

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.
FILED
APR 9 - 2007
MICHAEL J. KERLY, Clerk
By _____
DEPUTY

EAGLE BROADBAND, INC.,
Plaintiff and Appellant,

v.

THOMAS MOULD,
Defendant and Respondent.

No. H030719
(Super. Ct. No. CV050179)
Santa Clara County

BY THE COURT:

The motion to seal records is granted in part. The motion is granted only as to those documents which were sealed by the trial court. Those documents include:

- 1) Paragraph 7-9 of the Khachatourian declaration;
- 2) Exhibits G & H of that declaration;
- 3) Any portion of the Opposition or Reply to the Motion for attorney's fees and costs making reference to the above referenced information; and
- 4) Any portion of the Opening brief quoting or paraphrasing the above referenced information.

The court finds that Eagle has shown that (1) There exists an overriding interest that overcomes the right of public access to the record; that (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest. (Cal. Rules of Court, Rule 2.550, subd. (d).) The parties entered into a Settlement Negotiation Agreement which contained a confidentiality clause. The purpose of the confidentiality clause was to encourage settlement by protecting information provided for the purposes of facilitating settlement. When negotiations failed, the parties sought to file information relating to settlement in support of and in opposition to the motion for attorney's fees and costs. The trial court allowed certain portions of the record to be filed under seal, finding that it was information protected by the parties' confidentiality clause. The trial court refused to seal information relating to Eagle's attorney's fees and costs.

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Superior Court No. 149554

The court finds that there exists an overriding interest in protecting information subject to the confidentiality clause where the purpose of the clause is to facilitate settlement between the parties. The court further finds that revealing such information would prejudice parties' willingness to engage in frank and open settlement negotiations. The order sealing the record is limited only to those portions of the record specifically identified as information about negotiations which is subject to the confidentiality clause. Finally, the court finds that no less restrictive means exists to protect this confidential information, other than sealing that portion of the record and briefs which contain or reference this information.

The motion is denied as to those documents relating to Eagle's attorney's fees and costs. Specifically:

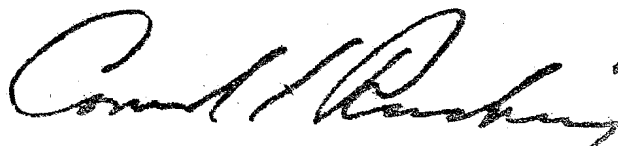
- 1) Parts of paragraph 6 (total Eagle has spent in costs and fees in this action;
- 2) Excerpts from Eagle's opposition to Mould's motion for fees which cites the total amount Eagle has spent in costs and fees;
- 3) Excerpts from reply brief filed by Mould which cites Eagle's costs and fees; and
- 4) Excerpts in Eagle's opening brief that quote or paraphrase this same information.

The court finds that there is no overriding interest in protecting Eagle's expenditures on legal fees and costs which overcomes the right of public access to the record.

The clerk of this court is directed to strike the filing of appellant's opening brief and appendix in lieu of clerk's transcript on appeal filed on January 18, 2007. Counsel for appellant or his representative may retrieve said brief and appendix from the clerk's office within 10 days from the date of this order so that said party may be able to provide a redacted version which complies with this order. The newly redacted record and opening brief shall be due within 15 days from the date that the brief and appendix are retrieved from the clerk's office or if not retrieved, within 15 days from the expiration of the 10-day period to retrieve said brief and appendix, whichever period comes first.

Time for filing of respondent's brief is extended to 15 days from the date that the redacted record and opening brief are filed in this court.

Dated APR 9 - 2007



P.J.

AFFIDAVIT OF TRANSMITTAL

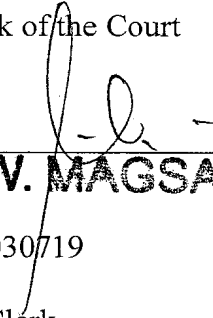
I am a citizen of the United States, over 18 years of age, and not a party to the within action: that my business address is 333 West Santa Clara Street, Suite 1060, San Jose, CA 95113; that I served a copy of the attached material in envelopes addressed to those persons noted below.

That said envelopes were sealed and shipping fees fully paid thereon, and thereafter were sent as indicated via the U.S. Postal System from San Jose, CA 95113.

I certify under penalty of perjury that the foregoing is true and correct.

Michael J. Yerly, Clerk of the Court

Deputy Clerk


W. MAGSAYSAY

APR 9 - 2007

Date

CASE NUMBER: H030719

Office of the County Clerk
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Material Sent YES: No

Mark Goldowitz
California Anti-SLAPP Project
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Material Sent YES: ✓

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Material Sent YES: ✓

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Material Sent YES: ✓