

Frosch Intl. Travel, Inc. v Botbol

2024 NY Slip Op 31428(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 653071/2020

Judge: Andrea Masley

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

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FROSCH INTERNATIONAL TRAVEL, INC., N/K/A FROSCH INTERNATIONAL TRAVEL, LLC, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> MICHEL BOTBOL, <p style="text-align: center;">Defendant.</p>	<table border="0"> <tr> <td style="padding-right: 20px;">INDEX NO.</td> <td><u>653071/2020</u></td> </tr> <tr> <td>MOTION DATE</td> <td>_____</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>007</u></td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	<u>653071/2020</u>	MOTION DATE	_____	MOTION SEQ. NO.	<u>007</u>
INDEX NO.	<u>653071/2020</u>						
MOTION DATE	_____						
MOTION SEQ. NO.	<u>007</u>						

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 237, 238, 239, 240, 244, 250, 251, 252, 253, 255, 257, 258, 259, 260
 were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 007, plaintiff Frosch International Travel, Inc. (n/k/a Frosch International Travel, LLC) (Frosch) moves, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact portions of NYSCEF Doc No. [NYSCEF] 232, 233, 234, 235 and 236¹ which disclose names and other information about Frosch’s current and prospective clients and portions of NYSCEF 233 which disclose Frosch’s financial and marketing information.

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal or redact documents upon a written finding of good cause. It provides:

“(a) [e]xcept 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

¹ These documents are exhibits 12, 25, 29, 30 and 31 to the affirmation of Michael V. Rella (NYSCEF 189) in support of Frosch’s motion for summary judgment dated November 6, 2023. The publicly available, redacted versions of NYSCEF 232, 233, 234, 235 and 236 have been filed as NYSCEF 201, 214, 218, 219 and 220.

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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 the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.”

Judiciary Law § 4 provides that judicial proceedings shall be public. “The public needs to know that all who seek the court’s protection will be treated evenhandedly,” and “[t]here is an important societal interest in conducting any court proceeding in an open forum.” (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U], *2 [Sup Ct, NY County 2006] [citation omitted].) The public right of access, however, is not absolute. (See *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000].)

The “party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosalleem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting “an affidavit from a person with knowledge explaining why the file or certain documents should be sealed.” (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], *2 [Sup Ct, NY County 2004].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Labs.*, 274 AD2d at 8.) In the business context, courts have sealed records where the disclosure of documents “could threaten a business's competitive advantage.” (*Mosalleem*, 76 AD3d at 350 [citations omitted].)

Frosch has demonstrated good cause to narrowly redact NYSCEF 232, 234, 235 and 236 as the disclosure of information about current and prospective clients could

threaten Frosch's competitive advantage and there is no public interest in this information. (NYSCEF 257, Bryan Leibman, CEO of Frosh, aff ¶12.)

Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party "ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information." (*D'Amour v Ohrenstein & Brown*, 17 Misc 3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

Frosch seeks to redact portions of NYSCEF 233 which disclose financial information including "(i) the amount of the commissions FROSCH had received from certain counterparties, (ii) the size of its hotel program and the amount of the marketing fees FROSCH had received from that program, and (iii) the size (by dollar amount) of FROSCH's pipeline of New York accounts." (NYSCEF 239, Frosch's Memo of Law [November 6, 2023] at 3-4.) This information is Frosch's commercially sensitive financial and marketing information and there exists no public interest in its disclosure. (NYSCEF 256, Liebman aff ¶¶6, 12.) The court finds that Frosch has demonstrated good cause to narrowly redact NYSCEF 233.

Defendant Botbol opposes the motion on the ground that Frosh previously failed to designate the information now sought to be redacted as confidential. (NYSCEF 253, Botbol's Memo of Law [November 27, 2023] at 3.) Parties' designation of information as confidential (or lack thereof of such designation) by itself does not constitute a basis to seal (or not seal a document) and does not excuse a party from making a showing of

good cause as to why certain information should be redacted or sealed. (See *Eccles v Shamrock Capital Advisors, LLC*, 2023 NY Slip Op 32730[U] ** 5 [Sup Ct, NY County 2023] [citation omitted].) Frosch has made an independent showing of good cause to narrowly redact NYSCEF 232, 233, 234, 235 and 236. Botbol also objects to the absence of an affirmation by someone with personal knowledge. (NYSCEF 253, Botbol's Memo of Law [November 27, 2023] at 3.) Frosch has since filed an affidavit from Bryan Liebman, Frosch's Chief Executive Officer and complied with the requirement to submit an affidavit from a person with knowledge explaining why the file or certain documents should be sealed. (NYSCEF 257, Liebman aff.) Botbol's opposition on this basis is moot.

Accordingly, it is

ORDERED that motion sequence number 007 is granted and the County Clerk is directed to permanently seal NYSCEF 232, 233, 234, 235 and 236; 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

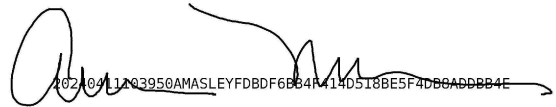
ORDERED that counsel for the plaintiff shall serve a copy of this order upon the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*

(accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); 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.



4/11/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: