

O'Brien v Kaplan

2024 NY Slip Op 31426(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 652840/2020

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

EDWARD O'BRIEN and THE ESOP SHOP, LLC,

Plaintiffs,

INDEX NO. 652840/2020

MOTION DATE --

- v -

MOTION SEQ. NO. 009 010 011

LAWRENCE KAPLAN, CORPORATE SOLUTIONS
GROUP I, LLC, CORPORATE SOLUTIONS GROUP, LLC,
CITY LINE CAPITAL, LLC, ABC CORPS. 1-10, JOHN
DOES 1- 10, and BLUE HIPPO ESOP ADVISORS, INC.,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 305, 308, 311, 313, 314

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 295, 296, 297, 298, 299, 300, 301, 303, 304, 307

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 328, 329, 330, 331, 332, 333, 334, 335, 336, 340, 347

were read on this motion to/for SEAL.

In motion sequence 009, defendants Corporate Solutions Group I, LLC and Corporate Solutions Group, LLC¹ move by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF Doc. Nos. (NYSCEF) 229, 231, 236, 237, 238, 240, 243, 246, and 247² on the grounds that

¹ For the purposes of the motions addressed herein, Corporate Solutions Group I, LLC and Corporate Solutions Group, LLC will be referred to as defendants.

² The following pairs are copies of identical unredacted documents: NYSCEF 229 and 268, NYSCEF 231 and 270, NYSCEF 236 and 272, NYSCEF 237 and 274, NYSCEF 238 and 276, NYSCEF 240 and 278, NYSCEF 243 and 280, NYSCEF 246 and 282, NYSCEF 247 and 284.

these documents include trade secret information, sensitive financial and business information, and confidential tax information.

In motion sequence 010, defendants move by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF 252 and 292³ on the grounds that these documents contain trade secret information and sensitive financial information. As to both motions 009 and 010, plaintiffs filed an opposition “for the purposes of clarifying that Plaintiffs do not concede that Defendants have an enforceable trade secret.” (NYSCEF 313, John P. O’Brien⁴ aff ¶ 7; NYSCEF 307, John P. O’Brien aff ¶ 7.)

In motion sequence 011, defendants move by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF 323 and seal⁵ 325⁶ on the grounds that these documents contain trade secret information and confidential and sensitive business information. Plaintiffs do not oppose. There is no indication that the public or press has an interest in this matter.

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records.” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010] [citations omitted].) The public’s right to access is, however,

³ The following pairs are copies of identical unredacted documents: NYSCEF 252 and 298, NYSCEF 292 and 300.

⁴ John P. O’Brien is plaintiffs’ counsel. (NYSCEF 313, John P. O’Brien aff ¶ 1.)

⁵ NYSCEF 325 is entitled 1042 Alternative Investments and includes a chart explaining 1042 transaction strategies. Although defendants state in the Order to Show Cause that they seek to redact NYSCEF 325 (NYSCEF 336, OSC at 2 [mot. seq. no. 011]), their proposed redactions reveal that they seek to redact the entire document. (See NYSCEF 332, proposed redactions to NYSCEF 325.) Thus, they effectively seek to seal this document.

⁶ The following pairs are copies of identical unredacted documents: NYSCEF 323 and 331, NYSCEF 325 and 333.

not absolute, and under certain circumstances, “public inspection of court records has been limited by numerous statutes.” (*Id.* at 349.) One of those statutes is section 216.1 (a) of the Uniform Rules for Trial Courts, which empowers courts to seal documents upon a written finding of good cause. It provides:

“Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosallem*, 76 AD3d at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotation marks omitted].) Further, in the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem*, 76 AD3d at 350 [citations omitted].)

Motion Sequence 009

The court finds that defendants have demonstrated good cause to redact NYSCEF 229, 231, 236, 237, 238, 240, 243, 246, and 247 as proposed. Since the publicly available redacted copies of these documents have already been filed as NYSCEF 267, 269, 271, 273, 275, 277, 279, 281, and 283, defendants need not refile the public copies.

Motion Sequence 010

The court finds that defendants have demonstrated good cause to redact NYSCEF 252 and 292 as proposed. Since the publicly available redacted copies of these documents have already been filed as NYSCEF 297 and 299, defendants need not refile the public copies.

Motion Sequence 011

The court finds that defendants have demonstrated good cause to redact NYSCEF 323 as proposed and seal NYSCEF 325. Since the publicly available redacted copy of NYSCEF 323 has already been filed as NYSCEF 330, defendants need not refile the public copy.

Accordingly, it is

ORDERED that motion sequence number 009 is granted; and it is further

ORDERED that the County Clerk, upon service on him of this order, shall seal NYSCEF 229, 231, 236, 237, 238, 240, 243, 246, 247, 268, 270, 272, 274, 276, 278, 280, 282, and 284.

ORDERED that motion sequence number 010 is granted; and it is further

ORDERED that the County Clerk, upon service on him of this order, shall seal NYSCEF 252, 292, 298 and 300; and it is further

ORDERED that motion sequence number 011 is granted; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 323, 325, 331, 333; and it is further

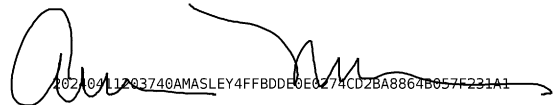
ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and

counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that movant shall serve a copy of this order on the County Clerk in accordance with the procedures set forth in the Protocol on Courthouse County Clerk Procedures for Electronically Filed Cases; and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



20240411203740AMASLEY4FFBDD80E0274CD2BA8864B057F231A1

4/11/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: