

Aaglance v Sami

2023 NY Slip Op 31155(U)

April 13, 2023

Supreme Court, New York County

Docket Number: Index No. 151262/2019

Judge: Mary V. Rosado

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

JAMILA AAGLANE,

Plaintiff,

- v -

ISHRAT SAMI,

Defendant.

-----X

INDEX NO. 151262/2019

MOTION DATE 04/11/2022

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 109, 110, 111, 112, 113

were read on this motion to/for REARGUE/RENEWAL.

Upon the foregoing documents, oral argument, which took place on December 20 and 21, 2022 where Kenneth McCallion, Esq. appeared for Plaintiff Jamila Aaglane (“Plaintiff”), Johanne Nicolas, Esq. appeared for Defendant Ishrat Sami (“Defendant”), and David P. Turchi, Esq. appeared for non-party Shailinder Khitri (“Khitri”), and good cause having been shown, Khitri is granted leave to reargue his prior motion to seal, and upon reargument, his prior motion to seal is granted in part and denied in part.

I. Background

This case was commenced on February 5, 2019 and arises out of Defendant’s alleged malpractice during the course of her representation of Plaintiff in her divorce action against non-party Khitri (NYSCEF Doc. 1). On January 8, 2021, Defendant moved for summary judgment dismissing Plaintiff’s Complaint (NYSCEF Doc. 9 or “Mot. Seq. 001”) Plaintiff cross-moved seeking to compel Defendant to respond to certain discovery demands (NYSCEF Doc. 11). On October 18, 2021, the Hon. Alexander Tisch denied Defendant’s motion for summary judgment, granted Plaintiff’s cross-motion to compel, and ordered the parties to appear for a preliminary

conference (NYSCEF Doc. 43). Defendant then filed a proposed order to show cause on January 5, 2022, asking the Hon. Alexander Tisch to vacate his prior order denying summary judgment (NYSCEF Doc. 58). The proposed order to show cause was denied on January 13, 2022 (NYSCEF Doc. 62 or “Mot. Seq. 002”). On January 14, 2022, Defendant then filed a motion for the prior order denying summary judgment to be vacated (NYSCEF Doc. 63 or “Mot. Seq. 003”). Plaintiff cross-moved for sanctions to be imposed against Defendant (NYSCEF Doc. 67). The case was subsequently transferred to this Part.

On February 18, 2022, non-party Khitri filed a proposed order to show cause seeking to seal the docket (NYSCEF Doc. 73 or “Mot. Seq. 004”). Khitri’s order to show cause was signed on March 3, 2022 (NYSCEF Doc. 77). On March 10, 2022, this Court denied Khitri’s motion to seal for failure to show good cause (NYSCEF Doc. 81).

On March 14, 2022, Defendant filed a motion seeking to join this trial with her civil court action against Khitri seeking attorneys’ fees (NYSCEF Doc. 82 or “Mot. Seq. 005”). Meanwhile, on April 8, 2022, Khitri filed the instant motion to reargue this Court’s decision denying his request to seal the docket (NYSCEF Doc. 97 or “Mot. Seq. 006”). On October 23, 2022, Defendant filed a motion against Plaintiff seeking sanctions for failure to provide discovery (NYSCEF Doc. 114 or “Mot. Seq. 007”).

On November 4, 2022, this Court denied Mot. Seq. 007 as discovery motions are not allowed in Part 33 without leave of the Court (NYSCEF Doc. 120). After oral argument on Mot. Seq. 003, Mot. Seq. 005, and Mot. Seq. 006, which was held on December 20 and 21, 2022, Defendant withdrew her motion seeking to vacate Judge Tisch’s prior order. The Court issued an Order reflecting Defendant’s withdrawal of Mot. Seq. 003 (NYSCEF Doc. 126). In a Decision and

Order dated March 3, 2023, this Court denied Defendant's motion to join for trial the instant action with her ongoing Civil Court action against non-party Khitri (NYSCEF Doc. 128).

^{with respect}
In ~~regards~~ to the instant motion, the Court directed the parties to attempt to agree to a proposed sealing order related to the instant motion. The Court allowed the parties time to submit a proposed order. Upon correspondence from the parties ~~informing the Court~~ that they have not been able to agree to a proposed sealing order, the Court issues the instant Decision and Order resolving motion sequence 006.

II. Discussion

A. Leave to Reargue

Pursuant to CPLR § 2221(d), a motion for reargument should be granted where the Court overlooks or misapprehends issues of fact or law (*Smith v City of Buffalo*, 997 NYS2d 563, 564 [2014]). The Court agrees with Khitri that certain issues of fact or law were overlooked. Specifically, in its Decision and Order dated March 10, 2022 (NYSCEF Doc. 81), the Court held that Khitri's motion was denied for failure to show good cause. However, the Court overlooked the operation of 22 NYCRR 202.5(e)(2), which mandates the redaction of confidential personal information regardless of whether good cause has been shown or not.

22 NYCRR 202.5(e)(2) provides as follows:

(e) Omission or redaction of confidential personal information.

(1) Except in a matrimonial action, or a proceeding in surrogate's court, or a proceeding pursuant to article 81 of the Mental Hygiene Law, or as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information (CPI) means:

- (i) the taxpayer identification number of an individual or an entity, including a social security number, an employer identification

- number, and an individual taxpayer identification number, except the last four digits thereof;
- (ii) the date of an individual's birth, except the year thereof;
 - (iii) the full name of an individual known to be a minor, except the minor's initials;
 - (iv) a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number, except the last four digits or letters thereof;
 - (v) any of the documents or testimony in a matrimonial action protected by Domestic Relations Law section 235 or evidence sealed by the court in such an action which are attached as exhibits or referenced in the papers filed in any other civil action. For purposes of this rule, a matrimonial action shall mean: an action to annul a marriage or declare the nullity of a void marriage, an action or agreement for a separation, an action for a divorce, or an action or proceeding for custody, visitation, writ of habeas corpus, child support, maintenance or paternity.

Moreover, Domestic Relations Law (“DRL”) § 235 explicitly provides that an officer of the court with whom the proceeding in a matrimonial action is filed:

“[S]hall not permit a copy of any of the pleadings, affidavits, findings of fact, conclusions of law, judgment of dissolution, written agreement of separation or memorandum thereof, or testimony, or any examination or perusal thereof, to be taken by any other person than a party, or the attorney or counsel of a party, except by order of the Court” (*see* DRL § 235[1]).

Indeed, under DRL § 235(3), if someone seeks evidence of the disposition of a matrimonial action, the County Clerk is directed to issue a certificate of disposition, but “shall in no manner evidence the subject matter of the pleadings, testimony, findings of fact, conclusions of law or judgment of dissolution derived in any such action.” Further, the legislature, in enacting DRL § 235(5), stated that the confidentiality subscribed by the DRL is to apply for one hundred years after disposition of the matrimonial action, at which point such records shall be available for public inspection. The application of this plain reading of DRL § 235 has been upheld by the Court of

Appeals in *Shiles v News Syndicate Co.*, where the Court held “Section 235 of the [DRL], which prohibits the taking of copies, or even the inspection, of the records of matrimonial proceedings by anyone other than the parties or their counsel, manifests a clear legislative design that these proceedings be kept secret and confidential.” (27 NY2d 9, 14 [1970]).

A transcript from the matrimonial proceeding or portions from the transcript has been repeatedly uploaded to the docket (NYSCEF Docs. 9, 12-13, 49, 60, 65, 88). Moreover, a subpoena, a notice to admit containing bank account information, and settlement communications regarding the matrimonial action were uploaded by Defendant (NYSCEF Docs. 50, 53, and 55). Both Plaintiff and Defendant have also included in their pleadings excerpts from the transcript in the matrimonial action as well as information regarding payments made during the matrimonial action (NYSCEF Docs. 1 and 4, *see also* NYSCEF Docs. 84-86). Defendant also uploaded to NYSCEF records requests to Khitri’s banks with his account numbers (NYSCEF Doc. 56). As the Court did not factor in the application of these statutes or case law in its analysis to seal at least some of the documents on the docket, leave to reargue is granted.

