SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **61M**

Justice

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DENVER WEWATTA (CO) LLC,

Plaintiff,

- v -

AMTRUST TITLE INSURANCE COMPANY and WEWATTA OWNER LLC,

Defendants.

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INDEX NO. 653618/2022

MOTION DATE 05/01/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 105, 106, 107, 108, 109, 110, 111

were read on this motion to/for SEAL.

In this breach of contract action, the plaintiff, Denver Wewatta (CO) LLC, moves by order to show cause pursuant to 22 NYCRR 216.1(a) to: (1) maintain and make permanent the redactions applied by defendant Wewatta Owner LLC to its Proposed Amended Counterclaims annexed to the affirmation in support of its pending motion for leave to amend (MOT SEQ 003), which was filed on March 14, 2024 (see NYSCEF Doc. No. 103); (2) require the redactions to the Proposed Amended Counterclaims be applied to any Amended Counterclaims filed should the defendant's motion for leave to amend be granted; and (3) require the parties to redact any information quoting or directly referencing the redacted allegations in the Proposed Amended Counterclaims from any future filings in this action. On March 26, 2024, the court granted the plaintiff's request for a TRO to maintain the redactions applied to the Proposed Amended Counterclaims pending a decision on the present motion. The motion, though unopposed, is now denied.

Pursuant to 22 NYCRR 216.1(a), "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."

Because "confidentiality is clearly the exception, not the rule" (Matter of Hofmann, 284 AD2d 92, 93–94 [1st Dept. 2001]), the First Department has authorized sealing "only in strictly limited circumstances." Gryphon Domestic VI, LLC v APP International Finance Co., 28 AD3d 322, 325 (1st Dept. 2006); see Mosallem v Berenson, 76 AD3d 345 (1st Dept. 2010).

While there is a broad presumption that the public is entitled to access to judicial proceedings and court records, the public's right to access is not absolute. See Danco Labs. v Chemical Works of Gedeon Richter, 274 AD2d 1 (1st Dept. 2000). "The presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public's right to access." Applehead Pictures, LLC v Perelman, 80 AD3d 181, 191 (1st Dept. 2010); see Danco Labs. v Chemical Works of Gedeon Richter, supra; see also Matter of Holmes v Winter, 110 AD3d 134 (1st Dept. 2013), revd on other grounds 22 NY3d 300 (2013); Schulte Roth & Zabel, LLP v Kassover, 80 AD3d 500 (1st Dept. 2011). "Thus, the court is required to make its own inquiry to determine whether sealing is warranted, and the court will not approve wholesale sealing of [court] papers, even when both sides to the litigation request sealing." Applehead Pictures, LLC v Perelman, supra, at 192 (citations omitted); see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U., 28 AD3d 322 (1st Dept. 2006); Liapakis v Sullivan, 290 AD2d 393 (1st Dept. 2002); Matter of Hofmann, supra.

The burden is on the party seeking to seal court records to establish "good cause." Maxim, Inc. v Feifer, 145 AD3d 516, 517 (1st Dept. 2017). "Since there is no absolute definition, a finding of good cause, in essence, 'boils down to … the prudent exercise of the court's discretion.'" Applehead Pictures, LLC v Perelman, supra, at 192 (quoting Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 [2nd Dept. 2007]) (some internal quotation marks and citation omitted). In the business context, good cause may be established "where trade secrets are involved (Matter of Crain Communications, Inc., 135 AD2d 351, 352 [1st Dept. 1987]), or where the release of documents could threaten a business's competitive advantage, (Matter of Twentieth Century Fox Film Corp., supra at 488)." Mosallem v Berenson, supra at 350; see Vergara v Mission Capital Advisors, LLC, 187 AD3d 495 (1st Dept. 2020) (noting as bases for sealing that a document contains "trade secrets, confidential business information, or proprietary information"). However, "[c]onclusory claims of the need for confidentiality … [are] not … sufficient bas[es] for a sealing order." Matter of Hofmann, supra at 93-94.

"A finding of 'good cause' presupposes that . . . no alternative to sealing can adequately protect the threatened interest." Mancheski v Gabelli Group Capital Partners, supra (citing In re Herald Co., 734 F2d 93, 100 [2nd Cir. 1984]). Accordingly, "less restrictive alternatives to closure" should be employed whenever possible. Anonymous v Anonymous, 263 AD2d 341, 344 (1st Dept. 2000). Appropriate alternative relief may be granted to balance the competing interests of public access and the need for secrecy or confidentiality. See Danco Labs v Chemical Works of Gedeon Richter, supra.

The plaintiff seeks to maintain the redactions applied to paragraphs 9, 27, 29, 30, 34-37, 39, 40, 42-52, 54, 104-109, 111, 178-180, 189, 191, 194, 201, 203, 206, 213, 216, and 219 of the Proposed Amended Counterclaims. It contends that these redactions are necessary to protect sensitive and confidential financial information of itself and several of its parent entities up the corporate chain (the "LCN Platform"). It further contends that this information was gleaned from private bank records and consolidated financial statements produced in discovery, and that the disclosure of this financial information, in which the public has little to no legitimate interest, would harm its and the LCN Platform's private competitive advantage.

Courts have found a compelling interest in sealing financial information in appropriate circumstances, such as where the information is "proprietary" because it relates to "the nature of current or future business strategies," such that disclosure "could harm [a] private corporation's competitive standing." Mancheski v Gabelli Group Capital Partners, supra at 502-03. However, the mere presence of financial information, without more, does not establish that there is good cause to seal. See id. at 503 (motion court struck an appropriate balance by sealing "proprietary" financial information but "refusing to seal documents containing [the defendant's] financial information that could not compromise its current business strategies").

Here, the plaintiff fails to meet its burden of demonstrating "good cause" for the subject redactions. Other than the pleadings herein and a copy of the parties' purchase and sale agreement, none of which are relevant to the proposed redactions, the sealing motion is accompanied solely by an attorney affirmation. No affidavits are submitted by officers of the plaintiff or any of the LCN Platform entities, the authors or custodians of the underlying financial records, or the participants in the relevant events who are alleged to have made statements regarding the financial information reflected in the underlying documents. Nor has the plaintiff

submitted the underlying financial documents themselves, without which it is impossible for the court to determine the extent to which the allegations to be redacted do in fact disclose specific information drawn from confidential, non-public financial records. There is thus no basis to conclude that the underlying financial documents are so confidential or sensitive that public disclosure of their contents via the allegations in the Proposed Amended Counterclaims should be restricted. See Mosallem v Berenson, supra at 350. Instead, the plaintiff offers mere conclusory assertions, without any further explanation, that the information to be redacted is "sensitive," "proprietary," and "confidential," and that its disclosure will "harm [its and the LCN Platform's] private competitive advantage." However, such "[c]onclusory claims of the need for confidentiality … [are] not … sufficient bas[es] for a sealing order." Matter of Hofmann, supra at 93-94.

Accordingly, it is

ORDERED that the plaintiff's motion to seal documents is denied.

This constitutes the Decision and Order of the court.

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

5/2/2024
DATE

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE