

**North Star Debt Holdings, L.P. v Serta Simmons
Bedding, LLC**

2020 NY Slip Op 32584(U)

August 4, 2020

Supreme Court, New York County

Docket Number: 652243/2020

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

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North Star Debt Holdings, L.P., Silver Oak Capital, L.L.C.,
AG Credit Solutions Non-ECI Master Fund, AG Centre
Street Partnership L.P., AG Super Fund Master, L.P., and
Gamut Capital SSB, LLC,

Plaintiffs,

- v -

Serta Simmons Bedding, LLC, Advent International
Corporation, Eaton Vance Corp., Invesco Ltd., Credit Suisse
Group AG, Barings LLC, and Does 1-50,

Defendants.

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INDEX NO. 652243/2020

MOTION DATE

MOTION SEQ. NO. 002, 005, 006,
and 007

DECISION + ORDER ON
MOTION

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 002, 005,
006, 007) 14, 15, 16, 17, 18, 19, 20, 21, 55, 83, 110, 95, 96, 97, 98, 99, 100, 101, 102,
103, 104, 108, 125, 126, 127, 128, 129, 130, 163, 164, 152, 153, 154, 155, 156, 157,
158, 159, 160, 162, 165, and 167.

were read on these motions to/for SEAL

In motion sequence number 002, defendant Serta Simmons Bedding, LLC
(Serta) moves to seal the unredacted versions of a memorandum of law (Brief), the
affidavits of Roopesh Shah and Barry Canipe, and a Credit Agreement. Serta also
requests that this redacted information be redacted from further filings. (NYSCEF Doc.
No [NYSCEF] 16, Lender aff; NYSCEF 17, Index of Documents.)

Serta argues that the Credit Agreement contains financially sensitive information
and business terms such as non-public holdings of each of the lender parties.
Disclosure of this information could allegedly disadvantage Serta in future negotiations
with third parties particularly if Serta needs to negotiate an alternative restructuring
transaction. Accordingly, Serta argues that good cause exists to seal the Credit
Agreement, the affidavits and Brief to the extent they reference that information.

The motion is unopposed. There are also no applications by the press or public
in regard to this particular motion.

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) [e]xcept 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].) 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, Serta demonstrates good cause to seal the documents at issue. Serta demonstrates that the financial information and business terms, if disclosed, could threaten its competitive advantage in the market going forward. (*Mosallem*, 76 AD3d at 350-351.)

The motion is granted.

Motion Sequence Number 005

In motion sequence number 005, plaintiffs North Star Debt Holdings, L.P., Silver Oak Capital, LLC, AG Credit Solutions Non-ECI Master Fund, AG Centre Street Partnership L.P., AG Super Fund Master, L.P., and Gamut Capital SSB, LLC move to seal plaintiffs' Reply Memorandum of Law, Exhibit 1 to the affirmation of Lewis R. Clayton which is a term sheet, Exhibit 3 to the Clayton Affirmation which is the Credit Agreement, Exhibit 5 to the Clayton Affirmation which is the First Lien/Second Lien Intercreditor Agreement, the affidavit of Joshua Abramson, and Exhibit 2 to the Abramson affidavit which is Serta's initial presentation regarding the Request for Proposals.

Plaintiffs incorporate the same arguments made by Serta in 002 to seal these documents because the information largely concerns Serta. (NYSCEF 97, Andrew J. Ehrlich Affirmation ¶ 3.) Indeed, plaintiffs "respectfully refer the Court to [Serta's] Memorandum of Law in Support" submitted for Motion Sequence Number 002 because the same financial information and business terms are at issue. (*Id.*)

For largely the same reasons that good cause was shown in motion sequence number 002, good cause is shown here. (*Mosallem*, 76 AD3d at 350-351; *Dawson v. White & Case*, 184 AD2d 246, 247 [1st Dept 1992].)

The motion is granted.

Motion Sequence Number 006

In motion sequence number 006, Serta moves to seal the "Amended Credit Agreement" and a Memorandum of Law that cites sensitive financial information and business terms.

Motion Sequence Number 006 is granted for the same reasons as motion sequence number 002 because it concerns the same financial information and business terms. (*Mosallem*, 76 AD3d at 350-351; *Dawson v. White & Case*, 184 AD2d 246, 247 [1st Dept 1992].)

The motion is granted.

Motion Sequence Number 007

In motion sequence number 007, defendant Advent International Corporation (Advent) moves to seal Advent's memorandum of law filed on NYSCEF Doc. No 148 (the Brief), Exhibit 1 to the Affirmation of Gregg M. Galardi filed on NYSCEF Doc. No 150 which is the Amended Credit Agreement and Exhibit 2 to the Affirmation of Gregg M. Galardi filed on NYSCEF Doc. No 151 which is a redacted version of the "DQ List."

Advent submits the affirmation of Gregg M. Galardi who states that as set out in Serta's papers on motion sequence number 002, "good cause exists to seal the redacted information in the Brief, the Credit Agreement ... and the redacted portions of the DQ List." (NYSCEF 154, Gregg M. Galardi affirmation ¶ 5.) This application is effectively to seal information that the court has already found good cause to seal. Accordingly, good cause exists to seal these documents for the same reason good cause exists to seal the information in 002.

The motion is granted.

It is

ORDERED that motion sequence number 002 is granted to the extent that Serta shall redact all references to financial information and business terms as directed by this decision from NYSCEF 18, 19, 20 and 21; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. Nos. 18, 19, 20 and 21; and it is further

ORDERED that within 10 days of this order being filed on NYSCEF, Serta shall file redacted versions of NYSCEF Doc. Nos. 18, 19, 20 and 21; and it is further

ORDERED that to the extent duplicates of these court records are filed on the docket, Serta or the parties shall follow the same procedure outlined above; and it is further

ORDERED that motion sequence number 005 is granted and the plaintiffs shall redact financial information and business terms from NYSCEF Doc. Nos. 99, 100, and 101; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. Nos. 99, 100 and 101; and it is further

ORDERED that motion sequence number 006 is granted and Serta shall redact financial information and business terms from NYSCEF Doc. No. 129 and 130; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. Nos. 129 and 130; and it is further

ORDERED that within 10 days of this order being filed on NYSCEF, Serta shall file redacted versions of NYSCEF Doc. Nos. 129 and 130; and it is further

ORDERED that motion sequence number 007 is granted and Advent shall redact financial information and business terms from NYSCEF Doc. Nos. 159 and 160; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. Nos. 99, 100 and 101; and it is further

ORDERED that within 10 days of this order being filed on NYSCEF, Advent shall file redacted versions of NYSCEF Doc. Nos. 18, 19, 20 and 21; and it is further

ORDERED that the parties shall redact financial information and business terms as set forth in this decision in future filings; 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

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

Motion Sequence Number 002

8/4/2020

DATE

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION

APPLICATION: SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

J.S.C.

Motion Sequence Number 005

8/4/2020

DATE

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION

APPLICATION: SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

J.S.C.

Motion Sequence Number 006

8/4/2020
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

J.S.C.

Motion Sequence Number 007

8/4/2020
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

J.S.C.