

Marullo v Amchem Prods., Inc.

Supreme Court of New York, Appellate Division, First Department

December 2, 2021, Decided; December 2, 2021, Entered

Index No. 190426/14 Appeal No. 14731 Case No. 2020-03324

Reporter

2021 N.Y. App. Div. LEXIS 6816 *; 2021 NY Slip Op 06766 **

[1]** John Marullo, Jr., et al., Plaintiffs-Respondents, v Amchem Products, Inc., et al., Defendants, J-M Manufacturing Company, Inc., Defendant-Appellant.

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THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Prior History: **[*1]** Order, Supreme Court, New York County (Margaret A. Chan, J.), entered on or about July 6, 2020, which denied defendant J-M Manufacturing Company, Inc.'s motion to seal certain documents, unanimously modified, on the law and the facts, to place under seal copies of a certain document previously deemed privileged by this Court, and otherwise affirmed, without costs.

Core Terms

seal, redacted, memorandum, privileged, decisions, memo

Counsel: Manning Gross + Massenburg, LLP, New York (Anna Hwang of counsel), for appellant. Weitz & Luxenberg, P.C., New York (Jason P.

Weinstein of counsel), for respondents.

Judges: Before: Webber, J.P., Friedman, Oing, Shulman, Pitt, JJ.

Opinion

This Court previously determined that the legal memorandum at issue, created by in-house counsel for J-M in the 1980s, was privileged but that J-M had waived the privilege with respect to a redacted version of the memorandum (*Matter of New York City Asbestos Litig.*, 151 AD3d 550 [1st Dept 2017], *lv dismissed* 30 NY3d 1055 [2018]). Thus, J-M's arguments concerning privilege with respect to the redacted version, advanced under the guise of a motion to seal, are barred by collateral estoppel (*see Buechel v Bain*, 97 NY2d 295, 303-405 [2001], *cert denied* 535 US 1096 [2002]). They are also unavailing. The Full Faith and Credit Clause of the United States Constitution does not compel this State to substitute the decisions of other states for its own decisions on privilege issues (*see JP Morgan Chase & Co. v Indian Harbor Ins. Co.*, 98 AD3d 18, 25 [1st Dept 2012], *lv denied* 20 NY3d 858 [2013]).

J-M failed to show that good **[*2]** cause existed to seal all court records that included or described the redacted memo (*see* 22 NYCRR 216.1; *see e.g. Mosallem v Berenson*, 76 AD3d 345, 350 [1st Dept 2010];

[Applehead Pictures LLC v Perelman, 80 AD3d 181, 191-192 \[1st Dept 2010\]](#)). However, the unredacted memo, since it is privileged, should be sealed.

The settlement of this action did not render the issue of sealing filed documents moot (see [New York State Commn. on Jud. Conduct v Rubenstein, 23 NY3d 570 \[2014\]](#); see also [Vergara v Mission Capital Advisors, LLC, 187 AD3d 495 \[1st Dept 2020\]](#)).

THIS CONSTITUTES THE DECISION AND ORDER OF
THE SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT.

ENTERED: December 2, 2021

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