

Spot & Co. of Manhattan, Inc. v Rudin
2022 NY Slip Op 33980(U)
November 18, 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

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SPOT AND COMPANY OF MANHATTAN, INC.,
Plaintiff,

- v -

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

Defendants.

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INDEX NO. 653623/2020
MOTION DATE N/A
MOTION SEQ. NO. 005 006

**AMENDED
DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 169, 170

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 168, 171

were read on this motion to/for _____ SEAL _____.

In motion sequence number 005, defendants 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, What a Dump Limited Liability Company, and Iowa Stubborn Limited Liability Company move, by order to show cause, to redact

or redact NYSCEF Doc. No. (NYSCEF) 133, 134, 135, 136, 137, and 138.¹ (See NYSCEF 139, Defendants' Sealing Chart.) In motion sequence number 006, plaintiff Spot and Company of Manhattan, Inc. moves, by order to show cause, to redact or seal NYSCEF 155, 156, 157, 159, 160, 161, 162, and 163.² (See NYSCEF 153, Plaintiff's Sealing Chart.) There is no opposition to either motion and there is no indication that the press or public have an interest in this motion.

Defendants' Proposed Redactions and Proposed Documents to be Sealed

Defendants seek to redact NYSCEF 133 and to seal in their entirety NYSCEF 134, 135, 136, 137, and 138. NYSCEF 133 is defendants' letter to the court which references confidential agreements (which are also the subject of this seal motion) and quote confidential information contained in those agreements. NYSCEF 134 is an advertising agreement between defendant No Ice, Inc. (No Ice) and a nonparty advertising vendor, which defendants contend contain confidential and proprietary terms and their disclosure could competitively harm the parties to the agreement. NYSCEF 135 is a settlement agreement between the same parties to the advertising agreement, No Ice and a nonparty advertising vendor, which defendants contend should be sealed in its entirety on the basis that it is a settlement agreement. NYSCEF 136 is the operating agreement of defendant Atticus Limited Liability Company (Atticus). NYSCEF 137 is the operating agreement of defendant Danish San Juan Limited Liability

¹ These documents were also filed under temporary seal as NYSCEF 123, 124, 125, 126, 127, and 128 in connection to defendants' opposition to plaintiff's demand for additional discovery documents.

² Plaintiff filed these same documents under temporary seal as NYSCEF 142, 143, 144, 146, 147, 148, 149, and 150 in connection to their request to compel defendants to produce additional discovery documents.

Company (Danish San Juan) NYSCEF 138 is the operating agreement of nonparty Trio Theatrical Limited Liability (Trio). Defendants contend that NYSCEF 136, 137, and 138 detail the confidential internal operating procedures of Atticus, Danish San Juan, and nonparty Trio, including their business practices, proprietary information relating to the production of Broadway shows, and financial information.

Plaintiff's Proposed Redactions and Proposed Documents to be Sealed

Plaintiff seeks to redact portions of NYSCEF 155 and 159 and seal in their entirety NYSCEF 156, 157, and 160-163. NYSCEF 155 is plaintiff's letter to the court which contains sensitive information concerning the financials between plaintiff and defendants. NYSCEF 156 is an email communication, dated November 14, 2017, between defendant Rudin and plaintiff, which includes prior emails sent to plaintiff by a nonparty advertising vendor dealing containing financial information of the parties and nonparty. NYSCEF 157 is an email communication, dated July 12, 2018, between Rudin, plaintiff, and a nonparty advertising vendor containing confidential information about a dispute over financials, compensation, and the terms of their agreement, which is the subject of defendants' sealing motion (mot. seq. no. 005). NYSCEF 159 is a letter which contains financial information and includes a copy of a news article. NYSCEF 160 is an email communication, dated October 10, 2018, between Rudin and an employee of plaintiff, which plaintiff contends contains sensitive information over the financial workings and relationships of the parties. NYSCEF 161 is an email communication, dated January 15, 2020, between plaintiff and defendants regarding financial workings and relationships of the parties. NYSCEF 162 is an email communication, dated March 4, 2020, that plaintiff contends contain sensitive

information concerning the financial workings and relationships between plaintiff and defendants. NYSCEF 163 is an email communication, dated March 21, 2018, that plaintiff contends contain sensitive information concerning the financial workings and relationships between plaintiff and defendants.

Discussion

“Under New York law, 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] [citations omitted].) However, the public right to access is not absolute and exceptions exist to shield the court documents from public view. (*Id.* at 349.)

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.” (*Mosallem*, 76 AD3d at 350-351.) 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].)

A party’s designation of a document as confidential or restricted, without further explanation or supporting case law, is insufficient to support a finding of good cause to seal court records in whole or in part. (*Mosalleem v Berenson*, 76 AD3d at 345 [noting, rather, that New York courts have found good cause where disclosure of documents could threaten a business’s competitive advantage]; *In re Will of Hoffman*, 284 AD2d 92, 94 [1st Dept 2001] [citation omitted] [explaining that “conclusory claims of the need for confidentiality of settlement agreements are insufficient to seal a record.”]; *Grande Prairie Energy LLC v Alstom Power, Inc*, 5 Misc 3d 1002(A) [Sup Ct, NY County 2004].) Motion Sequence Number 005

Here, defendants have not met their substantial burden in demonstrating that good cause exists to seal in their entirety NYSCEF 134, 136, 137, and 138; defendants’ proposal to seal these documents is overbroad. While good cause exists to redact portions of these documents which certainly contain confidential and proprietary financial information and negotiated terms, there has been no showing of good cause to seal parts of the agreement that do not, for example, identify the parties and nonparties and contains what appears to be boilerplate terms. (See, e.g., NYSCEF 134, Advertising Agreement at 8 [section 8.4]; NYSCEF 136, Atticus Operating Agreement at 41 [section 16.14]; NYSCEF 137, Danish San Juan Operating Agreement at 51 [section 16.14]; NYSCEF 138, Trio Operating Agreement at 15 [section 9.2].)

Good cause exists to seal in its entirety NYSCEF 135, the settlement agreement between a nonparty advertising vendor and No Ice. Although “conclusory claims of the need for confidentiality of settlement agreements are insufficient to seal a record” (*In re Will of Hofmann*, 284 AD2d at 94), a party seeking to seal a settlement agreement can establish good cause by demonstrating that the privacy interest of the parties, third-parties, or nonparties will be implicated if the record is available to the public. (See *Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 449 [1st Dept 2018].) Here, defendants have shown that good cause exists to seal NYSCEF 135 in its entirety as it implicates a nonparty advertising vendor and the settlement agreement contains many confidential and financial items, the disclosure of which could not only harm No Ice but a nonparty to this action.

Defendants have demonstrated that good cause exists to narrowly redact certain portions of NYSCEF 133. Defendants have sought a narrow redaction pertaining to identified confidential agreements and quoted confidential information. This tailored redaction effectively balances the interests of the public with the interest of the parties in keeping private their nonpublic and sensitive business and financial information. (See *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 9 [1st Dept 2010].)

Motion Sequence Number 006

Here, plaintiff has demonstrated good cause to narrowly redact NYSCEF 155 and 159 as both documents contain financial information and payment terms, confidential information relating to the operation, financial or otherwise, of several Broadway shows and films, and references business terms contained within pertinent

agreements. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Plaintiff has also shown good cause exists to seal NYSCEF 161 and 163, email communications that contains personal information, confidential negotiated terms, and financial information. (*Id.*) Additionally, there has been no showing of legitimate public concern in these terms to counterbalance the interests of the parties in keeping private their nonpublic business and financial information. (See *Dawson*, 184 AD2d at 247 [1st Dept 1992].)

However, with regarding to NYSCEF 156, 157, 160, 162, and 163, which are all email communications between various parties including plaintiff, defendants, and nonparty(s), 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). For example, NYSCEF 162 contains many communications that do not implicate any purported sensitive financial information; many of the emails were sent to set up a meeting or call time between the parties. NYSCEF 160 also does not contain sensitive financial information or any other confidential information that otherwise permeates the entire email communication to warrant the wholesale sealing of the document. “Neither the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records.” (*Mosallem*, 76 AD3d at 351.) To the extent that plaintiff seeks to keep private its confidential business terms, financial information, and confidential identifiable information of the parties, the disclosure of which would cause competitive harm, plaintiff has demonstrated that good cause exists.

Accordingly, it is

ORDERED that motion sequence number 005 is granted in part and denied in part with respect to NYSCEF Doc. Nos. 134, 136, 137 and 138. Defendants shall file NYSCEF Doc. Nos. 134, 136, 137 and 138 publicly by July 15, 2022 unless they file a new OSC giving reasons for their requests in accordance with this decision prior to July 15, 2022; and it is further

ORDERED that as a redacted version of NYSCEF Doc. No. 133 has already been filed publicly and unredacted copies under seal, defendants need not re-file duplicates; and it is further

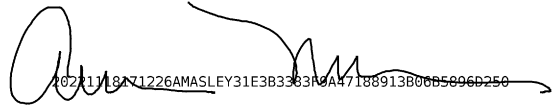
ORDERED that motion sequence number 006 is granted in part and denied in part with respect to NYSCEF Doc. Nos. 156, 157, 160, 162, and 163. Plaintiff shall file NYSCEF Doc. Nos. 156, 157, 160, 162, and 163 publicly by July 15, 2022 unless it files a new OSC giving reasons for its request in accordance with this decision prior to July 15, 2022; and it is further

ORDERED that as redacted versions of NYSCEF Doc. No. 155 and 159 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 seal NYSCEF Doc. Nos. 123, 125, 133, 135, 142, 146, 155, and 158; 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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11/18/2022
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