

**National Union Fire Ins. Co. of Pittsburgh, PA. v
Fresenius Med. Care Holdings, Inc.**

2024 NY Slip Op 30110(U)

January 9, 2024

Supreme Court, New York County

Docket Number: Index No. 653108/2016

Judge: Andrea Masley

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

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NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.	INDEX NO. <u>653108/2016</u>
Plaintiff,	MOTION DATE _____
- v -	MOTION SEQ. NO. <u>014 015</u>
FRESENIUS MEDICAL CARE HOLDINGS, INC.,	DECISION + ORDER ON
Defendant.	MOTION

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 514, 515, 516, 517, 520, 528, 529, 534, 537
were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 015) 530, 531, 532, 533, 536, 538
were read on this motion to/for _____ SEAL _____.

In motion sequence number 014, defendant Fresenius Medical Care Holdings, Inc. moves, pursuant to 22 NYCRR 216.1, to (i) seal NYSCEF Doc. No. (NYSCEF) 497, 498, and 499 because these documents contain nonparty medical information that is not at issue in this litigation, (ii) redact NYSCEF 486¹ to the extent it references confidential settlement information, and (iii) redact the parties' briefs related to their in limine motions (seq. nos. 012 and 013) to the extent such briefs reference confidential information contained in NYSCEF 497, 498, and 499. In motion sequence number 015, defendant moves, pursuant to 22 NYCRR 216.1, to redact NYSCEF 527² and the

¹ A public version of NYSCEF 486 with proposed redactions is at NYSCEF 485.

² A public version of NYSCEF 527 with proposed redactions is at NYSCEF 526.

parties' briefs related to their in limine motions (seq. nos. 012 and 013) to the extent these documents reference confidential settlement information. The motions are unopposed. There is no indication that the press or public have an interest in this matter.

Legal Standard

“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 public's right to access is, however, not absolute, and under certain circumstances, “public inspection of court records has been limited by numerus statutes.” (*Id.* at 349.) One of those statutes is Section 216.1 (a) of the Uniform Rules for Trial Courts, which empowers courts to seal documents upon a written finding of good cause. It provides:

“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 quotation marks omitted].)

Discussion

Motion Seq. No. 014

Defendant has failed to show good cause to seal NYSCEF 497. The court previously granted plaintiff's motion to redact this document, then filed as NYSCEF 344, to protect nonparty medical information that is not at issue in this litigation. (NYSCEF 383, Decision and Order [mot. seq. no. 011].) Wholesale sealing is unnecessary to protect such information. Accordingly, defendant shall file NYSCEF 497 in a redacted form.³ Further, the court has already ordered that NYSCEF 499, previously filed as NYSCEF 335, be sealed because it contains nonparties' medical information. (*Id.*)

NYSCEF 498 is an email from Mike O'Donnell at Wheeler Trigg O'Donnell LLP to Michael Muscarella and Richard Roberts with the subject "Information re 8 cases" and an attached memorandum. NYSCEF 498 is similar to NYSCEF 499, which is also an email from O'Donnell to the same recipients with an attached memorandum. Both emails discuss in detail nonparties' medical information that is not at issue in this litigation. Thus, good cause exists to seal NYSCEF 498. (*See Gottwald v Geragos*, 2020 NY Slip Op 31492[U], *3 [Sup Ct, NY County 2020], quoting *Gottwald v Sebert*, Index No. 653118/2014 [Sup Ct, NY County 2018] [mot. seq. no. 043] [holding that good cause existed to seal medical records and sensitive personal information which was completely irrelevant to underlying summary judgment motion].)

Further, defendant has shown good cause to redact NYSCEF 486, defendant's brief in opposition to plaintiff's in limine motion (seq. no. 013), as the proposed

³ Defendant is referred to NYSCEF 336, which is a public version of NYSCEF 344 with authorized redactions. (NYSCEF 383, Decision and Order [mot. seq. no. 011].)

redactions are narrowly tailored to protect information about a settlement amount paid to a nonparty and there is no indication of any public interest in the disclosure of this information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].)

The balance of the motion is denied without prejudice. To the extent that defendant seeks to redact certain other briefs filed in connection with the parties' in limine motions (seq. nos. 012, 013), it fails to identify such briefs by NYSCEF numbers or submit proposed redactions. (See Part 48 Procedures § 12 [B].)

Motion Seq. No. 015

Defendant has shown good cause to redact NYSCEF 527, defendant's reply brief in support of its in limine motion (seq. no. 012), because the single proposed redaction protects information about a settlement amount paid to a nonparty. (See *Dawson*, 184 AD2d at 247 [1st Dept 1992].)

The balance of the motion is denied without prejudice. To the extent that defendant seeks to redact certain other briefs filed in connection with the parties' in limine motions (seq. nos. 012, 013), it again fails to identify such documents by NYSCEF numbers or submit proposed redactions. (See Part 48 Procedures § 12 [B].)

Accordingly, it is

ORDERED that motion sequence number 014 is granted, in part, to the extent that NYSCEF 486, 497, 498, and 499 shall be sealed and New York County Clerk, upon service to him of this order, shall seal NYSCEF 486, 497, 498, and 499; and it is further

ORDERED that defendant shall file NYSCEF 497 in a redacted form with the redactions identical to those made in NYSCEF 336, within seven days of this order and notify the court when filed by email (sfc-part48@nycourts.gov); and it is further

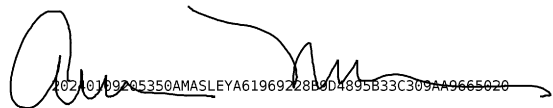
ORDERED that motion sequence number 015 is granted, in part, to the extent that NYSCEF 527 shall be sealed and New York County Clerk, upon service to him of this order, shall seal NYSCEF 527; and it is further

ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that defendant is to serve a copy of this order on the County Clerk in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-filing" page on the court's website – www.nycourts.gov/supctmanh); and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to redact here, that party shall submit a proposed sealing order to the court (via email to sfc-part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



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1/9/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: