

Buhannic v TradingScreen, Inc.
2018 NY Slip Op 33262(U)
December 17, 2018
Supreme Court, New York County
Docket Number: 653624/2016
Judge: Marcy Friedman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

-----X
PHILIPPE BUHANNIC and PATRICK BUHANNIC,
individually and derivatively on behalf of
TRADINGSCREEN, INC.,

Plaintiffs,

- v -

TRADINGSCREEN, INC.; PIERRE SCHROEDER;
PIERO GRANDI; FRANK PLACENTI; ROBERT
TRUDEAU; TCV VI, L.P., and TCV MEMBER
FUND, L.P.,

Defendants.
-----X

INDEX NO. 653624/2016

MOTION
DATE

MOTION SEQ.
NO.

017

DECISION AND ORDER

HON. MARCY S. FRIEDMAN:

The following e-filed documents, listed by NYSCEF document number (Motion Seq. No. 017)
363, 364, 367, 389, 390, 397

were read on this motion to/for

SEALING ORDER

Defendants TradingScreen Inc. (the Company), Pierre Schroeder, and Piero Grandi
moved, pursuant to 22 NYCRR 216.1 (a), for an order sealing the information set forth in
Appendix A and B to their memorandum of law in support of the motion. At an initial
appearance, the court indicated that the request for sealing was overbroad. (April 24, 2018 Tr.,
at 7.) In response, at the oral argument of the motion, defendants submitted a more narrowly
tailored sealing request in which they withdrew their claim that the sealing order should cover
plaintiffs' allegations as to defendants' wrongful conduct in causing the financial deterioration of
the Company. (See May 15, 2018 Court's Ex. 1; May 15, 2018 Tr., at 36.)

The court notes that when plaintiffs were represented by counsel they sought, and were granted, a sealing order protecting financial information similar to that which defendants seek to seal. (See April 20, 2017 Order [NYSCEF Doc. No. 171].) On the instant motion, plaintiffs submitted a pro se memorandum opposing defendants' request for sealing. At the oral argument of defendants' sealing motion, plaintiffs' then counsel agreed to sealing of financial statements and dollar amounts but objected to defendants' other requests for sealing of information. (May 15, 2018 Tr., at 38.)

Given the proprietary and confidential nature of the business information sought to be sealed, the court holds that good cause exists for sealing the documents and/or information identified in Appendix A and B, as limited by Court's Exhibit 1, which is annexed. Specifically, defendants may seal the documents and/or information which fall within the categories listed in Court's Exhibit 1, but may not seal plaintiffs' allegations as to defendants' wrongful conduct in causing the financial deterioration of the Company.

ORDER

The documents identified in Appendix A that defendants request be sealed in their entirety were not filed on the e-filing system. Instead, in place of each document, a slipsheet was filed—i.e., a temporary placeholder that states “Not Publicly Filed[,] Contains Private and Confidential Information.” (See e.g. NYSCEF Doc. Nos. 50, 53, 76, 77.)

One of the documents identified in Appendix A, NYSCEF document number 252, consists of one unredacted exhibit and five slipsheets, representing five of the six exhibits to the affirmation of Daniel S. Goldstein (plaintiffs' former counsel), dated October 26, 2017. Defendants request sealing in their entirety only of those five exhibits and not of the one unredacted exhibit.

On this motion, defendants did not provide the court with any of the unredacted versions of the documents that they seek to seal in their entirety.

The documents identified in Appendix A that defendants request be sealed in part were only filed on the e-filing system in redacted form. (See e.g. NYSCEF Doc. Nos. 70, 71, 83, 106.) The unredacted versions of these documents were not provided to the court on this motion. Moreover, several of these documents were filed with redaction of information that was not authorized concerning Philippe Buhannic's removal as CEO of the Company. (See e.g. id.; April 20, 2017 Decision and Order.)

The documents identified in Appendix B that defendants request be sealed, in whole or in part, were filed by plaintiff on the e-filing system in unredacted form. (See e.g. NYSCEF Doc. Nos. 317, 318, 319, 323.) Defendants timely requested that these documents be sealed and that redacted versions of these documents be filed. While defendants have identified the categories of information that they request be redacted, defendants have not filed redacted versions of the documents. In addition, defendants have failed to submit a revised appendix which describes the documents and information that fall within the categories set forth in Court's Exhibit 1 and which the court has authorized to be redacted.

While the court has found good cause to seal the categories of documents and information in Court's Exhibit 1, there must be a record of any document or statement within a document that is permitted to be sealed.

