

**93-94 Second Dev., LLC v GEMS Menasa Topco  
(Cayman) Ltd.**

2016 NY Slip Op 31158(U)

June 20, 2016

Supreme Court, New York County

Docket Number: 651951/2014

Judge: Jeffrey K. Oing

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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: IAS PART 48

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93-94 SECOND DEVELOPMENT, LLC,

Plaintiff,

-against-

GEMS MENASA TOPCO (CAYMAN) LIMITED,

Defendant.

**Index No. : 651951/2014**

**Mtn Seq. No. 004**

**DECISION AND ORDER**

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**JEFFREY K. OING, J. :**

Defendant GEMS Menasa Topco (Cayman) Limited ("Topco") moves by order to show cause to redact certain allegedly proprietary and confidential financial information in the public filings for this matter, and to seal its financial statements for the years ending in March 31, 2013 and 2014.

Topco claims that plaintiff 93-94 Second Development, LLC ("Second Development") is wrongfully attempting to "lay bare the internal financials of a private company in a public filing," which would "pose a substantial risk to Topco's competitive advantage, while providing little to no benefit" to Second Development (Ward Reply Affirm., ¶ 2). This issue arises as a result of Second Development's proposed Amended Complaint which seeks to assert fraud claims against Topco based on a certain guaranty signed by Topco on or about March 5, 2014. Topco seeks to redact paragraphs 41 and 45 through 48 of the Amended Complaint, and to seal the above mentioned financial documents.

A motion to seal is governed by 22 NYCRR 216.1(a), which provides:

Except when 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.

Thus, the statute clearly does not favor sealing orders. The party seeking a sealing order bears a heavy burden in its effort to do so and the presumption of the benefit of open public access to court proceedings takes precedence absent a compelling need for secrecy such as in the case of, e.g., trade secrets or other bona fide proprietary information. This burden results from the broad constitutional presumption arising from the First and Sixth Amendments, and applicable to the states through the Fourteenth Amendment, that the public is entitled to access court proceedings (Gryphon Domestic VI, LLC v APP Intl. Fin. CO., B.V., 28 AD3d 322, 324 [1<sup>st</sup> Dept 2006]). In addition to its constitutional dimensions, "[t]he right of access to proceedings as well as to court records is ... firmly grounded in common-law principles, and the existence of the correlating common-law right to inspect and copy judicial records is 'beyond dispute'" (Id.). Thus, any sealing order issued must be very narrowly tailored to serve these compelling objectives.

Here, Topco has failed to meet its burden with respect to the allegations contained in paragraphs 41 and 45 through 48 of the proposed Amended Complaint. To be sure, the information contained in these paragraphs may not be positive and Topco may understandably prefer not to have it in the public sphere, but such is the case with virtually any complaint filed against any defendant. The only proof submitted in support of its motion by Topco is a six paragraph affidavit from Anand Ramnath Iyer, Topco's financial officer. Iyer's affidavit, however, wholly fails to address the specific paragraphs in the complaint that Topco seeks to redact. As such, his affidavit is plainly insufficient to sustain defendant's heavy burden on its motion. Contrary to defense counsel's arguments, the fact that Topco is a private company, without more, is not a sufficient basis to redact the paragraphs at issue. Nor does Topco identify what competitive harm would befall it from the disclosure of information in paragraphs 41 and 45 through 48 beyond the potential harm that might befall any defendant in any lawsuit as a result of the allegations contained therein.

Moreover, contrary to defendant's argument, the lack of a benefit to plaintiff from the public filing of this information is not part of the calculus on a motion to seal; the value is to the public and our judicial process as a whole from the open and unfettered access to court documents.

Accordingly, defendant's motion to redact the above-cited paragraphs in the proposed Amended Complaint is denied.

Turning to the financial documents themselves, the parties have entered into a Stipulation and Order for the Production and Exchange of Confidential Information (the "Confidentiality Order") which has designated the documents at issue confidential (Ward Affirm., Ex. A). The Confidentiality Order provides that, as an alternative to the sealing procedure set forth in paragraph 12(a) thereof, "any party may file with the court any documents previously designated as comprising or containing Confidential Information [as here] by submitting such documents to the Part in sealed envelopes or other appropriate sealed container on which shall be endorsed the caption of this litigation," and provides language indicating the confidential nature of the documents.

Having reviewed the documents at issue, this Court finds that the financial statements at issue should be submitted to this Court in accordance with this procedure set forth in the parties' Confidentiality Order, which obviates the need for any sealing order. For purposes of clarification and simplicity, this Court directs the documents to be submitted in accordance with the protocol set forth in Part 48's Part Rules, which direct that confidential or highly confidential information shall be redacted before being submitted to the public file and provided in unredacted form to this Court in Chambers labeled "Unredacted

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(Part 48 Rule, ¶ 24).

This decision is without prejudice to renewal in the event that plaintiff's principal, Adam Hochfelder, or any other party associated with plaintiff, attempts to post documents designated as confidential or highly confidential on Twitter and/or in any other media. Both sides are cautioned to litigate this matter in the courtroom, and not in the press or on social media.

Accordingly, it is

ORDERED that insofar as defendant's motion seeks to redact paragraphs 45 and 48-50 of the proposed Amended Complaint, it is denied, and insofar as it seeks to submit the two financial statements for years ending in March 31, 2013 and 2014 confidentially, defendant may do so in accordance with this decision and procedure set forth above, and it is further

ORDERED that counsel shall appear for a status conference in Part 48 on July 21, 2016 at 11 a.m.

This constitutes the decision and order of the Court.

Dated: 6/20/16

  
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HON. JEFFREY K. OING, J.S.C.