# UNITED STATES DISTRICT COURT
## DISTRICT OF NEW JERSEY

**Chambers of**
**STEVEN C. MANNION**
**United States Magistrate Judge**

**Martin Luther King Jr., Federal Bldg.**
**& U.S. Courthouse**
**50 Walnut Street**
**Newark, NJ 07102**
**(973) 645-3827**

August 21, 2018

**LETTER ORDER-OPINION**

**Re: Shanus v. R.L. Americana, et al.**
**Civil Action No. 11-cv-2839 (KM) (SCM)**

Dear Counsel:

Before the Court is Defendants Robert Lifson and Robert Edward Auctions' (collectively "REA") motion to seal and redact portions of the trial transcript and exhibits.[1] REA argues that they have a strong interest in redacting and sealing portions of the transcript because they reference confidential business dealings, contracts, and settlements relating to customers who were not parties to this action.[2] After a five day trial, the jury found that REA, with the assistance of non-parties Peter Nash and his business, Cooperstown Monument Company ("Cooperstown"), fraudulently manipulated the market through a deceptive bidding and purchase scheme.[3] Plaintiff Corey R. Shanus contends that this motion is nothing more than an attempt to conceal evidence of REA's fraud from the public.[4]

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[1] (ECF Docket Entry ("D.E.") 331, Defs.' Br.).

[2] *Id.* at 4.

[3] (D.E. 325, J.).

[4] (D.E. 334, Pl.'s Br., at 4).

## I. MAGISTRATE JUDGE AUTHORITY

Magistrate judges are authorized to decide any non-dispositive motion.[5] We are also authorized to perform unspecified "additional duties."[6] Motions to seal are non-dispositive matters that may be referred to a magistrate judge.[7] Decisions by magistrate judges must be upheld unless "clearly erroneous or contrary to law."[8]

## II. DISCUSSION AND ANALYSIS

The presentation of materials to the Court creates a presumption that such materials, regardless of a party's discovery designation, are part of the public record and subject to public access.[9] Because all materials and judicial proceedings are matters of public record, the Court typically should not seal such records.[10] However, the right of public access is not absolute.[11] "Every court has supervisory power over its own records and files, and courts have denied access where files might become a vehicle for improper purpose."[12]

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[5] 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72; *In re U.S. Healthcare*, 159 F.3d 142, 145 (3d Cir. 1998).

[6] 28 U.S.C. § 636(b)(3).

[7] *Dauphin v. Hennager*, 727 F. App'x 753, 755 (4th Cir. 2018).

[8] § 636(b)(1)(A).

[9] *See* Comment to L. Civ. R. 5.3(c)(2); *Bank of America Nat'l Trust and Savs. Ass'n v. Hotel Rittenhouse Assoc.*, 800 F.2d 339 (3d Cir. 1988).

[10] *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 659 (3d Cir. 1991) (citing *Littlejohn v. Bic Corp.*, 851 F.2d 673, 678 (3d Cir. 1988)).

[11] *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 165 (3d Cir. 1993) (quoting *Bank of America*, 800 F.2d at 344).

[12] *Littlejohn*, 851 F.2d at 678 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)).

The Local Rules require the party moving to seal an otherwise publicly available document to show:

> (a) the nature of the materials or proceedings at issue;
>
> (b) the legitimate private or public interests which warrant the relief sought;
>
> (c) the clearly defined and serious injury that would result if the relief sought is not granted; [and]
>
> (d) why a less restrictive alternative to the relief sought is not available.[13]

As stated above, REA asserts that the nature of the materials and proceedings relates to "business dealings, contracts, agreements, and settlements with consignors and/or customers not a party to this action," specifically Mr. Nash and Cooperstown.[14] REA alleges that portions of the transcript and exhibits will reveal the final prices of various items and expose Mr. Nash's bidding strategies to win these items.[15]

This Court has previously acknowledged that these parties are often engaged in competitive bidding at auctions, and that the disclosure of previously paid prices or bidding strategies could place REA and Mr. Nash at a competitive disadvantage.[16] Simply put, if parties are forced to show their cards, they may be put at a disadvantage in competitive auctions.[17] Because this "disclosure

[13] L. Civ. R. 5.3(c)(3).

[14] (D.E. 331, Defs.' Br., at 4).

[15] (D.E. 331, Defs.' Br., at 8).

[16] (D.E. 215, Order).

[17] (D.E. 304, Tr., at 45:22–24).

of business information might harm . . . [a person's] competitive standing,"[18] the Court considers this information appropriately confidential in nature.

Next, REA argues that the interest in their own privacy, as well as their customers' privacy, outweighs the public interest in allowing access to disputed materials.[19] The disputed transcript portions deal only with two individuals; Mr. Lifson and Mr. Nash (as well as their respective entities). If unsealed, competitors in the sports memorabilia business would have access to Mr. Nash and Mr. Lifson's financial arrangements. The fact that REA is no longer in operation lessens this private interest, but the Court notes that Mr. Nash and Mr. Lifson are both still active in the sports memorabilia business.[20] To protect this private interest, REA moves to seal large portions of the transcript, in excess of 175 pages in total.[21]

Prior to trial, Judge McNulty found that the disputed transcript sections provide the foundational information necessary to understand REA's scheme.[22] The public has a right to understand why and how a court reached a judgment.[23] If the Court were to seal these documents, it would effectively obscure the reasoning behind the Court's judgment.

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[18] *Republic of Philippines*, 949 F.2d at 663.

[19] (D.E. 331, Defs.' Br., at 4–5).

[20] (D.E. 335, Defs.' Reply, at 2 n.1).

[21] (D.E. 331, Defs.' Br., at 1–3).

[22] (D.E. 304, Tr., at 52:9–215).

[23] *See Republic of Philippines*, 949 F.2d at 664.

For example, REA wishes to seal sections of the April 30th and May 1st transcripts that describe Mr. Lifson's relationship with Mr. Nash and outline their scheme.[24] The disputed transcripts explain how Mr. Nash consigned items that he owned for sale in REA auctions.[25] After placing his items in the auctions, Mr. Nash bid on some of those very same items as Cooperstown, an entity that he completely controlled.[26]

Mr. Nash then extended credit to Cooperstown for the cost of the successful bids, therefore preventing any money from actually changing hands between Mr. Nash and Cooperstown.[27] Essentially, Mr. Nash would loan Cooperstown, an entity under his control, money to pay himself for Cooperstown's purchases of his own memorabilia.

Mr. Lifson, as the auction representative, would normally receive a buyer's commission and fees from items sold in REA auctions.[28] However, Mr. Nash would not pay the full fees, accruing debt with REA.[29] Instead, Mr. Lifson had an agreement with Mr. Nash that the items Cooperstown purchased would be held as collateral for Mr. Nash's debt,[30] but it is unclear whether Mr. Lifson ever intended on collecting this debt.

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[24] (D.E. 305, Tr., at 179:10–180:12).

[25] (D.E. 306, Tr., at 426:23–428:17).

[26] (D.E. 306, Tr., at 460:16–25).

[27] (D.E. 306, Tr., at 495:4–16).

[28] (D.E. 306, Tr., at 496:18–497:15).

[29] (D.E. 306, Tr., at 496:18–499:14).

[30] (D.E. 306, Tr., at 499:10–500:18).

Mr. Lifson would then report these sales on his website,[31] but REA never actually removed these items from their inventory, until offering them for sale at some point in the future.[32] Because successful sales potentially increase the value of items; Mr. Lifson and Mr. Nash's scheme would artificially inflate the prices of items that they intended to sell in future auctions.[33]

For the above reasons, the materials that REA seeks to seal are directly relevant to the heart of this case, meaning that the basis for the judgment rests upon the disputed transcripts and exhibits. If the Court sealed the disputed materials, it would essentially conceal the very mechanism that REA used to perpetuate the scheme,[34] leaving the public with little more than the judgment itself to establish the existence of the scheme. Consequently, the Court finds that the public interest in disclosure outweighs any private interest to seal.

Turning then to whether REA would suffer a clearly defined and serious injury, REA argues that public access to these documents would harm its standing in the marketplace and disadvantage its customers in future competitive bidding, as well as constitute an invasion of financial privacy.[35] REA summarily concludes that the disclosure of credit arrangements and confidential financial information would negatively impact future competitive standing in the marketplace and diminish trust between REA and their customers.[36] However, "[b]road

[31] (D.E. 16, Am. Compl., at ¶ 89).

[32] (D.E. 16, Am. Compl., at ¶ 90; D.E. 306, Tr., at 499:25–500:5).

[33] (D.E. 16, Am. Compl., at ¶¶ 86, 90).

[34] *See Republic of Philippines*, 949 F.2d at 664; *Harris v. Nielsen*, No. 09-2982, 2010 WL 2521434, at *4 (D.N.J. June 15, 2010).

[35] (D.E. 331, Defs.' Br., at 7).

[36] (D.E. 331, Defs.' Br., at 8; D.E., 335 Defs.' Reply, at 2).

allegations of harm, unsubstantiated by specific examples or articulated reasoning," are insufficient to show a clearly defined and serious injury.[37] "The burden of justifying the confidentiality of each and every document . . . remains on the party seeking the order."[38]

Judge McNulty previously rejected REA's broad allegations. [39] In denying REA's motion to seal the courtroom, the Court found that it was "speculative to a great degree whether" the history of prices and bidding strategies would seriously injure anyone.[40] Similarly, in the present motion, REA conceptually defines its injuries, but its broad allegations fail to establish, with the requisite specificity,[41] that anyone would suffer a serious injury.

Lastly, the Court must determine whether REA could avoid injury by utilizing a less restrictive alternative.[42] REA summarily concludes they have presented the least restrictive alternative, the sealing of more than 175 pages of trial transcript, without proposing or analyzing any other alternatives.[43] Mr. Shanus acknowledges this flaw but fails to present any alternatives aside from a blanket denial of the motion.[44] REA implies that Mr. Shanus should "meticulously go through the trial transcript or exhibits" to narrow the materials in dispute, but it is REA which

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[37] *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994) (quoting *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)).

[38] *Id.* at 786–87.

[39] (D.E. 304, Tr., at 52:7–15).

[40] (D.E. 304, Tr., at 52:7–15).

[41] *Pansy*, 23 F.3d at 786.

[42] L. Civ. R. 5.3(c)(3).

[43] (D.E. 331, Defs.' Br., at 9).

[44] (D.E. 334, Pl.'s Br., at 10).

bears the burden of showing that less restrictive means are not available.[45] Consequently, REA fails to properly address this prong and does not meet their burden of explaining why a less restrictive alternative is not available.[46]

For the reasons stated above, REA's motion to seal and redact (D.E. 330) is **DENIED**.

**IT IS SO ORDERED**.


Honorable Steve Mannion, U.S.M.J.
United States District Court,
for the District of New Jersey
phone: 973-645-3827

8/21/2018 8:42:26 AM

Original: Clerk of the Court
Hon. Kevin McNulty, U.S.D.J.
cc: All parties
File

[45] *Darkins v. Continental Airlines, Inc.*, No. 10-6165, 2013 WL 3285049 at *5 (D.N.J. June 27, 2013).

[46] *Id.*