

OREI IV Invs. LLC v Sterling Bay Capital Partners I, LLC
2020 NY Slip Op 33341(U)
October 8, 2020
Supreme Court, New York County
Docket Number: 653959/2020
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

-----X

OREI IV INVESTMENTS LLC,

Plaintiff,

- v -

STERLING BAY CAPITAL PARTNERS I, LLC.,

Defendant.

-----X

INDEX NO. 653959/2020MOTION DATE MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 66

were read on this motion to/for

SEAL

In motion sequence number 003, defendant Sterling Bay Capital Partners I, LLC (Sterling) moves to redact (1) the affidavit of its Chief Financial Officer Michael Keesey filed on NYSCEF Doc. No. 37, (2) Sterling's financial statements as of December 31, 2019 filed on NYSCEF Doc. No. 38, (3) Sterling's financial statements as of June 30, 2020 filed on NYSCEF Doc. No. 39, (4) Sterling's net worth analysis as of June 30, 2020 filed on NYSCEF Doc. No. 40, (5) Sterling's internal Interim Valuation Memo filed on NYSCEF Doc. No. 41, and (6) Sterling's response to plaintiff OREI IV Investments LLC's motion for an order of attachment filed on NYSCEF Doc. No. 42. To the extent these court records are quoted or referenced elsewhere on the docket, Sterling moves to redact.

In support, Sterling submits the affidavit of Dean Marks whose duties "include responsibility for overseeing and supervising the business affairs and operations of"

Sterling. (NYSCEF 36, Marks Affidavit ¶ 3.) Marks states that he has personal knowledge and asserts that “the public disclosure of [Sterling’s] information, condition and positions would place [Sterling] at a competitive disadvantage because [Sterling’s] competitors would know [Sterling’s] financial condition and resources and could use such information to gain an advantage in connection with negotiations regarding pending transactions, tenant discussions and investor relations.” (*Id.* ¶¶ 1, 8.) He adds, “Armed with the detailed knowledge of [Sterling’s] assets, net worth, financial condition and the nature and extent of [Sterling’s] resources, [Sterling’s] competitors which have a higher net worth could determine the commercial transactions on which they likely could outbid [Sterling].” (*Id.* ¶ 9.)

Plaintiff does not oppose. There is no indication in the record that the press or public are interested in this matter.

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].)

Good cause exists to redact the financial terms as proposed by Sterling from NYSCEF Doc. Nos. 37, 38, 39, 40, 41, 42 and quotes or references of that information elsewhere on the docket. Sterling demonstrates that disclosure of this information could threaten its competitive advantage for the reasons stated in Marks' affidavit. (*Mosallem*,

76 AD3d at 350-351.) There is also no public concern to counter-balance Sterling's interests in keeping its financial arrangement private. (*Dawson*, 184 AD2d at 247.)

Accordingly, it is

ORDERED that the motion is granted as set forth above; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. Nos. 37, 38, 39, 40, 41, 42 and any other filings on the docket that either duplicate or quote them and it is further

ORDERED that within 10 days of this order being filed on NYSCEF, Sterling shall file redacted versions of those court records; and it is further

ORDERED that the parties shall redact the financial information as proposed in NYSCEF Doc. Nos. 37, 38, 39, 40, 41, 42 from future filings; and it is further

ORDERED that until further order of the court, the County Clerk shall deny other access to the sealed 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.

<u>DATE</u>			
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE
	☐ DENIED		

10/8/2020

J.S.C.
HON. ANDREA MASLEY