

<b>Urban Commons 2 W. LLC v Battery Park City Auth.</b>
2022 NY Slip Op 33992(U)
November 25, 2022
Supreme Court, New York County
Docket Number: Index No. 656505/2022
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART 48

Justice

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URBAN COMMONS 2 WEST LLC, URBAN COMMONS 2 WEST II LLC, URBAN COMMONS 2 WEST III LLC, and URBAN COMMONS 2 WEST IV LLC,

Plaintiffs,

- v -

BATTERY PARK CITY AUTHORITY DBA THE HUGH L. CAREY BATTERY PARK CITY AUTHORITY, and BPC LENDER, LLC,

Defendants.

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INDEX NO. 656505/2022
MOTION DATE N/A
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 57, 58, 59, 60, 62, 63, 65

were read on this motion to/for SEAL

In motion sequence number 002, plaintiffs move, by order to show cause, to redact portions of NYSCEF Docs. No. (NYSCEF) 44, 46, 48, 50 and 52<sup>1</sup> pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. The motion is unopposed. There is no indication that the press or public have an interest in these matters.

NYSCEF 44 is a letter dated June 23, 2022. NYSCEF 46 is a letter dated June 16, 2022. NYSCEF 48 is a letter dated June 24, 2022. NYSCEF 50 is letter dated July 7, 2022. NYSCEF 52 is a letter dated July 8, 2022. All of the documents contain the names of lenders or investors. NYSCEF 44, 46, 48, and 52 also contain information such as addresses or phone numbers that could be used to identify those lenders or

<sup>1</sup> Publicly redacted versions of these documents are filed at NYSCEF 43, 45, 47, 49, and 51.

investors. NYSCEF 44, 46 and 50 contain loan terms including amounts loaned or equity purchased. NYSCEF 48 and 52 contain financial information of third parties. Plaintiffs seek to redact these documents on the grounds that they contain highly sensitive nonpublic information of third parties and proprietary loan terms, and disclosure of the information could hinder plaintiffs' business relationship with these third parties and could put plaintiffs at a competitive disadvantage. (NYSCEF 58, Woods aff ¶ 46.) Plaintiffs assert there is no public interest in the disclosure of this financial information.

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) Except 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 of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

“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].) The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

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 [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.” (*D'Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

The court finds good cause exists to redact the financial information, lender identities, and business terms contained in NYSCEF 44, 46, 48 and 52. Plaintiffs have demonstrated that revealing this information could put them at a competitive disadvantage. (See *Mosallem*, 76 AD3d at 350-351 [internal citations omitted].) Moreover, there has been no showing of legitimate public concern (see *Dawson*, 184 AD2d at 247 [1st Dept 1992]), and the requested redactions are narrowly tailored. (See *Danco Lab, Ltd.*, 274 AD2d at 6.) Plaintiffs have also demonstrated good cause to redact the financial information of third parties contained in NYSCEF 48 and 52, which are of minimal public interest. (See *Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 815-816 [Sup Ct, NY County 1991], *affd* 183 AD2d 678 [1st Dept 1992].)

Plaintiffs have also demonstrated good cause to redact the investor identity and capital contribution amount on page 1 of NYSCEF 50. However, plaintiffs have not demonstrated good cause to redact the loan terms on page 2, because they left the

same loan terms unredacted in NYSCEF 46 and have not provided any reason for a distinction.

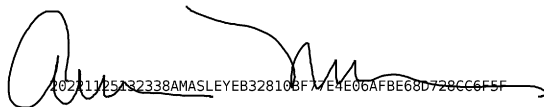
Accordingly, it is

ORDERED, that motion sequence number 002 is granted, in part, and the New York County Clerk, upon service to him of this order, shall permanently seal NYSCEF 44, 46, 48, 50 and 52; and it is further

ORDERED, that within 10 days of this order, plaintiffs shall file a new publicly redacted copy of NYSCEF 50 which contains only the proposed redactions on page 1 of that document and no redactions on page 2; and it is further

ORDERED, that 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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11/25/2022

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