It is accordingly hereby ORDERED:

I. For the documents identified in Appendix A (other than NYSCEF document number 252) to be sealed in their entirety:

a. Defendants shall replace the slipsheets previously filed as NYSCEF document numbers 50, 53, 59, 73, 74, 76, 77, 78, 79, 80, 85, 86, 87, 89, 98, 103, 105, 107, 109, 110, 119, 131, 133, 134, 135, 140, 231, 232, 233, 243, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, and 267 with unredacted versions of the documents; and

b. Defendants shall file a revised Appendix A setting forth the following information for each document: (1) the NYSCEF document number of the document to be sealed; and (2) the category or categories in Court's Exhibit 1 applicable to the sealed document; and

c. Upon service of a copy of this order, together with the revised Appendix A, upon the Clerk of the Court, the Clerk shall seal the documents filed as the NYSCEF document numbers set forth in sub-paragraph I (a) above. Until further order of the court, the Clerk of the Court shall deny access to these documents to anyone other than the staff of the Clerk or the court, counsel of record for any party to this case, and any party. Provided that: The Clerk of the Court shall not seal any document numbers not listed in defendants' revised Appendix A, and

II. For NYSCEF document number 252:

a. Defendants shall file an unredacted version of NYSCEF document number 252 – i.e., defendants shall file the unredacted document previously filed and the five documents previously represented by slipsheets; and

b. Defendants shall file a revised Appendix A setting forth the following information for NYSCEF document number 252: (1) the NYSCEF document number for the unredacted version to be sealed; and (2) the category or categories in Court's Exhibit 1 applicable to the document or information to be sealed; and

c. Upon service of a copy of this order, together with the revised Appendix A, upon the Clerk of the Court, the Clerk shall seal the unredacted version of the document previously filed as NYSCEF document number 252. Until further order of the court, the Clerk of the Court shall deny access to this document to anyone other than the staff of the Clerk or the court, counsel of record for any party to this case, and any party; and

III. For the documents identified in Appendix A to be sealed only in part:

a. Defendants shall file an unredacted version of each of the redacted documents previously filed as NYSCEF document numbers 56, 57, 58, 62, 70, 71, 83, 84, 100, 102, 104, 106, 108, 115, 118, 121, 124, 127, 129, 130, 132, 141, 215, 236, 242, 245, 249, 250, 254, 255, and 360; and

b. Previously filed documents that redacted information concerning Philippe Buhannic's removal as CEO of the Company shall be re-filed without redaction of such information; and

c. Defendants shall file a revised Appendix A setting forth the following information for each document: (1) the NYSCEF document number for the unredacted version to be sealed; (2) the NYSCEF document number for the previously filed redacted version; (3) if applicable, the NYSCEF document number for any re-filed redacted version, and (4) the category or categories in Court's Exhibit 1 applicable to the document or information to be sealed; and

d. Upon service of a copy of this order, together with the revised Appendix A, upon the Clerk of the Court, the Clerk shall seal the unredacted version of each of the documents previously filed as the NYSCEF document numbers set forth in sub-paragraph III (a) above. Until further order of the court, the Clerk of the Court shall deny access to these documents to

anyone other than the staff of the Clerk or the court, counsel of record for any party to this case, and any party. Provided that: The Clerk of the Court shall not seal any document numbers not listed in defendants' revised Appendix A; and

IV. For the documents identified in Appendix B:

a. Defendants shall file redacted versions of NYSCEF document numbers 315, 316, 317, 318, 319, 323, 324, 326, 327, 339, 340, 332, 337, 338, and 343, which shall redact solely the information authorized to be sealed by the April 20, 2017 order or this order; and

b. Defendants shall file a revised Appendix B setting forth the following information for each document: (1) the NYSCEF document number for the previously filed unredacted version to be sealed; (2) the NYSCEF document number for the redacted version; and (3) the category or categories in Court's Exhibit 1 applicable to the sealed document; and

c. Upon service of a copy of this order, together with the revised Appendix B, upon the Clerk of the Court, the Clerk shall seal the previously filed unredacted version of each document filed as the NYSCEF document numbers set forth in sub-paragraph IV (a) above.

Until further order of the court, the Clerk of the Court shall deny access to these documents to anyone other than the staff of the Clerk or the court, counsel of record for any party to this case, and any party. Provided that: The Clerk of the Court shall not seal any document numbers not listed in defendants' revised Appendix B; and

V. Future submissions containing or referencing the confidential information specified in this decision shall be redacted prior to public filing on NYSCEF; and

VI. This order may not be used to seal or redact any documents or evidence to be offered at trial.

This constitutes the decision and order of the court.

12/17/2018
DATE


MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:

☐
☐
☐
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

☒
☒
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: