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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1674-14T3

MITCHELL WILLIAMS,

Plaintiff-Respondent,

v.

THE MLB NETWORK, INC.,

Defendant-Appellant,

and

THE GAWKER MEDIA GROUP,
INC., and GAWKER MEDIA,
L.L.C.,

Defendants.

Submitted April 15, 2015 – Decided September 10, 2015

Before Judges Kennedy and O'Connor.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-3675-14.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., attorneys for appellant (Peter O. Hughes and Christopher G. Elko, on the brief).

Console Law Offices, L.L.C., attorneys for respondent (Laura C. Mattiacci and Stephen G. Console, on the brief).

PER CURIAM

Defendant MLB Network (MLBN) appeals, on leave granted, the denial of its motion to seal an employment agreement between it and plaintiff Mitchell Williams. MLBN also seeks to seal references to the terms of the agreement in a complaint plaintiff filed in the Law Division against MLBN and defendant The Gawker Media Group, d/b/a Gawker (Gawker). After carefully reviewing the record and applicable legal principles, we affirm.

I

Plaintiff, a former major league baseball player, was hired as a sports commentator for defendant in 2009. In November 2011, plaintiff and MLBN entered into a confidential agreement for plaintiff's services.

During his spare time plaintiff coached a youth baseball team that he had organized. On May 10, 2014, plaintiff was coaching the team when an argument erupted between him and the umpire. According to plaintiff, the umpire initiated the confrontation and ejected plaintiff from the game; ultimately, tournament officials permitted plaintiff to coach the remaining games and banned the umpire.

On May 11, 2014, Gawker issued an article on one of its news websites in which it reported that plaintiff called the umpire a "motherfucker" in front of the children and had to be

"physically separated from the umpire by other coaches." On May 16, 2014, Gawker posted an article on its website about the incident; the headline was "Witnesses: Mitch Williams Called Child 'A Pussy,' Ordered a Beanball." In response to these articles, MLBN suspended plaintiff for thirty days pending an investigation.

Thereafter, MLBN requested that plaintiff agree to refrain from attending any amateur sports events for one year. Plaintiff refused, claiming his children participated in various sports and thus he did not want to be barred from attending his children's practices and games. MLBN then terminated plaintiff on the grounds he violated the agreement.

Believing MLBN breached the agreement and that Gawker defamed him, on September 24, 2014, plaintiff filed a complaint against defendants. Appended to the complaint was a copy of the agreement. MLBN promptly filed a motion to seal the complaint, arguing the terms of agreement and, in particular, the provisions covering compensation, were trade secrets. MLBN contended it would suffer a competitive disadvantage if plaintiff's salary and other terms of the agreement were made public. The trial court denied the motion but temporarily stayed its order to enable defendant to seek leave to appeal.

The trial court's reasons for denying the motion were as follows:

> I think that the defendant's concern is legitimate . . . but I see nothing different about this defendant wanting to keep its contract with a public figure, where some of this information is already out there, confidential, as compared to every other employer out there that's [similarly] situated, which is basically 90 percent of the workforce.
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> . . . .
>
> So my concern here is that I can't say with a straight face that the desire to keep Mitch Williams' salary confidential and the -- exactly what the contract provisions are outweighs this strong presumption. I just don't buy that somehow it's going to destroy MLB's Network to compete with its competitors.
>
> . . . .
>
> I just don't think this represents the case where I could say with a straight face that our Supreme Court would -- would say, yes, this information cannot be released to the public. It would be so damaging and so unfairly damaging to MLB Network that we have to go through these rather extraordinary security procedures to bar the public, this courtroom is either actually physically locked or de facto locked by our Sheriff's officer. I just don't see it. I just don't buy it.
>
> . . . .
>
> [Plaintiff] is a public figure. And there is a certain amount of -- of public desire to see what he's up to these days, that type of thing. But he is -- his relationship

> with MLB Network has entitled him to no greater and no less weight than the hundreds of thousands of other contractual relationships in New Jersey between either employee and employer or an independent contractor. . . .

On appeal, MLBN's principal argument is that there is "good cause" under Rule 1:2-1 and Rule 1:38-11 to seal the agreement and those portions of the complaint that refer to its terms. According to MLBN, the good cause is (1) the high likelihood that disclosure of the agreement will result in a clearly defined and serious injury, and (2) MLBN's privacy interests outweigh the presumption that all court records are public.

MLBN specifically contends that, if the information in the agreement is disclosed, it will be at a competitive disadvantage. First, other sports media organizations will become aware of the terms included or omitted from the agreement and might use that information to compete for available talent or lure MLBN's current on-air personalities away from MLBN. Second, other on-air performers or their agents will use the terms of the agreement to their advantage when negotiating with MLBN.

II

The decision to seal or unseal documents rests in the trial court's sound discretion. Hammock by Hammock v. Hoffmann-Laroche, 142 N.J. 356, 380 (1995). Decisions addressed to the

court's discretion will be reversed only if that discretion is abused or mistakenly exercised.

"A determination of what standard should guide our courts when deciding whether to unseal judicial records filed with the court should begin with our court rules." Id. at 367. Rule 1:2-1 states in pertinent part:

> All trials, hearings of motions and other applications, pretrial conferences, arraignments, sentencing conferences (except with members of the probation department) and appeals shall be conducted in open court unless otherwise provided by rule or statute. If a proceeding is required to be conducted in open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, as defined by R. 1:38-11(b), which shall be set forth on the record.

Rule 1:38, adopted in 2009, replaced "the common law 'balancing of interests' test with an absolute right of access to all non-exempt court and administrative records." New Jersey Supreme Court, Report of the New Jersey Supreme Court Special Committee on Public Access to Court Records, §1.1.1 (Nov. 29, 2007). Rule 1:38-11 also codified the "good cause" standard referenced in Rule 1:2-1 to permit a court to seal court records only if certain criteria are met. R. 1:38-11(b). This rule provides in pertinent part:

> (a) Information in a court record may be sealed by court order for good cause as defined in this section. The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.
>
> (b) Good cause to seal a record shall exist when:
>
> > (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and
> >
> > (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.
> >
> > . . . .

Rule 1:38-11 clearly imposes a more stringent standard for sealing records than existed before its adoption. A party seeking to seal a record must now show by a preponderance of the evidence that (1) disclosure of the agreement's terms will likely cause a serious and defined injury, and (2) the party's privacy interests substantially outweigh the presumption that court records are to be open for inspection. Further, Rule 1:38-11 did not eliminate the requirement that a party seeking to seal a record must demonstrate with specificity the need for secrecy for each document sought to be sealed. Hammock by Hammock, supra, 142 N.J. at 381-82. "Broad allegations of harm,

unsubstantiated by specific examples or articulated reasoning, are insufficient."[1] Ibid.

Here, MLBN did not specify the serious injury that will likely result if the agreement is not sealed. MLBN's sweeping, generalized contentions that the disclosure of the terms of the agreement will empower their competitors or current employees to use the agreement against MLBN and cause it serious harm are too amorphous and unenlightening to persuade us that the agreement requires protection. Given the information before us, any finding that disclosure of the agreement would cause MLBN harm, let alone serious harm, would be impermissibly speculative. For that matter, we could just as easily speculate that the disclosure of the contract terms would not put MLBN at a disadvantage because plaintiff's salary is comparable to what other celebrity sports commentators earn.

Accordingly, we cannot conclude the trial court abused its discretion when it found MLBN failed to prove the likelihood of a "clearly defined and serious injury." Because MLBN must show both prongs in Rule 1:38-11 to obtain an order to seal a record

[1] Although the Court was commenting on Rule 1:2-1, we find these requirements apply equally to Rule 1:38-11(b), which is referenced in Rule 1:2-1 as the source for defining "good cause."

and MLBN failed to meet the requirements of the first prong, we need not address the second one.

To the extent any arguments raised by MLBN have not been explicitly addressed in this opinion, it is because we were satisfied the arguments lacked sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.