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FILED

JUN 17 2016

BRIAN R. MARTINOTTI, J.S.C.

EVELYN HOLMES,

Plaintiffs,

vs.

C.R. BARD., INC
AND JOHN DOES 1-20

Defendants.

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION – BERGEN COUNTY
: DOCKET NO. BER-L-017503-14
: MASTER CASE NO. BER-L-017717-14

:
: Civil Action
: BARD Litigation, Case No. 292

:
: **ORDER TO SEAL DOCUMENTS**

THIS MATTER having come before the Court on the Motion of Plaintiff for an Order sealing certain documents in the file in this action in order to submit papers regarding the Confidential Settlement Agreement and a Supplemental Needs Trust; and the Court having read and considered all submissions in connection with the Motion; and good cause appearing;

IT IS on this 17 day of June, 2016,

ORDERED that Plaintiff is Granted (i) leave to file her Petition for the Creation of a First Party Supplemental Needs Trust, and any exhibits or attachments thereto, under seal, (ii) to conduct any hearings and/or proceedings related thereto in camera, and (iii) that any notes

of meetings or filings from any such hearings containing confidential information be sealed as well.

IT IS FURTHER ORDERED that counsel for Plaintiffs shall serve a copy of this order on all parties within seven (14) days.

Denied



Hon. Brian R. Martinotti

Opposed

Unopposed

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NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

EVELYN HOLMES,

Plaintiff,

v.

C.R. BARD, INC.,
AND JOHN DOES 1-20,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BERGEN COUNTY

DOCKET NO. BER-L-17503-14

CIVIL ACTION

Submitted: May 18, 2016

Decided: June 17, 2016, 2016

For Plaintiff: Mitchell M. Breit, Esq.
(Simmons Hanly Conroy LLC)

For Defendant: Melissa A. Geist, Esq.
(Reed Smith LLP) (No pleadings were filed
in opposition to this Motion)

MARTINOTTI, J.S.C.

Before this Court is Plaintiff's Motion for Leave to File Documents Under Seal

Pursuant to R. 1:38-11. This Motion is not opposed.

Facts

The underlying controversy in this case involves alleged damages for personal injuries associated with a pelvic mesh device designed and manufactured by Defendant.

The product's alleged risks and this litigation have become broadly known. Articles have appeared in various news outlets, including the (Bergen) Record, the Star Ledger, and Bloomberg News.

Plaintiff and Defendant entered into a confidential settlement agreement and on April 4, 2016, Plaintiff applied by letter to seal the file in this action in its entirety. The Court denied that application, finding the request too broad and noting a party seeking such relief must file a R. 1:38-11 motion demonstrating the existence of good cause to seal the record. On May 18, 2016, Plaintiff filed the instant Motion.

Plaintiff's Argument

Plaintiff argues a seal is necessary because she intends to file a petition to create a special needs trust and would have to include the settlement amount as part of that petition. The special needs trust would ensure the settlement would not impair Plaintiff's eligibility to receive public assistance. Plaintiff argues the disclosure of the settlement amount in her petition to establish the trust could subject her to adverse consequences, including relief, redress, and damages associated with a potential breach of the provisions of the settlement agreement. Plaintiff argues that, while the public may have an interest in knowing the nature of the litigation, the claims made, and the fact that a resolution was reached, there is no public interest in any individual's settlement amount.

Decision

R. 1:2-1 establishes a presumption in favor of public access:

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*.

R. 1:2-1 (emphasis added).

In Hammock by Hammock v. Hoffman-LaRoche, Inc., 142 N.J. 356, 381-82 (1995), the New Jersey Supreme Court noted that the “good cause” requirement of the rule was not defined, and therefore set forth the guidelines that: 1) there is presumption of public access to court documents; and 2) the party seeking to overcome this presumption in favor of public access bears the burden to convince a court that the interest in secrecy outweighs this presumption. In Verni ex rel. Burstein v. Lanzaro, 404 N.J. Super. 16, 25 (App. Div. 2008), the Appellate Division explained that a “simple desire for privacy” is inadequate to overcome the public interest in open judicial proceedings, particularly where the underlying issues are those of great public concern, such as health, consumer safety, and corporate responsibility. The Verni court also cited with approval the Appellate Division’s holding in Lederman v. Prudential Life Ins. Co. of America, Inc., 385 N.J. Super 307, 319 (App. Div. 2006), which stated that a party seeking to seal a record must show "a specific, serious injury that would result from lifting the seal." Verni at 24.

After Verni, the New Jersey Court Rules were amended to incorporate both the “specific injury” and burden of proof standards. Effective September 1, 2009, R. 1:2-1 was amended to redefine “good cause” by reference to a new Rule, R. 1:38-11, which states that good cause to seal exists 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.

R. 1:2-1, R. 1:38-11.

This case involves considerable matters of public health and public interest. Defendant has settled tens of thousands of lawsuits related to its pelvic mesh products, and thousands of lawsuits are still pending, including 2,490 in this Court as of June 6, 2016. In Verni, supra, the issue was the risk of socially irresponsible behavior encouraged by vendors of alcoholic beverages, which led to the tragic injury to the minor plaintiff. Here, the issues of public concern are the severe injuries allegedly caused by Defendant's product.

Plaintiff argues her privacy interest substantially outweighs the presumption of public access. The "specific injury" Plaintiff identifies is the impairment of her eligibility for public benefits if a special needs trust cannot be established for benefit. More specifically, Plaintiff avers that the disclosure of the confidential settlement amount could expose her to damages associated with the breach of the settlement agreement.

However, the standard a party must meet to seal documents demands more. In Verni, the party seeking a seal cited, among other concerns, the risk that the infant plaintiff's estranged father would contact the family in violation of a restraining order if he learned of the settlement amount his child received. Verni, supra, 404 N.J. Super. at 20. Despite the father's history of domestic violence, the Appellate Division reversed the trial court's decision to seal documents related to the settlement.

Here, the injury Plaintiff cites does not rise to the level of that in Verni. Further, the Verni court posited that a seal would be appropriate "when an application is filed with a court that pertains to a purely private matter" Id. at 24 (citing In re Trust Created by Johnson, 299 N.J. Super. 415, 423 (App. Div. 1997)). The Verni court's reliance on In re Trust Created by Johnson provides an instructive contrast with the instant matter. In

In re Trust Created by Johnson, the Appellate Division affirmed the trial court's decision to deny a contingent beneficiary access to trust records. In re Trust Created by Johnson, supra, 404 N.J. Super. at 424. The court noted the trust was not associated with "issues of health, safety, and consumer fraud," which are factors that weigh in favor of disclosure. Id. at 423. Here, litigation arose from the harm Plaintiff allegedly suffered from Defendant's medical device. The litigation clearly implicates issues of health and public safety.

Plaintiff's concern that she could be subject to damages stemming from a breach of the confidentiality provisions of the settlement is speculative. Each party has an interest in confidentiality provisions, but those interests are not necessarily equal. Defendants may object to the disclosure of a settlement amount so high that it would inspire a flood of new lawsuits. But it is just as likely that Defendants would be pleased by the disclosure of what may have been a settlement they viewed as favorable. The injury Plaintiff cites do not substantially outweigh the presumption in favor of access. See Verni, supra, 404 N.J. Super. at 23 (citing Hammock, supra, 142 N.J. at 381).

For the foregoing reasons, Plaintiff's Motion for Leave to File Documents Under Seal is DENIED.