

B2 Payment Solutions, Inc. v UL LLC

2018 NY Slip Op 32043(U)

August 17, 2018

Supreme Court, New York County

Docket Number: 653394/2018

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Andrea Masley Justice PART 48

B2 PAYMENT SOLUTIONS, INC., Plaintiff, - v -

INDEX NO. 653394/2018 MOTION DATE MOTION SEQ. NO. 002 MOTION CAL. NO.

UL LLC and UL TS BV, Defendants.

The following papers, numbered 1 to were read on this motion to seal certain filings.

Table with 2 columns: NUMBERED, PAPERS. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion to seal is GRANTED to the extent that the parties may file redacted documents and file the same documents unredacted under seal.

Plaintiff B2 Payment Solutions, Inc. (B2) commenced this action on July 5, 2018 against Defendants UL LLC (UL) and UL TS BV (ULBV) for (1) unlawful termination of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) breach of contract; and (4) tortious interference with contract.

Defendants are engaged in the business of payment testing tools used to process credit, debit, and prepaid card transactions. According to the complaint, B2 served as ULBV's distributor in North America. Plaintiff alleges that after ULBV reorganized its management team, the new team attempted to phase out B2.

In motion sequence 002, B2 and defendants move jointly, pursuant to 22 NYCRR § 216, for an order authorizing the redaction of certain documents related to B2's motion for a preliminary injunction, currently filed under temporary seal, and

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

sealing the unredacted versions of the same documents.¹ In particular, the parties seek to redact and seal B2's Memorandum of Law In Support of its Order to Show Cause (Doc. No. 46) and the Affirmation of Itai Sela, including its exhibits, submitted in support of B2's motion for injunctive relief (Doc. No. 47).

In addition, defendants seek an order directing B2 to redact certain documents and file the unredacted versions under seal. B2 did not join in this branch of the motion, but does not object to the relief. Specifically, defendants request an order directing B2 to redact: (1) the Affirmation of Berend Van Geffen (Van Geffen Affirmation) (Doc. No. 36), submitted in support of B2's motion for preliminary injunction; (2) defendants' Memorandum of Law In Opposition To Order To Show Cause For A Preliminary Injunction (Doc. No. 34); and (3) the Affidavit of Gregory Swanson In Opposition To B2's Motion For A Preliminary Injunction (Doc. No. 35).

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 (*Moslem 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

¹ The parties filed a joint memorandum of law in support of their motion for redactions and in support of defendants' requests for additional relief (Doc. No. 48).

legitimate need to take judicial action" (*Danco Labs.*, 274 AD2d at 9). Consent to seal does not constitute "good cause" (*MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U] 9 [Sup Ct, NY County 2012]).

In support of their sealing motion, the parties submitted the affirmations of attorneys William Wargo and Robin L. Alperstein who explain that the filings, for which sealing is requested, contain sensitive information such as customer names, business strategies, and marketing plans. They opine that the disclosure of such confidential information would harm both parties' competitive standing in the industry. Mr. Wargo contends that the Van Geffen Affirmation contains numerous assertions about ULBV's internal business projections and explanations for particular contract provisions with B2.

The parties have demonstrated good cause to the extent the parties may redact from the respective filings all references to sensitive information about B2 and defendants' finances and business strategies. 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]). (See also *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]). Here, the information – customer lists, sales figures, and product development strategies – could arm competitors with propriety information to the detriment of B2 and defendants. The court also notes that the motions to seal were listed on the court's public calendar and were argued in the courtroom, but neither the press nor the public attended.

The parties are directed to redact confidential information relating to each company's internal finances, strategies, and proprietary information.

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 to seal is granted to the extent the parties shall redact confidential information from: (1) B2's Memorandum of Law In Support of its Order to Show Cause (Doc. No. 46); and (2) the Affirmation of Itai Sela, including attachments (Doc. No. 47); and it is further

ORDERED that the motion is granted to the extent defendants shall redact confidential information from: (3) the Affirmation of Berend Van Geffen (Doc. No. 36); (4) Defendants' Memorandum of Law In Opposition To Order To Show Cause For A Preliminary Injunction (Doc. No. 34); and (5) Affidavit of Gregory Swanson In Opposition To B2's Motion For A Preliminary Injunction (Doc. No. 35); and it is further

ORDERED that the motion is granted to the extent the parties shall redact confidential information from the filings as directed by this decision and file them in redacted form within 10 days of the date 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

NYSCEF DOC. NO. 56

RECEIVED NYSCEF: 08/21/2018

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to accept NYSCEF Doc. Nos. 34, 35, 36, 46, and 47 in redacted form; and it is further

ORDERED that NYSCEF Doc. Nos. 34, 35, 36, 46, and 47 shall be filed in unredacted form and until further order of the court, the County Clerk shall deny access to the unredacted documents 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:

8/17/18

ENTER:

Andrea Masley, J.S.C.
HON. ANDREA MASLEY

Dated: _____

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST