Tremor Video, Inc. v Alphonso, Inc.
2023 NY Slip Op 34287(U)
December 5, 2023
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.,

Plaintiff,

- v -

ALPHONSO, INC. N/K/A LG ADS, LG ELECTRONICS, INC.,

Defendants.

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INDEX NO. 653266/2021

MOTION DATE 08/03/2023

MOTION SEQ. NO. 023

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 023) 555, 556, 557, 558, 658, 660, 661, 664

were read on this motion to SEAL/REDACT.

Defendant LG Electronics, Inc. ("LGE"), seeks an order sealing exhibits from that were filed in connection with this proceeding as NYSCEF Document Numbers 521, 522, 525, 526, 530, 532, 534, 535, 536, 544, 545, 547, 548, 549, and 550, and redacting portions of documents filed as NYSCEF Document Numbers 509, 510, 511, 512, 513, and 514 (the "Exhibits"). No party makes any argument for permanent sealing of the documents filed as NYSCEF Document Numbers 527, 528, 529, 533, 538, 541, 543, 546, 551 and 552. For the following reasons, LGE'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 LGE's proposed sealing of the documents filed as NYSCEF Document Numbers 521, 530, 532, 534, 535, 544, 545, 547, 548, 549 and 550,[1] as well as the targeted redactions proposed in the documents filed as NYSCEF Doc. Nos. 509, 510, 511, 512, 513, and 514, and finds that they comport with the applicable sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that they contain sensitive and confidential business and financial information. Further, these Exhibits are properly sealed and/or redacted to

[1] By the admission of LGE, NYSCEF Doc. Nos. 530, 534, and 535 were the subject of previous sealing motions, and the Court ordered their sealing (NYSCEF Doc. No. 321). The Court's order further specified that the parties did not need to make subsequent motions to seal future filings of these documents and could stipulate to their sealing with a request to so-order. The parties are hereby reminded that, where the Court has already ordered sealing of certain documents and specific information in connection with this case, counsel need only file a stipulation with a request to so-order to cover future filings of the same documents, provided an unredacted version is uploaded under seal at the same time. These stipulations both expedite the Court's review and avoid unnecessary additional motions.

the extent they contain nonpublic information about confidential contracts or agreements with non-parties to this instant case (*Mancheski v Gabelli Grp. Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] ["[D]isclosure could impinge on the privacy rights of third parties who clearly are not litigants herein[.]"]).

However, LGE's generalized assertions of good cause for the remaining Exhibits filed as NYSCEF Document Numbers 522, 525, 526, and 536 do not establish a compelling justification for the complete sealing that is proposed. While *portions* of these documents may include confidential business and financial information, the proposed sealing is not adequately explained or justified. Thus, LGE may propose and justify targeted redactions that satisfy the requirements of 22 NYCRR § 216 [a] and applicable case law.

Any subsequent motion seeking to address the above concerns should adhere to this Part's Sealing Practices and Procedures (*see* https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part3-sealing-practices.pdf), including the requirement to submit an affidavit based on personal knowledge attesting to the factual bases for redaction and a spreadsheet setting forth a non-conclusory good faith basis for each proposed redaction.

Further, neither party submits any reason why the Exhibits filed as NYSCEF Doc. Nos. 527, 528, 529, 533, 538, 541, 543, 546, 551, and 552 remain sealed. Accordingly, they will be unsealed.

Accordingly, it is

ORDERED that LGE's motion to seal the Exhibits is **granted** insofar as it seeks to seal the documents filed as NYSCEF Document Numbers 521, 530, 532, 534, 535, 544, 545, 547, 548, 549 and 550, and insofar as it seeks to redact the documents filed as NYSCEF Document

Numbers 509, 510, 511, 512, 513, and 514, and is otherwise **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of the remaining Exhibits consistent with this Decision and Order and applicable case law; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 509, 510, 511, 512, 513, 514, 521, 530, 532, 534, 535, 544, 545, 547, 548, 549, and 550 under seal, so that the documents may be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that LGE file redacted copies of NYSCEF Document Numbers 509, 510, 511, 512, 513, and 514 within 21 days of this Decision and Order; it is further

ORDERED that the documents filed as NYSCEF Document Numbers 522, 525, 526, 536 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If LGE files a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day 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 alert the County Clerk that the motion to seal the above-referenced documents has been denied by the Court and that the documents should be unsealed on NYSCEF; it is further

ORDERED that the County Clerk is directed to unseal the documents filed as NYSCEF Document Numbers 527, 528, 529, 533, 538, 541, 543, 546, 551, and 552; and it is further

ORDERED that as it relates to future submissions that contain subject matter that the court has authorized to be sealed by this Decision and Order, which are made by any party, **the parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such**

future submissions to be filed in sealed and/or redacted form on NYSCEF, provided that an unredacted copy of any document is contemporaneously filed with a request to seal.

This constitutes the Decision and Order of the Court.

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12/5/2023
DATE

JOEL M. COHEN, J.S.C.

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