

Tremor Video, Inc. v Alphonso, Inc.

2022 NY Slip Op 31655(U)

May 20, 2022

Supreme Court, New York County

Docket Number: Index No. 653266/2021

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

<p>-----X</p> <p>TREMOR VIDEO, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>ALPHONSO, INC. N/K/A LG ADS, LG ELECTRONICS, INC., LG ELECTRONICS U.S.A., INC.</p> <p style="text-align: center;">Defendants.</p> <p>-----X</p>	<table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">INDEX NO.</td> <td style="border-bottom: 1px solid black; text-align: center;">653266/2021</td> </tr> <tr> <td>MOTION DATE</td> <td style="border-bottom: 1px solid black; text-align: center;">N/A</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black; text-align: center;">005</td> </tr> <tr> <td colspan="2" style="text-align: center; padding-top: 10px;">DECISION + ORDER ON MOTION</td> </tr> </table>	INDEX NO.	653266/2021	MOTION DATE	N/A	MOTION SEQ. NO.	005	DECISION + ORDER ON MOTION	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 57, 58, 59, 60, 69, 70, 71, 74, 75, 76, 77, 82, 97, 104, 109, 110, 112, 113, 114, 115, 116, 121, 122, 125, 182, 183, 214 were read on this motion to SEAL.

Plaintiff Tremor Video, Inc. (“Plaintiff”) moves for an order sealing and/or redacting portions of certain documents filed in connection with Plaintiff’s motion for a preliminary injunction (Mot. Seq. 003). Plaintiff seeks to seal and/or redact portions of its Memorandum of Law, along with Exhibits 6–8, 18–20, 23–26, 53, 58, and 59 (NYSCEF 57–59, 69, 70, 71, 74–77, 104, 109, 110). Plaintiff filed a supplemental affidavit seeking to maintain NYSCEF 121, 122, and 125 under seal (*see* NSYCEF 214).

Defendant Alphonso, Inc. (“Defendant”) filed responsive papers (NYSCEF 182, 183) that did not challenge Plaintiff’s request to seal and/or redact the above documents, but rather requested the sealing of Exhibits 9, 31, and 46 (NYSCEF 60, 82, and 97). Plaintiff opposes only the sealing of Exhibit 46 (NYSCEF 97).

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining

whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed Exhibits 6 (NYSCEF 57), Exhibit 23 (NYSCEF 74), Exhibit 25 (NYSCEF 76), Exhibit 26 (NYSCEF 77), Exhibit 53 (NYSCEF 104), Exhibit 58 (NYSCEF 109), Exhibit 59 (NYSCEF 110), and finds that they comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive non-public financial information pertaining to Tremor’s business and marketing strategy. Further, Exhibits 18, 19, 20 (NYSCEF 69–71) and Exhibits 4, 5, 8 (NYSCEF 121, 122, 125) are properly sealed and/or redacted because they contain nonpublic confidential contracts or agreements with non-parties to this instant case (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [“disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein”]). The references to the contents of those agreements

in Plaintiff's Memorandum of Law (NYSCEF 50) (the unredacted version was provided to the Court for *in camera* review) are likewise properly redacted.

However, Tremor has failed to carry its burden to demonstrate good cause to keep Exhibit 7 (NYSCEF 58), Exhibit 8 (NYSCEF 59), and Exhibit 24 (NYSCEF 75), in their entirety, under seal. Plaintiff has failed to show why narrowly tailored redactions would be insufficient to protect the confidential information at issue.

Further, Alphonso has failed to carry its burden to demonstrate good cause to keep Exhibit 46 (NYSCEF 97) under seal as there appears to be no sensitive information in this exhibit, and Alphonso provides no specific justification for its sealing. Thus, Alphonso's application is denied with respect to this document.

Accordingly, it is:

ORDERED that Plaintiff Tremor Video, Inc.'s sealing motion (Motion Seq. 005) is **granted in part**, and the County Clerk shall maintain NYSCEF Document Number 50 in its current, redacted form; it is further

ORDERED that the Clerk of the Court is directed to permanently seal the documents filed at NYSCEF Nos. 57, 58, 59, 60, 69, 70, 71, 74, 75, 76, 77, 82, 104, 109, 110, 121, 122, and 125; it is further

ORDERED that the documents filed as NYSCEF 58, 59, 75, and 97 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If the parties file a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is filed within

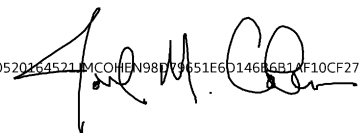
21 days from the entry of this Decision and Order, the parties shall within three business days thereafter file unredacted/unsealed copies of the documents on NYSCEF; and it is further

ORDERED, that the Clerk of the Court is directed to unseal the documents filed at NYSCEF Nos. 52, 53, 54, 55, 56, 61, 62, 63, 64, 65, 66, 67, 68, 72, 73, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 172, 173, 174, 175, 176, 177, 178, and 179. These documents were filed provisionally under seal in connection with Mot. Seq. 003, but neither party has moved to seal these documents.

It is further ORDERED that future submissions, made by any party, that contain subject matter that the court has authorized to be sealed by this Order may submit a Stipulation to be So Ordered authorizing such sealing and/or redaction of documents, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

5/20/2022
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE