

Yates v Memorial Sloane Kettering Cancer Ctr.

2024 NY Slip Op 32790(U)

August 5, 2024

Supreme Court, New York County

Docket Number: Index No. 158830/2019

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

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NATASHA YATES

Plaintiff,

- v -

MEMORIAL SLOANE KETTERING CANCER CENTER,

Defendant.

INDEX NO. 158830/2019

04/01/2024,
03/28/2024,
05/20/2024,
06/17/2024

MOTION DATE

MOTION SEQ. NO. 001 002 003
and 004

**DECISION + ORDER ON
MOTION SEQS. 1 and 4**

**INTERIM ORDER ON
MOTION SEQS. 2 and 3**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 133, 135, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 203, 204, 205, 206, 207

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 003) 136, 137, 138, 139, 140, 141, 142, 143, 144, 145

were read on this motion to/for EXTEND - TIME

The following e-filed documents, listed by NYSCEF document number (Motion 004) 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 208

were read on this motion to/for SEAL

Upon the foregoing documents, it is

There are four motions presently pending in this action. Motion sequences 1, 2 and 3 have already been marked submitted. Meanwhile, motion sequence 4, which was brought by

plaintiff via an Order to Show Cause returnable August 13, 2024, has not yet been heard. However, the court has received a letter from defense counsel consenting to the relief sought therein (sealing certain unredacted exhibits) and requesting an adjournment of the 8/13/24 appearance.

For the reasons that follow, motion sequences 1 and 4 are granted without opposition. Both motions seek to have certain parts of the court file marked sealed. Specifically, defendant seeks to have the following documents marked sealed in motion sequence 1:

- a) Defendant's Memorandum of Law in Support of its Motion for Summary Judgment (Doc. No. 42);
- b) Defendant's Statement of Material Facts in Support of its Motion for Summary Judgment (Doc. No. 96);
- c) Exhibits B, C, I, J, K, M, R, S, U, V, AA, CC, DD, EE, GG, and HH to the Affirmation of Terri L. Chase in Support of Defendant's Motion for Summary Judgment dated March 28, 2024 (Doc. Nos. 63-64, 70-72, 74, 79-80, 82-83, 88, 90-92, 94-95);
- d) Exhibits A through G, I and J to the Affidavit of Stephanie Chu in Support of Defendant's Motion for Summary Judgment dated March 27, 2024 (Doc. Nos. 51-57, 59-60); and
- e) Exhibits D through F to the Affidavit of Brooke Lay dated March 27, 2024 (Doc. Nos. 47-49).

Meanwhile, plaintiff seeks to have the following documents marked sealed in motion sequence 4:

- a) Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment. (Doc No. 146);
- b) Plaintiff's Counterstatement of Material Facts. (Doc No. 147);
- c) Affirmation of Natasha Yates and Exhibit A thereto. (Doc Nos. 148 and 149); and
- d) Affirmation of Frances Codd Slusarz and Exhibits A, B, C, D, E, H, I, J, K, L, M, N, P, Q, R, S, T, and V thereto. (Doc Nos. 150-155, 158-164, 166-170, and 172).

In both, counsel argues that disclosure of the subject information would cause competitive harm to defendant and violate the privacy interests of nonparty patients and employees. The parties further argue that there is no legitimate public interest in the information which the parties seek to keep confidential.

As a general rule, the public is entitled to access to judicial proceedings and court records (*Mosallem v. Berenson*, 76 AD3d 345 [1st Dept 2010] citing *Mancheski v. Gabelli Group Capital Partners*, 39 AD3d 499 [1st Dept 2007]). The public's right to access, however, is not absolute (*id.* citing *Danco Laboratories, Ltd. v. Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1 [2000]).

Pursuant to 216.1(a) of the Uniform Rules for Trial Courts (22 NYCRR 216.1[a]): 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.

"Although the term 'good cause' is not defined, 'a sealing order should clearly be predicated upon a sound basis or legitimate need to take judicial action'" (*Mosallem, supra* at 349, quoting *Gryphon Dom. VI, LLC*, 28 AD3d 322, 325 [1st Dept 2006]; see also *Abe v. New York University*, 169 AD3d 445 [1st Dept 2019]). The party seeking to seal court records must demonstrate compelling circumstances to justify restricted public access (*Mancheski, supra* at

502; see also *Maxim, Inc. v. Feifer*, 145 AD3d 516 [1st Dept 2016]; see also *Wilder v. Fresenius Medical Care Holdings, Inc.*, 175 AD3d 406 [1st Dept 2019] [“plaintiff has failed to make a showing of a substantial privacy right that outweighs the customary and constitutionally-embedded presumption of openness in judicial proceeding”]). The First Department, however, has been reluctant to allow the sealing of court records, even when both parties have presented a joint application (see *i.e. Gryphon Domestic VI, LLC v. APP Intern. Finance Co., B.V.*, 28 AD3d 322 [1st Dept 2006]).

After review of the court’s file, and without objection by any party, the court agrees with the parties that disclosure of the subject records would cause undue competitive harm to defendant, violate non-parties’ privacy interests and that the public’s interest in obtaining such information is not outweighed by the parties’ need to keep such information confidential. Accordingly, motion sequence numbers 1 and 4 are granted in their entirety and without opposition.

As for motion sequences 2 and 3, both are adjourned to September 17, 2024 at 9:30am for oral argument via Microsoft Teams.

Conclusion

In accordance herewith, it is hereby

As explained in the accompanying memorandum opinion the court, having determined, in accordance with Part 216 of the Uniform Rules for the Trial Courts, that good cause exists for the sealing in part of the file in this action and the grounds therefor having been specified, it is now

ORDERED that motion sequences 1 and 4 are granted without opposition and the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal:

- a) Defendant's Memorandum of Law in Support of its Motion for Summary Judgment (Doc. No. 42);
- b) Defendant's Statement of Material Facts in Support of its Motion for Summary Judgment (Doc. No. 96);
- c) Exhibits B, C, I, J, K, M, R, S, U, V, AA, CC, DD, EE, GG, and HH to the Affirmation of Terri L. Chase in Support of Defendant's Motion for Summary Judgment dated March 28, 2024 (Doc. Nos. 63-64, 70-72, 74, 79-80, 82-83, 88, 90-92, 94-95);
- d) Exhibits A through G, I and J to the Affidavit of Stephanie Chu in Support of Defendant's Motion for Summary Judgment dated March 27, 2024 (Doc. Nos. 51-57, 59-60); and
- e) Exhibits D through F to the Affidavit of Brooke Lay dated March 27, 2024 (Doc. Nos. 47-49);
- f) Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment. (Doc No. 146);
- g) Plaintiff's Counterstatement of Material Facts. (Doc No. 147);
- h) Affirmation of Natasha Yates and Exhibit A thereto. (Doc Nos. 148 and 149); and
- i) Affirmation of Frances Codd Slusarz and Exhibits A, B, C, D, E, H, I, J, K, L, M, N, P, Q, R, S, T, and V thereto. (Doc Nos. 150-155, 158-164, 166-170, and 172)


And the Clerk of the Court shall separate these documents and 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)]; and it is further

ORDERED that motion sequences 2 and 3 are adjourned to **September 17, 2024 at 9:30am** for oral argument via Microsoft Teams.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>8/5/2024</u> DATE	 LYNN R. KOTLER, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE