

Tremor Video, Inc. v Alphonso, Inc.

2022 NY Slip Op 33852(U)

November 14, 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

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TREMOR VIDEO, INC.,		INDEX NO. <u>653266/2021</u>
Plaintiff,		MOTION DATE <u>09/06/2022</u>
- v -		MOTION SEQ. NO. <u>015</u>
ALPHONSO, INC. N/K/A LG ADS, LG ELECTRONICS, INC.		
Defendant.		DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 288, 321, 324, 326, 360, 362, 363, 364, 365, 366, 367

were read on this motion to SEAL.

Plaintiff Tremor Video Inc. (“Tremor”) moves for an order redacting portions of Tremor’s Memorandum of Law in Opposition to Defendant LG Electronics, Inc.’s Motion to Dismiss Plaintiff’s Second Amended Complaint (the “Memorandum”). For the reasons stated below, Tremor’s unopposed motion is **granted in part**.

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 Tremor’s request and finds that Tremor properly relies on this Court’s Decision and Order on Motion Sequence 005 (NYSCEF 321), which sealed certain documents filed in this action, as its basis for a redaction in the first paragraph on page 9 of the Memorandum. The proposed redaction comports with the applicable sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that it contains sensitive non-public information pertaining to Tremor’s business and marketing strategy.

However, Tremor has not provided a sufficient basis for the remaining proposed redactions requested in this motion. Tremor’s reliance on certain Notifications for Sealing (NYSCEF 288, 326) is unavailing. Those documents are not orders of the Court. They cite the Protective Order, which in turn requires that a sealing motion be filed within seven days of any redacted filing (NYSCEF 198, at ¶ 12(a)). No such motion has been made. Moreover, the fact that certain documents that have been designated *by a party* to be Confidential Information and/or Highly Confidential – Attorney’s Eyes Only under the Protective Order is insufficient to support the sealing of a Court document. That requires an independent determination by the Court based on a factual presentation by the party requesting sealing.

Accordingly, it is:

ORDERED that Tremor's motion to seal/redact is **granted in part**; it is further

ORDERED that Tremor refile the Memorandum filed as NYSCEF 360 with redactions in accordance with this Decision and Order; it is further

ORDERED that the Clerk of the Court is directed to unseal the documents filed as NYSCEF 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 280, 282, 283, 284, 285, 286 and 287. These documents were filed provisionally under seal in connection with Motion Sequence 009, but neither party has moved to seal these documents; it is further

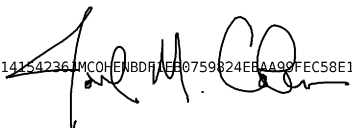
ORDERED that Tremor file an unredacted copy of the Second Amended Complaint filed as NYSCEF 324. This document was filed provisionally under seal, but neither party has moved to seal this document; it is further

ORDERED that the Clerk of the Court maintain NYSCEF 365 under seal, so that the document is only accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that as it relates to future submissions, made by any party, that contain subject matter that the court has authorized to be sealed by this Decision and Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any 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.

11/14/2022
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: