

Novolex Holdings, LLC v Illinois Union Ins. Co.

2020 NY Slip Op 30552(U)

February 26, 2020

Supreme Court, New York County

Docket Number: 655514/2019

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

-----X
NOVOLEX HOLDINGS, LLC,

Plaintiff,

- v -

ILLINOIS UNION INSURANCE COMPANY, LLOYD'S
SYNDICATE 4000, BARBICAN TRANSACTION LIABILITY
CONSORTIUM 9804, ARCH REINSURANCE (BERMUDA)
LTD.

Defendants.
-----X

INDEX NO. 655514/2019

MOTION DATE _____

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 58, 59, 60, 61, 62, 63, 64, 66, 67

were read on this motion to/for SEAL

In motion sequence number 003, plaintiff Novolex Holdings, LLC (Novolex) moves pursuant to Section 216.1(a) of the Uniform Rules for Trial Courts to redact pricing terms from the Equity Purchase Agreement (EPA) between non-party Newell Brands Inc. and Novolex dated May 2, 2018. (NYSCEF Doc. No. [NYSCEF] 66 at 1-2.)

Background

Novolex purchased The Waddington Group (TWG) from non-party Newell pursuant to the EPA. (NYSCEF 1, Complaint at ¶ 1.) Under the EPA, Novolex also purchased TWG's wholly owned subsidiary Waddington North America, Inc. (WNA). Accordingly, the EPA contains confidential unit prices per stock keeping unit (SKU) at which WNA offered certain products to specific customers. (NYSCEF 59, affidavit of Christopher J. Klein, Esq, General Counsel for Novolex Holdings, LLC, at ¶ 3.) Although

this action largely concerns the defendant insurers' alleged refusal to cover losses under the insurance policy for the representations and warranties made in the EPA (NYSCEF 1, Complaint at ¶ 1), Novolex asserts that disclosure of these unit prices per SKU could threaten Novolex's competitive advantage especially because they were offered to specific customers. (NYSCEF 59, affidavit of Christopher J. Klein, Esq, General Counsel for Novolex Holdings, LLC, at ¶¶ 3, 6.) Novolex further asserts that the unit prices per SKU "have no bearing on [the] claims against [d]efendants." (*Id.* at ¶ 7.) Defendants do not oppose the motion.

Discussion

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). Agreements to seal are insufficient as such agreements do not establish “good cause” (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], * 9 [Sup Ct, NY County 2012]).

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 unit prices per SKU of certain products sold by WNA and offered to specific customers because disclosure could threaten WNA and Novolex's competitive advantage. (*Mosallem*, 76 AD3d at 350-351 [citations omitted]). Indeed, there has been no showing of any legitimate public concern to counter-balance the interest of Novolex and WNA in keeping their financial arrangements private. (*Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].)

Pursuant to, and in accordance with, Rule 216, having determined that good cause exists for the redacting of the unit price per SKU of certain WNA products as proposed in the redactions filed on NYSCEF Doc. No. 62, and 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 defendants shall redact all references to the unit prices per SKU of the WNA products in accordance with NYSCEF Doc. No. 62 as directed by this decision; and it is further

ORDERED that defendants are directed to re-file NYSCEF Doc. No. 62 in redacted form within 10 days of this date of this decision. Future submissions containing or referencing the unit prices per SKU of the WNA products, 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 accept NYSCEF Doc. No. 62 in redacted form; and it is further

ORDERED that NYSCEF Doc. No. 62 and 61 shall also be filed in unredacted form and sealed. 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 does not authorize sealing or redacting for purposes of trial; and it is further

ORDERED that within 10 days of this order's filing on NYSCEF, Novolex is directed to re-file an unredacted version of the complaint that only contains redactions consistent with this order or any prior order of this court.

2/26/2020
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: