

Matter of Arad 2 LLC v Ben-Hamo

2024 NY Slip Op 31478(U)

April 10, 2024

Supreme Court, New York County

Docket Number: Index No. 656951/2020

Judge: Robert R. Reed

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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 43

-----X
 IN THE MATTER OF THE APPLICATION OF ARAD 2
 LLC, DIRECTLY IN ITS OWN RIGHT AND DERIVATIVELY
 AS A MEMBER OF 4053-4057 BX, LLC, AND ARAD
 LLC, DIRECTLY IN ITS OWN RIGHT AND DERIVATIVELY
 AS A MEMBER OF 4001 BX, LLC AND DAVID ARAD,

Plaintiff,

- v -

GADI BEN HAMO, MOUNT SINAI PROPERTIES, INC.
 (A/K/A MT. SINAI PROPERTIES, INC.), 4053-4057 BX,
 LLC, 4001 BX, LLC,

Defendant.
 -----X

INDEX NO. 656951/2020
 MOTION DATE 07/18/2022
 MOTION SEQ. NO. 008

**DECISION + ORDER ON
 MOTION**

HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 225, 226, 227, 228, 229, 230, 231

were read on this motion to/for

SEAL

This case involves a dispute between cousins who own and operate two limited liability companies. Plaintiff David Arad (“Arad”) commenced this action individually and derivatively against defendant Gadi Ben-Hamo (“Ben-Hamo”), to dissolve 4053-4057 BX LLC and 4001 BX LLC for Ben-Hamo’s alleged fraud, conversion, and breach of fiduciary duties. In a 243-paragraph complaint, Arad makes several allegations against Ben-Hamo and his attorneys directly, referencing conduct that Arad characterizes as “criminal,” “fraudulent” and knowingly unethical.

Defendants move for an order pursuant to 22 NYCRR 216.1(a): sealing for good cause plaintiffs’ amended verified complaint (the AVC) (NYSCEF doc. no. 32), all duplicate filings of the AVC e-filed by plaintiffs’ counsel (NYSCEF doc. nos. 87 and 149), plaintiffs’ proposed

second amended verified complaint (the AVC2) (NYSCEF doc. no. 150), the red-line comparison between the AVC and AVC2 (NYSCEF doc. no. 151), plaintiffs' revised AVC (NYSCEF doc. no. 217), in light of the inherently prejudicial nature of the allegations set forth in the complaint as determined by the Decision and Order of the Hon. Robert R. Reed dated May 12, 2022 (NYSCEF doc. no. 206) and the stipulation by and between the parties. For the foregoing reasons, defendants' motion is granted.

In the amended complaint, Arad characterizes Ben Hamo's handling of the Bronx litigation as "fraud" and asserts that defendants committed a crime in the commission of or in the filing of the Bronx action (see NYCEF doc. no. 32 para. 7, 30). Arad's amended complaint also claims that Ben Hamo's attorneys made material misrepresentations to the Bronx court and submitted knowingly fraudulent and falsified documents in support of the Bronx litigation (see NYCEF doc. no. 32 para. 29). Defendants asserts that these statements are prejudicial and unnecessary. Moreover, defendants claim that the prejudicial allegations mirror those that the Hon. Robert R. Reed ordered stricken from the AVC, and thus the basis for sealing is indisputable.

In opposition, plaintiffs argue that defendants are trying to obtain much more drastic relief than the court granted, and more drastic relief than they originally sought in their motion to strike. Plaintiffs further claim that, even though the court's order did not require it, defendants seek to remove all references to "fraudulent" or "criminal" conduct from the revised AVC. Plaintiffs maintain that defendants' motion does not demonstrate compelling circumstances to justify restricting public access and falls short of the applicable legal standard for sealing records.

Under New York law, there is a presumption that the public is entitled to access to judicial proceedings and court records (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 501 [2d Dept 2007]). The public's right to access, however, is not absolute, and a court is empowered to seal or redact court records pursuant to section 216.1 (a) of the Uniform Rules for Trial Courts upon a showing of “good cause” (*Danco Labs v Chemical Works of Gedeon Richter*, 274 AD2d 1, 8 [1st Dept 2000]).

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

“(a) [e]xcept 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 the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.”

Thus, sealing has been found to be appropriate to preserve the confidentiality of materials which involve internal finances of a party which are of minimal public interest (*see D'Amour v Ohrenstein & Brown, LLP*, 17 Misc 3d 1130[A], 2007 NY Slip Op 52207[U] [NY Sup Ct. NY County 2007]). In the business context, courts permit records to be sealed when trade secrets are involved or when disclosure of information contained in documents “could threaten a business's competitive advantage” (*Mosallem v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010]). Moreover, sealing has been allowed in the absence of “any legitimate public concern, as opposed to mere curiosity, to counterbalance the interest of [a business's] partners and clients in keeping their financial arrangement private” (*Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992] [internal quotation marks and citation omitted]).

“Since confidentiality is the exception,” the movant must demonstrate that “public access to the documents at issue will likely result in harm to a compelling interest of the movant” (*Mancheski*, 39 AD3d 499 at 502 [2nd Dept. 2007] [citations omitted]). There is no indication on this record that the public or press would have an interest in this matter. It is this court’s view that there is no legitimate public interest in this matter, which involves a family dispute and is fueled, seemingly, by high emotions. Absent an order from this court, the pleadings containing prejudicial and irrelevant allegations would remain unrestricted to the public.

Arad’s subjective labeling of Ben Hamo and his attorney’s conduct in the Bronx litigation is irrelevant to whether Arad can establish that Ben Hamo committed fraud and breached his fiduciary duties with respect to the operation of 4053 BX LLC in this action. This court noted in its Decision and Order, dated May 12, 2022, that it is unnecessary, for the sufficiency of the pleading, to characterize the conduct of the parties involved in the Bronx litigation as “criminal,” “fraudulent,” and “unethical.” To allow those allegations to remain in the pleadings would cause undue prejudice to defendants (*JC Mfg., Inc. v NPI Elec. Inc.*, 178 AD2d 505, 506 [2nd Dept 1991]; *Pisula v Roman Cath. Archdiocese of New York*, 201 AD3d 88, 96–97 [2nd Dept 2021] [“The discussion of particular pieces of evidence... need not be included in an otherwise sufficient complaint as a precondition to their pretrial discoverability or their admissibility at trial. (T)here is a distinction between what is relevant to factual averments in a pleading to give proper notice of transactions and occurrences and to address the material elements of the causes of action, versus what evidence may be relevant and admissible at the trial of the action to prove them.”]).

In consideration of this court’s previous order to strike the pleading, defendants’ motion to seal the pleading is granted.


ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal NYSCEF doc. no. 32, 87, 149, 150, 151, and 217, and to separate these documents and to keep them separate from the balance of the file in this action; 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 anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made 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).

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

4/10/24
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: