

**Martin v William & Cindy Abrams Family Trust**

2023 NY Slip Op 32358(U)

July 13, 2023

Supreme Court, New York County

Docket Number: Index No. 651174/2022

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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TERI MARTIN,

Plaintiff,

- v -

WILLIAM AND CINDY ABRAMS FAMILY TRUST,  
WILLIAM L. ABRAMS, NEIL B. GARFINKEL, and ZAREH  
BANDARI,

Defendants.

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INDEX NO. 651174/2022

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 83, 84, 85, 86, 87, 88, 90, 91

were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170

were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

In motion sequence number 003, defendants move by order to show cause (OSC), to redact NYSCEF Doc No. (NYSCEF) 73<sup>1</sup> and to seal NYSCEF 80, pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. In motion sequence number 004, defendants move by OSC, to redact NYSCEF 104, 124, 149, and 150<sup>2</sup>, and to seal entirely NYSCEF 115-118, 120, 125, 126, 130, 136-138, and 140-146. Defendants also move to seal entirely NYSCEF 110, 111, 112, 113, and 114, and

<sup>1</sup> Defendants failed to file a publicly redacted copy of this document in accordance with the Part 48 Procedures and instead only filed a copy of this document with highlighted proposed redactions under seal. (NYSCEF 86.)

<sup>2</sup> Defendants failed to file publicly redacted copies of these documents in accordance with the Part 48 Procedures and instead only filed copies of these documents with highlighted proposed redactions under seal. (NYSCEF 156, 157, 158, 159.)

file excerpts of those documents with redactions<sup>3</sup>. The motions are unopposed. There is no indication that the press or public have an interest in these matters.

### **Motion Sequence Number 003**

NYSCEF 73 contains excerpts from the deposition of plaintiff Teri Martin dated January 31, 2023 (Martin Dep). Defendants seek to redact information concerning clients of MSI Management Services, Inc. (MSI), in which the parties are shareholders, specifically the approximate number of clients MSI has in total, and in different offices, as well as the name of a client, and the occupations of clients.

NYSCEF 80 also contains excerpts from the Martin Dep. Defendants state, citing to the parties' confidentiality stipulation (NYSCEF 13) that this document has been filed under seal because "[t]ime has not yet elapsed for Plaintiff to make confidentiality designations." (NYSCEF 85, sealing chart.)

### **Motion Sequence Number 004**

NYSCEF 115-118, 120, 126, 136-138, and 140-146 contain various email chains, some with attachments. Defendants state that the emails "concern the negotiation and execution of an internal MSI transaction, including non-public financial information regarding the transaction . . ." (NYSCEF 165, memorandum at 3.) The emails appear to contain conversations with the parties and attorneys concerning MSI transactions and plaintiff's retirement. NYSCEF 125 and 130 are an MSI shareholder's agreement and a draft shareholders' agreement. Defendants seek to seal all of these documents in their entirety.

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<sup>3</sup> Defendants failed to file publicly redacted copies of these excerpts in accordance with the Part 48 Procedures and instead only filed copies of some of them with highlighted proposed redactions under seal. (NYSCEF 160-162, 164.)

NYSCEF 104 contains excerpts from the deposition of Neil Bruce Garfinkel dated March 23, 2023 (Garfinkel Dep). Defendants seek to redact what they describe as “[i]nformation regarding the MSI’s internal finances and transactions.” (NYSCEF 155, sealing chart at 1.) The proposed redaction appears to be testimony as to the purchase price for plaintiff’s shares. (NYSCEF 156.)

NYSCEF 110 is the transcript of the deposition of Zareh Bandari dated March 15, 2023. NYSCEF 111 is the full transcript of the Martin Dep. NYSCEF 112 is the transcript of the deposition of William L. Abrams dated April 20, 2023. NYSCEF 114 is the transcript of the deposition of Hillel S. Shechter, Esq. dated April 26, 2023. Defendants seek to seal these depositions and file excerpts of them with redactions as set forth in NYSCEF 160-162 and 164. Defendants describe the proposed redactions as “[i]dentifying information regarding MSI’s clients and internal finances.” (NYSCEF 155, sealing chart at 2-3.) The proposed redactions in the depositions collectively appear to be testimony regarding the pricing of MSI shares negotiated or agreed to, an employee salary under a shareholders’ agreement, and salaries of different individuals that were negotiated, proposed or agreed to.<sup>4</sup> (NYSCEF 160-162, 164.)

NYSCEF 113 is the full transcript of the Garfinkel Dep. Defendants state in their sealing chart that NYSCEF 163 is an excerpted copy of NYSCEF 113 with proposed highlighted redactions. (NYSCEF 155 at 3.) Defendants do not include any proposed highlighted redactions of NYSCEF 163, and it is not filed under seal.

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<sup>4</sup> The proposed redactions in NYSCEF 162 also appear to include the names of two present or former clients.

NYSCEF 124 is an affidavit of plaintiff Martin in support of her motion for summary judgment. NYSCEF 149 is plaintiff's memorandum of law in support of her motion for summary judgment. NYSCEF 150 is plaintiff's statement of material facts in support of her motion for summary judgment. Defendants describe the proposed redactions to these documents as "[i]nformation regarding the MSI's internal finances and transactions." (NYSCEF 155, sealing chart at 1-2.) The proposed redactions collectively appear to be pricing of MSI shares negotiated, paid or agreed to, the price for a deceased shareholder's shares in a shareholders' agreement, MSI's profits in different years, and characterizations of the value of MSI shares and the company.

### Discussion

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

"(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except 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. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard."

"Under New York law, 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] [citations omitted].) The "party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access" to the documents. (*Id.* at 349 [citations omitted].) Good cause must "rest on a sound basis or legitimate need to take judicial action." (*Danco Lab, Ltd. v Chemical*

*Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem*, 76 AD3d at 350 [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information.” (*D’Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

As an initial matter, the fact that the parties agreed to designate certain documents or information as confidential pursuant to a confidentiality stipulation in this action is not itself a basis for sealing or redacting the documents, as defendants seem to assert. (*Mosallem*, 76 AD3d at 350, quoting *Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 626 [2d Dept 2006] [“Merely because some of the documents were marked ‘confidential’ or ‘private’ ‘is not controlling on the court’s determination whether there is good cause to seal the record.’”].) Likewise, the parties cannot seal documents on consent; good cause must be shown. (See *Benkert v Smithers (In re Will of Benkert)*, 288 AD2d 147 [1st Dept 2001] [“The Surrogate correctly held that the stipulation of the parties to a terminated probate proceeding consenting to the sealing or expunging of certain records in that proceeding does not obviate the need to show good cause for such relief, as required by 22 NYCRR 216.1(a).”].)

Additionally, neither party has filed any proposed redactions of NYSCEF 80, and therefore, the court cannot make any determination as to that document. The court also denies the motion to the extent defendants seek to redact portions of the Garfinkel Dep. excerpts filed at NYSCEF 163, since that document has been filed publicly without proposed redactions.

The court next addresses defendants' proposed redactions to information about clients in NYSCEF 73 (as shown in NYSCEF 86). Defendants have demonstrated sufficient cause to redact MSI's present or former client names and occupations of clients that could potentially identify them. While defendants fail to give a detailed explanation of why such information is confidential, it is plainly information about nonparties that could be competitively harmful to a business (*Mosallem*, 76 AD3d at 350), and defendants have narrowly tailored their redactions of this information. However, defendants provide no basis to redact the total number of clients MSI has or the number of clients in particular offices in NYSCEF 73. Defendants fail to explain how this information is competitively sensitive. Thus, defendants' motion is denied to this extent.

The court next addresses defendants' proposed redactions of NYSCEF 104, 160-162, 164, 124, 149, and 150. While defendants' redactions are narrowly tailored, defendants fail to (1) identify the particular financial information they seek to redact in these documents or (2) explain why its disclosure would be competitively harmful to them. Rather, defendants broadly state that the information is not publicly available, and the business management industry is highly competitive. Defendants have not

demonstrated good cause to redact this information. Nor is a lack of public interest alone sufficient.

The court also denies the motion to the extent defendants seek to seal NYSCEF 110, 111, 112, 113, and 114 in their entirety. Defendants provide no basis to seal the entire transcripts.

The court next addresses defendants' proposed sealing of NYSCEF 115-118, 120, 125, 126, 130, 136-138, and 140-146. Defendants' only reason for sealing these documents entirely is that they contain "[i]nformation regarding MSI's internal finances and transactions" and disclosure of this "would competitively disadvantage MSI." (NYSCEF 155, sealing chart at 1.) Defendants however quote portions of several of these emails in their memorandum of law in support of their motion for summary judgment, which is filed publicly. (NYSCEF 148.) Thus, defendants have not demonstrated that these documents must be sealed entirely.

To the extent defendants seek to redact any information in the documents which this decision denies redaction of, they must move by OSC, including descriptions of the particular redactions, what the information covered by each redaction is, and why it is confidential and/or would be competitively harmful to plaintiff if revealed. Defendants shall also provide an affidavit from a person with knowledge to explain the necessity of the redactions they seek.

Accordingly, it is

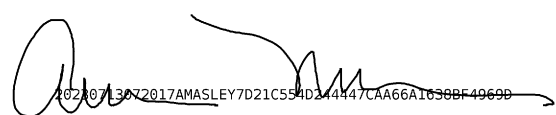
ORDERED that motion sequence number 003 is granted in part in part; and it is further

ORDERED that motion sequence number 004 is denied without prejudice; and it is further

ORDERED that within 30 days of this order, defendants must either file public copies of NYSCEF 73, 80, 86, and 111 with only those redactions in each that are permitted by this order in NYSCEF 73, or move by OSC as set forth in this decision; and it is further

ORDERED that within 30 days of this order, the court will direct the County Clerk to unseal NYSCEF 104, 110, 112, 113, 114, 115-118, 120, 124, 125, 126, 130, 136-138, 140-146, 149, 150, 156, 157, 158, 159, 160-162, and 164 unless defendants file an OSC in accordance with this order; and it is further

ORDERED that the motion is denied to the extent defendants seek to redact any portions of NYSCEF 163.



7/13/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE