

**Coresite 32 Ave. of the Ams., L.L.C. v 32 Sixth Ave.  
Co. LLC**

2022 NY Slip Op 32670(U)

August 8, 2022

Supreme Court, New York County

Docket Number: Index No. 652792/2019

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X	
CORESITE 32 AVENUE OF THE AMERICAS, L.L.C.,	INDEX NO. <u>652792/2019</u>
Plaintiff,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>011</u>
32 SIXTH AVENUE COMPANY LLC and TELX - NEW YORK 6TH AVE. LLC	
Defendants.	<b>DECISION + ORDER ON MOTION</b>
-----X	

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 586, 587, 588, 589, 596, 599, 600

were read on this motion to/for SEAL.

In motion sequence number 011, defendant 32 Sixth Avenue Company LLC (Owner) moves, pursuant to 22 NYCRR 216.1, to redact portions of NYSCEF Docs. No. (NYSCEF) 564 and 565 in accordance with the court's Decision and Order granting the redaction of "future submissions containing or referencing confidential information, as outlined in this decision." (NYSCEF 70, Decision and Order [mot. sequence. no. 001] at 6<sup>1</sup>.) There is no indication that the press or public have an interest in this matter.

NYSCEF 564 is Owner's unredacted memorandum of law in opposition to plaintiff's motion for summary judgment (Opposition). The proposed redactions contained in Owner's Opposition refers to the parties' business terms, such as specific pricing terms and negotiated economic terms of the agreement, information related to the operation of plaintiff's other facilities, and arguments related to Owner's mitigation

<sup>1</sup> Pages refer to NYSCEF generated pagination.

defense. NYSCEF 565 is Owner's unredacted response to plaintiff's Rule 19-a Statement (Response). Owner's Response refers to specific financial and business terms of the lease, such as pricing terms and rates, conversations between the parties' decisionmakers and employees. Owner also seeks to redact plaintiff's statement allegations. In connection to this motion to seal, plaintiff submitted a Statement of Non-Opposition in support of Owner's motion to seal NYSCEF 564 and 565. (NYSCEF 600, Statement of Non-Opposition.)

Both documents were filed again in unredacted form as NYSCEF 575 and 576, respectively.

### **Legal Standard**

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].)

### **Discussion**

As to Owner’s Opposition, good cause exists to the extent that the Opposition seeks to narrowly redact the pricing terms and negotiated economic terms of the parties’ agreement. (*Mosallem*, 76 AD3d at 350-351 [citations omitted]; *Dawson*, 184 AD2d at 247.) The court notes that the majority of the proposed redactions refer to the lease terms and disclose the parties’ strategies and negotiations and is subject to the court’s prior sealing order. (NYSCEF 70, Decision and Order [mot. seq. no. 001].)

Good cause, however, does not exist to redact Owner’s asserted defense of mitigation within the Opposition, and Owner provides no law to support the redaction of any portion of the Opposition that mentions or refers to the defense of mitigation. (See *e.g.*, NYSCEF 575, Owner’s Opposition at 11.) Asserting a defense of mitigation is not proprietary; however, any of Owner’s evidence supporting the assertion of the defense that specifically implicates or refers to confidential and proprietary terms of the parties’ agreements or the business strategy the parties elected to take, the disclosure of which would harm the parties’ economic advantage, would satisfy the moving party’s burden to show good cause to seal or redact. To the extent that those conditions are present, good cause exists to narrowly redact portions of evidence that discloses proprietary information.

As to Owner's Response, good cause exists solely to redact the portions of the Response that refer to the confidential lease terms and business strategies taken by the parties in connection to this action (*Mosalleh*, 76 AD3d at 350-351 [citations omitted]) and is in accordance with the court's prior sealing order. (NYSCEF 70, Decision and Order [mot. seq. no. 001]).

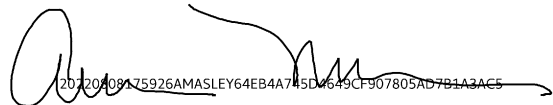
However, Owner's proposed redactions of certain portions of the Response are overbroad; for example, good cause does not exist to redact statements describing the building (NYSCEF 565, Response ¶ 2) without an affidavit from a person with knowledge explaining why that information, if disputed, would adversely harm a party's economic advantage or competitive standing. Further, good cause does not exist to redact testimony of various deponents that the court has not previously granted the sealing of or redaction of. (See *e.g.* NYSCEF 565, Response ¶¶ 10, 43-46.) Portions of such deposition, that do not refer to confidential or proprietary business terms and strategy on the face, will not be redacted without a prior order granting such relief by the court. A statement of non-opposition by the plaintiff is insufficient as a basis to redact. Furthermore, disagreement with plaintiff's characterization or claiming to have no knowledge of plaintiff's motivations to lease the premises (*see id.* ¶ 7), is an insufficient basis to seal or redact.

The court implores Owner to read and follow Part 48's Procedures on sealing. (*See specifically* Rule 13 [B] [i].) Comparison of the unredacted documents and proposed redactions without highlighting the proposed redactions results in unnecessary delay.

Accordingly, it is

ORDERED that motion sequence number 011 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 Docs. No. 564, 565, 575, and 576 unless a new OSC is filed in accordance with this decision.



8/8/2022  
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