

Mitskevich v Levin
2022 NY Slip Op 31784(U)
June 2, 2022
Supreme Court, New York County
Docket Number: Index No. 653689/2020
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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YURA MITSKEVICH,

Plaintiff,

- v -

ALEXANDER LEVIN, DAVID LUBIN, CG FRIENDSHIP
HOLDINGS LLC, and FRIENDSHIP CENTER FL LLC,

Defendants.

INDEX NO. 653689/2020

MOTION DATE _____

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 118, 120

were read on this motion to/for SEAL.

In motion sequence number 004, defendants Alexander Levin, David Lubin, CG Friendship Holdings LLC, and Friendship Center FL LLC move, pursuant to Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause, to seal NYSCEF Doc. Nos. (NYSCEF) 89, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 105, 106, 107, 108, 109, and 111 on the grounds that disclosure of defendants' confidential financial information would harm their competitive advantage. Plaintiff does not oppose defendants' request to redact and seal the documents. There is no indication that the press or public have an interest in this action.

NYSCEF 89 is an affidavit by defendant Levin. The affidavit contains financial information regarding capital calls issued by defendant Friendship Center FL LLC, which includes amounts of additional funding, reasons for the capital calls, and amounts escrowed funds generated by a private financing. Defendants argue disclosure of this information would harm their competitive advantage.

NYSCEF 92 is a December 3, 2020 letter discussing a capital call, with the following attachments: the unsigned Member Approval for the capital call, the allocation of the additional funds, a tenant lease, and two contractor agreements. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information about the capital calls and contains private proposals for work.

NYSCEF 93 is identical to NYSCEF 92. However, the Member Approval for the capital call is signed by defendants Levin and Lubin in this submission. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information about the capital calls and contains private proposals for work.

NYSCEF 95 is an email from defendants' counsel with the following attachments: two proposals for services; a title report; an insurance invoice; a loan agreement; a promissory note; a guaranty agreement; an environmental indemnity agreement; an assignment of leases and rents; a mortgage, security agreement and fixture filing; and a letter sent on behalf of defendants to plaintiff that contains amounts in reference to financing and insurance premiums. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information about the capital calls and contains private proposals for work.

NYSCEF 96 is an email chain that discusses payments made to a contractor and includes attachment containing a proposed amount of insurance. Defendants argue the

disclosure of construction expense and insurance information would harm their competitive advantage.¹

NYSCEF 97 is a letter sent by defendant Levin to defendant CG Friendship Holdings LLC and plaintiff discussing the amount of a capital call contribution. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information about the capital calls.

NYSCEF 99 is a letter containing the amount plaintiff allegedly failed to contribute to the capital call and the amount of plaintiff's Cram-Down contribution. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information about the capital calls.

NYSCEF 100 is a letter discussing the capital call to pay an insurance premium with an unsigned Member Approval form and an insurance invoice attached. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information about the capital calls.

NYSCEF 101 is identical to NYCEF 100. However, the Member Approval for the capital call is signed by defendants Levin and Lubin in this submission. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information about the capital calls.

NYSCEF 102 is a bank statement for defendant Friendship Center FL LLC. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information.

¹ The court suggests counsel be consistent when submitted proposed redactions.

NYSCEF 103 are canceled checks. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information.

NYCEF 104 is a contractor statement. Defendants argue disclosure of this information would harm their competitive advantage because it includes amount paid for services and third-party account information.

NYSCEF 105 is a bank statement for defendant Friendship Center FL LLC. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information.

NYSCEF 106 is a canceled check. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information.

NYSCEF 107 is a bank statement for defendant Friendship Center FL LLC. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information.

NYCEF 108 is an insurance premium invoice. Defendants argue disclosure of this information would harm their competitive advantage because it includes confidential financial information.

NYSCEF 109 is defendants' Rule 19-a Statement of Undisputed Facts. Defendants argue the statement contains financial information regarding capital calls issued by defendant Friendship Center FL LLC, which includes amounts of additional funding, reasons for the capital calls, and amounts escrowed funds generated by a

private financing. Defendants argue disclosure of this information would harm their competitive advantage.

NYSCEF 111 is defendants' Memorandum of Law in support of their Motion for Summary Judgment and Related Relief. The memorandum of law contains financial information regarding capital calls issued by defendant Friendship Center FL LLC, which includes amounts of additional funding, reasons for the capital calls, and amounts escrowed funds generated by a private financing. Defendants argue disclosure of this information would harm their competitive advantage.

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.”

Judiciary Law § 4 provides those 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].)

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].)

Good cause exists to redact the amounts and purposes of the capital calls, the amount of escrowed funds generated by a private financing, defendants’ cash positions,

and defendants' private bank account information contained in NYSCEF 89, 96, 97, 98, 99, 100, 101, 104, 106, 108, 109, and 111. These documents contain private business and financial terms, and disclosure would harm its competitive advantage. (*Mosallem*, 76 AD3d at 350-351.)

However, good cause does not exist for many of defendants' proposed redactions. For example, in NYSCEF 92, defendants request to redact a lease and construction agreements in their entirety. Any proposed redactions must be narrowly tailored to protect financial information that may harm the business's competitive advantage. Defendants do not provide good cause to redact these documents in their entirety. Additionally, the proposed redactions in NYSCEF 93, 95, 102, 103, 105, and 107² are significantly overbroad. Defendants file an OSC with new proposed redactions that are narrowly tailored to the information granted in this order.

Accordingly, it is

ORDERED that motion sequence 004 is granted in part and denied in part; and it is further

ORDERED defendants are directed to publicly file redacted versions of NYSCEF 89, 96, 97, 98, 99, 100, 101, 104, 106, 108, 109, and 111; and it is further

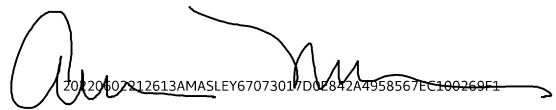
ORDERED that upon service of this order by movant on the County Clerk, he shall seal NYSCEF 89, 96, 97, 98, 99, 100, 101, 104, 106, 108, 109, and 111; and it is further

² The name and address of a bank do not need to be redacted. (See *e.g.*, NYSCEF 102, 103, 105, and 107.)

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 motion is denied as to NYSCEF 92, 93, 95, 102, 103, 105, and 107 and defendants shall have 10 days from the court's entry of this order on NYSCEF to file a new OSC, if they choose, or the court will direct the County Clerk to unseal these documents; and it is further

ORDERED that this action is discontinued with prejudice as per parties' stipulation. (NYSCEF Doc. No. 124.)



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6/2/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: