

<b>DT Net Lease I REIT v Coughlan</b>
2022 NY Slip Op 31326(U)
April 21, 2022
Supreme Court, New York County
Docket Number: Index No. 652850/2020
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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DT NET LEASE I REIT,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> JAMES COUGHLAN, ROBERT COUGHLAN, RITA CASTAGNA AS THE EXECUTOR OF THE ESTATE OF FRANK CASTAGNA, and RITA CASTAGNA  <p style="text-align: center;">Defendants.</p>	<table border="0"> <tr> <td style="padding-right: 10px;"><b>INDEX NO.</b></td> <td style="border-bottom: 1px solid black; text-align: right;">652850/2020</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION DATE</b></td> <td style="border-bottom: 1px solid black; text-align: right;">N/A</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION SEQ. NO.</b></td> <td style="border-bottom: 1px solid black; text-align: right;">005</td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	652850/2020	<b>MOTION DATE</b>	N/A	<b>MOTION SEQ. NO.</b>	005
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 65, 66, 67, 68, 69, 87, 88, 89, 90

were read on this motion to/for SEAL.

In motion sequence number 005, defendants James L. Coughlan and Robert J. Coughlan move, by order to show cause, to seal NYSCEF Doc. No. (NYSCEF) 67.<sup>1</sup>

There is no opposition to this motion and there is no indication that the public or press have an interest in this matter.

NYSCEF 67 is a settlement agreement between plaintiff DT Net Lease I REIT, DT-XCHIII-IS, LLC, defendants, and TRITEC Building Company, Inc. (NYSCEF 87, Behar aff ¶ 1.) Defendants argue that sealing of the settlement agreement is in accordance with paragraph 3, the confidentiality provision, of the settlement agreement. (*Id.* at ¶¶ 5-6.)

<sup>1</sup> TRITEC Building Co., Inc. (TBC) is also a moving party on this motion. TBC is a defendant in a related action (*Castagna v. DT Net Lease I REIT, et al.*, Index No. 652722/2020) that is also before this court. NYSCEF 67, the settlement agreement to be sealed in this motion, settled the claims between plaintiff, James L. Coughlan, and Robert J. Coughlan in this action and also settled the claims between those parties, as well as TBC, in the related action.

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.”

A party’s designation of a document as confidential or restricted, without further explanation or supporting case law, is insufficient to support a finding of good cause to seal court records in whole or in part. (*Mosalleem v Berenson*, 76 AD3d 345 [1st Dept 2010] [noting, rather, that New York courts have found good cause where disclosure of documents could threaten a business’s competitive advantage]; *Grande Prairie Energy LLC v Alstom Power, Inc*, 5 Misc 3d 1002(A) [Sup Ct, NY County 2004].)

Defendants rely on paragraph 3 of the settlement agreement and on *Gliklad v Deripaska*, 185 AD3d 512 (1st Dept 2020), in support of sealing the agreement. As an initial matter, the parties’ designation of a court document as confidential, alone, does not constitute good cause. (*In re Will of Hoffman*, 284 AD2d 92, 94 [1st Dept 2001] [citation omitted] [explaining that “conclusory claims of the need for confidentiality of settlement agreements are insufficient to seal a record.”].)

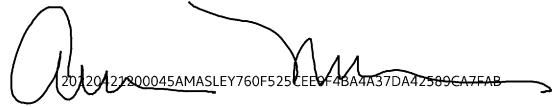
Second, defendants’ reliance on *Gliklad v Deripaska* is misplaced. In *Gliklad*, nonparty BuzzFeed, Inc. requested to unseal certain documents, including a confidentiality settlement agreement, arguing that all judicial proceedings are presumptively open to the public. (185 AD3d at 513.) The trial court agreed with BuzzFeed and unsealed the requested documents. (*Id.* at 512.) However, on appeal,

the First Department held that the complete unsealing of a settlement agreement was inappropriate despite the strong public policy in favor of open court records. (*Id.* at 513.) The appellate court found that settlement agreement was the subject of a prior sealing order where the trial court found good cause to seal the documents in the first place. (*Id.*) That is not the case here. Here, the parties have not shown good cause at all. The only similarity between this motion and *Gliklad* is the presence of a confidentiality agreement. The holding in *Gliklad* does not support defendants' motion to seal a document as the holding permitted BuzzFeed to access the previously sealed document subject to redactions despite the public's interest in the matter leading to the appellate court's decision. Thus, the outcome in *Gliklad* provides little support for the moving defendants. Moreover, this is the first application to seal NYSCEF 67, the parties' settlement agreement, and thus there has been no prior finding of good cause to permit the sealing of the settlement agreement.

In sum, defendants have failed to show why the settlement agreement should be completely sealed and not redacted in order to protect any confidential or proprietary information in the agreements—factors that weigh in favor of finding good cause to redact or seal court documents.

Therefore, defendants' request to seal NYSCEF 67 is denied without prejudice. To the extent that defendants wish to narrowly redact portions of the settlement agreement in accordance with the principles stated above and Section 216.1(a) of the Uniform Rules for Trial Courts. Good cause may exist to narrowly redact portions that contain confidential, proprietary, and/or internal financial information, but it has not been shown on this record.

Accordingly, it is  
ORDERED that this motion is denied without prejudice; and it is further  
ORDERED that, within ten days of this order, this court will direct the County  
Clerk to unseal NYSCEF Doc. No. 67, unless a new OSC is filed.



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4/21/2022  
DATE

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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