

Zydus Worldwide DMCC v Teva Pharm. Indus. Ltd.

2023 NY Slip Op 31055(U)

April 1, 2023

Supreme Court, New York County

Docket Number: Index No. 654824/2019

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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ZYDUS WORLDWIDE DMCC,

Plaintiff,

- v -

TEVA PHARMACEUTICALS INDUSTRIES LTD.,

Defendant.

INDEX NO. 654824/2019

MOTION DATE _____

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 130, 131, 132, 133, 134, 136

were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In motion sequence number 006, defendant Teva Pharmaceuticals Industries Ltd. moves, by order to show cause, to maintain under seal NYSCEF Docs. No. (NYSCEF) 126 and 127, and to redact portions of NYSCEF 128¹ pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. The motion is unopposed. There is no indication that the press or public have any interest in this matter.

NYSCEF 126 and 127 are exhibits 5 and 6 to defendant’s motion to stay (mot. seq. no. 007.) NYSCEF 126 is plaintiff’s first supplemental objections and responses to defendant’s first interrogatories. NYSCEF 127 is plaintiff’s second supplemental objections and responses to defendant’s first set of interrogatories.

¹ A publicly redacted copy of this document is filed at NYSCEF 129.
654824/2019 ZYDUS WORLDWIDE DMCC, vs. TEVA PHARMACEUTICALS
Motion No. 006

NYSCEF 128 is defendant's memorandum of law in support of its renewed motion to stay. Defendant seeks to redact information from NYSCEF 126 and 127 cited in its memorandum.

Defendant states that "[d]efendant has redacted the confidential information from Defendant's Memorandum of Law in Support of Its Renewed Motion to Stay. However, since Plaintiff designated each of Exhibits 5 and 6 as wholly Attorneys' Eyes Only, Defendant has requested to seal those exhibits in their entirety. Defendant is willing to meet and confer with Plaintiff regarding appropriate redactions to Exhibits 5 and 6." (NYSCEF 133, sealing chart, n. 1.)

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

"(a) 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."

"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 "party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access" to the documents. (*Id.* 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 quotations omitted].)

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].) 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].)

Defendant has not demonstrated good cause to seal or redact any of the information at issue. Defendant states that the documents contain “[n]on-public financial and business information regarding alleged damages calculations” that are “designated as Attorneys’ Eyes Only by [plaintiff].” (NYSCEF 133, sealing chart.) Defendant fails to explain how this information, if revealed, would be harmful to plaintiff, and provides no basis to seal the entirety of NYSCEF 126 and 127.

Moreover, the fact that plaintiff has designated the documents at issue as “Attorneys’ Eyes Only” is not itself a basis for sealing them or redacting information from them. (*Mosallem*, 76 AD3d at 350, quoting *Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 626 [2d Dept 2006] [“Merely because some of the documents were marked ‘confidential’ or ‘private’ ‘is not controlling on the court's determination whether there is good cause to seal the record.’”].) Likewise, the parties cannot seal documents on consent; good cause must be shown. (See *Benkert v Smithers (In re Will of Benkert)*, 288 AD2d 147 [1st Dept 2001] [“The Surrogate correctly held that the stipulation of the

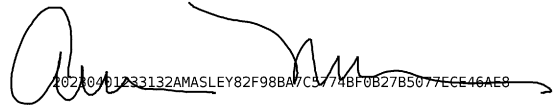
parties to a terminated probate proceeding consenting to the sealing or expunging of certain records in that proceeding does not obviate the need to show good cause for such relief, as required by 22 NYCRR 216.1(a).”].)

To the extent either party seeks to redact information in NYSCEF 126, 127, and 128, it must provide an affidavit from a person with knowledge, explaining the good cause for the redactions. Thus, defendant’s motion is denied.

Accordingly, it is

ORDERED, that motion sequence number 006 is denied without prejudice; and it is further

ORDERED, that, within 14 days of this order, this court will direct the County Clerk to unseal NYSCEF 126, 127, and 128 unless a new OSC is filed in accordance with this decision.



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4/1/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE