

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ELIYAHU MIRLIS, : CASE NO. 3:16-CV-00678 (MPS)
Plaintiff, :
v. :
: :
: :
RABBI DANIEL GREER and YESHIVA OF :
NEW HAVEN, INC., :
Defendants. : JANUARY 2, 2018

**MEMORANDUM IN OPPOSITION TO REQUEST
FOR PUBLIC ACCESS TO DOCUMENTS**

Defendants respectfully submit this memorandum in opposition to the letter request submitted by Lawrence Dressler seeking disclosure of post-judgment discovery relating to defendants' finances, and also seeking videotape depositions taken of Aviad Hack during pre-trial discovery on August 2 and 25, 2016. We will address the Court regarding these matters at the hearing currently scheduled for January 4, 2018 at 11:00 a.m., and highlight in this memorandum certain points we believe helpful to inform the Court's consideration of Mr. Dresler's request, in accord with the Court's order of December 5, 2017 (Doc. No. 240).

I. Post-Judgment Financial Disclosures

As the Court is aware, plaintiff is currently in the process of gathering financial discovery from the defendants, and other non-parties, as part of its attempts to collect on the judgment in this matter. The question of what form of protective order should enter regarding post-judgment financial discovery remains unresolved; however, it seemed clear during the discussion with the Court at the December 8, 2017 hearing in this matter that all parties (and perhaps the Court as well) agreed with the general proposition that the defendants, as well as non-parties, had a legitimate interest in not having their personal financial privacy protected, and in having such information shielded from general public disclosure. It thus is highly likely that the material Mr.

Dressler, a non-party, seeks will ultimately fall within the scope of a protective order that prohibits disclosure to non-parties.

Nothing cited by Mr. Dressler suggests a contrary conclusion. In general, courts have held that information exchanged by parties during discovery is not subject to a First Amendment or common-law public right of access. *Bond v. Utreras*, 585 F.3d 1061, 1066 (7th Cir. 2009) (“[T]here is no constitutional or common-law right of public access to discovery materials exchanged by the parties but not filed with the court. Unfiled discovery is private, not public.”); *Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“[discovery] documents are not part of the judicial record”). These policies are even stronger in the current post-judgment procedural posture of the case, where the focus of the discovery at issue is simply the potential collection by plaintiff of the judgment entered by the Court, and the nature of the material being sought is uniquely personal and private.

Mr. Dressler’s repeated references in his January 2, 2018 faxed submission (Doc. No. 255) to the non-profit status of Yeshiva of New Haven, Inc., and involvement of defendant Greer and his wife in that entity, are simply irrelevant. This is not the forum in which to litigate what disclosures are required, or not required, of a charitable organization. Mr. Dressler is free to seek whatever records are publicly available regarding Yeshiva of New Haven via proper requests to the appropriate agency or agencies. He is not a party to this action, however, and has no right to obtain the same financial records that the plaintiff is seeking regarding the finances of the defendants and non-parties.

II. Disclosure of Hack Deposition Videos

It is our understanding that counsel for Aviad Hack will be moving for a protective order seeking to prevent release of the videotapes of Mr. Hack's pre-trial deposition sessions.

Defendants also oppose release of deposition videotapes, and join in any arguments set forth by counsel for Mr. Hack. In addition, defendants submit the following points for the Court's consideration on this issue.

First, the general principles cited above from the *Bond v. Utreras* and *Pintos* cases apply equally here. There is no blanket right of public access to pre-trial discovery material. Mr. Dressler's request specifically seeks the video versions of the Hack depositions taken in the pre-trial discovery phase of this case. Those videotapes were never publicly filed. Therefore, the general rule that unfiled discovery is private, not public, applies here.

Second, even if the request is interpreted as seeking video testimony that was played at trial, no video was ever offered as an exhibit or made part of the public record. See generally Doc. No. 167 (official Plaintiff's Exhibit List, as marked by the Court); see also May 11, 2017 Tr. at 137-37.. As the Court recalls, the video testimony of Mr. Hack testimony played during the trial was not the entirety of his deposition sessions, but instead was limited to those portions ruled by the Court to be admissible and appropriate. Mr. Dressler has admitted that he already has been able to access the entirety of Mr. Hack's depositions, save for "a few redactions". He has no right to additional video material that has never been part of the public record.

Finally, disclosure of the requested videotapes has the potential to cause significant and unfair prejudice. The Court is aware that criminal charges are currently pending against defendant Greer in the Connecticut Superior Court based on allegations made by plaintiff Eliyahu Mirlis. Notably, those charges do not include any charges based on claims of Aviad

Hack. Mr. Dressler freely admits his intent publish the material he seeks on his website. Publication of videotaped testimony of Aviad Hack could poison the prospective state court juror pool, and could unfairly prejudice trial jurors against defendant Greer if any juror accessed such extra-judicial material. The Hack videotaped testimony is not of public record, and as such should not be disclosed to Mr. Dressler or any other member of the general public.

We will address any further questions the Court may have on these issues at the January 4th hearing.

THE DEFENDANTS,

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CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing Memorandum in Opposition to Request For Public Access to Documents was filed electronically on January 2, 2018. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ David T. Grudberg

David T. Grudberg