

<b>Credit Agricole Corporate v BDC Fin., LLC</b>
2016 NY Slip Op 32412(U)
December 6, 2016
Supreme Court, New York County
Docket Number: 651989/10
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 12

-----X  
CREDIT AGRICOLE CORPORATE and  
INVESTMENT BANK NEW YORK BANK,  
f/k/a CALYON NEW YORK BRANCH, *et al.*,

Index No. 651989/10

Mot. seq. no. 31

Plaintiffs,

**DECISION AND ORDER**

-against-

BDC FINANCE, LLC, *et al.*,

Defendants.

-----X  
UBS AG, STAMFORD BRANCH AND UBS LOAN  
FINANCE LLC,

Plaintiffs,

-against-

BDC FINANCE, L.L.C., *et al.*,

Defendants.

-----X  
AND RELATED COUNTERCLAIMS

-----X  
BARBARA JAFFE, JSC:

Based on defendants' conduct as bidders in a bankruptcy proceeding auction (*see Credit Agricole Corporate v BDC Fin., LLC*, 135 AD3d 561, 561 [1<sup>st</sup> Dept 2016]) and thereafter, plaintiffs assert contract and other claims against them. Black Diamond Commercial Finance LLC (Finance) moves for an order sealing specific documents in the record, representing, without dispute, that plaintiffs and the other defendants in this action do not oppose.

Documents in a case may be sealed pursuant to 22 NYCRR § 216.1(a), which provides as

follows:

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.

“Generally, [the First Department] has been reluctant to allow the sealing of court records, even where both sides to the litigation have asked for such sealing.” (*Gryphon Domestic VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322, 324 [1<sup>st</sup> Dept 2006] [citations omitted] [reversing sealing and providing that trial court must do independent evaluation]). To ensure transparency and prevent the loss of public confidence in the judicial system, the confidentiality afforded by sealing “is clearly the exception, not the rule.” (*Matter of Hofman*, 284 AD2d 92, 93–94 [1<sup>st</sup> Dept 2001]).

There is a presumption against sealing of court-filed documents and records. (*See Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499 [2d Dept 2007]), and the court is required to make its own inquiry to determine whether sealing is warranted (*L.K. Sta. Group, LLC v Quantek Media, LLC*, 20 Misc 3d 1142(A), 2008 NY Slip Op 51827[U] [Sup Court, NY County 2008]; *see also Gryphon Domestic*, 28 AD3d at 324).

“In the business context, [the First Department has] allowed for sealing where trade secrets are involved or where the release of documents could threaten a business’s competitive advantage.” (*Mosallem v Berenson*, 76 AD3d 345, 350 [1<sup>st</sup> Dept 2010] [citations omitted]; *see also Mancheski*, 39 AD3d at 502-503 [concerning factors relating to sealing of business information]).

Here, Finance provides conclusory assertions about the documents that it seeks to have

sealed. Although counsel provides some detail, an insufficient explanation is offered as to why disclosure of documents a-h, concerning a five-year-old bid in bankruptcy court, the assignment of a promissory note, and direction letters to an agent concerning membership interests from 2011, would threaten a business's competitive advantage or would otherwise be subject to sealing.

While documents l and m, a deposition transcript, were designated as confidential by the parties, such a designation does not in itself establish a ground for sealing documents. Finance also fails to demonstrate why employee personal information contained within the transcript cannot be effectively redacted. (*See Danco Labs. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 8 [1<sup>st</sup> Dept 2000]).

Movants also provide no justification for sealing document n, comprising the transcripts of the four-day bankruptcy auction held in 2011, as there is no explanation as to why, or whether, years after the auction, a party or non-party would be harmed by the release of its bidding strategies. Any such harm is not apparent from the information provided, and Finance cites no bankruptcy law to support its position. Document p is an email message that does not appear to contain any confidential information, nor is there an indication that its revelation could harm the business interests of the producing nonparty. Although documents q and r may include confidential information, there is no explanation as to potential harm from disclosure, nor the interest to be protected.

Finance's assertion that some of the documents listed are not available to the public constitutes an inadequate basis for sealing them. That a document has been designated as confidential in the parties' confidentiality agreement in this case is also insufficient, and in any

event, the agreement is conclusory in its descriptions.

For document t, copies of bids submitted at auction in 2011, Finance does not state whether they were confidential once the auction was over, and if not, whether they are now confidential, nor does it explain how the presumption against sealing is overcome; the same holds for the transcript excerpts in documents x and y. Personal employee information contained within any document, such as vv, if not essential to a motion, may be redacted, while a sufficient explanation as to the need to seal dated bidding strategies is not provided.

Finance has demonstrated an adequate basis for sealing the following documents, i, j, k, o, s, aa, cc, dd, ii, kk, ll, mm-oo, rr, ss, sss, and uuu, as they contain confidentiality provisions, fee structures, and tax or financial information that is proprietary to a company, such as its general ledger. These documents also concern privately held entities, and the confidential nature of the documents is apparent, as is that they are more likely to be of interest to competitors, rather than the public, in relation to the case. Any copies of these same documents, that are identified with a different letter in the Riccardi affirmation, are also sealed, and Finance may include these documents in the Notification of Sealing in Electronically-Filed Cases form, which must be filed in order to effect the sealing in the court's electronic document system.

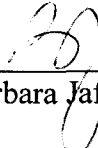
Movant also seeks to have sealed many memoranda of law, affirmations, and affidavits submitted on the summary judgment motions in this case by various parties. These documents are currently filed with redactions on the court's electronic filing system. As the explanation given for the sealing of the documents in their entirety is fatally conclusory, the request is denied; any documents that contain materials or references to materials to be sealed pursuant to this order may be further redacted.

Accordingly, it is hereby

ORDERED, that the motion to seal is granted to the extent that the documents identified in the affirmation of Matthew M. Riccardi as letters: i, j, k , o, s, aa, cc, dd, ii, kk, ll, mm-oo, rr, ss, sss, and uuu, and any copies of these same documents, identified with a different letter on the same affirmation, are permitted to be sealed; and it is further

ORDERED, that defendant's request for sanctions against plaintiff is denied.

ENTER:

  
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Barbara Jaffe, JSC

DATED: December 6, 2016  
New York, New York