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August 12, 2016

VIA ECF

Honorable Thomas P. Griesa, U.S.D.J.
United States District Court
500 Pearl Street, Courtroom 26B
New York, New York 10007

Re: Joseph Hardy et al. v. Kaszycki & Sons Contractors, Inc. et al.
1:83 CV 6346 (TPG)

Dear Judge Griesa:

We are counsel to Donald J. Trump and The Trump Organization, former defendants in the above-captioned lawsuit (the “*Hardy* lawsuit”). We write in response to the letter motion of Time Inc. and the Reporters Committee for Freedom of the Press, dated July 12, 2016, which seeks to unseal certain confidential documents relating to the settlement of the *Hardy* lawsuit nearly 18 years ago.

By way of brief background, the *Hardy* lawsuit was commenced over 30 years ago, in 1983, and toiled on for more than 15 years (1983 – 1999). Along the way, it amassed a 20-page docket with over 400 *unsealed* documents that are currently available for public consumption, inclusive of pleadings, motions, affidavits, stipulations, correspondence, and Orders. In other words, the parties’ allegations, arguments, and defenses, along with the Court’s various rulings and attendant reasoning, have been public record for years; *everything* aside from three settlement-related documents that were sealed by Order of this Court at the joint request of the parties.¹

¹ There were numerous other parties invested in the amicable and confidential resolution of the *Hardy* lawsuit aside from the Trump defendants, including the named plaintiffs and various other co-defendants and all of their lawyers. To the extent the Court might be inclined to now unseal the heretofore sealed settlement-related documents, it is perhaps premature to do so until such time as all of the other parties who participated in the *Hardy* lawsuit and settlement, and their counsel, can likewise be heard. See *Application of Newsday, Inc.*, 895 F.2d 74, 79 – 80 (2d Cir. 1990) (“the privacy interests of innocent third parties as well as those of defendants that may be harmed by disclosure of the Article III material *should weigh heavily in a court’s balancing equation...*”).

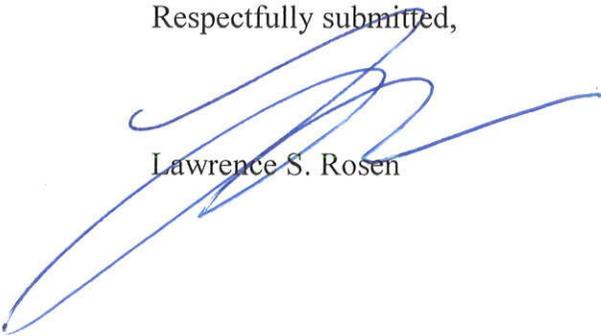
It is axiomatic that the federal courts encourage settlements in civil litigation and that doing so is an important Article III function. *See U.S. v Glens Falls Newspapers, Inc.*, 160 F.3d 853 (2d Cir. 1998). To foster—rather than chill—an atmosphere of open discussion among the parties’ attorneys and the potential for mutual resolution, settlements are not typically made part of the public record. *Id.* at 856. This appears to be precisely why the subject documents were sealed in the first instance, and also one of the reasons why the federal rules of evidence render settlement offers and related negotiations inadmissible at trial. *See F.R.E. 408.*

Notably, the movants’ instant request to unseal the settlement documents is mistakenly premised on the purported existence of a written settlement agreement executed between the parties. No such written settlement agreement exists, however. Rather, the sealed records contain a transcript of a settlement conference that reflects that the parties merely discussed the potential terms and conditions of a settlement for which there is now little, if any, presumption of public access. *See U.S. v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 858 (2d Cir. 1998) (“[w]e conclude that the presumption of access to settlement negotiations, draft agreements, and conference statements is negligible to nonexistent”).

The two remaining documents are virtually identical Orders where this Court simply “So-Ordered” the parties’ settlement (including the parties’ express and material condition that the settlement remain sealed and not be disclosed to any third parties). Contrary to the movants’ contentions now, the transcript seems to reveal that the Court’s role relative to this settlement was negligible because amicable terms had already been reached by the parties without Court intervention. Moreover, as per the express terms of the parties’ settlement (*See February 9, 1999 Order at page 3, first paragraph at top*), there were zero settlement funds that were paid to the members of the certified class individually, and thus the Court seemingly was not asked or required to determine whether the class settlement was “fair, reasonable, and adequate.” *See F.R.C.P. 23(e)*. In fact, it appears that the Court did not even require that the class members themselves be provided with notice of the settlement (as per Rule 23), noting that none of the relief resulting from the settlement accrued to the individual class members. *Id.*

In light of the limited function the Court played in the settlement of the *Hardy* lawsuit *nearly twenty years ago*, the movants cannot demonstrate that there is a presumption—let alone a strong presumption—of public access to any one of the three confidential documents sought, especially when balancing this against the privacy interests of all of the parties to the *Hardy* lawsuit and their respective counsel. As such, this Court should deny the movants’ application to unseal the three settlement-related documents in its entirety.

Respectfully submitted,



Lawrence S. Rosen

cc: Andrew Lachow, Esq. (via ECF)