

Natixis, N.Y. Branch v 20 TSQ Lessee LLC

2023 NY Slip Op 31039(U)

March 30, 2023

Supreme Court, New York County

Docket Number: Index No. 850272/2019

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

NATIXIS, NEW YORK BRANCH, CATHAY LIFE INSURANCE CO., LTD., NONGHYUP BANK, NONGHYUP BANK NEW YORK BRANCH, NONGHYUP BANK, NONGHYUP BANK, KEB HANA BANK NEW YORK AGENCY, HAREL - 20 TIMES SQUARE - GENERAL PARTNERSHIP, CHANG HWA COMMERCIAL BANK, LTD., LOS ANGELES BRANCH, CHINA MERCHANTS BANK CO., LTD., NEW YORK BRANCH, VIOLET PROTECTED ASSET SPC,

Plaintiffs,

- v -

20 TSQ LESSEE LLC, 20 TSQ SIGN LLC, MARK SIFFEN, NAVILLUS TILE, INC., FACADE TECHNOLOGY, LLC, SERVICE GLASS & STORE FRONT CO., INC., SIGNATURE METAL & MARBLE MAINTENANCE, L.L.C., HARDER SERVICES, INC., METAL SALES CO., INC., FACADE MAINTENANCE SYSTEMS LLC, TEXAS SCENIC COMPANY, INC., PENGUIN MAINTENANCE AND SERVICES, INC., SOLAR ELECTRICAL SYSTEMS, INC., AF SUPPLY CORPORATION, SAFWAY ATLANTIC, LLC, TREX COMMERCIAL PRODUCTS, INC., B.A.C.C. BUILDERS INC., 20 TSQ GROUND CO LLC, CNY CONSTRUCTION 701 LLC, ZURICH AMERICAN INSURANCE COMPANY, FIDELITY AND DEPOSIT COMPANY OF MARYLAND, MAEFIELD DEVELOPMENT INC., R & S UNITED SERVICES, INC. S/H/A JOHN DOE, OTIS ELEVATOR COMPANY, MAEFIELD DEVELOPMENT CORP., CNY BUILDERS LLC, G-CNY GROUP LLC, CNY GROUP LLC, CNY CONSTRUCTION LLC, KENNETH COLAO, STEVEN COLAO, DENNIS PRUDE,

Defendants.

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 019) 888, 889, 890, 891, 892, 893, 894, 895, 897, 899, 900, 901

were read on this motion to

SEAL AND/OR REDACT

Defendants 20 TSQ Lessee LLC, 20 TSQ Sign LLC, and Mark Siffin (collectively, the "TSQ Defendants") move for an order sealing and/or redacting Exhibit 3 to the Affirmation of

Gavin D. Schryver (the “Schryver Affirmation”) (NYSCEF 864), filed in connection with TSQ Defendants’ Memorandum of Law in Opposition to Natixis’ Motion for Substitution, to Confirm Referee’s Report of Sale and for Entry of a Deficiency Judgment (the “Natixis Motion”) (Mot. Seq. 018), and for an order provisionally sealing its Memorandum of Law in Opposition to the Natixis Motion (NYSCEF 858) and Exhibits 2, 4, 5, 6, 7, 8, 11, 12, and 13 to the Schryver Affirmation. In response, Plaintiffs seek an order permanently sealing and/or redacting Exhibits 11, 12, and 13 to the Schryver Affirmation (NYSCEF 879, 881, 883) and TSQ Defendants’ Opposition to the Natixis Motion (NYSCEF 858). For the following reasons, the motion 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 TSQ Defendants’ proposed sealing and/or redactions to the document identified as Exhibit 3 to the Schryver Affirmation (NYSCEF 864) and finds that they comport with the applicable sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that they contain non-public confidential contracts or agreements with non-parties (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [“disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein”]).

Further, the Court has reviewed Plaintiffs’ proposed sealing and/or redactions to the documents identified as Exhibits 11, 12, and 13 to the Schryver Affirmation (NYSCEF 878, 880, 882) and finds that they contain proprietary and highly sensitive non-public information, the “disclosure [of which] could harm [non-party Marriott’s] competitive standing” (*Mancheski v Gabelli Grp. Cap. Partners*, 39 AD3d 499, 502 [2d Dept 2007]).

Finally, the Court has reviewed the proposed redactions to TSQ Defendants’ Memorandum of Law in Opposition to the Natixis Motion (NYSCEF 859) and finds the redactions identified by Plaintiffs in their redaction chart (NYSCEF 900) are appropriate in that they contain proprietary and highly sensitive non-public information about non-party Marriott. However, the Court finds no basis for the remaining redactions that refer to Exhibits 2, 4, 5, 6, 7, and 8 to the Schryver Affirmation. Therefore, Plaintiffs are directed to file a redacted version of NYSCEF 859 that redacts only the references to Exhibits 11, 12, and 13 of the Schryver Affirmation.

Accordingly, it is:

ORDERED that TSQ Defendants' motion to seal and/or redact is **granted in part**; it is further

ORDERED that the Clerk shall maintain the documents filed as NYSCEF Document Numbers 859, 864, 878, 880, 882, and 892 under seal so that they may only be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that the Clerk shall maintain the documents filed as NYSCEF Document Numbers 858, 865, 879, 881, 883, and 893 in their current, redacted form; it is further

ORDERED that the Clerk is directed to unseal the documents filed as NYSCEF Document Numbers 862, 863, 866, 867, 868, 869, 870, 871, 872, 873, 874, and 875. These documents were provisionally filed under seal by TSQ Defendants, but Plaintiffs have not sought to permanently seal these documents; it is further

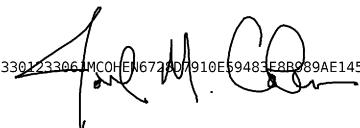
ORDERED that Plaintiffs file a redacted version of the document filed as NYSCEF 859 that comports with the proposed redactions identified in Plaintiffs' sealing chart filed in connection with this motion (NYSCEF 900); it is further

ORDERED that as it relates to future submissions, made by any party, that contain subject matter that the court has authorized to be sealed by this Decision and 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 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.

This constitutes the Decision and Order of the Court.

20230330123306 JMC0HEN1672807910E59483E8B989AE1459CD794



3/30/2023

DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: