

<b>Offshore Brazil II Hotel Invs. Fund LP v GP Invs., Ltd</b>
2018 NY Slip Op 32004(U)
August 8, 2018
Supreme Court, New York County
Docket Number: 653457/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Andrea Masley

PART 48

Justice

OFFSHORE BRAZIL II HOTEL INVESTORS FUND, LP, OFFSHORE RIO HOSPITALITY INVESTMENTS FUND LP, OFFSHORE SAO PAULO HOTEL ENTERPRISES FUND LP, OFFSHORE BRAZIL II HOTEL INVESTORS LTD, OFFSHORE RIO HOSPITALITY INVESTMENTS LTD, OFFSHORE SAO PAULO HOTEL ENTERPRISES LTD, BRAZIL HOTEL INVESTORS LLC, RIO HOSPITALITY INVESTMENTS LLC, and SAO PAULO HOTEL ENTERPRISES LLC

INDEX NO. 653457/2018 MOTION DATE MOTION SEQ. NO. 001 MOTION CAL. NO.

Plaintiffs, - v -

GP INVESTMENTS, LTD, LA HOTELS (CAYMAN), LTD, LATIN AMERICA HOTELS LLC, ANTONIO BONCHRISTIANO, and FERSEN LAMBRANHO

Defendants.

The following papers, numbered 1 to were read on this motion to/for SEAL COMPLAINT PAPERS

NUMBERED

- Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits
Replying Affidavits

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion to seal the file is GRANTED to the extent that the parties may redact portions of the complaint.

Plaintiffs Offshore Brazil II Hotel Investors Fund, LP, Offshore Rio Hospitality Investments Fund LP, Offshore Sao Paulo Hotel Enterprises Fund, LP, Offshore Brazil II Hotel Investors Ltd, Offshore Rio Hospitality Investments Ltd, Offshore Sao Paulo Hotel Enterprises Ltd, Brazil Hotel Investors LLC, Rio Hospitality Investments LLC, and Sao Paulo Hotel Enterprises LLC (collectively, "GTIS") commenced this action on July 10, 2018 against Defendants GP Investments, Ltd, LA Hotels (Cayman), Ltd, Latin America Hotels LLC, Antonio Bonchristiano, and Fersen Lambranh (collectively, GP) to enjoin GP from selling Brazil Hospitality Group, S.A. ("BHG"). GP and GTIS are co-owners of BHG.

According to the complaint, BHG is in the business of renovating underperforming hotels. To finance BHG's business, GTIS agreed to provide an equity investment in BHG. The terms of the investment were memorialized in a confidential

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Term Sheet and Shareholders Agreement, executed by GTIS and GP. GTIS's complaint, for which it seeks a wholesale seal, references both the Term Sheet and Shareholders Agreement. Defendant Latin America Hotels LLC does not oppose the motion to seal the complaint.

In motion sequence 01, GTIS moves pursuant to 22 NYCRR § 216 to seal the entire complaint. GTIS's moving papers consist of the affirmation of Attorney Jeffrey B. Korn who explains that the complaint describes the substance of the Term Sheets with third-parties and the consequences of defendant GP's alleged misconduct. Both documents are governed by their respective confidentiality provisions prohibiting disclosure of the terms of the transaction. He opines that the disclosure of certain provisions in either the Term Sheet or Shareholders Agreement could harm GTIS's competitive standing in its industry by disclosing the detailed financial health of BHG.

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 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)."

Judiciary Law § 4 provides that judicial proceedings shall be public. "The public needs to know that all who seek the court's protection will be treated evenhandedly," and "[t]here is an important societal interest in conducting any court proceeding in an open forum" (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U],\*2 [Sup Ct, NY County 2006] [citation omitted]). The public right of access, however, is not absolute (see *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000]).

The "party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access" to the documents (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted]). The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting "an affidavit from a person with knowledge explaining why the file or certain documents should be sealed" (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], \*2 [Sup Ct, NY County 2004]). Good cause must "rest on a sound basis or legitimate need to take judicial action" (*Danco Labs.*, 274 AD2d at 9). Consent to seal as is not sufficient as it does not establish "good cause" (*MBIA Ins. Corp. v Countrywide*

*Home Loans, Inc.*, 2012 NY Slip Op 33147[U] 9 [Sup Ct, NY County 2012]].

GTSI has demonstrated good cause to the extent GTSI may redact from the complaint all references to confidential provisions from the Term Sheet and Shareholders Agreement. In the business context, courts have sealed records where trade secrets are involved or where the disclosure of documents "could threaten a business's competitive advantage" (*Mosallem*, 76 AD3d at 350-351 [internal citations omitted]). As both agreements memorialized the terms of GTSI's investment in BHG, GTSI has demonstrated that disclosure of this confidential business information could have a detrimental effect on its business competition. Moreover, while this motion to seal was listed on the court's public docket, neither the press nor public appeared to demonstrate interest in this case.

GTSI is directed to redact confidential terms relating to the investment in BHG, including its finances as referenced in the parties' term sheet and Shareholder Agreement (*see e.g. Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 815-816 [Sup Ct, NY County 1991] ["[T]he internal finances" of a party are not a matter of public interest], *affd* 183 AD2d 678 [1st Dept 1992]).

Pursuant to, and in accordance with, Rule 216, having determined that good cause exists for the redacting of the complaint in this action and the grounds having been specified, it is now accordingly,

ORDERED that the motion is granted to the extent plaintiffs shall redact from the complaint any references to confidential financial provisions of the Term Sheet; and it is further

ORDERED that plaintiffs shall redact from the complaint any confidential references to terms from the Shareholder Agreement; and it is further

ORDERED that the motion is granted to the extent plaintiffs shall redact from the complaint any references to provisions from both the Term Sheet and Shareholder Agreement as directed by this decision and file them in redacted form within 10 days of the filing of this decision. Future submissions containing or referencing confidential information, as outlined in this decision, shall be likewise redacted prior to being filed publically in NYSCEF; and it is further

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to accept the complaint in redacted form; and it is further

ORDERED that until further order of the court, the County Clerk shall deny access to the unredacted complaint to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from the counsel; and it is further

ORDERED that this order cannot be used to seal or redact any documents or evidence used at trial.

DATED:

ENTER:

8/8/18

Andrea Masley, J.S.C.

**HON. ANDREA MASLEY**

J.S.C.

Dated:

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  GRANTED