

People v Quality King Distribs., Inc.
2020 NY Slip Op 33117(U)
September 23, 2020
Supreme Court, New York County
Docket Number: 451296/2020
Judge: Eileen A. Rakower
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PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

**PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,**

Petitioners,

- against-

**INDEX NO. 451296/2020
MOTION DATE
MOTION SEQ. NO. 3
MOTION CAL. NO.**

**QUALITY KING DISTRIBUTORS, INC., and
GLENN NUSSDORF,**

Respondents.

The following papers, numbered 1 to _____ were read on this motion for/to
PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits _____

Replying Affidavits

Cross-Motion: Yes No X

Respondent Quality King Distributor's Inc. ("Respondent" or "Quality King") moves pursuant to 22 N.Y.C.R.R. §216.1(a), permanently sealing documents 34-35, 81-90, 99-103, 105-107, 109-110, 143-152, 161-165, 167-169, 171-172, and 179-180 and permanently redacting from public view portions of documents 1, 3-4, 59-61, 97-98, 104, 112, 122-123, 159-160, 166, 174-175, 200, 201-202, 206 and 209-210. Quality King contends that these documents contain Quality King's confidential business information. Specifically, Quality King "seeks to redact material concerning Quality King's purchase pricing, supplier relationships (including the identity of its suppliers), profit margins, employee names, and internal business operations" that are contained in the referenced documents. Petitioner opposes the motion.

Quality King contends that it voluntarily provided certain information to the New York Office of the Attorney General (the "OAG") which was marked "Confidential." Quality King asserts that the information was provided based "on its understanding that it was a witness and that the OAG would inform it and communicate with it should its status change." Quality King contends that OAG failed to do so and proceeded to file the instant proceeding alleging violations of Section 396-r of the State General Business Law and Section 63(12) of the Executive Law for sales of certain Lysol products during the COVID-19 pandemic. Quality King contends that OAG's "moving papers included confidential purchase data that Quality King had voluntarily provided to it in the weeks preceding the OAG's surprise filing." Quality King argues that this application "was necessitated by the fact that Petitioner: (i) publicly filed Quality King's confidential information; (ii) objected to Quality King's filing of provisionally-redacted and provisionally-sealed documents; and (iii) refused, on July 8, 2020, to consent to Respondents' anticipated application to the Court that such confidential documents be sealed."

Quality King submits the affidavit of Louis Assentato. Mr. Assentato states that he has served as the Senior Vice President at Quality Kings since 2006 and has worked there for approximately 30 years. Mr. Assentato states:

Details of Quality King's purchase pricing, supplier relationships (including the identity of our suppliers), profit margins and our internal business operations are all sensitive and confidential information which we do not make public in order to maintain our

competitive advantage in the wholesale and distribution industry. As a wholesaler and distributor, our retailer customers purchase from us because we are able to offer the best price and service for the goods that they wish to buy and sell. Public disclosure of our pricing information, sources of supply, and profit margins for particular products or product categories erodes our competitive advantage by allowing competitors to potentially undercut our sales, and by allowing customers to bypass us and purchase directly from our suppliers. Similarly, details of how Quality King operates its business - from how we categorize our customers to what we pay our employees - could be used by competitors to knock off our business model and “poach” our employees. The result of these disclosures would be that our competitors would gain an unfair advantage over Quality King and cause Quality King economic harm. As such, Quality King does not publicly disclose this kind of sensitive information. We also take steps to keep it confidential, so that it cannot otherwise be acquired by the public.

Petitioner opposes the motion to seal. Petitioner argues: (1) that the public interest call for the documents at issue to be accessible to the public; (2) Quality King has not shown good cause for sealing; (3) Quality King’s “tardiness” in bringing the application shows that there is no good cause, and (4) Quality King has failed to follow proper procedure and has made “false statements of law and fact.”

Quality King, in its reply, further specified the documents and portions of the documents it seeks to redact.

