

**Hegazy v Mount Sinai Hosp.**

2024 NY Slip Op 33834(U)

October 10, 2024

Supreme Court, New York County

Docket Number: Index No. 805276/2017

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M**

*Justice*

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NEHAL Y. HEGAZY,

Plaintiff,

- v -

MOUNT SINAI HOSPITAL, BRIAN J. WAGNER, M.D., and  
FELIPE TUDELA, M.D.,

Defendants.

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INDEX NO. 805276/2017

MOTION DATE 05/08/2024

MOTION SEQ. NO. 007

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 203, 204, 205 were read on this motion to/for SEAL.

In this settled action to recover damages for medical malpractice, the plaintiff moves pursuant to 22 NYCRR 216.1 to seal several docket entries in the case file, and to compel legal public domain legal reporting companies such as Justia, Trellis, Unicourt, and Leagle to remove those filings from their archives and web sites. Although the defendants do not oppose the motion, the motion nonetheless is denied.

A detailed outline of the underlying dispute in this action is set forth in the November 9, 2023 order granting in part and denying in part the defendants' motion for summary judgment dismissing the complaint (SEQ 005). The crux of the plaintiff's claims against the defendants is that they departed from good and accepted medical practice in the course of performing a cesarean section procedure upon her, and in failing to provide adequate post-operative monitoring and care, thus requiring her to undergo a total abdominal hysterectomy.

In this motion, the plaintiff contends that the claims underlying her complaint are of a sensitive nature, and suggests that the papers filed in this proceeding might reveal information that is sensitive, personal, and embarrassing. These contentions are insufficient to support the plaintiff's request for a sealing order.

22 NYCRR 216.1(a) provides, in relevant part, that,

“[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 . . . 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.”

“[T]here 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]). Although the public’s right to access is not absolute (see *Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept. 2000]), “[t]he presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public’s right to access” (*Applehead Pictures, LLC v Perelman*, 80 AD3d 181, 191 [1st Dept 2010]; see *Matter of East 51st St. Crane Collapse Litig.*, 106 AD3d 473, 474 [1st Dept 2013]; *Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d at 6; see also *Schulte Roth & Zabel, LLP v Kassover*, 80 AD3d 500, 501-502 [1st Dept 2011]). As the Appellate Division, First Department, has explained, it has “been reluctant to allow the sealing of court records” (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d 322, 324 [1st Dept 2006]; see *Matter of Holmes v Winter*, 110 AD3d 134, 138 [1st Dept 2013], *revd other grounds* 22 NY3d 300 [2013]; *Mosallem v Berenson*, 76 AD3d at 350; see generally *Davis v Nyack Hosp.*, 130 AD3d 455, 456 [1st Dept 2015]; *Matter of Brownstone*, 191 AD2d 167, 168 [1st Dept 1993]).

“Thus, the court is required to make its own inquiry to determine whether sealing is warranted, and the court will not approve wholesale sealing of [court] papers, *even when both sides to the litigation request sealing*” (*Applehead Pictures, LLC v Perelman*, 80 AD3d at 192 [citations omitted] [emphasis added]; see *Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d at 324; *Liapakis v Sullivan*, 290 AD2d 393, 394 [1st Dept 2002]; *Matter of Hofmann*, 284 AD2d 92, 93 [1st Dept 2001] [denying request to seal court records despite the parties’ confidentiality agreement]).

The party seeking to seal court records has the burden of establishing “good cause” for the sealing order (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]). “Since confidentiality is the exception,” the movant must establish that “public access to the documents at issue will likely result in harm to a compelling interest of the movant and that no alternative to sealing can adequately protect the threatened interest” (*id.* [citations omitted]). This court has discretion, on a case-by-case basis, to determine if good cause exists (*see id.*). Hence, where a party fails to show the existence of a compelling reason to seal a record, sealing should be denied (*see Davis v Nyack Hosp.*, 130 AD3d at 456).

Neither a party’s embarrassment nor a general desire for privacy is sufficient, of itself, to establish good cause for sealing a court file (*see Matter of Holmes v Winter*, 110 AD3d at 138; *Mosallem v Berenson*, 76 AD3d at 351; *Liapakis v Sullivan*, 290 AD2d at 394; *Matter of Benkert*, 288 AD2d 247, 247 [1st Dept 2001]; *Matter of Hofmann*, 284 AD2d at 93; *State of New York ex rel. Aniruddha Banerjee v Moody’s Corp.*, 54 Misc 3d 705, 708 [Sup Ct, N.Y. County 2016]). Moreover, conclusory claims of the need for confidentiality, based on the alleged adverse consequences arising from public access to certain documents, and even the existence of a confidentiality agreement between the parties, are insufficient bases upon which to seal court records (*see Heng Ren Silk Rd. Invs. LLC v Duff & Phelps, LLC*, 203 AD3d 659, 660 [1st Dept 2022] [conclusory statements that defendant might be subject to draconian penalties if it were found to be in violation of the Chinese Data Security Law by filing a confidential valuation report with a United States court are insufficient to establish good cause for sealing]; *Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 448-449 [1st Dept 2018] [although the disclosures that the defendants sought to seal involved sensitive financial information that related to information contained in tax returns, their request for a sealing order was properly denied, since those documents were not actual tax returns, and did not involve trade secrets or information that could result in a competitive disadvantage to defendants]; *Matter of Benkert*, 288 AD2d at 247; *Matter of Hofmann*, 284 AD2d at 93; *Matter of Tram Thuy Nguyen*, NYLJ,

Feb. 23, 2016, at 22, col 6, 2016 NYLJ LEXIS 2391 [Sur Ct, N.Y. County, Feb. 18, 2016]; *Matter of Golden*, NYLJ, Jul. 16, 2015, at 24, col 1 [Sur Ct, N.Y. County]; *Matter of Brown*, NYLJ, Apr. 10, 2013, at 23, col 6 [Sur Ct, Kings County]; *Matter of Soltesz*, NYLJ, Jun. 29, 2015, at 25 [Sur Ct, Bronx County]).


Inasmuch as the plaintiff has failed to make a sufficient showing of good cause as to why the court file, or certain docket entries contained therein, should be sealed in this action, her motion must be denied.

Accordingly, it is,

ORDERED that the motion is denied.

This constitutes the Decision and Order of the court.

10/10/2024  
DATE

  
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JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE