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## Bid to Seal Records In State Case Rejected

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A state judge has ordered that court records in connection with a \$2.5 billion lawsuit over the financing of a Hispanic TV network should be made public.

Noting that he did not have the authority to apply the more liberal sealing standard used by the federal courts, Supreme Court Justice Herman Cahn ([See Profile](#)) rejected a lender's bid to keep sealed an amended complaint and other documents designated "confidential," even though the company had prevailed in an earlier effort to dismiss the action.

Quantek Media and several affiliated entities had claimed that sealing was necessary to protect "sensitive and private business information between defendants" and non-parties.

But Justice Cahn held in *L.K. Station Group, LLC v. Quantek Media, LLC*, 601015/08, that Quantek had failed to show that good cause existed to keep the documents private.

### **The decision will be published Monday.**

While federal courts appear to apply this standard more broadly than New York courts, the judge noted that "[t]his court is bound by the case law of this state" and "cannot apply the standards of the federal courts unless and until the New York Rule is changed to make sealing more widely available, either through legislative action or through judicial review of the current standards."

Mark C. Zauderer of Flemming Zulack Williamson Zauderer, who was not involved in the case, said the issue of sealing has gained importance with "the growing prominence of commercial litigation" in New York state courts and businesses' desire to "litigate cases without revelation of sensitive information to competitors."

The rule requiring that a litigant show good cause for sealing was born of concerns over a decade ago that settlements in product liability cases kept the public in the dark about defective products, Mr. Zauderer said in an interview.

Since "most commercial cases do not involve those public concerns," "many users of the state court system feel that a party seeking to seal commercial information faces an undue burden," Mr. Zauderer added.

The dispute over sealing stemmed from a joint venture between Quantek and L.K. Station Group to create a media enterprise aimed at markets with substantial Hispanic populations.

As part of this plan, L.K. planned to buy Station KFTY-TV in Santa Rosa, Calif., and KVOS-TV in Bellingham, Wash., and enhance the value of the two "underperforming," independent stations.

Even if the overall venture between the parties failed, Tvestments Ltd, an affiliate of Quantek, nonetheless agreed in a commitment letter to provide L.K. with up to \$30 million in financing to acquire the two stations.

In March 2008, 10 days before the deal was scheduled to close, Quantek allegedly refused to fund the purchase, based on what it characterized as L.K.'s "material breach" of the commitment letter.

On April 7, L.K. sued Quantek and several affiliated entities for breach of contract.

The parties subsequently entered into a so-ordered confidentiality agreement in which they stipulated that documents exchanged during discovery could be labeled "confidential" or "confidential - counsel only." Prior to filing or using any such records in court, the stipulation required a party to "obtain an appropriate order from the Court pursuant to section 216.1(a) of the Uniform Rules for the New York State Trial Courts finding good cause to seal the Court records in which the confidential matter appears."

In May, L.K. filed an amended complaint, based in part on information contained in six documents designated as confidential. It maintained that Quantek "deliberately" failed to disclose its intention to acquire a stake in CaribeVision, which "owned or controlled Spanish-language television stations in Puerto Rico."

According to the complaint, L.K., based on its "mistaken" belief that Quantek had no such competing interest, revealed "valuable proprietary information" to the defendants.

L.K. sought compensatory damages of up to \$500 million and no less than \$2.5 billion in punitive damages.

L.K. filed the amended complaint under seal pursuant to a so-ordered stipulation, signed by Judicial Hearing Officer Beverly Cohen.

Quantek moved to dismiss the complaint and subsequently requested that all documents filed in connection with their motion to dismiss be kept under seal. Supreme Court Justice Helen E. Freedman ([See Profile](#)) agreed to temporarily seal the papers, pending Justice Cahn's ultimate determination of the motion.

### **Sealing Not Warranted**

On July 31, Justice Cahn granted Quantek's motion to dismiss L.K.'s first amended complaint.

However, last week, the judge rejected Quantek and the related defendants' bid to keep under seal documents previously labeled as confidential.

L.K. had maintained that the records eventually could be unsealed and argued that the "public's interest in access to these court proceedings is substantial."

Citing *Matter of Hofmann*, 284 AD2d 92 (1st Dept. 2001), Justice Cahn agreed with L.K. that the "First Department rejects wholesale sealing of motion papers, even when both sides to the litigation request sealing."

Since sealing of court papers only is allowed to further "compelling objectives," such as the need to preserve trade secrets, the court "is required to make its own inquiry to determine whether sealing is warranted," he added.

To grant a sealing order, a party must show, "with respect to each specific document which it seeks to have sealed," that "good cause" exists to seal that particular document, and that "there is no feasible alternative to sealing," the judge wrote.

While Quantek maintained that "the confidentiality designations are based, in large part, on their efforts to protect the interests of third parties unrelated to this litigation," Justice Cahn concluded that it had failed to meet its burden of proof.

The judge observed that "many litigants have referred to the standard applied in the federal courts, which appear to allow sealing more freely than in the New York courts."

Although litigants in both jurisdictions must demonstrate good cause before a sealing motion is granted, the way in which this term is construed appears to be "broader in federal courts than in New York courts," Justice Cahn wrote.

"It could be argued that trial courts" should be afforded greater discretion in balancing the state's right to have its courts, "especially the Commercial Division be 'user friendly'" with litigants' interest in keeping documents containing confidential information sealed, the

judge wrote.

However, until the New York rule is altered to "make sealing more widely available, either through legislative action or through judicial review of the current standards," Justice Cahn concluded that he was "bound by the case law of this state" and vacated the temporary sealing order.

Arthur J. Jacobs, John J. Lynch, and John F. Burleigh of Jacobs deBrau represented L.K. While Mr. Lynch said he was pleased with Justice Cahn's lifting of the temporary sealing order, he "vigorously disagreed" with the dismissal of his client's case and has appealed.

Howard M. Shapiro, Peter K. Vigeland, and Ashley Baynham of Wilmer Cutler Pickering Hale and Dorr served as counsel to Quantek and its affiliated entities.

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