

**SYNCORA Guarantee Inc. v Alinda Capital Partners
LLC**

2016 NY Slip Op 30490(U)

March 22, 2016

Supreme Court, New York County

Docket Number: 651258/2012

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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SYNCORA GUARANTEE INC.,

Plaintiff,

-against-

ALINDA CAPITAL PARTNERS LLC,
AMERICAN ROADS LLC, MACQUARIE
SECURITIES (USA) INC., and JOHN S.
LAXMI,

Defendants.

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DECISION AND
ORDER

Index No.
651258/2012

HON. ANIL C. SINGH, J.:

Plaintiff moves pursuant to CPLR 3025(b) for leave to file and unredact the first amended complaint.¹ Defendant Macquarie Capital (USA) Inc. (“Macquarie”) does not oppose the part of the motion seeking leave to file the proposed first amended complaint. However, Macquarie does oppose the part of the motion seeking to unredact the complaint.

On September 24, 2013, the parties executed a Stipulation and Order for the Protection and Exchange of Confidential Information (the “protective order”).

Paragraph 3(a) of the protective order states as follows:

¹Plaintiff has agreed to withdraw the motion to unredact the first amended complaint solely as to the identification of the name of the non-party witness referred to in paragraphs 62 and 64.

“Confidential Information” shall mean all documents and testimony, and all information contained therein, and other information designated as confidential, if such documents or testimony contain trade secrets, proprietary business information, competitively sensitive information, or other information the disclosure of which would, in the good faith judgment of the party designating the material as confidential be detrimental to the conduct of that party’s business or the business of any of that party’s customers or clients.

(NYSCEF Doc. No. 89, p. 2, para. 3(a)).

Plaintiff contends that it should be permitted to file the amended complaint publicly and without redactions because the allegations in the complaint concerning Macquarie’s internal records are not “confidential.” Plaintiff asserts that the redacted information does not meet the definition of “confidential information,” which covers only proprietary or commercially sensitive matters. Further, plaintiff asserts that all of the allegations refer to a transaction that was completed several years ago and has no continuing relevance to Macquarie’s business today. Finally, plaintiff asserts that the allegations involve a public bond offering that ultimately affects members of the public at large.

In response, Macquarie points out that it does not seek to seal the amended complaint. Rather, it seeks limited redaction of information that Macquarie in good faith designated as confidential. Macquarie contends that the redactions are necessary to protect confidential, non-public business information that, if disclosed, would be detrimental to the conduct of Macquarie’s business.

Discussion

In New York, there is a strong presumption favoring public legal proceedings and against sealing files without good cause shown (Matter of Twentieth Century Fox Film Corp., 190 A.D.2d 483 [1st Dept., 1993]).

The sealing of court records is governed by 22 NYCRR section 216.1, which provides as follows:

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

(b) For purposes of this rule, “court records” shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103(a).

“Although the term ‘good cause’ is not defined, a sealing order should clearly be predicated upon a sound basis or legitimate need to take judicial action” (Mosallem v. Berenson, 76 A.D.3d 345, 349 [1st Dept., 2010]) (internal quotation marks and citation omitted). “A finding of ‘good cause’ presupposes that public access to the documents will likely result in harm to a compelling interest of the movant” (id.). The burden of establishing such good cause falls on the party seeking

to seal the record, which must demonstrate compelling circumstances to justify restricting public access (Danco Lab., Ltd. v. Chemical Works of Gideon Richter, 274 A.D.2d 1, 8 [1st Dept., 2000]). “[A] trial court must also consider less drastic alternatives to sealing the records which would adequately serve the competing interests” (People v. Burton, 189 A.D.2d 532, 536 [3d Dept., 1993]).

In the business context, sealing orders have been permitted where trade secrets are involved, or where the release of documents could threaten a business’s competitive advantage (Mosallem, supra.)

Here, Macquarie does not seek to seal the entire record. Rather, Macquarie proposes only to redact a limited amount of confidential information from publicly filed documents. Macquarie contends that the confidential information at issue derives from documents concerning Macquarie’s negotiation strategies, deal structuring strategies (including pricing), communications with consultants, internal reports and memoranda, and financial models. Macquarie asserts that such information relates not only to Macquarie’s internal practices, but also informs Macquarie’s present day practices within an industry in which Macquarie remains a participant.

It is critical to note that Macquarie only seeks to redact sixteen of the 105 paragraphs of the proposed first amended complaint. Of the sixteen paragraphs,

seven would only be partially redacted.

Although the sealing of an entire record requires a compelling basis, it is not clear that there must be a compelling showing to redact limited personal or financial information.

Under the specific circumstances of this case, the Court in its discretion finds that the redaction adequately serves the competing interests of public access to judicial documents and Macquarie's interest in not releasing confidential documents that could threaten the business's competitive advantage.

Accordingly, it is

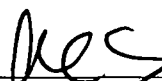
ORDERED that the motion for leave to unredact the first amended complaint is denied; and it is further

ORDERED that plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed redacted form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service.

The foregoing constitutes the decision and order of the court.

Date: 3/22/16
New York, New York



Anil C. Singh