

Dantzig v Orix AM Holdings, LLC
2020 NY Slip Op 30768(U)
March 10, 2020
Supreme Court, New York County
Docket Number: 653368/2016
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. 653368/2016

ARON DANTZIG,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 009

- v -

ORIX AM HOLDINGS, LLC, ORIX ASSET MANAGEMENT, LLC, ORIX AM INVESTMENTS, LLC, ORIX USA ASSET MANAGEMENT, ORIX CORPORATION, ORIX USA CORPORATION,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 264, 265, 266, 267, 268, 269, 270

were read on this motion to/for _____ SEAL _____.

In motion sequence number 009, plaintiff Aron Dantzig moves to seal NYSCEF Doc No. 214 and 215.

Background

Plaintiff Aron Dantzig allegedly entered into various written agreements, in September 2011, with nonparty Richard Baxter, and defendants ORIX AM Holdings LLC, ORIX Asset Management LLC, ORIX AM Investments LLC, ORIX USA Asset Management, ORIX Corporation, and ORIX USA Corporation (collectively, ORIX defendants). (NYSCEF Doc. No. [NYSCEF] 36, First Amended Complaint at ¶¶ 2, 31.) Pursuant to these written agreements, the ORIX defendants promised to invest in Fund I and later Fund II, in exchange for Dantzig and Baxter's services as managers and co-investors of these investments. (*Id.* at ¶¶ 31, 35.) Dantzig and Baxter managed these investments through nominal defendants New Health Capital Partners GP LLC, New Health Capital Partners Management LP, New Health Capital Partners Management GP LLC, and New Health Capital Partners Fund I, LLC (collectively NHCP). (*Id.* at ¶¶ 23, 31; *see also* NYSCEF 110.)

Fund I was successful, and by May 2013, NHCP had allegedly met the preconditions in the agreements that would have triggered a \$50,000,000 investment by the ORIX defendants in Fund II. (*Id.* at ¶¶ 38, 44.) Nevertheless, Baxter informed Dantzig and the ORIX defendants of his intention to resign from NHCP and work for a competitor. (*Id.* at ¶¶ 47, 49.) This resignation was set to trigger a host of provisions in the written agreements ranging from anti-competitive restrictive covenants that the ORIX defendants and Dantzig could enforce, to forfeitures of Baxter's compensation

and equity interests. (*Id.* at ¶¶ 51, 52, 55.) Allegedly, these circumstances caused Baxter and the ORIX defendants to enter into a secret agreement by which the ORIX defendants promised to release Baxter from his obligations in exchange for his cooperation in terminating Dantzig and assisting the ORIX defendants take control of Fund I. (*Id.* at 59, 60.)

The ORIX defendants and Baxter allegedly performed under this secret agreement, and on July 11, 2013, they provided a notice of termination without cause to Dantzig, effective January 11, 2014. (*Id.* at ¶ 74.) The ORIX defendants allegedly disseminated false information that Dantzig's employment was effective immediately. (*Id.* at ¶ 79.) Accordingly, this information cast Dantzig in a negative light insofar as investors believed that he was terminated for cause as the result of wrongdoing. (*Id.*) The ORIX defendants also began implementing the dissolution of Fund I, and NHCP. (*Id.* at ¶ 77.) During this time, the ORIX defendants allegedly denied Dantzig compensation that he previously had earned pursuant to the written agreements, as well as compensation that he allegedly should have earned throughout the dissolution process. (*Id.*) Nevertheless, Dantzig offered to purchase the assets of Fund I, but the ORIX defendants sold the assets to other parties for a price lower than that offered by Dantzig. (*Id.* at ¶ 85.)

On June 24, 2016, Dantzig commenced this action by summons with notice (NYSCEF 1.) This action was removed to the United States District Court for the Southern District of New York which on March 22, 2017, Dantzig filed the First Amended Verified Complaint alleging causes of action for breach of the written agreements, inducing breach of contract, breach of the implied covenant of good faith and fair dealing, tortious interference with contract, tortious interference with prospective economic advantage, breach of fiduciary duty, quantum meruit, unjust enrichment, and constructive trust. (NYSCEF 2.) Alternatively, Dantzig alleged derivative causes of action for breach of contract, inducing breach of contract, and tortious interference with contract. The ORIX defendants, and NHCP moved to dismiss. Hon. Louis L. Stanton (SDNY) granted the motions with respect to Dantzig's claims for tortious interference with contract, tortious interference with prospective economic advantage, quantum meruit, unjust enrichment and for constructive trust. (NYSCEF 39 at 26.) The balance of the action was remanded back to the Commercial Division on February 2, 2018. (NYSCEF 6 at 4; NYSCEF 35.)

Dantzig has since become an owner and Managing Partner of a business known as Capital IP Investment Partners LLC (Capital IP). (NYSCEF 76 at ¶ 6; NYSCEF 171 at ¶¶ 3, 5.)

On February 11, 2020, Dantzig filed a stipulation of discontinuance as to ORIX Am Holdings, LLC; ORIX Asset Management, LLC; ORIX AM Investments, LLC; ORIX Global Asset Management, LLC; ORIX Corporation USA; New Health Capital Partners GP, LLC; New Health Capital Partners Management, LP; New Health Capital Partners Management GP, LLC; and New Health Capital Partners Fund I, LP. (NYSCEF 274.)

On February 14, 2020, Dantzig discontinued this action against defendant ORIX corporation. (NYSCEF 275.)

Dantzig now requests that the pending motion to seal NYSCEF Doc Nos. 214 and 215 be decided.¹ These documents reflect two private equity investments by non-party Capital IP. Dantzig asserts that 214 and 215 contain sensitive business and financial information that would unfairly benefit the competitors of Capital IP. This information includes confidential performance and returns on investments. Defendants do not oppose the motion. No members of the press or public appeared for the argument of this motion which was publicly posted.

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

¹ Hard copies of the unredacted information were provided to the court although this information does not appear to be filed on NYSCEF under temporary seal.

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 information concerning performance and returns on investments because disclosure could threaten non-party Capital IP’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 Capital IP and Dantzig 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 NYSCEF Doc. Nos. 214 and 215 as detailed in this decision, and the grounds having been specified, it is now accordingly,

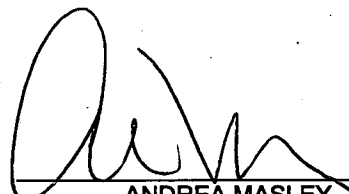
ORDERED that the motion is granted to the extent that Dantzig shall redact NYSCEF 214 and 215 as directed by this decision; and it is further

ORDERED that defendants are directed to re-file NYSCEF Doc. Nos. 214 and 215 in redacted form within 10 days of this date of this decision. Future submissions containing or referencing these two private equity investments, 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 214 and 215 in redacted form; and it is further

ORDERED that NYSCEF 214 and 215 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.

3/10/2020
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE