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

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GENTRY T. BEACH and ROBERT A. VOLLERO,

Plaintiffs,

- v -

TOURADJI CAPITAL MANAGEMENT, LP, PAUL TOURADJI, VOLLERO BEACH CAPITAL PARTNERS, VOLLERO BEACH CAPITAL FUND, VOLLERO BEACH ASSOCIATES LLC, VOLLERO BEACH CAPITAL OFFSHORE, LTD., GARY BEACH, and DEEPROCK VENTURE PARTNERS, LP,

Defendants.

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INDEX NO. 603611/2008

MOTION DATE N/A

MOTION SEQ. NO. 058

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 058) 1445, 1446, 1448, 1457, 1464

were read on this motion to/for SEAL.

Upon the foregoing documents, it is

Plaintiffs Gentry Beach and Robert Vollero move, pursuant to 22 N.Y.C.R.R. § 216.1 of the Uniform Rules for New York State Trial Courts, for an order (i) requiring the parties to redact the name Trump in all NYSCEF filings and correspondence with the court and (ii) sealing the 2019 sealing order and the so-ordered stipulation. Plaintiffs' counsel, in an affirmation in support of this motion, requests enforcement of Justice Andrew Borrok's 2019 order by redacting all references to "certain prejudicial information in all NYSCEF filings"[1] and sealing "the so-ordered stipulation referenced in

[1] This court cannot consider this broad request lacking any specificity; to date, there are 1,504 documents filed on NYSCEF. This part of the motion is also denied since plaintiffs failed to comply with this court's procedure which requires a chart listing each document number, redaction, and legal basis for the redaction. (Part 48 Procedure 12[A].)

the Sealing Order, which was supposed to be sealed pursuant to the Sealing Order but was not" in 2019. (NYSCEF 1448, Stopler aff ¶ 2.)

The motion is denied for the reasons stated on the record on June 15, 2023, which are supplemented by this written decision.

There are eight emails at issue before the court. This is a post-trial motion following a four-week jury trial in January-February 2023 during which the emails at issue (DX 0371A, 1103A, 1105A, 1107A, 1115A, 1122A, and 1150A) were read into the record and entered into evidence in support of defendants' faithless employee theories. (NYSCEF 1436, 1437, 1438, 1439, 1440, 1441, 1443.) Plaintiffs offered another email (PX304) during Touradji's examination. (NYSCEF __;[2] NYSCEF 1378, tr. at 1116:10-1120:2.)

In April 2019, prior to the first trial in this action, plaintiffs moved to exclude all references to the name Trump from evidence at trial. (NYSCEF 773, Order to Show Cause [mot. seq. no. 041] [seeking permission to file a motion in limine (seq. 042) under seal]; NYSCEF 775, Order to Show Cause [mot. seq. no. 042] [seeking to prohibit defendants from offering evidence including the name Trump or using the name Trump at trial].) On April 30, 2019, relying on the proposed and signed Orders to Show Cause (NYSCEF 772, 773, 774, 775) and stipulation submitted by the parties, the court (Borrok, J.) granted the motions "to the extent of the stipulation, dated April 26, 2019"

[2] Plaintiff is directed to file PX304 in NYSCEF within 10 days of this decision.

(Sealing Order).[3] (NYSCEF 869, Decision and Order [mot. seq. no. 041]; NYSCEF 870, Decision and Order [mot. seq. no. 042].) The stipulation provides:

> "absent further order of the Court, none of the parties shall offer any evidence or make any statement that does, or that is designed to, connect any other party to any member of the Trump family, and all parties shall take steps to ensure that any documentary evidence that might otherwise be used or be admitted into evidence and that might contain information making such a connection is appropriately redacted. This includes redacting any reference to the Trump family or any individual members thereof in any written document or deposition testimony that is otherwise admissible."

(*Id*. at 4.) The Sealing Order required that the so-ordered stipulation be sealed, but it never was. (*See id*.) In the 2019 trial, defendants never questioned Beach about why he sent PX304 to Touradji. The jury returned a verdict for plaintiffs (NYSCEF 876, 2019 Verdict Sheet), but that verdict was reversed. (NYSCEF 1005, First Department Decision and Order; *Beach v Touradji Capital Mgt., LP*, 179 AD3d 474 [1st Dept 2020].)

Subsequently, a new trial was ordered, and the case was transferred to this court. Defendants' new trial counsel had new strategies. This court ruled that the emails could be offered into evidence in support of defendants' faithless employee affirmative defense and counterclaim. (NYSCEF 1246, Decision and Order at 5 [mot. seq. no. 053].) During the trial, defendants' counsel examined Beach using unredacted versions of some of the emails. (*See* NYSCEF 1385, tr. at 2695:3-16 [DX1103A], 2698:12-14 [DX1105A], 2699:2-12 [DX1150A], 2701:15-02:2 [DX1151A], 2706:11-15 [DX354A].) Trump Jr.'s name was stated repeatedly in open court on the record. (*See id.* at 2696:22, 2699:3, 2699:6, 2699:22, 2703:25, 2704:10, 2704:25.) Plaintiffs did not

[3] The court stated in the Sealing Order that its reasoning is on the record of April 30, 3019, but that transcript is not in the record. Likewise, the supporting papers are not in the record. Accordingly, the good cause found by the court is unknown.

object. (*Id.*; *see also id.* at 2706:11-15.) The jury was provided with all of the trial exhibits for their deliberations. When plaintiffs offered PX 304, defendants argued for unredacting the Trump name because "Gentry Beach traded off his relationship" with the Trump family. (NYSCEF 1378, tr. at 1117:1-9.) Defense counsel opined that Beach forwarded the email to his boss to say "look at all my important friends." (*Id.* at 1118:18.) The court allowed defendants to question "Beach about why he sent [PX304]" and held that "they get to put in that name Trump." (*Id.* at 1119:9-10.)

The jury rejected defendants' counterclaims and deadlocked on plaintiffs' sole claim for breach of contract. (NYSCEF 1365, 2023 Verdict Sheet.) Now, defendants seek to rely on these emails in support of their post-trial motions.

"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].) "It is a bedrock principle of our judicial system that the public has a presumptive right of access to court records." (*Gottwald v Sebert*, 58 Misc 3d 625, 638 [Sup Ct, NY County 2017] [citation omitted].) The public's right to access is, however, not absolute, and under certain circumstances, "public inspection of court records has been limited by numerous statutes." (*Id.* at 349.) Section 216.1(a) of the Uniform Rules for New York State Trial Courts, empowers courts to seal documents upon a written finding of good cause and 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."

The "party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access" to the documents. (*Mosallem*, 76 AD3d 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].)

Plaintiffs' first reason for redaction is to deny further access to admitted evidence because the court files "might become a vehicle for improper purposes." (NYSCEF 1446, Plaintiffs' Memorandum of Law [MOL] at 5 [internal quotation marks and citation omitted].) However, plaintiffs fail to identify defendants' improper purpose. Rather, plaintiffs opine that defendants have only improper purposes for using the Trump name either to prejudice the jury pool for the retrial or to increase risk of reputational harm to plaintiffs, or perhaps to generate settlement leverage. Other than plaintiffs' counsel's affirmation labeling the name Trump as "prejudicial information," there is effectively no affidavit in support of this motion. Accordingly, this reason is rejected as speculative and vague.

Plaintiffs' second reason to redact the Trump name from the emails already in the record is that "when a party uses the threat of public disclosure for tactical purposes, such as to apply extrajudicial settlement pressure, courts generally grant sealing orders." (*Id.* [citation omitted].) However, plaintiffs fail to identify such a threat in this case. Again, the court rejects plaintiffs' argument as speculative and vague.

Plaintiffs next point to the Sealing Order. However, the Sealing Order was subject to further court order. Indeed, much has changed since that Order. Most

significantly, the emails are in evidence. The court controls the evidence after trial and whether it can be replicated for public consumption or subsequently inspected, and the court may limit access to the evidentiary record after the trial. "The common-law presumption of access, as applied to the inspecting and copying of court records, is especially strong for any item entered into evidence at a public session of the trial although, again, it is not absolute." (*Danco Labs., Ltd.*, 274 AD2d at 7 [internal quotation marks and citation omitted].)

At issue here is the public filing of emails, admitted into evidence at trial, for the purpose of deciding post-trial motions. This court is compelled to conduct its own evaluation of good cause in the absence of a statement of good cause in the Sealing Order. (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]; *In Re Brownstone*, 191 AD2d 167 [1st Dept 1993].) Plaintiffs' reliance on the parties' stipulation is rejected as parties cannot stipulate to seal documents. Consent does not establish good cause; rather, a court must make "its own written finding of good cause, as is required by the provisions of the Uniform Rules for Trial Courts." (*Maxim Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted] [rejecting trial court's reliance on parties' stipulation to seal].)

The court rejects plaintiffs' invitation "to redact the names of non-parties on exhibits for privacy reasons." (NYSCEF1446, Plaintiffs' MOL at 4.) Plaintiffs admit that Trump Jr. is a "public figure" (*id.* at 5), and public figures are afforded little privacy protection. (*Rand v Hearst Corp.*, 31 AD2d 406, 409 [1st Dept 1969] [holding "in the case of a public figure -- who by the very nature of being a public figure has no complete privacy -- no liability exists when his or her name or picture is used without

consent"]; *Rosemont Enters., Inc. v Random House, Inc.*, 294 NYS2d 122 [Sup Ct, NY County 1968] [citation omitted] ["A public figure, whether he be such by choice or involuntarily, is subject to the often-searching beam of publicity and, in balance with the legitimate public interest, the law affords his privacy little protection."].)

Finally, plaintiffs assert that the Trump name is toxic and presumptively prejudicial to any New York jury. This too is speculative, and as discussed on the record, is rejected. Voir dire is the "process which has served the courts well since the inception of jury selection" and gives the parties amply opportunity to "explore potential biases." (*See Matter of Barker v Union Corrugating Co.*, 72 Misc 3d 731, 733 [Sup Ct, Onondaga County 2021].) Further, "it is a fundamental assumption of our system of trial by jury that, after the presentation of evidence and argument by counsel, the jury will apply the law to the facts to reach a proper and reasoned verdict." (*People v Davis*, 86 AD3d 59, 67-68 [2d Dept 2011] [internal quotation marks and citation omitted].)

Also, implicit in this argument is that Beach is embarrassed of his affiliation. However, the cases are clear that embarrassment is not good cause to seal. (*Benkert v Smithers (In re Will of Benkert)*, 288 AD2d 147 [1st Dept 2001] [holding that a "desire to prevent dissemination of inflammatory and embarrassing allegations contained in the record constitute such good cause" to seal]; *Spot & Co. of Manhattan v Rubin*, 2022 NYLJ LEXIS 2199, *8 [internal quotation marks and citation omitted] [holding that "embarrassment, damage to reputation and the general desire for privacy do not constitute good cause to seal court records"]; *see also Anonymous v Lerner*, 124 AD3d 487, 488 [1st Dept 2015] [internal quotation marks and citations omitted] [holding that

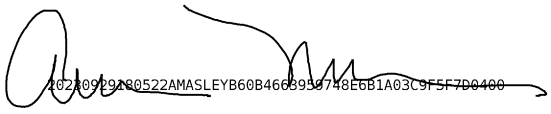
"claims of public humiliation and embarrassment . . . are not sufficient grounds for allowing a plaintiff . . . to proceed anonymously"].)

Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that defendants' request for rule 130-1.1 sanctions is denied; and it is further

ORDERED that movants shall file the transcript in accordance with part 48 Procedures.



9/29/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE