

**260-261 Madison Ave. LLC v  
WeWork 261 Madison LLC**

2023 NY Slip Op 30989(U)

March 29, 2023

Supreme Court, New York County

Docket Number: Index No. 654806/2021

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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260-261 MADISON AVENUE LLC,  
  
Plaintiff,

- v -

WEWORK 261 MADISON LLC, ADAM NEUMANN,  
WEWORK INC., WW HOLDCO LLC, THE WE COMPANY  
MC LLC, THE WE COMPANY MANAGEMENT  
HOLDINGS L.P., WEWORK COMPANIES LLC, THE WE  
COMPANY MANAGEMENT LLC, WE WORK  
MANAGEMENT LLC, WW BUILDCO LLC

Defendants.

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INDEX NO. 654806/2021  
  
MOTION DATE 12/16/2022  
  
MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 94, 95, 115, 116, 117

were read on this motion to SEAL.

Defendant WeWork 261 Madison LLC (“Defendant”) moves for an order sealing and/or redacting certain information contained in Plaintiff 260-261 Madison Avenue LLC’s (“Plaintiff”) motion for leave to amend its Complaint: the Affirmation of Andrew L. Kincaid (filed at NYSCEF 33, 41, and 42 [“Kincaid Aff”]); Plaintiff’s proposed Amended Summons and Complaint (filed at NYSCEF 34, 43, and 44 [“Amended Complaint”]); Plaintiff’s Memorandum of Law in Support of its Motion for Leave to Amend the Complaint (filed at NYSCEF 37, 47, and 48 [“MOL”]); Proposed Amended Complaint against Original Complaint (filed at NYSCEF 36 and 45 [“Readline”]), as well as certain documents filed in support of this sealing motion (NYSCEF 39, 50, and 51). Plaintiff opposes this motion. For the following reasons Defendant’s motion to seal and/or redact is **granted in part**.

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing “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” (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that “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]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed the proposed redactions in the Kincaid Aff, Amended Complaint, Redline, and MOL and finds that *some* redactions comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive non-public about Defendant and other non-parties, including confidential business strategy, plans, and operations of the non-party WeWork affiliates. Specifically, Defendant may maintain the following under redactions: Kincaid Aff. ¶¶ 10, 18, 20, 21; Amended Complaint ¶¶ 3, 28, 30, 31, 40, 41; Redline ¶¶ 3, 28, 30, 31, 40, 41; MOL pp. 1, 3, 5-7, 10, 12. Defendant has proposed and

justified targeted redactions that satisfy the requirements of 22 NYCRR § 216.1 (a) for these redactions.

However, the proposed redactions relating to individuals that were or are employed by Defendants and/or Defendant's affiliates (Kincaid Aff. ¶ 16, Amended Complaint ¶ 15, Redline ¶ 15, MOL pp. 5,10) are denied as the names of the WeWork employees included in the Amended Complaint are not confidential. Furthermore, the mere fact that Plaintiff issued subpoenas to nonparties, who are not identified by name in the Amended Complaint is not confidential (Kincaid Aff. ¶ 15, MOL p. 4), nor are references to personal property that WeWork allegedly left at Plaintiff's premises after breaching its lease ("Kincaid Aff." ¶¶ 13, 19; Amended Complaint ¶ 33, Redline ¶ 33, MOL pp. 4, 5, 10).

The Court also finds no basis for sealing NYSCEF 39 and 50 which is Defendant's sealing spreadsheet and affirmation in support of this motion. To the extent NYSCEF 51, Defendant's moving brief, contains any confidential information, Defendant may refile NYSCEF 51 with narrowly tailored redactions.

Accordingly, it is:

**ORDERED** that the motion is **GRANTED IN PART**; it is further

**ORDERED** that the County Clerk shall maintain NYSCEF Document Numbers 42, 44, 46, and 48 in their current, redacted form; it is further

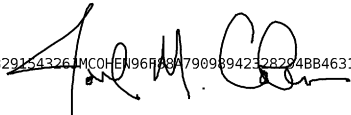
**ORDERED** that the County Clerk shall maintain NYSCEF 33, 34, 36, 37, 41, 43, 45 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

**ORDERED** that the County Clerk will unseal NYSCEF 39 and 50; it is further

**ORDERED** that Plaintiff shall file redacted versions of NYSCEF 33, 34, 36, 37, and 51 in accordance with the Court’s direction above within ten (10) business days of the date of this Order; it is further

**ORDERED** as it related to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; and it is further

**ORDERED** that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

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JOEL M. COHEN, J.S.C.

3/29/2023  
DATE

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