Discussion

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records.” *Mosallem v Berenson*, 76 AD3d 345, 348 (1st Dept 2010). “The public right to access, however, is not absolute.” *Mosallem*, 76 AD3d at 349. “[T]he party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access.” *Id.*

The sealing of court records is governed by 22 NYCRR 216.1, which provides as follows:

(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 of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

“Although ‘good cause’ is not defined in Section 216.1(a), ‘[a] finding of ‘good cause’ presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant.” *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 N.Y. Slip Op. 33147[U] (N.Y. Sup Ct, New York County 2012). Courts will “consider the interests of the public as well as the parties in determining whether good cause has been shown.” *In re E. 51st St. Crane Collapse Litig.*, 106 AD3d 473, 474 (1st Dept 2013). “In this regard, ‘[t]he presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public’s right to access, e.g., in the case of trade secrets.” *Id.*

“[S]ealing has been deemed appropriate to shield trade secrets or where the release of documents could ‘threaten a business’s competitive advantage.” *MBIA Ins. Corp.*, 2012 WL 7145814. New York law provides that “a trade secret exists where there is a ‘formula, pattern, device or compilation of information ... used in one’s business ... which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it.” *Mann v. Cooper Tire Co.*, 33 AD3d 24, 31 (1st Dept 2006) (citation omitted). “Proprietary information, in the nature of current or future business strategies which are closely guarded by a private corporation, is akin to a trade secret, which, if disclosed, would give a competitor an unearned advantage.” *Mancheski v. Gabelli Grp. Capital Partners*, 39 AD3d 499, 503 (2d Dept 2007).

Here, Quality King has met its burden of demonstrating compelling circumstances to justify the sealing of the requested documents and portions of documents. Quality King has demonstrated that the information it seeks to redact consists of proprietary business information such as pricing and that the disclosure of which would be detrimental to Quality King’s business and competitive standing. Quality King’s need to maintain the confidentiality of this information outweighs the public’s interest in these details. The public can still access a significant portion of Petitioner and Quality King’s papers, including the basic facts and allegations underlying the action and response, as well as Quality King’s selling prices, to the extent they are central to the Petition.

Wherefore it is hereby

ORDERED that motion to seal is granted to the following extent; and it is further

ORDERED that the provisionally-sealed docket entries located at NYSCEF Doc. Nos. 84-90, 99-103, 105-107, 109-110, 146-152, 161-165, 167-169, and 171-172 shall be permanently sealed; and it is further

ORDERED that the unsealed docket entries located at NYSCEF Doc. Nos. 34-35 and 179-180 shall be permanently sealed; and it is further

ORDERED that the provisionally-redacted confidential business information located within the docket entries at NYSCEF Doc. Nos. 59-60, 97-98, 104, 112, 122, 159-160, 166, 200, 201-202, 206 and 209-210 shall be permanently sealed; and it is further

ORDERED that the confidential business information located at the following docket entries and in the following locations shall be permanently sealed:

NYSCEF Doc. Nos. 1, 61, and 123, at ¶ 37 (listing Quality King’s purchase prices); ¶¶ 40-42 (listing alleged profit margins); Doc.

No. 3, at 6-7 (listing purchase prices and alleged profit margins), 13-14 (listing purchase prices and alleged profit margins); Doc. No. 4, at ¶¶ 25, 28 (listing purchase prices and alleged gross margin); Doc. No. 174, at 7, 16 (listing Quality King's purchase prices and calculating markup); and Doc. No. 175, at ¶¶ 10, 12 (listing Quality King's purchase prices and calculating markup).

And it is further

ORDERED that the portions of the OAG's Memorandum of Law in Opposition (NYSCEF Doc. No. 219), to the extent that portions of the OAG's Opposition include the same confidential purchase-price information (i.e., Opp. at 9, listing Quality King's purchase prices), shall be permanently redacted; and it is further

ORDERED that Respondents shall serve a copy of this Order upon the Clerk of the Court within 5 days of this Order and the Clerk shall take the appropriate measures to ensure that the above referenced documents and portions of documents are permanently sealed from public view.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: September 23, 2020

ENTER: 
J.S.C.
HON. EILEEN A. RAKOWER

Check one: ☒ FINAL ☐ DISPOSITION ☐ NON-FINAL DISPOSITION