

Dyal Capital Partners (A) LP v Jana Partners LLC

2023 NY Slip Op 30238(U)

January 23, 2023

Supreme Court, New York County

Docket Number: Index No. 650630/2020

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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DYAL CAPITAL PARTNERS (A) LP, DYAL CAPITAL PARTNERS (B) LP, DYAL CAPITAL PARTNERS II (A) LP, DYAL CAPITAL PARTNERS II (B) LP, DYAL JAMES CO-INVESTMENT PARTNERS A LP, DYAL JAMES CO-INVESTMENT PARTNERS B LP,

Plaintiff,

- v -

JANA PARTNERS LLC, BARRY ROSENSTEIN, DAVID DIDOMENICO, CHARLES PENNER, SCOTT OSTFELD, JAAR, LLC, DAVID M. DIDOMENICO 2012 IRREVOCABLE TRUST, OLIVIA W. DOUGLAS 2012 IRREVOCABLE TRUST, SCOTT OSTFELD 2010 GRAT FAMILY TRUST

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 268, 270

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 008) 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290

were read on this motion to/for SEAL

In Motion Sequence 6, defendants' JANA Partners LLC, Barry Rosenstein, David DiDomenico, Charles Penner, Scott Ostfeld, JAAR, LLC, David M. DiDomenico 2012 Irrevocable Trust, Olivia W. Douglas 2012 Irrevocable Trust, and Scott Ostfeld 2010 GRAT Family Trust move to redact certain information filed on the NYSCEF docket in connection with their motion for summary judgment (Motion Sequence No. 7).

In Motion Sequence 8, plaintiffs Dyal Capital Partners (A) LP, Dyal Capital Partners (B) LP, Dyal Capital Partners II (A) LP, Dyal Capital Partners II (B) LP, Dyal James Co-Investment

Partners A LP, and Dyal James Co-Investment Partners B LP move to redact information filed on the NYSCEF docket in connection with the motion for summary judgment and defendants' related order to show cause (Motion Sequences 6 and 7). Both motions are unopposed.

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal or redact a filing "upon a written finding of good cause, which shall specify the grounds thereof." "[T]he court shall consider the interests of the interests of the public as well as of the parties" in determining whether there is good cause (22 NYCRR § 216 [a]). The Court must balance the risk of privacy concerns stemming from public access to the information against the "compelling public interest in exposure of this information," if any (*see MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 WL 450030, *9 (Sup Ct, NY County Jan. 3, 2013)). The moving party has the burden to set forth compelling circumstances to justify restricting public access and must demonstrate "a sound basis or legitimate need to take judicial action" (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 6 [1st Dept 2000]). "[T]here is a broad presumption that the public is entitled to access to . . . court records" (*Mosallem v Berenson*, 76 AD3d 345, 348-350 [1st Dept 2010]).

The court has reviewed the filings that the parties seek to redact. Motion Sequences 6 and 8 are granted. The parties have established good cause to redact the requested documents and information, which include sensitive and proprietary information, financial information, business strategy information, and investment information. Additionally, the parties have established that the public would have little to no interest in the protected information.

Accordingly, it is

ORDERED that Motion Sequence Nos. 6 and 8 to redact information from certain documents are granted, and within seven (7) days of the date this Order is served upon the Clerk

of the Court, the parties shall refile the following documents in the redacted form proposed in support of Motion Sequence 8, and the County Clerk shall maintain foregoing documents in such redacted form: NYSCEF Doc. Nos. 182, 186, 187, 188, 198, 199, 202, 207, 248, 252, 257, 259, 265; and it is further

ORDERED that the parties' motions to redact information from certain documents is granted, and within seven (7) days of the date this Order is served upon the Clerk of the Court, the parties shall refile the following documents in the redacted form proposed in Motion Sequence 6, and the County Clerk shall maintain the foregoing documents in such redacted form: NYSCEF Doc. Nos. 162, 164, 165, 166, 167, 170, 171, 173, 174, 175, 177, 178, 179, 181, 183, 184, 185, 190, 191, 192, 193, 195, 196, 197, 200, 201, 205, 206, 209, 210, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 244, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 256, 258, 260, 261, 262, 263, 264, 266, 267; and it is further

ORDERED that, upon service of a copy of this Order upon the Clerk of the Court, the Clerk shall cause and permit the following documents submitted in support of Motion Sequences 6 and 8 to be and remain filed under seal as the Confidential Chambers' copies: NYSCEF Doc. Nos. 88-159, 278-289; and it is further

ORDERED that until further Order of the Court, the Clerk of the Court shall deny access to the foregoing sealed documents and redacted information to anyone other than authorized court personnel, staff of the Clerk of the Court, counsel of record for any party to this case, and any party, provided that the Clerk of the Court shall not seal or redact any documents not referenced in this Order, or as otherwise described below, or as set forth in another Order of this Court; and it is further

ORDERED that any redacted document field in the NYSCEF docket must always be accompanied by an unredacted Court Copy (*see* Part Rule 7); the parties must ensure that there is a publicly available redacted copy [unsealed] and a wholly redacted court copy [under seal] of all documents maintained in the NYSCEF Docket; and it is further

ORDERED that any future submissions, made by any party, which contain the information/subject matter that the court has authorized to be filed in redacted form by this Order may be filed in redacted form on NYSCEF, provided that in all instances an unredacted copy of any redacted document is contemporaneously filed under seal in compliance with the Part 60 Practices and Procedures (*see* Part Rule 7); and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redacting of any documents or evidence to be offered at trial; and it is further

ORDERED that such service upon the County Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-filing" page on the court's website - www.nycourts.gov/supctmanh).

1/23/23
DATE


MELISSA A. CRANE, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: