

Spot & Co. of Manhattan, Inc. v Rudin
2022 NY Slip Op 33804(U)
November 7, 2022
Supreme Court, New York County
Docket Number: Index No. 653623/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

SPOT AND COMPANY OF MANHATTAN, INC.,
Plaintiff,

INDEX NO. 653623/2020

MOTION DATE N/A

- v -

MOTION SEQ. NO. 008 009

SCOTT RUDIN, SCOTT RUDIN PRODUCTIONS, INC.,
NO ICE, INC., THE WAVERLY GALLERY LIMITED
LIABILITY COMPANY, ATTICUS LIMITED LIABILITY
COMPANY, NEVER NEVER NEVER NEVER NEVER
LIMITED LIABILITY COMPANY, NEW HAMPSHIRE
LIMITED LIABILITY COMPANY, GARY A SEQUEL
LIMITED LIABILITY COMPANY, DANISH SAN JUAN
LIMITED LIABILITY COMPANY, THREE BROTHERS
BROADWAY LIMITED LIABILITY COMPANY, WHAT A
DUMP LIMITED LIABILITY COMPANY, and IOWA
STUBBORN LIMITED LIABILITY COMPANY,

DECISION + ORDER ON
MOTION

Defendants.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 188, 189, 190, 191,
192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 220, 223

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 009) 203, 204, 205, 206,
207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 221, 225

were read on this motion to/for SEAL

Motion Sequence Number 008

In motion sequence number 008, defendants Scott Rudin, Scott Rudin
Productions, Inc., No Ice, Inc. (No Ice), The Waverly Gallery Limited Liability Company,
Atticus Limited Liability Company (Atticus LLC), Never Never Never Never Never
Limited Liability Company, New Hampshire Limited Liability Company, Gary a Sequel
Limited Liability Company, Danish San Juan Limited Liability Company (Danish San
Juan LLC), and What a Dump Limited Liability Company, and Iowa Stubborn Limited

Liability Company move, by order to show cause, to redact NYSCEF Doc. No. (NYSCEF) 192, 194, 196, and 198. The court denied defendants' prior motion (motion sequence number 005) to seal the same documents in their entirety as "defendants have not met their substantial burden in demonstrating that good cause exists to seal in their entirety . . . defendants' proposal to seal these documents is overbroad." (NYSCEF 185, Decision and Order at 6¹ [mot. seq. no. 005] [denying sealing in their entirety NYSCEF 134, 136, 137, and 138].) Thus, motion sequence number 005 was denied without prejudice, and the court noted that "good cause exists to redact portions of these documents which certainly contain confidential and proprietary financial information and negotiated terms." (*Id.*) On July 22, 2022, defendants refiled these documents, as NYSCEF 192, 194, 196, and 198, with proposed redactions.

NYSCEF 192 is an advertising spending agreement between No Ice and a nonparty to this action. Defendants contend that their proposed redactions are limited to confidential terms and provisions of the agreement, the identity of the nonparty, and financial and business information pertaining to the nonparty.

NYSCEF 194 is Atticus LLC's operating agreement. NYSCEF 196 is the operating agreement of Danish San Juan LLC. NYSCEF 198 is the operating agreement of nonparty Trio Theatrical Limited Liability (Trio LLC). Defendants contend that these three operating agreements detail the confidential internal procedures of Atticus, Danish San Juan LLC, and Trio LLC, including their business practices,

¹ Pages refer to NYSCEF generated pagination.

proprietary information relating to the production of Broadway shows, and internal financial information.

Defendants contend that the disclosure of this information will cause harm to its competitive standing and give others an unearned advantage. (See NYSCEF 199, Sealing Chart at 2-5.)

The court has reviewed defendants' proposed redactions and finds that they are consistent with the court's prior order in motion sequence number 005 and now finds that there is good cause to support the redactions. (*Mosallem v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010] [citations omitted].) For example, in NYSCEF 194, the advertising spending agreement, the proposed redactions seek to prevent disclosure of negotiated business terms and the identity of the nonparty to the agreement. (*Id.*) Additionally, there is good cause to redact the specific pricing rates, bonus rates and conditions, and production terms as it relates to advertising, the disclosure of which could harm the nonparty's competitive advantage. (*Id.*; see *Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 815-816 [Sup Ct, NY County 1991].) In NYSCEF 194, 196, and 198, the operating agreements of Atticus LLC, Danish San Juan LLC, and Trio LLC, respectively, the proposed redactions are targeted at business, financial, and creative terms, considerations that are specific to the LLCs and its nonparty author. The proposed redactions also seek to prevent the disclosure of the business operations of the LLCs. Thus, good cause exists to redact the portions of the operating agreement that reflect this confidential and private proprietary business information. (*Mosallem*, 76 AD3d at 350-351.)

