

DIRECTV, LLC v Nextar Broadcasting, Inc.
2019 NY Slip Op 33510(U)
November 20, 2019
Supreme Court, New York County
Docket Number: 653733/2019
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY

PART

IAS MOTION 48EFM

Justice

-----X

INDEX NO. 653733/2019

DIRECTV, LLC

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 003

- v -

NEXSTAR BROADCASTING, INC.,

DECISION + ORDER ON
MOTION

Defendant.

-----X

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 42, 43

were read on this motion to/for SEAL

Plaintiff DIRECTV, LLC (DIRECTV) operates a multichannel video programming distribution system. (NYSCEF Doc. No. [NYSCEF] 29 at 1.) On July 3, 2015, DIRECTV entered into an agreement (Retransmission Agreement) with defendant Nexstar Broadcasting, Inc. (Nexstar) to retransmit television stations owned by Nexstar. (*Id.*; NYSCEF 2 at ¶ 8.) For most of these stations, DIRECTV agreed to pay a license fee pursuant to Section 8 (a) of the Retransmission Agreement. (NYSCEF 2 at ¶ 9.) With respect to one station that had not yet launched, WHAG, DIRECTV allegedly agreed to pay a separate "Unlaunched Station Fee." (*Id.*) WHAG lost its affiliation with its network, and Nexstar never notified DIRECTV allegedly in contravention of the Retransmission Agreement. (*Id.* at ¶ 10.) DIRECTV, however, continued to pay the Unlaunched Station Fee for approximately twenty-eight months, and Nexstar allegedly accepted these payments. (*Id.*) When DIRECTV attempted to recoup these alleged overpayments, Nexstar declined to remit them. (*Id.* at ¶ 13.) Accordingly, DIRECTV

commenced this action for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment and a declaratory judgment.

Nexstar moves in motion sequence number 003 to seal and redact Section 8 of the Retransmission Agreement, and any references to this section in other court records. Nexstar contends that portions of Section 8 contain confidential pricing information for the retransmission licensing fees and the calculation for the Unlaunched Station Fee. Disclosure of this information, according to Nexstar, will be detrimental to its business. DIRECTV does not oppose, but rather, agrees that disclosure of this information could harm the parties' competitive standing in the marketplace. (NYSCEF 42 at ¶ 4.) DIRECTV also notes that it filed its answer and counterclaims in redacted form to the extent these pleadings reference the Retransmission Agreement. (*Id.* at ¶ 2.)

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, v Chemical Works of Gedeon Richter*, 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].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Labs.*, 274 AD2d at 9.)

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 [citations omitted]). Additionally, the First Department has affirmed the sealing of records concerning financial information where there has not been a showing of relevant public interest in disclosure of the financing. (see *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) For instance, in *Dawson v White & Case*, the First Department stated that the plaintiff appellant failed to show “any legitimate public concern, as opposed to mere curiosity, to counter-balance the interest of defendant’s partners and clients in keeping their financial arrangement private.” (*Id.* [internal quotation marks and citation omitted].)

Here, good cause exists to redact the pricing information and calculation rubric as proposed and redacted in NYSCEF 29. Indeed, disclosure of this pricing information and calculation rubric could threaten the parties’ competitive advantage in the industry. (*Mosallem*, 76 AD3d at 350-351 [citations omitted]). Furthermore, there has been no showing or any indication of public concern sufficient to outweigh the parties’ interest in keeping their financial arrangement private. (*Dawson*, 184 AD2d at 247.)

Pursuant to, and in accordance with, Rule 216, having determined that good cause exists for the redacting of the Retransmission Agreement as detailed in this decision and the grounds having been specified, it is now accordingly,

ORDERED that the motion is granted to the extent that Nexstar shall redact all references to the pricing information and calculation rubric as directed by this decision from the Retransmission Agreement; and it is further

ORDERED that future submissions containing or referencing the pricing information or calculation rubric, as outlined in this decision, shall likewise be redacted prior to being filed publicly in NYSCEF; and it is further

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to seal NYSCEF Doc. No. 28, but unseal NYSCEF Doc. No. 29; and it is further

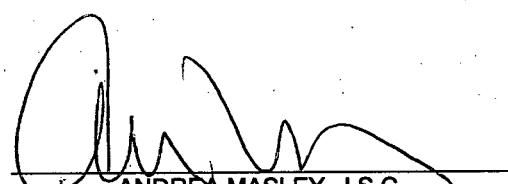
ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to seal NYSCEF Doc. No. 31, DIRECTV's answer and counterclaims in unredacted form¹; and it is further

ORDERED that 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

¹ DIRECTV's decision to redact its pleadings without first filing an unredacted copy for the Court's view is procedurally improper, and will not be tolerated going forward. Should DIRECTV seek to redact information not permitted by the Court Rules, DIRECTV must familiarize itself with the procedure's for sealing in the Commercial Division, and subsequently file a motion.

ORDERED that this order does not authorize sealing or redacting for purposes of trial.

11/20/19
DATE


ANDREA MASLEY J.S.C.
HON. ANDREA MASLEY

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE