

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROSSI, et al.	:	
Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	NO. 07-3792
	:	
SCHLARBAUM, et al.	:	
Defendants.	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 25th day of January, 2008, upon consideration of Defendants' Motion to Seal the Record and the accompanying Memorandum (Document No. 9, filed November 6, 2007), plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Seal the Record (Document No. 10, filed November 20, 2007), plaintiffs' letter of December 14, 2007 (Document No. 16, filed December 14, 2007), Defendants' Supplemental Memorandum in Support of Motion to Seal (Document No. 17, filed December 17, 2007), and related correspondence to Chambers, a telephone conference having been held on December 4, 2007, on the present state of the record, for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that Defendants' Motion to Seal the Record is **DENIED**.

MEMORANDUM

I. Background and Procedural History

On September 12, 2007, plaintiffs filed a 12-count Complaint against defendants alleging, *inter alia*, negligent and intentional infliction of emotional distress, tortious interference with contractual relationships, invasion of privacy, defamation, slander, and libel. The gravamen of

the Complaint is that defendant Janet Schlarbaum caused plaintiffs to suffer economic and personal losses by stating to plaintiffs' business associates, and to local media, that plaintiff Jaqueline Rossi was engaged in illicit and illegal activities. According to plaintiffs, defendant Janet Schlarbaum targeted Rossi after learning of a relationship between her husband, Mark Schlarbaum, and Rossi. On November 6, 2007, defendants filed the instant Motion to Seal the Record.

On November 21, 2007, while the Motion to Seal was pending, defendants advised the Court, via letter, that they became aware of a press release dated November 16, 2007 that appeared on the Internet and discussed the contents of the Complaint and contained highly-charged rhetoric. The contact person listed on the press release was Tim Bauer, Rossi's co-plaintiff, business partner, and husband.

On December 4, 2007, the Court held a telephone conference to address the issue of the press release and the Motion to Seal. During the conference, plaintiffs' counsel stated that the press release was issued prior to the filing of the Motion, notwithstanding its publication date. Plaintiff's counsel informed the Court that the press release had been removed from the website on which it appeared. Counsel also agreed that neither he nor his clients would publicize the case until after the Motion to Seal was ruled upon. At the conclusion of the telephone conference, the Court directed the parties to submit supplemental memoranda addressing the press release.

II. Arguments of the Parties

In the Motion to Seal the Record, defendants claim that the facts alleged thus far

and facts developed “during the course of the litigation could damage their reputation, friendships, and family life.” Defs.’ Mem. 2. Defendants describe the “nature of the facts” as “highly personal.” Id. at 4. They argue that the record should be sealed “to avoid . . . unnecessary shame and embarrassment and accomplish a full and fair adjudication.” Id. at 1. They further argue that plaintiffs are using the case for an improper purpose - to defame them and to pressure them to settle, irrespective of the merits of the case. Id. at 2.

In their Supplemental Memorandum, defendants again assert that “litigating the case publicly could prove destructive to Defendants’ personal and public life” and ask that the record be sealed. Defs.’ Supplemental Mem. 1. They accuse plaintiffs of adopting a strategy of public humiliation and abusing the judicial process. They also accuse plaintiffs of causing the November 16, 2007 press release to reappear on other Internet sites, while the Motion to Seal was pending and contrary to plaintiffs’ counsel’s agreement not to publicize the case. In a letter to the Court, plaintiffs disclaimed responsibility for the republication of the press release.

Plaintiffs oppose defendants’ Motion to Seal. They argue that defendants’ privacy concerns do not outweigh the presumption of public access to judicial records and proceedings. They further argue that defendant Mark Schlarbaum is a quasi-public person by virtue of his business dealings and that, as a result, the case involves issues important to the public. See generally Pls.’ Mem. in Opp’n.

III. Discussion

A. Motion to Seal the Record

The issuance of protective orders sealing court materials is governed by Pansy v. Borough

of Stroudsburg, 23 F.3d 772 (3d Cir. 1994). Under Pansy, “good cause must be demonstrated to justify” an order of confidentiality at any stage of the litigation. *Id.* at 786. “The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order.” *Id.* at 786-87.

“‘Good cause’ is established when it is specifically demonstrated that disclosure will cause a clearly defined and serious injury. Broad allegations of harm, unsubstantiated by specific examples . . . will not suffice.” Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995) (citing Pansy, 23 F.3d at 786). The Third Circuit has emphasized that, “[i]n delineating the injury to be prevented, *specificity is essential*.” In re Cendant Corp., 260 F.3d 183,194 (3d Cir. 2001) (citations omitted) (emphasis added).

“[S]everal factors, which are neither mandatory nor exhaustive, . . . may be considered in evaluating whether ‘good cause’ exists:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants will promote fairness and efficiency;
- 6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- 7) whether the case involves issues important to the public.”

Glenmede, 56 F.3d at 483 (citing Pansy, 23 F.3d at 787-91). In addition to these factors, courts should consider any other factors relevant to the dispute. *Id.*

The Court considers all of the relevant Pansy factors and other factors relevant to the dispute in turn. In balancing those factors, the Court concludes that defendants have failed to

establish good cause to seal the record.

As an initial matter, the Court acknowledges the “highly personal nature of the facts” in this case and does not doubt that certain facts or allegations may cause defendants embarrassment.¹ However, “[w]hile preventing embarrassment may be a factor satisfying the ‘good cause’ standard, an applicant for a protective order whose chief concern is embarrassment must demonstrate that the embarrassment will be particularly serious.” Pansy, 23 F.3d at 787.

In this case, defendants have made only broad allegations of harm. They claim that this litigation “*could* damage their reputation, friendships, and family life” and “*could* prove destructive” to their personal and professional lives. See Defs.’ Mot. 2; Defs.’ Supplemental Mem. 1 (emphases added). Defendants do not, in their Motion, Supplemental Memorandum, or in any correspondence to the Court, delineate specifically the injury they seek to prevent. Given the paucity and generality of defendants’ allegations, the Court cannot conclude that any embarrassment caused by this litigation “will be particularly serious.” Pansy, 23 F.3d at 787. Without more information demonstrating “a clearly defined and serious injury” to defendants, the Court is unwilling and unable to override “the strong common law presumption of access” to judicial proceedings and records. See In re Cendant, 260 F.3d at 194.

In reaching this conclusion, the Court is mindful of the lineage and importance of the “pervasive” common law public right of access to judicial proceedings and records, “which antedates the Constitution and which is applicable in both criminal and civil cases, [and] is . . . ‘beyond dispute.’” Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 161

¹ The Court also recognizes plaintiffs’ claim that they too may suffer embarrassment, given the charges allegedly made by defendant Janet Schlarbaum. Pls.’ Mem. in Opp’n. 1.

(3d Cir. 1993) (citing Littlejohn v. Bic Corp., 851 F.2d 673, 677-78 (3d Cir. 1988); see also id. (providing rationale for common law right of access). It is the public interest in openness which the Court must balance against the private interests at stake. Glenmede, 56 F.3d at 483.

Notwithstanding plaintiffs' claims to the contrary, this case does not involve issues important to the public in the traditional sense. No party to this litigation is a public entity (i.e. a governmental agency or elected official), nor does this case involve information relevant to the public health or safety. See Pansy, 23 F.3d at 787-88. In fact, this case involves only private litigants and, in the Court's view, "concerns matters of little legitimate public interest." Id. at 788. Nonetheless, the Court will deny the Motion to Seal on other grounds, as explained above.

On the present state of the record, there is no evidence that the case was filed for an improper purpose. While the Court finds the publication (and republication) of the November 16, 2007 press release troubling, the Court is not prepared, at this time, to find that plaintiffs are "exploit[ing] . . . the public nature of . . . *judicial proceeding[s]* to prompt a settlement." Defs.' Mem. 1 (emphasis added). Thus, this factor militates against closure. Should the Court later determine that plaintiffs are utilizing the judicial process for an improper purpose, the Court will fashion an appropriate remedy. See Constand v. Cosby, 229 F.R.D. 472, 475-76 (E.D. Pa. 2005).

B. Relief Sought by Defendants Regarding Press Releases

In their supplemental memorandum, defendants argue that plaintiffs have acted in bad faith by causing or allowing the press release to reappear on the Internet after having removed it. Defendants now seek to have the press release removed from all websites where it has reappeared.

The Court finds no conclusive evidence that the press release was disseminated by plaintiffs after the Motion to Seal was filed. Thus, it has no bearing on the issues presented by the Motion. Moreover, on the present state of the record, there is no evidence that the plaintiffs are responsible for republication of the press release. Nevertheless, the parties are urged to resolve this issue by cooperating in the removal of the press release from all websites.

IV. Conclusion

Having applied the “good cause” balancing test in the present case, and after considering the factors relevant to the present dispute, *see Glenmede Trust Co.*, 56 F.3d at 483; *Pansy*, 23 F.3d at 789, the Court concludes that defendants have failed to show good cause to seal the record in this case. For this reason, defendants’ Motion to Seal the Record is denied.

BY THE COURT:

/s/ Honorable Jan E. DuBois

JAN E. DUBOIS, J.