Finally, as there is still no indication that the press or public have an interest in this matter, the proposed redactions effectively balance defendants' interest in keeping private their and the nonparties' sensitive information and the interests of the public, if any. (See *Danco Lab Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 9 [1st Dept 2010].)

Motion Sequence Number 009

In motion sequence number 009, plaintiff Spot and Company of Manhattan, Inc. moves, by order to show cause, to redact NYSCEF 207, 209, 213, and 215.² The court denied, in part, plaintiff's prior motion (motion sequence number 006) to seal the same documents in their entirety as "the request to seal these documents is overbroad as there is no showing that each of the email communications contains confidential or proprietary information that would adversely harm the parties and nonparty(s)." (See NYSCEF 186, Decision and Order at 7 [mot. seq. no. 006] [denying sealing in their entirety NYSCEF 156, 157, 160, 162].) NYSCEF 207, 209, 213, and 215 are identically filed in unredacted form as NYSCEF 143, 144, 147, and 149, respectively.

NYSCEF 207 and 209 are email communications between a nonparty vendor, Rudin, and an employee of plaintiff, Scott Johnson. Plaintiff contends its proposed redactions prevent disclosure of the identity of the nonparty vendor and negotiated business terms. NYSCEF 213 is an email communication between Rudin and an employee of plaintiff, Tom Greenwald, which purports to reveal plaintiff and defendants'

² The court granted the sealing of NYSCEF 217, which is also filed in unredacted form as NYSCEF 150. NYSCEF 217 shall remain under seal pursuant to the court's prior order. (NYSCEF 186, Decision and Order [mot. seq. no. 006].)

business relationship. NYSCEF 215 is an email communication between plaintiff and defendants that purports to reveal financial information, business strategy, and negotiated business terms.

The court has reviewed plaintiff's proposed redactions and finds that the proposed redactions with regard to NYSCEF 207, 209, 215, and 217 are consistent with the court's prior order in motion sequence number 006 and now finds that there is good cause to support the redactions. (*Mosallem v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010] [citations omitted].) The proposed redactions in NYSCEF 207 and 209 are narrowly tailored to redact negotiated financial information between plaintiff, Rudin, and a nonparty vendor and the identity of the nonparty vendor. In NYSCEF 215 and 217, the proposed redactions are targeted to prevent the disclosure of financial information, such as pricing rates, and the business terms and strategy of plaintiff and defendants. These proposed redactions effectively balance the plaintiff's interest in keeping private its, the nonparty vendor's proprietary information, and the interests of the public, if any. (*See Danco Lab Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 9 [1st Dept 2010].)

"In accordance with the presumption against the sealing of court records and the presumption against any prior restraint on expression, plaintiffs must demonstrate that the public or press' access to the records is likely to harm a compelling interest to plaintiffs, and that no alternative to sealing can adequately protect the threatened interest." (*Doe v New York Univ.*, 6 Misc 3d 866, 877 [Sup Ct, NY County 2004].) Plaintiff contends that the harm it would face would be the public's access to information about the Rudin and Greenwald's business relationship contained in NYSCEF 213.

However, plaintiff has not provided law showing that disclosure of an email purporting to evidence a business relationship, without details involving, inter alia, financial information or proprietary business strategy and terms, constitutes a compelling interest in keeping that information private. That presumption has not been rebutted by plaintiff, and thus, there is no good cause to seal NYSCEF 213, the email communication between Rudin and Greenwald. Again, “embarrassment, damage to reputation and the general desire for privacy do not constitute good cause to seal court records.” (*Id.* at 878 [citations omitted].) Furthermore, upon review, NYSCEF 213 does not contain information for which there could be good cause to permit redaction or sealing, and thus, this document shall be filed publicly.

Accordingly, it is

ORDERED that motion sequence number 008 is granted; and it is further

ORDERED that as redacted versions of NYSCEF Doc. Nos. 192, 194, 196, and 198 have already been filed publicly and unredacted copies under seal, defendants need not re-file duplicates; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall permanently seal NYSCEF Doc. Nos. 134, 136, 137, 138, 192, 194, 196, 198; and it is further

ORDERED that motion sequence number 009 is granted in part but denied in part with respect to NYSCEF Doc. No. 213; and it is further

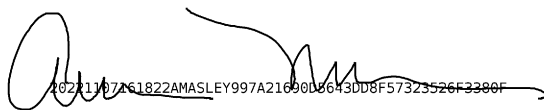
ORDERED that as redacted versions of NYSCEF Doc. Nos. 207, 209, and 215 have already been filed publicly and unredacted copies under seal, plaintiff need not re-file duplicates; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall permanently seal NYSCEF Doc. Nos. 143, 144, 149, 150, 156, 157, 162, 163, 207, 209, 215, and 216; and it is further

ORDERED that the County Clerk is directed to unseal NYSCEF Doc. No. 213; and it is further

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 order does not authorize sealing or redacting for purposes of trial.



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11/7/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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