

LCX AG v 1.274M U.S. Dollar Coin
2022 NY Slip Op 33961(U)
November 25, 2022
Supreme Court, New York County
Docket Number: Index No. 154644/2022
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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LCX AG,

Plaintiff,

- v -

1.274M U.S. DOLLAR COIN, CIRCLE INTERNET
FINANCIAL, LLC, CENTRE CONSORTIUM, LLC, and
JOHN DOE,

Defendants.

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INDEX NO. 154644/2022

MOTION DATE N/A

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 122, 123, 124, 125, 126, 127, 128, 129, 130, 136, 137, 138, 167

were read on this motion to/for SEAL.

In motion sequence number 007, plaintiff LCX AG moves, by Order to Show Cause (OSC), to redact (i) its reply memorandum in support of its motion to hold defendants in civil contempt (Reply Memo) (NYSCEF Doc. No. [NYSCEF] 107, Reply Memo [mot. seq. no. 005]), (ii) memorandum in opposition to defendants John Doe Nos. 1-25's motion to dismiss (Opposition Brief) (NYSCEF 92, Opposition Brief [mot. seq. no. 004]), and (iii) affidavit of Andrew Balthazor¹ (NYSCEF 126, Balthazor Aff) and affixed Exhibits 2 (*id.* at 11) and 3 (*id.* at 14),² filed in connection with the Opposition Brief.³

¹ Plaintiff explains that Balthazor is no longer with the law firm Holland & Knight and has withdrawn from this matter. (See NYSCEF 115, consent to attorney withdrawal.)

² Exhibits 2 and 3 should have been filed separately and not together with the affidavit. Moreover, regarding Exhibits 2 and 3, plaintiffs originally filed placeholders that merely say "REDACTED," which is in contravention of the Part 48 Procedures.

³ NYSCEF 83, 85-86, 92, and 107 are the publicly available redacted version of the Balthazor affidavit, Exhibit 2, Exhibit 3, Opposition Brief, and Reply Memo respectively. These documents were originally filed redacted or filed as a placeholder without a sealing order. Unredacted copies of these documents, with highlights of the proposed

Exhibit 2 to the Balthazor affidavit (Exhibit 2) is a spreadsheet depicting transfers of cryptocurrency and money for an account held at Gemini Trust Company (Gemini) (Gemini Account) which apparently received a portion of the proceeds from the defendants. (See *generally* NYSCEF 129, Sealing Chart; see NYSCEF 123, Magruder⁴ Aff ¶¶ 17-18.) Exhibit 3 to the Balthazor affidavit (Exhibit 3) is an “Account Page” displaying the account information for the Gemini Account, nonparty Yelena Sharova (defendants’ counsel) as the account holder, Sharova’s personal Citibank checking account information, and Sharova’s other personal information linked to the Gemini Account. (*Id.* ¶¶ 18-19; see *generally* NYSCEF 129, Sealing Chart.)

Defendants submit an affirmation in support of plaintiff’s OSC to redact these documents. (NYSCEF 167, Marino Aff.⁵) The press has indicated an interest in this matter.

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.”

redactions, are identically filed at NYSCEF 126 (Balthazor aff. and Exhibits 2-3), NYSCEF 128 (Opposition Brief), and NYSCEF 127 (Reply Memo).

⁴ Magruder of law firm Holland & Knight is counsel of record for plaintiff.

⁵ Marino is an associate of Sharova Law Firm, attorneys for defendants. (NYSCEF 167, Marino aff ¶ 1.)

“[T]he party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 349 [1st Dept 2010] [citations omitted].) For example, in the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Id.* at 350-351 [citations omitted].) Courts have also permitted the sealing or redacting the private information of third-parties as disclosure could impinge on the privacy rights of third parties who are not litigants. (See *Manufacturers and Traders Tr. Co. v Client Server Direct, Inc.*, 156 AD3d 1364, 1366 [4th Dept 2017], citing *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007].) The First Department has cautioned that it has been reluctant to allow the sealing of court records “even where both sides to the litigation have asked for such sealing.” (*Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006] [citations omitted].)

Discussion

Plaintiff contends that Exhibit 2, the spreadsheet depicting transfer history and account activity of the Gemini Account, contains non-public financial transactions and related information that should be redacted, specifically the dates and amounts of cryptocurrencies moved and the money funneled through the Gemini Account. Moreover, plaintiff argues that redaction should be granted because Exhibit 2 contains potentially prejudicial information, i.e., Sharova and her law firm may have been paid with monies obtained in the hack at issue. As to Exhibit 3, the “Account Page,” plaintiff contends that the summary includes Sharova’s personal and financial information, such as Sharova’s address, account numbers, telephone number, social security number, as

well as an email address of a Gemini employee. Balthazor's affidavit, the Reply Memo, and the Opposition Brief narrate and refer to the information contained and Exhibits 2 and 3, and plaintiff therefore argues references to this information should likewise be redacted.

Good cause exists to narrowly redact nonparty Sharova's personal information, including home address, birth date, phone numbers, personal bank information, and the email address of the Gemini employee appearing in Exhibit 3. (See *In re Afilalo*, 139 AD3d 175, 180 [1st Dept 2016] [granting redaction of bank account numbers].) The court finds that the disclosure of nonparty Sharova's banking and personal information impinges on Sharova's privacy interests, warranting redaction of such information in the absence of any legitimate public interest, if any. These narrow redactions to protect Sharova's private information effectively balances the interests of the public against the privacy interests of the nonparty. Plaintiff, or any party moving to seal/redact, need not demonstrate good cause to redact social security numbers. (See 22 NYCRR 202.70 [g]; 22 NYCRR 202.5 [e] [1] [i].)

However, no good cause exists to redact the transfer information, e.g. date, amount, balance information contained in Exhibit 2, and to a limited extent, Exhibit 3. Plaintiff argues that the alleged potentially prejudicial information depicted in Exhibit 2 i.e., that Sharova may have been paid with funds obtained via the hack at issue, should be redacted but the description that this is prejudicial information is conclusory and is unsupported by any law. Plaintiff very briefly argues that Exhibit 2 should be redacted because it details specific financial transactions; however, account activity related to the deposit and conversion of cryptocurrency, without more, is insufficient to support

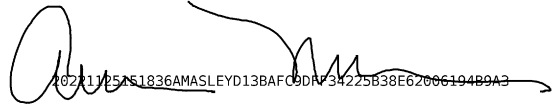
redaction. (See *Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 449 [1st Dept 2018] [citation omitted] [affirming denial of defendant's motion to seal financial and tax information in amended complaint as the disclosures do not involve trade secrets or information that could result in a competitive disadvantage].) Here, for example, there is no argument that the financial information would harm plaintiff's competitive advantage or implicate a trade secret. And, further, as discussed above, any sort of privacy interests or purported prejudicial effect is without further explanation and otherwise unsupported. Therefore, plaintiff has failed to meet its burden to demonstrate that good cause exists to "overcome the broad presumption of public entitlement to judicial proceedings and court records." (*Id.* at 449-50.) Accordingly, plaintiff's request to redact portions of Balthazor's affidavit, Reply Memo, and Opposition Brief that narrate and/or describe Exhibit 2 is denied and plaintiff's request to redact portions of Exhibit 3 that reflect any financial information contained in Exhibit 2 (for which no good cause exists to seal) is also denied.

Accordingly, it is

ORDERED that this motion is granted, in part, with respect to NYSCEF 86 and 126 (as to Exhibit 3) on the condition that plaintiff revise its proposed redactions in accordance with this decision within 7 days of this order and denied in part with respect to NYSCEF 83, 85, 92, 107, 126 (as to Exhibit 2 and related narration), 127, and 128; and it is further

ORDERED that plaintiff shall refile unredacted, publicly available copies of the Opposition Brief, Balthazor affidavit, and Exhibit 2 to the Balthazor affidavit within 7 days of the date of this order; and it is further

ORDERED that the County Clerk shall unseal NYSCEF 107; and it is further
ORDERED that plaintiff shall refile a redacted copy of Exhibit 3 to the Balthazor
affidavit to the extent permitted by this decision and order within 7 days of this order.



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11/25/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	<input type="checkbox"/>
				OTHER	
				REFERENCE	