

Atalaya Special Opportunities Fund VII LP v Whited
2022 NY Slip Op 30403(U)
February 2, 2022
Supreme Court, New York County
Docket Number: Index No. 652767/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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ATALAYA SPECIAL OPPORTUNITIES FUND VII LP and
MIDTOWN MADISON MANAGEMENT LLC,

INDEX NO. 652767/2020

Plaintiffs,

MOTION DATE _____

- v -

MOTION SEQ. NO. 003

JIMMY WHITED,

**DECISION + ORDER ON
MOTION**

Defendant.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65

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

In motion sequence number 003, plaintiffs Atalaya Special Opportunities Fund VII LP (Atalaya) and Midtown Madison Management LLC (Midtown Madison) move under Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause, to redact NYSCEF Docs. Nos. (NYSCEF) 45¹, 61, 62, 63, 64, and 65 on the ground that disclosure of plaintiffs' confidential financial information and proprietary business practices and strategies would harm Atalaya's competitive business advantage. Defendant Jimmy Eric Whited opposes plaintiffs' motion arguing that plaintiffs' request to seal the documents in their entirety is overbroad. There is no indication that the press or public have an interest in this action.

NYSCEF 61 is the transcript of the deposition testimony of Matt Spiro, plaintiffs' corporate representative. According to plaintiffs, portions of Spiro's testimony contain

¹ For future filing, counsel is reminded that affirmations/affidavits and exhibits shall be e-file separately and not as one document.

proprietary information relating to Atalaya's internal methodologies and processes for the identification and analysis of investment and lending opportunities, disclosure of which would harm its competitive advantage.

NYSCEF 62 is an email communication between Atalaya employees containing an internal memorandum that discusses proprietary business strategy and financial information.

NYSCEF 63 is an internal email communication between Atalaya employees discussing proprietary business strategy and financial information.

NYSCEF 64 is an email communication including an internal Atalaya memorandum that contains proprietary business strategy and financial information.

NYSCEF 65 is an email communication between Spiro and Whited discussing proprietary business strategy and financial information.

NYSCEF 45 is an affirmation with the aforementioned exhibits attached.

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.”

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosalleem v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010] [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of

relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information” and that “sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.” (*D’Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

NYSCEF 62, 63, 64, and 65 contain proprietary business strategy and confidential financial information and forecasts. To the extent that plaintiffs seek to keep private its confidential business and financial information, the disclosure of which would cause competitive harm, plaintiffs have demonstrated that good cause exists to redact those portions these documents. (*Mosalem*, 76 AD3d at 350-351 [citations omitted].)

Good cause does not exist to redact portions of NYSCEF 61, the deposition testimony of Spiro, that discuss due diligence efforts and/or references made to the data room. Plaintiffs fail to explain, with applicable law, why generalized references to the data room and/or conducting due diligence contains any proprietary or confidential information that may harm plaintiffs’ competitive advantage sufficient to warrant redaction. For example, it is unclear how testimony regarding the mechanics of conducting due diligence and setting up a data room—testimony that does not implicate proprietary business strategy or otherwise—could harm plaintiffs’ business advantage. (See e.g. NYSCEF 61, Matt Spiro deposition tr at 31:25-32:8; *id.* at 292:2-7.)

However, good cause exists to redact portions of the deposition testimony that reflect nonpublic and sensitive business and financial information. Plaintiffs' tailored redactions, insofar as they discuss confidential and proprietary information, effectively balances the interests of the public with the interest of the parties in keeping private their nonpublic and sensitive business and financial information. (See *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 9 [1st Dept 2010].)

Plaintiffs shall file a copy of the publicly redacted documents in connection with motion seq. no. 001.

Accordingly, it is

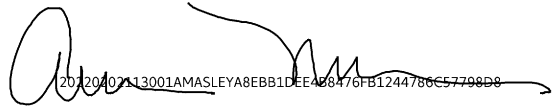
ORDERED that motion sequence 003 is granted, in part and denied in part, in accordance with the court's reasoning stated above; and it is further

ORDERED that plaintiffs are directed to file publicly redacted versions of NYSCEF 45, 61, 62, 63, 64, 54 in accordance with this decision and in connection with motion seq. no. 001; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 45, 61, 62, 63, 64, and 65; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

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



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2/2/2022

DATE

ANDREA MASLEY, J.S.C.

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