

**International Bus. Machs. Corp. v GlobalFoundries
U.S. Inc.**

2022 NY Slip Op 32279(U)

July 13, 2022

Supreme Court, New York County

Docket Number: Index No. 653625/2021

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

- v -

GLOBALFOUNDRIES U.S. INC.,

Defendant.

INDEX NO. 653625/2021

MOTION DATE 07/06/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 32, 33, 35

were read on this motion to SEAL.

Plaintiff International Business Machines Corporation (“IBM”) moves for an order sealing and/or redacting IBM’s Complaint and “eight highly confidential, non-public documents” that were filed as Exhibits to the Complaint (*see* NYSCEF 14). For the reasons stated below, IBM’s motion is **denied** without prejudice.

Pursuant to § 216.1[a] of the Uniform Rules for Trial Courts, this Court may seal a filing “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 of the parties” (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve*

compelling objectives, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed the proposed sealing and redactions to IBM’s Complaint (NYSCEF 16) and the Exhibits filed as NYSCEF 18, 19, 20, 21, 22, 23, 24 and 25 and finds that IBM’s generalized assertions of good cause do not establish a compelling justification for the broad (and in some cases complete) sealing that is proposed. While *portions* of the Complaint and Exhibits may well include protectable trade secrets, confidential business information, or proprietary information, the proposed redactions and/or sealing are not adequately explained or justified. For example, IBM seeks to seal NYSCEF 18, 19, 20, 21 and 22 in their entirety, without any attempt to isolate the specific portions of those documents that genuinely require sealing under the rigorous standards described above. The blanket redaction of contract language in the Complaint must be similarly justified. In view of the admonition that sealing of court records must be “narrowly tailored to serve compelling objectives,” (*Danco*, 274 AD2d at 6), IBM will need to propose and justify more targeted redactions that satisfy the requirements of 22 NYCRR § 216 [a] and applicable case law.

Any subsequent motion seeking to address the above concerns should adhere to this Part’s Sealing Practices and Procedures (*see* <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part3-sealing-practices.pdf>),

including the requirement to submit an affidavit based on personal knowledge attesting to the factual bases for redaction and a spreadsheet setting forth a non-conclusory good faith basis for each proposed redaction.

Accordingly, it is:

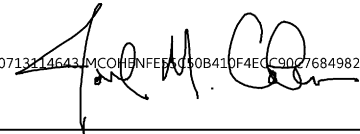
ORDERED that IBM's Motion to Seal the Complaint and Certain Documents Filed in Connection with the Complaint is **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of documents consistent with this Decision and Order and applicable case law; it is further

ORDERED that the documents filed as NYSCEF 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20, 21, 22, 23, 24 and 25 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If IBM files a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is filed within 21 days from the entry of this Decision and Order, the parties shall alert the County Clerk that the motion to seal the above-referenced documents has been denied by the Court and that the documents should be unsealed on NYSCEF; and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redaction of any documents or evidence to be offered at trial.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/13/2022

DATE

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