

Ashkenazy v Gindi
2023 NY Slip Op 32104(U)
June 25, 2023
Supreme Court, New York County
Docket Number: Index No. 656277/2020
Judge: Andrea Masley
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In motion sequence number 004, plaintiffs/counterclaim-defendants (the Ashkenazy Parties) move, pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts, to seal NYSCEF Doc. Nos. (NYSCEF) 303-304¹ and redact NYSCEF 307.

In motion sequence number 007, defendants/counterclaim-plaintiffs (the Gindi Parties) move to seal NYSCEF 308-309 and redact NYSCEF 311-312.

In both seal motions, the parties seek to seal exhibits filed in connection to motion sequence number 006, which is the Ashkenazy Parties' motion to dismiss the Gindi Parties' counterclaims and redact the memoranda of law or affidavits that reference these exhibits purportedly containing confidential or proprietary information. There is no indication that the public or press have an interest in this matter.

Legal Standard

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

¹ NYSCEF 303-304 are placeholders. The texts of NYSCEF 303-304 are filed under temporary seal at NYSCEF 248-249, respectively.

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].)

Discussion

As discussed below, both motions are denied as overbroad.

Motion Sequence Number 004

The Ashkenazy Parties seek to seal NYSCEF 303-304, exhibits filed to the Gindi Parties’ opposition memorandum (Opp. Memo).

NYSCEF 303 is a September 2012 email thread between Joel Suskin and Hymie Mishan. The Ashkenazy Parties seek to seal this email as it discloses loan terms, including payment amounts and timing of payments. (NYSCEF 247, sealing chart.) NYSCEF 304 is an August 2012 email thread between Janet Fleming and Suskin. The

Ashkenazy Parties seek to seal this email because the terms of a promissory note are disclosed, including Ashkenazy's analysis concerning the timing of payments, amounts due and source of funds. (*Id.*) NYSCEF 307 is a redacted Opp. Memo that references the purportedly confidential information to be sealed in NYSCEF 303-304. NYSCEF 250 is the unredacted copy of NYSCEF 307.

The Ashkenazy Parties contend that the disclosure of the loan and promissory note terms would cause Ashkenazy, a private real estate investment firm, competitive harm as the public would gain access to Ashkenazy's strategy for structuring their loans. The Ashkenazy Parties have demonstrated good cause to narrowly redact, but not to entirely seal the email chains, financial information and negotiated terms related to Ashkenazy's loans and sources of funding. (*See Dawson*, 184 AD2d at 247.) There has been no showing of public interest to outweigh the Ashkenazy Parties' interest in keeping the loan arrangement and amounts private. (*Id.*) The Ashkenazy Parties, however, have not demonstrated any good cause, nor could they, to prevent the disclosure of the names of the sender or recipient, names of the parties to this action referenced in these email chains, dates, or questions, answers, or other responses contained in the email threads that do not implicate confidential information found in the email threads.² The Ashkenazy Parties are directed to publicly e-file and email proposed narrow redactions of NYSCEF 303 and 304 in accordance with this decision

² A motion is not necessary to redact confidential personal information (CPI) pursuant to Section 202.5(e) of the Uniform Civil Rules for the Supreme Court and County Court, should there be any. Upon resubmission, to the extent that a movant seeks to redact personal contact information of the sender/recipients of emails, where there is no legitimate public interest in this information, movant may do so.

within 7 days of the date of this order. If narrowly tailored redactions are not submitted, the court will direct the County Clerk to unseal NYSCEF 303 and 304.

Motion Sequence Number 007

The Gindi Parties seek to seal two exhibits filed in connection with the Ashkenazy Parties' reply memorandum (Reply Memo) and redact portions of the Reply Memo and accompanying affidavit that reference the information contained in the exhibits. NYSCEF 311 is an August 2014 email between Raymond Gindi and Mishan, containing investment terms, projections, financials, information concerning the structure of the investments, and Gindi's analysis of the investments. (NYSCEF 318, sealing chart.) NYSCEF 312 is an email from December 2012 between Mishan and Sultan, containing investment terms, information revealing the structure of the investment, tax treatment information, and strategic considerations. (*Id.*)

NYSCEF 308 is the Reply Memo that references the information above and NYSCEF 309 is the affirmation of Kevin A. Cyrulnik, Esq., counsel for the Ashkenazy Parties, that describes the substance of both NYSCEF 311 and 312.

As a preliminary matter, the court denies the motion to seal or redact NYSCEF 312. NYSCEF 319, filed in connection with the seal motion, is supposed to be a copy of NYSCEF 312 with proposed redactions highlighted, or in this case, since the Gindi Parties are seeking to seal this document, merely a copy of NYSCEF 312. However, NYSCEF 319 is not the same document as NYSCEF 312; in addition to the email, NYSCEF 319 includes two extra pages—a page of handwritten notes and a spreadsheet. Thus, the request to seal NYSCEF 312 is denied as procedurally

improper. The Gindi Parties have 7 days from the date of this order to seek this relief again. If no OSC is filed, the court will direct the County Clerk to unseal NYSCEF 312.

With regard to NYSCEF 311, the Gindi Parties contend that the disclosure of the information contained in this email would provide their competitors with an unearned advantage and harm their competitive position because these documents reveal the properties' financials, deal structures and related strategies, and analyses of their investments. Consistent with the analysis above, the Gindi Parties have also demonstrated good cause to narrowly redact—but not to seal the entire email—financial information, tax information, and business strategies that would impinge upon the Gindi Parties' competitive edge. (See *Dawson*, 184 AD2d at 247; *Mosallem*, 76 AD3d at 350 [citations omitted].) The Gindi Parties are directed to publicly e-file and email proposed narrow redactions of NYSCEF 311 in accordance with this decision within 7 days of the date of this order.

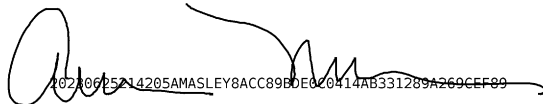
Accordingly, it is

ORDERED that motion sequence number 004 is granted to the extent that the County Clerk is directed to seal NYSCEF 250; and it is further

ORDERED that the Ashkenazy Parties are directed to publicly e-file and email proposed narrow redactions of NYSCEF 303 and 304 in accordance with this decision within 7 days of the date of this order; and it is further

ORDERED that motion sequence number 007 is granted to the extent that the County Clerk is directed to seal NYSCEF 308 and 309; and it is further

ORDERED that the Gindi Parties are directed to publicly e-file and email proposed narrow redactions of NYSCEF 311 in accordance with this decision within 7 days of the date of this order.



6/25/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

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SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

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SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE