

Seaport Mgt. Dev. Co., LLC v Shop Architects, P.C.

2023 NY Slip Op 30949(U)

March 26, 2023

Supreme Court, New York County

Docket Number: Index No. 657263/2019

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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SEAPORT MANAGEMENT DEVELOPMENT COMPANY,
LLC,

Plaintiff,

- v -

SHOP ARCHITECTS, P.C., HUNTER ROBERTS
CONSTRUCTION GROUP, LLC, and SCHNEIDER
ELECTRIC SYSTEMS USA, INC.,

Defendants.

INDEX NO. 657263/2019

MOTION DATE N/A

MOTION SEQ. NO. 013

**DECISION + ORDER ON
MOTION**

-----X

SHOP ARCHITECTS, P.C.,

Plaintiff,

-against-

SCHNACKEL ENGINEERS, INC.,

Defendant.

Third-Party
Index No. 595060/2020

-----X

HUNTER ROBERTS CONSTRUCTION GROUP, LLC,

Plaintiff,

-against-

B&G ELECTRICAL CONTRACTORS OF NEW YORK,

Defendant.

Second Third-Party
Index No. 595178/2020

-----X

HUNTER ROBERTS CONSTRUCTION GROUP, LLC,

Plaintiff,

-against-

ENCLOS CORP.,

Defendant.

Third Third-Party
Index No. 595713/2020

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 013) 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 499, 500

were read on this motion to/for

SEAL

Upon the foregoing documents, it is

In motion sequence number 013, plaintiff Seaport Management Development Company, LLC moves, by order to show cause, to file under seal NYSCEF 420-428, and to file with redactions NYSCEF 429, 431, 433, 435, and 437¹, pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. Defendant SHoP Architects, P.C. (SHoP) responded to this motion with an affirmation. The court has not been contacted by the press or public in regard to this action.

NYSCEF 420 is the Expert Report of Margulies Hoelzli dated September 6, 2022. Plaintiff seeks to seal the entire expert report.

NYSCEF 421 is an email dated June 23, 2021 attaching the January 1, 2015 Development Management Agreement between South Street Seaport Limited Partnership (South Street) and plaintiff. Plaintiff seeks to seal the entire email and attachment.

NYSCEF 422 is the Amended and Restated Agreement of Lease between the City of New York and South Street, dated June 27, 2013 (the NY/Seaport Lease). Plaintiff seeks to seal the entire agreement.

NYSCEF 423 is the First Amendment to the NY/Seaport Lease. Plaintiff seeks to seal the entire agreement.

¹ Publicly redacted copies of these documents are filed at NYSCEF 430, 432, 434, 436, and 438.

NYSCEF 424 is the Second Amendment to the NY/Seaport Lease. Plaintiff seeks to seal the entire agreement.

NYSCEF 425 is the Third Amendment to the NY/Seaport Lease. Plaintiff seeks to seal the entire agreement.

NYSCEF 426 is a Lease between South Street and HHC Pier Village, LLC dated January 15, 2019. Plaintiff seeks to seal the entire agreement.

NYSCEF 427 is, according to plaintiff, an excel spreadsheet “listing Seaport’s costs and expenses from switchgear malfunction.” (NYSCEF 439, memorandum of law at 2.) Plaintiff seeks to seal the entire spreadsheet.

NYSCEF 428 is a Lease between South Street and NEP Image Group, LLC, dated October 3, 2017. Plaintiff seeks to seal the entire lease.

NYSCEF 429, 431, and 433 contain excerpts from the deposition of George Giaquinto, dated January 20, 2022, October 7, 2021, and January 19, 2022. Plaintiff seeks to redact “[n]on-public financial and business terms of the Seaport’s lease agreements” (NYSCEF 440, sealing chart at 8.)

NYSCEF 435 is plaintiff’s responses and objections to SHoP’s interrogatories directed to plaintiff. Plaintiff seeks to redact “[n]on-public financial and business information of Seaport.” (NYSCEF 440, sealing chart at 9.)

NYSCEF 437 is an email chain dated August 1, 2018 through July 18, 2019. Plaintiff seeks to redact “[n]on-public financial and business information of Seaport relating to rental pricing.” (NYSCEF 440, sealing chart at 10.)

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].)

Plaintiff asserts that the documents at issue contain “commercially sensitive business terms and financial information regarding [plaintiff] and its tenants” that “could cause competitive harm to [plaintiff] and its tenants.” (NYSCEF 439, memorandum at 3.) Plaintiff further states that “disclosure of the economic terms [plaintiff] was willing to accept in [the leases] could disadvantage Seaport in future negotiations of similar agreements with third parties” and that “disclosure of sensitive rental terms would reveal business strategies concerning how [plaintiff’s] tenants approach commercial real estate, which would cause competitive harm to these tenants.” (*Id.* at 5.) Plaintiff further asserts that there is no legitimate public interest in the information at issue.

Plaintiff’s motion is denied. First, plaintiff has not demonstrated good cause to seal NYSCEF 420 through 428 in their entirety. Plaintiff asserts that these documents have information that, if revealed, would cause competitive harm to plaintiff and its tenants, but plaintiff fails to point to any particular portions of these documents that are competitive, other than generally pricing. Plaintiff also asserts a concern over “nondisclosure obligations” in its memorandum but fails to point to any particular obligations. Moreover, SHoP’s counsel’s affirmation suggests many portions of these documents are not confidential. Specifically, counsel states that NYSCEF 423, 424, and 425 are “contract documents with New York City that presumably would be subject to an open records request” (NYSCEF 499, Schwartz aff ¶ 13) and portions of NYSCEF 422 have already been publicly filed at NYSCEF 254. (*Id.* ¶ 10-11.) Plaintiff also has not demonstrated good cause for the redactions it seeks in NYSCEF 429, 431, 433, 435, and 437. While certain portions of the proposed redactions may contain

confidential terms, plaintiff does not provide sufficient basis for the court to make a determination that the redactions are narrowly tailored.

Thus, to the extent plaintiff seeks to redact any of the documents at issue here, it must provide descriptions of the particular redactions, what the information covered by each redaction is, and why it is confidential and/or would be competitively harmful to plaintiff if revealed. Plaintiff shall also provide an affidavit from a person with knowledge to explain the necessity of the redactions it seeks.

Finally, SHoP's counsel requests that the court remove the seal on NYSCEF 457. According to SHoP's counsel, NYSCEF 457 is not the document that SHoP thought plaintiff would object to filing publicly and is actually a different document. (NYSCEF 499, Schwartz aff ¶¶ 28-31.) As plaintiff has not filed any objection to unsealing NYSCEF 457, and has not moved to seal NYSCEF 457, the document will be unsealed.

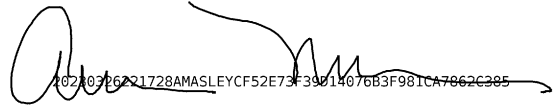
Accordingly, it is

ORDERED that motion sequence number 013 is denied without prejudice; and it is further

ORDERED that within 30 days of this order, this court will direct the County clerk to unseal NYSCEF 420-428, 429, 431, 433, 435, and 437, as well as any copies of those documents, or documents citing to those documents, filed under seal in support of motion sequence numbers 014 or 015, unless a party files a new OSC in accordance with this decision; and it is further

ORDERED that the County Clerk is directed to unseal NYSCEF 457; and it is further

ORDERED that a copy of this order be served on the County Clerk 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).



3/26/2023
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