

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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ANONYMOUS,

Petitioner,

- v -

ANONYMOUS,

Respondent.

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INDEX NO. 655887/2018
MOTION DATE March 5, 2019
MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 39, 40

were read on this motion to/for SEAL

Upon the foregoing documents, the Petition for pre-action discovery is dismissed, and Order to Show Cause seeking the sealing of the record and to proceed under the caption of Anonymous v. Anonymous, is denied.

It has been held that a petition for pre-action discovery may be granted only if the petitioner demonstrates that they have a meritorious cause of action and the information sought is material and necessary to an existing or actionable wrong. *Liberty Imports v. Bourguet*, 271 AD2d 535 (1st Dept. 2006). Pre-action discovery may not be used by a party to ascertain whether she has a cause of action or to discover whether or not a claim exists or to explore the feasibility of framing a complaint. *Uddin v. New York City Transit Authority*, 27 AD3d 265; *In re Banco de Concepcion v. Manfra Tordella & Brooke, Inc.* 842 (1st Dept. 1979).

In the case at bar, petitioner claims that he has meritorious causes of action for breach of contract, tortious interference with contract, injunctive relief and others. In determining whether a petitioner has demonstrated a prima facie case, the evidence presented must be considered in

the light most favorable to the petitioner. *Holzman v. Manhattan and Bronx Surface Transit*, 217 AD2d 346 (1st Dept. 2000). However, in viewing such evidence in the favorable light, the court finds that petitioner has failed to establish the elements necessary to obtain pre-action discovery arising out of the claims raised herein.

Petitioner argues that he is entitled pre-discovery pursuant CPLR § 3102(c) to determine who induced the breach of the stipulated confidentiality agreement in his divorce proceeding. Petitioner also requests an injunction “to preserve information.” He claims that each of the respondents has “an obvious incentive to destroy or secrete evidence relating to the disclosure of a confidential and sensitive business document” which was produced after the divorce proceeding ended and in the midst of a Federal proceeding, which is still pending.

These claims lack merit. It appears when one peels away the layers of petitioner’s claims, he is really seeking to ascertain the identity of the source of Ms. Buhl’s information which led her to publish an article regarding the Federal action in which petitioner is a party. He asserts that Ms. Buhl knew of the confidentiality agreement. However, the record reveals that Ms. Buhl was unaware of the confidentiality agreement between petitioner and his ex-wife, she never induced a breach of an agreement she did not know existed and she never received any sealed document relating to petitioner or any document covered by a confidentiality agreement between petitioner and his ex-wife.

Moreover, given New York’s long tradition of protecting freedom of the press and recognizing the critical role that the press plays in our democratic society, Ms. Buhl, as a professional journalist, is protected by the Shield Law, which was enacted to provide the highest level of protection in the nation for those which gather and report the news and to promote the free flow of newsworthy information to the public. *Immuno AD v. Moor-Jankowski*, 77 NYS2d

235 (1991); *Murray Energy Corp. v Reorg Research, Inc.*, 152 AD3d 445 (1st Dept. 2017), *leave to appeal den'd*, 30 NY3d 9133 (2018).

Petitioner has also failed to establish a meritorious cause of action against the CKR law or Binn parties. The court denies petitioner's request for pre-action disclosure against these parties as there is no nexus between them and the conduct about which the petitioner complains. They are not mentioned in the confidentiality agreement and there was no contract between them and petitioner. Further, the petition alleges breach of contract between petitioner and his ex-wife in connection with their divorce action. These parties were not involved in that proceeding.

The Court also denies petitioner's request for a preliminary injunction. The purpose of a preliminary injunction is to "maintain the status quo until there can be a full hearing on the merits." *Putter v. City of New York*, 277 AD3d 250 (1st Dept. 1991). Here, the Binn and CKR Law parties have already filed the document under seal in the Federal action. There is no need to issue an injunction by this Court, as one is not necessary. Petitioner has also not shown a likelihood of success on the merits, irreparable injury in the absence of an injunction and a balance of equities in his favor. As the respondents are not parties to the agreement, he may not succeed in his request. There is no showing that he will suffer irreparable harm or that the balance of the equities fall in his favor. These claims are not plead against the proper entities.

Finally, petitioner has failed to meet the substantial burden demonstrating that compelling circumstances exist to justify the total sealing of the record at bar. There is a broad constitutional presumption that the public and press are entitled to access court proceedings. The right of access to proceedings as well as to court records is firmly grounded in common-law principles and the existence of the correlating common-law right to inspect and copy judicial records is beyond dispute. *Mosallem v. Berenson*, 76 AD3d 345 (1st Dept. 2010).

The party seeking to seal records has the burden of demonstrating compelling circumstances to justify restricting public access. A finding of “good cause” presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant. *Mancheski v. Global Group Capital Partners*, 39 AD3d 499 (2d Dept. 2007). Neither the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records. *Mosallem*. 76 AD3d at 349.

The Courts have been cautioned that the discretion to limit the public nature of judicial proceedings by the use of anonymous captions should be used sparingly and then only when usual circumstances necessitate it. *Anonymous v. Anonymous*, 27 AD3d 356 (1st Dept. 2006). Petitioner’s financial interest in the document, already sealed in federal court, is not a compelling circumstance warranting the drastic relief of proceeding under an anonymous caption.

Accordingly, it is hereby;

ADJUDGED that the Order to Show Cause, Motion Sequence 001, to seal the record and to proceed under the caption of Anonymous v. Anonymous is denied; and it is further,

ADJUGED that the cross motion to unseal Exhibit K is denied as moot as the petition is dismissed, and the Court has denied the Order to Show Cause to seal the record; and it is further,

ADJUGED that the cross motion to dismiss the petition as to Teri Buhl and CKR Law LLP and the Binn defendants is granted and the petition is dismissed without costs and disbursements.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied.

This constitutes the decision and order of the Court.

3/5/2019

DATE



W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE