

**Hes v Zirkin**

2024 NY Slip Op 30617(U)

February 28, 2024

Supreme Court, New York County

Docket Number: Index No. 155457/2022

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. LORI S. SATTLER **PART** **02M**

*Justice*

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JOEY HES,

Plaintiff,

- v -

ADAM ZIRKIN, SAMANTHA ZIRKIN

Defendant.

-----X

**INDEX NO.** 155457/2022

**MOTION DATE** 10/05/2023

**MOTION SEQ. NO.** 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 80, 81, 82, 84, 88, 89, 92, 93

were read on this motion to/for MISCELLANEOUS.

In Motion Sequence No. 006 of this tort action, Defendant Adam Zirkin (“A.Z.”) moves for an order directing the Clerk of the Court to remove NYSCEF Doc. Nos. 39 and 73 from the public docket. Defendant Samantha Zirkin (“S.Z.”) submits an affirmation in support of the motion. Plaintiff Joey Hes (“Plaintiff”) opposes the motion.

Plaintiff commenced this action by filing a 17-page Complaint in June 2022. She then filed the Amended Complaint (NYSCEF Doc. No. 39) in February 2023. Her amended pleading is 69 pages and contains 120 pages of annexed exhibits. It asserts causes of action for intentional infliction of emotional distress, defamation, false arrest, and malicious prosecution. Plaintiff’s claims arise from a series of purported events beginning with a relationship she had with A.Z. while he was separated from his wife S.Z., the end of that relationship, Plaintiff’s subsequent behavior which led A.Z. and S.Z. to involve the police, Plaintiff’s being charged with stalking and aggravated assault, and the dismissal of those charges.

In prior motion practice, S.Z. moved to strike portions of the Amended Complaint as scandalous and prejudicial in accordance with CPLR 3024(b). In a Decision and Order dated

August 11, 2023 (NYSCEF Doc. No. 65, “Decision”), the Court granted that motion. The Court described the Amended Complaint as “a rambling 69-page document with 120 pages of annexed exhibits,” containing quotes from *The Great Gatsby* and Gary Kasparov, much of which is not relevant to the asserted causes of action (Decision at 2). It found that certain portions were extraneous and “serves as a vehicle for Plaintiff to assert sensational material that serves no purpose in the instant proceeding” (*id.* at 7). The Court therefore struck a number of paragraphs and headings from the Amended Complaint, along with some of the exhibits annexed thereto, and directed Plaintiff to serve an amended complaint without the stricken material within ten days.

The Decision further granted a motion brought by A.Z. to dismiss all claims asserted against him. The Court found that the intentional infliction of emotional distress, defamation, and false arrest claims were time-barred, and that Plaintiff failed to state a claim for malicious prosecution.

Plaintiff timely filed a Second Amended Verified Complaint (NYSCEF Doc. No. 73). It is conceded that this document did not comply with the directives of the Court’s Decision. A.Z. then filed this motion by Order to Show Cause seeking the removal of both the First and Second Amended Complaints. The Court granted his request for interim relief and sealed NYSCEF Doc. No. 39 pending the determination of the motion. The following day, Plaintiff filed a Corrected Second Amended Verified Complaint (NYSCEF Doc. No. 83). The NYSCEF comment associated with that filing says: “corrected copy of Second Amended Complaint to conform to Court’s August 11, 2023 D&O.”<sup>1</sup>

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<sup>1</sup> As a result of this corrected filing, the portion of A.Z.’s motion asking that the Court return Doc. No. 73 for correction so that a corrected pleading can be refiled under the same document number is no longer appropriate, and the Court will treat the motion as one to seal both documents containing the stricken material.

“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]). This presumption exists in civil actions and proceedings “to ensure that they are conducted efficiently, honestly, and fairly” (*id.*, quoting *In re Brownstone*, 191 AD2d 167 [1st Dept 1993]). The right of access to court records is also grounded in common law, and the Court has recognized the “broad constitutional presumption” that the public is generally entitled to access to court proceedings (*Mosallem*, 76 AD3d at 348-49, quoting *Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322 [1st Dept 2006]; *Danco Lab., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000]).

However, this right is not absolute (*Mosallem*, 76 AD3d at 349; *Danco Lab.*, 274 AD2d at 6). The public’s ability to view court records has been limited by statute in certain proceedings, including those in Family Court and in matrimonial actions (*see* Family Court Act § 166; Domestic Relations Law § 235). Additionally, the Uniform Rules for the New York State Trial Courts provide:

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.

(22 NYCRR § 216.1[a]). While good cause is not defined, the Court has found that “a sealing order should clearly be predicated upon a sound basis or legitimate need to take judicial action” (*Gryphon Dom. VI, LLC*, 28 AD3d at 325).

The Court finds that there is a sound basis for sealing both documents. The action arises from a series of highly personal interactions between the parties. The documents A.Z. seeks to

have sealed contain Plaintiff’s characterization of these interactions. Allowing these characterizations to remain publicly viewable may be harmful to both Defendants and to their two children. The Court has already found that the material contained in the two documents is sensational and irrelevant to Plaintiff’s claims in the action. Plaintiff’s remaining allegations are publicly available in her corrected Second Amended Complaint and no other records have been sealed, therefore the public’s access to court records is protected. For these reasons, in accordance with 22 NYCRR § 216.1(a), good cause exists to seal NYSCEF Doc. No. 39 and 73.

Accordingly for the reasons set forth herein it is hereby:

ORDERED that the Clerk of the Court is directed, upon service of a copy of this order with notice of entry, to seal NYSCEF Doc. Nos. 39 and 73; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to any non-Court personnel except for counsel of record for any party to this case and any party.

All other relief sought is denied. This constitutes the Decision and Order of the Court.

2/28/2024  
DATE

  
LORI S. SATTLER, 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