

Shift4 Payments, LLC v Westamerica Bank
2022 NY Slip Op 32782(U)
August 17, 2022
Supreme Court, New York County
Docket Number: Index No. 652618/2021
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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SHIFT4 PAYMENTS, LLC

Plaintiff,

- v -

WESTAMERICA BANK,

Defendant.

INDEX NO. 652618/2021

MOTION DATE N/A

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) 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 26, 27, 30, 31, 34

were read on this motion to

SEAL

Plaintiff Shift4 Payments, LLC (“Plaintiff”) moves for an order redacting and/or sealing Plaintiff’s Memorandum of Law in Support of its Motion for Summary Judgment (the “Memorandum of Law”) (NYSCEF 19), Plaintiff’s Statement of Material, Undisputed Facts in Support of its Motion for Summary Judgment (the “Statement of Facts”) (NYSCEF 21), the Affidavit of Avani Patel in Support of Plaintiff’s Motion for Summary Judgment (“the Patel Affidavit”) (NYSCEF 8), Exhibits A through G of the Patel Affidavit (the “Exhibits”) (NYSCEF 9-15) and the Affidavit of Jordan Frankel in Support of this Motion (the “Frankel Affidavit”) (NYSCEF 24). Defendant Westamerica Bank (“Defendant”) consents to the motion. For the reasons stated below, the motion is **granted in part**.

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 Exhibits B through E to Patel Affidavit (NYSCEF 10, 11, 12, 13) and finds the documents are properly sealed because they contain sensitive, confidential financial information pertaining to Plaintiff’s operations as well as proprietary and competitively sensitive information that could harm Defendant if made publicly available. Additionally, the proposed redactions in the Patel Affidavit, Exhibits F and G to the Patel Affidavit, Plaintiff’s Memorandum of Law, Plaintiff’s Statement of Facts and the Frankel Affidavit (NYSCEF 8, 14, 15, 19, 21, 24) are narrowly tailored and satisfy the requirements of NYCRR § 216.1[a].

However, the Court has also reviewed the proposed sealing to Exhibit A to the Patel Affidavit (NYSCEF 9) and finds that Plaintiff’s generalized assertions of good cause do not establish a compelling justification for the complete sealing that is proposed. While *portions* of

the document may well include protectable trade secrets, confidential business information, or proprietary information, the proposed sealing is not adequately explained or justified. In view of the admonition that sealing of court records must be “narrowly tailored to serve compelling objectives,” (*Danco*, 274 AD2d at 6), Plaintiff will need to propose and justify more targeted redactions that satisfy the requirements of 22 NYCRR § 216 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 Plaintiff’s Motion to Seal and/or Redact is **granted in part**; the County Clerk shall maintain NYSCEF Document Numbers 8, 10, 11, 12, 13, 14, 15, 19, 21 and 24 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

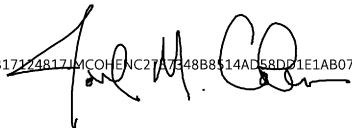
ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 16, 18, 20, 22 and 25 in their current, redacted form; it is further

ORDERED that Plaintiff file a redacted copy of Exhibit F to the Patel Affidavit (NYSCEF 14) that conforms with the proposed redactions; it is further

ORDERED that Plaintiff’s motion is otherwise **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of the document consistent with this Decision and Order and applicable case law; and it is further

ORDERED that the document filed as NYSCEF Document Number 9 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If Plaintiff files a new motion to seal or redact confidential portions of the document consistent with this Decision and Order within that 21-day period, the document 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 document has been denied by the Court and that the document should be unsealed on NYSCEF.

This constitutes the Decision and Order of the Court.

<u>8/17/2022</u> DATE	 2022081712248171MCOHENC27A7348B8514AD58DD1E1AB0765C377 JOEL M. COHEN, J.S.C.			
CHECK ONE:	☐	CASE DISPOSED	☒	NON-FINAL DISPOSITION
	☐	GRANTED	☐	DENIED
APPLICATION:	☐	SETTLE ORDER	☒	GRANTED IN PART
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐	SUBMIT ORDER
			☐	FIDUCIARY APPOINTMENT
			☐	OTHER
			☐	REFERENCE