B. Khitri’s underlying motion to seal

Upon reargument, Khitri’s underlying motion to seal is granted in part and denied in part. The Court agrees with Khitri that pursuant to statutory mandate, multiple documents on the docket must be redacted or sealed. However, as argued by Plaintiff and Defendant, it does not follow that the entirety of the docket must be sealed. Indeed, for the remainder of the docket, where no statutory mandate applies, good cause must be shown.

22 NYCRR 216.1 grants courts the ability to seal court records upon a finding of good cause. In determining whether good cause exists, a court shall consider the interests of the public, as well as of the parties (*Applehead Pictures LLC v Perelman*, 80 AD3d 181 [1st Dept 2010]). A

finding of good cause is within the Court's discretion (*id.*). To overcome the presumption of openness, a movant must establish that "compelling circumstances" exist to justify secrecy (*Coopersmith v Gold*, 156 Misc.2d 594, 606 [Sup Ct, Rockland County 1992]). The Court balances the interests of the public as well as of the parties in determining whether sealing is warranted (*Doe v New York Univ.*, 6 Misc3d 866, 874-75 [Sup Ct, New York County 2004]).

Khitri has not established compelling circumstances to justify sealing the entire docket. This is a legal malpractice action. Defendant, who provides legal services to the public, has been accused of professional negligence. Therefore, the public has a strong interest in open proceedings in this matter. Moreover, both Plaintiff and Defendant have opposed Khitri's motion to the extent it seeks to seal the entire docket. While counsel for Khitri argued on the record that the parties repeated violations of DRL § 235 and 22 NYCRR 202.5(e) constitute good cause to seal the entire docket, as their past violations indicate likely future violations, the Court finds this argument heavy handed and premature. The more appropriate remedy here is to warn the parties that should they continue to violate DRL § 235 and 22 NYCRR 202.5(e) in future filings, the Court may impose sanctions on the violator. Therefore, Khitri has not demonstrated good cause to seal the entire docket, and this portion of his motion is denied.

However, the Court agrees with Khitri that certain documents should be sealed or redacted pursuant to statute and rule (*see* DRL § 235; 22 NYCRR 202.5[e]). The parties' pleadings, which contain portions of the transcript from the matrimonial action, are in violation of DRL § 235 shall remain sealed from the public.¹ Therefore, NYSCEF Docs. 1 and 4 shall be sealed.

¹ Although the preferred method would be to allow the parties to redact solely those paragraphs of the pleadings which contain the excerpts of the transcript from matrimonial court, as this is an e-filed case, the limitations of NYSCEF will now allow for such a remedy, and therefore the offending documents must be sealed in its entirety.

Defendant's prior motion for summary judgment, which annexed the entirety of a transcript from the matrimonial action in her motion papers also must be sealed pursuant to DRL § 235 (NYSCEF Doc. 9). The affirmation of Plaintiff's counsel in opposition to Defendant's prior motion for summary judgment contains excerpts from the matrimonial transcript discussing temporary maintenance as well as settlement of the matrimonial action and must therefore be sealed (NYSCEF Doc. 13). Plaintiff's affidavit in opposition to Defendant's prior motion for summary judgment contains the same excerpts of the transcript from the matrimonial action and must therefore be sealed (NYSCEF Doc. 12).

Plaintiff's bill of particulars, while containing some information that may tangentially relate to the matrimonial action, deals almost exclusively with the facts underlying her malpractice action. Therefore, the Court finds no basis for sealing this document (*see* NYSCEF Doc. 17). While there is reference to attached exhibits in the bill of particulars which may include matrimonial documents, on NYSCEF, the exhibits are not attached. To the extent there are questions about the marital estate, Plaintiff objected to these requests and did not provide any information which would be barred pursuant to DRL § 235. Therefore DRL § 235 does not mandate sealing, and there is no good cause to seal this document. Likewise, there is no need to seal NYSCEF Doc. 19, which deals with Plaintiff's work at a company named Retention, Inc. To the extent there is banking information attached to that document, it is sufficiently redacted.

NYSCEF Doc. 20, which shows a check from a company called Retention, has the banking information redacted. Therefore, it is not in violation of 22 NYCRR §202.5(e), and there is no good cause to seal this document. Likewise, NYSCEF Doc. 25, which is titled "Notes re Partnership" does not contain any identifying information, nor has good cause been established to seal this document. NYSCEF Doc. 28, which is titled "Financial Transactions" does not contain

sufficient identifying information to require sealing. The handwritten notes in NYSCEF Doc. 33 are sufficiently redacted. NYSCEF Doc. 40 is also sufficiently redacted.

Khitri has failed to show any particular reason to seal NYSCEF Doc. 28, and in any event, records concerning business operations and internal practices and procedures are insufficient to demonstrate compelling circumstances which justify sealing (*Vergara v Mission Capital Advisors, LLC*, 187 AD3d 495 [1st Dept 2020]; see also *Cortland Street Recovery Corp. v Bonderman*, 71 Misc.3d 908 [Sup. Ct., NY Co. 2021]).

NYSCEF Doc. 49, uploaded by Defendant, and titled "Transcript of February 25, 2016" contains the transcript of a portion of the matrimonial action, and therefore shall remain sealed pursuant to DRL § 235. Likewise, NYSCEF Doc. 50 is a letter from Khitri's attorney in the matrimonial action to Defendant and contains settlement discussions and should therefore be sealed pursuant to DRL § 235. Defendant uploaded a subpoena she sent to Khitri's banks in the matrimonial action and has failed to redact personal confidential information, therefore this document is sealed (NYSCEF Doc. 53). The Court admonishes the Defendant, who is a licensed attorney, for uploading a document with Khitri's bank account information without redacting those numbers. If either party continues this practice, the Court repeats: they will face sanctions.

NYSCEF Doc. 55 is a notice to admit from the matrimonial action and must be sealed pursuant to DRL § 235. The same applies to NYSCEF Doc. 56, also uploaded by Defendant, wherein correspondence to banks with Khitri's account numbers was uploaded without redacting the confidential and personal information. This document must be sealed.

NYSCEF Doc. 57, which contains emails purportedly evidencing Defendant scheduling a settlement discussion with Khitri without notifying Plaintiff, does not contain any information

which contravenes DRL § 235. Nor is there any confidential personal information. Therefore, there is no reason for this document to be sealed.

NYSCEF Doc. 60, titled “copy of motion to (*sic*) summary judgment” which was uploaded by Defendant, contains the transcript from the matrimonial case. Therefore, this document must be sealed. NYSCEF Doc. 65, titled “order to show cause package” also contains the transcript in violation of DRL § 235 and must therefore be sealed. NYSCEF Doc. 70, uploaded by Defendant, also contains a portion of the transcript from the matrimonial action in contravention of DRL § 235. Although the portion of the transcript quoted is *de minimis*, pursuant to statute, no portion of testimony from a matrimonial matter may be disclosed to anyone other than the parties to the matrimonial action. Therefore, this document must be sealed pursuant to statute.

Finally, NYSCEF Docs. 84-86, uploaded by Defendant, all contain pleadings with portions of the transcript from the matrimonial matter quoted verbatim, uploaded in contravention of DRL § 235. NYSCEF Doc 88, again uploaded by Defendant, also contains the entire transcript from the matrimonial matter. These documents must therefore be sealed.

As held by the First Department, although it may be easier for the motion court to seal an entire court record, rather than deciding on a document-by-document basis, administrative convenience is not a compelling reason to justify sealing (*Vergara v Mission Capital Advisors, LLC*, 187 AD3d 495 [1st Dept 2020]). However, engaging in this practice is time consuming and an improper use of court resources, especially when the parties to this action are licensed attorneys. Therefore, the Court again cautions the parties in uploading further documents in this matter. If a document is uploaded in contravention of any statute or court rule, the offending party may be sanctioned.

Accordingly, it is hereby,

ORDERED that non-party Khitri's motion to reargue its prior motion to seal is granted, and upon reargument, Khitri's underlying motion to seal is granted in part and denied in part; and it is further

ORDERED that within ten days of entry, counsel for non-party Khitri shall serve a copy of this Decision and Order upon all parties to this action, with notice of entry; and it is further

ORDERED that the Clerk of the Court is directed to seal the docket in accordance with the annexed supplemental Order.

This constitutes the Decision and Order of the Court.

<u>4/13/2023</u> DATE					<u>Mary V Rosado JSC</u> MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE