

Tremor Video, Inc. v Alphonso, Inc.

2024 NY Slip Op 30711(U)

March 6, 2024

Supreme Court, New York County

Docket Number: Index No. 653266/2021

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 03M

-----X

TREMOR VIDEO, INC.,	INDEX NO.	<u>653266/2021</u>
Plaintiff,		09/28/2023,
		09/28/2023,
- v -	MOTION DATE	<u>12/22/2023</u>
ALPHONSO, INC. N/K/A LG ADS, LG ELECTRONICS, INC.,	MOTION SEQ. NO.	<u>030 031 032</u>
Defendant.	DECISION + ORDER ON MOTION	

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 030) 1007, 1008, 1009, 1010, 1011, 1028, 1031, 1032
 were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 031) 1019, 1020, 1021, 1022, 1029, 1033, 1034, 1036
 were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 032) 1038, 1039, 1040, 1041, 1042, 1046
 were read on this motion to/for _____ SEAL _____.

Co-defendants Alphonso, Inc. (“Alphonso”), and LG Electronics, Inc. (“LGE”), seek multiple orders sealing and/or redacting exhibits from that were filed in connection with this proceeding as NYSCEF Document Numbers 1005, 1006 (MS 030); 1014, 1015, 1016, 1018 (MS 031), and 1042 (MS 032). For the following reasons, the co-defendants’ motions are **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 the proposed targeted redactions the proposed in the documents filed as NYSCEF Document Numbers 1006 (MS 030),¹ 1014 (MS 031), and 1042 (MS 032), 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 the extent they contain nonpublic information about confidential contracts or agreements with non-parties (*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[.]”]).

¹ The proposed redactions to NYSCEF 1006 are found at NYSCEF 1009.

However, the parties' generalized assertions of good cause for the remaining Exhibits filed as document numbers 1005 (MS 030), 1016, 1017, and 1018 (MS 031), 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, the parties should 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.

Accordingly, it is

ORDERED that the motions to seal/redact the Exhibits is **granted** insofar as it seeks to redact confidential portions of the documents filed as NYSCEF 1006 (MS 030), 1014 (MS 031), and 1042 (MS 032), 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 1006, 1014, and 1042 under seal, so that the documents may be accessible by the parties, their counsel, and authorized court personnel; it is further

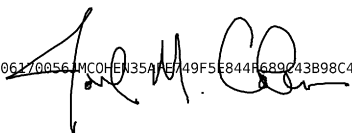
ORDERED that the documents filed as NYSCEF Document Numbers 1005 (MS 030), 1016, 1017, and 1018 (MS 031) shall remain provisionally sealed for 21 days from the date of

the Court’s entry of this Decision and Order on NYSCEF. If any party files a new motion to redact/seal 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 parties upload redacted copies to NYSCEF of the documents filed at NYSCEF Document Numbers 1006, 1014, and 1042; 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.


202403062700561MCOHEN35A7E7449F5E844F680243B98C44D8D64

JOEL M. COHEN, J.S.C.

3/6/2024
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT

REFERENCE

CHECK IF APPROPRIATE: