

<b>Wilmington Trust, N.A. v Elmwood NYT Owner, LLC</b>
2022 NY Slip Op 30728(U)
March 7, 2022
Supreme Court, New York County
Docket Number: Index No. 850176/2020
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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WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BENEFIT OF THE HOLDERS OF CD 2016-CD2 MORTGAGE TRUST COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2016-CD2, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF THE REGISTERED HOLDERS OF JPMDB COMMERCIAL MORTGAGE SECURITIES TRUST 2017-C5, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-C5, DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CITIGROUP COMMERCIAL MORTGAGE TRUST 2017-P7, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-P7, WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CD2017-CD3 MORTGAGE TRUST, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, and SERIES 2017-CD3,

INDEX NO. 850176/2020  
MOTION DATE N/A  
MOTION SEQ. NO. 014

**DECISION + ORDER ON MOTION**

Plaintiffs,

- v -

ELMWOOD NYT OWNER, LLC, LANDINGS NYT OWNER, LLC, OAKWOOD NYT OWNER, LLC, WALLKILL NYT OWNER, LLC, BOARD OF MANAGERS 229 WEST 43RD STREET CONDOMINIUM, CRIMINAL COURT OF THE CITY OF NEW YORK, GLOBAL SECURITY GROUP INC., and JOHN DOE NO. I THROUGH JOHN DOE NO. XXX,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 182, 183, 184, 185, 186, 187, 190, 191, 192

were read on this motion to/for SEAL.

In motion sequence number 014, Receiver Klaus Kretschmann moves, by Order to Show Cause, to (i) redact NYSCEF Doc. No. (NYSCEF) 185 pursuant to Section 216.1(a) of the Uniform Rules for New York State Trial Courts and (ii) approve NYSCEF

185, a proposed amendment to a lease. There is no opposition to either branch of this motion and no indication that the press or public have an interest in this matter.

This action concerns the foreclosure of a mortgage lien on 229 West 43<sup>rd</sup> Street, New York, NY 10036 (Property). On March 17, 2021, Kretschmann was appointed Receiver of the Property by the court and was empowered to “rent or lease any part of the Property.” (NYSCEF 65, Order Appointing Receiver at 7.) Pursuant to the Order Appointing Receiver, the Receiver and a tenant of the Property, Bowlmor Times Square, LLC (Bowlmor), negotiated to modify Bowlmor’s lease of the Property, which is memorialized as the “Second Amendment to Lease” (Bowlmor Proposed Lease Amendment). (NYSCEF 183, Kretschmann aff ¶¶ 1-2.)

First, the Receiver asks the court to redact the specific rental terms of the lease, the financial information derived from those rental terms of the lease, and identifiable information of entity guarantors and its agents to the lease contained in NYSCEF 185, the Bowlmor Proposed Lease Amendment. The Receiver asserts that the disclosure of such information to the public may adversely impair his ability to negotiate competitive lease terms for the Property.

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.” (*Mosallem 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], 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

Here, good cause exists to redact the narrowly tailored portions of the Bowlmor Proposed Lease Amendment as they contain rental pricing information, payment terms of the renegotiated lease, and identifiable information of the nonparty guarantors. The disclosure of this information could damage the Receiver’s ability to negotiate competitive terms for future leases. Moreover, there is no showing of relevant public interest in the matter to counterbalance the parties’ interest in keeping the terms of their lease and the nonparties involved private. (*Dawson*, 184 AD2d at 247.)

Second, the Receiver seeks approval to modify the Bowlmor lease, asserting that the modification of Bowlmor’s lease was necessitated after Bowlmor failed to meet its rent obligations in light of the ongoing COVID-19 pandemic and after Bowlmor’s request for rental relief. (*Id.* ¶¶ 2-3; NYSCEF 184, Bowlmor Proposed Lease Amendment at 2.)

The Receiver and his colleague, Matthew Chmielecki, negotiated the modifications to Bowlmor's lease. (NYSCEF 183, Kretschmann aff ¶¶ 4.) The Receiver and Chmielecki considered alternatives to modification of Bowlmor's lease, such as reletting the premises. (*Id.* ¶¶ 5.) However, with their experience in the commercial real estate industry, the Receiver and Chmielecki concluded that modifying Bowlmor's lease is commercially reasonable and in the best interest of the Property given the pandemic and its aftereffects on the retail industry. (*Id.*)

The Order Appointing the Receiver provides that the Receiver may, with the approval of the court, "rent or lease any part of the Property for terms not exceeding one (1) year or such longer terms." (NYSCEF 65, Order Appoint Receiver at 7.) In the absence of opposition and given that the parties are sophisticated businesspeople who have entered into the agreement, the Receiver's motion for court approval of the Bowlmor Proposed Lease Amendment is granted.

Accordingly, it is

ORDERED that motion to redact NYSCEF Doc. No 185 is granted. As a redacted version of NYSCEF Doc. No. 185 has already been file, the Receiver does not need to re-file duplicates; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. No. 185; and it is further

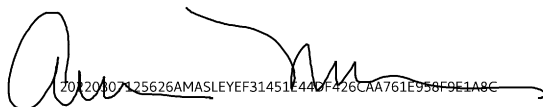
ORDERED that the New York County Clerk shall restrict access to the sealed document with access to be granted only to the authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any

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 Receiver is to serve a copy of this order on the County Clerk in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-filing" page on the court's website – [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial; and it is further

ORDERED that the Receiver's motion for approval of the Bowlmor Proposed Lease Amendment is granted.



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3/7/2022  
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE