

**Community Assn. of the E. Harlem Triangle, Inc. v  
Butts**

2024 NY Slip Op 32668(U)

July 11, 2024

Supreme Court, New York County

Docket Number: Index No. 656028/2018

Judge: Andrea Masley

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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 48

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COMMUNITY ASSOCIATION OF THE EAST HARLEM  
TRIANGLE, INC., and DERRICK TAITT,

Plaintiffs,

- v -

REVEREND DR. CALVIN O. BUTTS III, JAMES  
HOWARD, CHARLES SIMPSON, VICTOR SOZIO,  
WINDELS MARX LANE & MITTENDORF LLP, ARIEL  
PROPERTY ADVISORS, LLC, and ABYSSINIAN  
DEVELOPMENT CORPORATION,

Defendants.

-----X

INDEX NO. 656028/2018

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 010

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256

were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In mot. seq. no. 010, plaintiffs Derrick Taitt and Community Association of the East Harlem Triangle, Inc. move, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to seal the settlement agreement executed on September 28, 2023 (Settlement Agreement) or, alternatively, redact certain portions of the Settlement Agreement. The Settlement Agreement is filed as NYSCEF 248. Plaintiffs also seek the approval of the Settlement Agreement pursuant to BCL §626 (d) and so-Ordering of the stipulation of partial discontinuance with prejudice. The motion is unopposed. There is no indication that the press or public have an interest in this action.

## Background

Plaintiffs filed this derivative action on behalf of East Harlem Abyssinian Triable Corporation (EHAT Corp.) against defendants Abyssinian Development Corporation (ADC), James Howard (former Senior Vice President of ADC and a member of the Board of Directors of EHAT Corp.), Reverend Dr. Calvin O. Butts III (former Chairman of ADC and a member of the Board of Directors of EHAT Corp.), Windels Marx Lane & Mittendorf LLP and its partner Charles Simpson (collectively, WM Defendants), and Ariel Property Advisors, LLC and its member Victor Sozio (collectively, Ariel Defendants) on December 4, 2018. On December 1, 2022, plaintiffs, ADC, Howard, WM Defendants, and Ariel Defendants (collectively, the Settling Parties) engaged in mediation and agreed to settle their disputes. (NYSCEF 247, Richter Aff. ¶14.) On September 28, 2023, the Settling Parties executed the Confidential Settlement Agreement. (*Id.* ¶15.)

Defendant Butts passed away on October 28, 2022 before the Settling Parties settled their disputes, and the court stayed this action against Butts on January 4, 2023. (NYSCEF 244, Decision & Order dated January 4, 2023 [mot. seq. no. 009] at 2, fn. 3.) No executor or administrator has been appointed to the Butts' estate as of February 29, 2024 and he is not a party to the Settlement Agreement. (NYSCEF 247, Richter Aff. ¶13.) The action remains stayed as to defendant Butts.

## Discussion

### Plaintiffs' Motion to Seal/Redact the Settlement Agreement

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.”

“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 “party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting “an affidavit from a person with knowledge explaining why the file or certain documents should be sealed.” (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], \*2 [Sup Ct, NY County 2004].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Labs.*, 274 AD2d at 8.)

Movant has demonstrated good cause to seal the Settlement Agreement (NYSCEF 248.) (See *Parvis v Rakower Law PLLC*, 2020 NY Slip Op 32957[U], \*5 [Sup Ct, NY County 2020] [citations omitted]; *Delo v O'Connor*, 2022 NY Slip Op 34135[U], \*3 [Sup Ct, NY County 2022].) Further, since this document is clearly labeled, the court finds that the public and press can meaningfully challenge the seal designation.

#### Plaintiffs’ Motion to approve the Settlement Agreement

A derivative action “shall not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action.” (BCL §626 [d].) “The court

must determine whether a proposed settlement of a shareholder derivative claim is fair and reasonable to the corporation and its shareholders, then either approve or disapprove the settlement.” (*Benedict v. Whitman Breed Abbott & Morgan*, 77 AD3d 870, 872 [2nd Dep 2010] [internal quotation marks and citation omitted].) The court will approve a settlement agreement pursuant to BCL §626 (d) if it is “in all respects, fair, reasonable, adequate, in full compliance with applicable law, valid, and enforceable, and in the best interests of the Corporations and their shareholders.” (*Matter of Quazzo v 9 Charlton St. Corp.*, 2021 NY Slip Op 32342[U], \*4 [Sup Ct, NY County 2021].).

Having reviewed the Settlement Agreement, the court finds that the agreement satisfies these above requirements. The court approves the Settlement Agreement pursuant to BCL §626 (d) and the action is discontinued as against defendants Abyssinian Development Corporation, James Howard, Windels Marx Lane & Mittendorf LLP, Charles Simpson, Ariel Property Advisors, LLC, and Victor Sozio. The action will continue against defendant Butts.

Accordingly, it is

ORDERED that plaintiffs’ motion to seal NYSCEF 248 is granted; 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 this 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

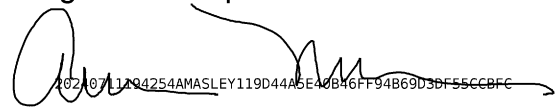
ORDERED that counsel for the movants shall serve a copy of this order on the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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 at the address 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 be redacted here, that party shall submit a proposed sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that the Settlement Agreement is approved, and the action is discontinued with prejudice against defendants Abyssinian Development Corporation, James Howard, Windels Marx Lane & Mittendorf LLP, Charles Simpson, Ariel Property Advisors, LLC and Victor Sozio; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein.



7/11/2024  
DATE

\_\_\_\_\_  
ANDREA MASLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE