

**Premiere Bobine, Inc. v Hi-Fi Asset Acquisition Co.
L.P.**

2023 NY Slip Op 32449(U)

July 13, 2023

Supreme Court, New York County

Docket Number: Index No. 654303/2022

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

PREMIERE BOBINE, INC.,

Plaintiff,

- v -

HI-FI ASSET ACQUISITION CO. L.P.,

Defendant.

INDEX NO. 654303/2022

MOTION DATE _____

MOTION SEQ. NO. 002 004 005

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 93, 94, 95, 96, 97, 98, 106

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 100, 101, 102, 103, 104, 105, 107, 109

were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 002, defendant moves, by order to show cause (OSC), to redact NYSCEF Doc. Nos. (NYSCEF) 10, 16-24, 26, and 28¹ and to seal

¹ Publicly redacted copies of these documents are filed at NYSCEF 52, 58, 60, 62, 64, 66, 68, 70, 72, 74, and 82. The court notes that, contrary to defendant's sealing chart, NYSCEF 80 and 81 do not appear to match the documents filed at NYSCEF 26, because the invoices attached to the last email are different. To the extent defendant seeks to file a new OSC as required by this order, it must clarify why such a distinction exists and address proposed redactions in NYSCEF 26 as well as 80 and 81.

NYSCEF 13 and 14². In motion sequence number 004, plaintiff moves to redact NYSCEF 92³. In motion sequence number 005, defendant moves by OSC to redact NYSCEF 99⁴. The motions are unopposed. There is no indication that the press or public have an interest in these matters.

Motion Sequence Number 002

NYSCEF 10 is defendant's memorandum of law in support of its motion to dismiss the complaint (Memorandum in Support). Defendant seeks to redact portions of the Memorandum in Support that quote the Asset Purchase and Sale Agreement between plaintiff and KMR Music Royalties II SCSP⁵ dated November 23, 2020 (NYSCEF 13, APA) and the amendment thereto dated July 6, 2021 (NYSCEF 14, Amendment).

NYSCEF 13 is the APA. Defendant seeks to seal the APA in its entirety. Defendant also seeks, as an alternative to sealing, to redact only the account numbers contained therein, except for the last four digits. (NYSCEF 55⁶.)

² Defendant previously filed a motion to seal by OSC and the court declined to sign the OSC for failure to follow the Part 48 Procedures. (NYSCEF 47.) In connection with that motion, defendant filed the same documents which are the subject of this motion under seal at NYSCEF 32-45 (although NYSCEF 45 matches NYSCEF 26 rather than NYSCEF 80 and 81). The documents at issue on this motion are also filed under seal at NYSCEF 53-57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 81, and 83. Defendant also filed documents under seal at NYSCEF 77 and 79, and publicly redacted copies of the same documents at 76 and 78 and later filed "corrected" copies of these documents at 80-83. NYSCEF 76 and 77 appear to be the same documents as NYSCEF 82 and 83 and NYSCEF 78 and 79 appear to be the same documents as NYSCEF 80 and 81.

³ A publicly redacted copy of this document is filed at NYSCEF 96.

⁴ A publicly redacted copy of this document is filed at NYSCEF 105. Defendant also filed another sealed copy of this document at NYSCEF 104.

⁵ Plaintiff alleges this nonparty's rights under the APA were assigned to defendant. (NYSCEF 1, Complaint ¶ 11.)

⁶ The court notes that NYSCEF 55, the copy of the APA that defendant filed with this motion, contains several additional pages that NYSCEF 13, 33, and 54 do not.

NYSCEF 14 is the Amendment. Defendant seeks to seal NYSCEF 14 in its entirety. Defendant also seeks, as an alternative to sealing, to redact only the account number contained therein, except the last four digits. (NYSCEF 57.)

NYSCEF 16-24 and 26 are variations of an email chain beginning on March 14, 2022, which includes correspondence with Kobalt Music Group, a nonparty. Most of the email chains also attach invoices and some contain a wire payment enrollment form. Defendant seeks to redact several portions of the email correspondence, which it describes as “confidential, non-public business information relating to private transaction between parties as well as private and confidential banking information” including “[p]ricing amounts and terms of sale . . . as well as publicly undisclosed names of media being purchased and sold.” (NYSCEF 51, sealing chart at 3-6.) Defendant also seeks to redact payment identification numbers, account numbers, and titles of media. (*Id.*)

NYSCEF 28 is a cash and security transactions statement which defendant states reflects payments by defendant to plaintiff. Defendant seeks to redact what it describes as “private and confidential banking information, wire reference numbers, invoice numbers, and confidential financial descriptions.” (NYSCEF 51, sealing chart at 6-7.)

⁷ The court notes that other filed copies of these documents contain redactions of other numbers in the attachments, and there are inconsistencies in defendant’s proposed redaction of the correspondence in the different email chains.

Motion Sequence Number 004

NYSCEF 92 is plaintiff's memorandum of law in opposition to defendant's motion to dismiss (Opposition). Plaintiff seeks to redact portions of the APA and the Amendment that are quoted in the Opposition.

Motion Sequence Number 005

NYSCEF 99 is defendant's reply memorandum of law in further support of its motion to dismiss. Defendant seeks to redact portions of the APA and the Amendment that are quoted in the reply.

Discussion

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].)

The court first addresses the parties' proposed redactions of quotations from the APA and the Amendment in NYSCEF 10, 92, and 99, as well as the sealing of the APA and the Amendment in NYSCEF 13 and 14. The parties' only argument in support of sealing the agreements, and any quotations from the same, is that the APA contains a confidentiality provision which prohibits the parties to the APA from disclosing the terms of the APA.⁸ (NYSCEF 49, memorandum at 7.) The fact that terms of an agreement have been designated as confidential is, alone, not sufficient to permit sealing of the entire document. (*Mosallem*, 76 AD3d at 350, quoting *Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 626 [2d Dept 2006] [“Merely because some of the documents were marked ‘confidential’ or ‘private’ ‘is not controlling on the court's determination whether

⁸ Defendant quotes a portion of this provision from the APA in its memorandum in support of motion 002. (NYSCEF 49, memorandum at 4 [“The parties hereunder shall hold in strict confidence, and shall not disclose to any third party, without the prior written consent of the other party, any information received by it from the other party in connection with the transactions contemplated hereby, nor shall either party disclose or authorize the disclosure to any third party of any information pertaining to either party's business, or the terms of this Agreement . . .”].)

there is good cause to seal the record.”.) Rather, the parties must demonstrate that the disclosure of the referenced terms would “threaten a business’s competitive advantage” or some other cause for sealing. (*Id.* [citation omitted])

None of the cases defendant cites support a different conclusion because in each, unlike here, the court had a basis for determining the disclosure of the information to the public would be harmful. (See *PricewaterhouseCoopers LLP v Lewis*, 2020 WL 5819746, 2020 NY Slip Op 33217[U] [Trial Order] at *3 [Sup Ct, NY County 2020] [permitting sealing of agreements where it was “clear that the terms and contents of such agreements constitute confidential and proprietary information of PwC and its partners . . .” and PwC asserted that “it takes reasonable measures to maintain such confidentiality. . .”]; *Linkable Networks, Inc. v Mastercard Inc.*, 75 Misc 3d 1231[A], 171 NYS3d 889 [Sup Ct, NY County 2022] [permitting sealing and redaction of documents containing protected information including “sensitive financial information concerning business strategies, licensing agreements and fees of nonparties . . .”].) Defendant also cites *IDW Grp., LLC v Levine Ins. Risk Mgmt. Servs., Inc.*, however, the court in that case only permitted sealing of information, not material to the motion at issue, related to a settlement agreement, albeit with a confidentiality provision, including the settlement amount, and “confidential agreements” without specifying why those agreements were confidential. (40 Misc 3d 368, 382 [Sup Ct, NY County 2013].) Thus, defendant’s motion is denied as to redactions of quotations from the APA and the Amendment in NYSCEF 10, 92, and 99, as well as the sealing of the APA and the Amendment in NYSCEF 13 and 14.

Next, the court addresses defendant's proposed redaction of correspondence in NYSCEF 16-24 and 26, as well as payment identification numbers and media titles. Defendant broadly redacts correspondence in the emails and fails to explain in its motion why any of the correspondence is competitively harmful or otherwise cannot be disclosed. It is not sufficient for defendant to merely state that the information in these emails is confidential. Nor is a lack of public interest or relevance to defendant's motions alone sufficient. Defendant similarly provides no basis to redact the information it seeks to redact in the invoices attached to the emails, including payment identification numbers or titles of media.

Again, the cases cited by defendant do not support its broad redaction of correspondence in these documents. (See *Dawson v White & Case*, 184 AD2d at 247 [permitting sealing of "financial information concerning defendant's partners and clients . . ."]; *D'Amour*, 17 Misc. 3d 1130[A] [permitting sealing of "tax returns, financial statements and reports, and firm agreements and memoranda which are non-public and confidential."]; *Linkable Networks, Inc.*, 171 NYS3d 889 [see *supra*]; *Dentsu Aegis Network US Holdings, Inc. v Robt Ventures, LLC*, 2020 WL 7657979, 2020 NY Slip Op 34312[U] [Trial Order] at *3 [Sup Ct, NY County 2020] [denying request to "carte blanche seal all filings" because of confidentiality provisions agreed to by the parties and instead finding good cause to redact information regarding acquisitions in some of the documents because "because disclosure could threaten a competitive advantage with respect to other acquirers as articulated" in an affidavit from a person with knowledge, as well as financial terms.]) While the emails do contain some correspondence regarding pricing amounts and sale terms, defendant has not provided

sufficient basis for the court to determine whether the proposed redactions are narrowly tailored. Thus, the motion is denied as to redaction of correspondence in NYSCEF 16-24 and 26.

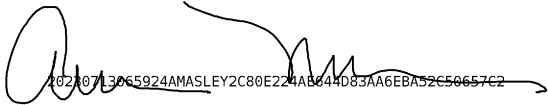
Finally, the court addresses defendant's proposed redactions of account numbers in NYSCEF 13, 14, 16-24 and 26 and a transactions statement filed at NYSCEF 28. The redaction of account numbers is governed by Section 202.5 (e) (1) of the Supreme Court Rules and does not require a seal motion. Thus, defendant must redact any financial account numbers "except the last four digits or letters thereof" in accordance with that rule. Defendant inconsistently redacts some account numbers in accordance with this rule and other account numbers entirely. Defendant also states in its sealing chart that it seeks to redact routing numbers in the email attachments but does not highlight these in the documents, and thus, the court does not make any determination as to those. As to the other numbers defendant seeks to redact in NYSCEF 28, defendant fails to provide any reason that this information is confidential and thus, the court denies the motion to this extent.

In sum, while there may be good cause to redact certain portions of the documents at issue on these motions, the parties have not demonstrated what that good cause is or how disclosure of this information would be harmful. Thus, to the extent the parties seek to redact any of the documents at issue here, they 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 if revealed. An affidavit from a person with knowledge shall also be provided to explain the necessity of the redactions the parties seek.

Accordingly, it is

ORDERED that motion sequence numbers 002, 004, and 005 are denied without prejudice; and it is further

ORDERED that, within 30 days of this order, the parties must either file public copies of NYSCEF 10, 13, 14, 16, 17- 24, 26, 28, 32-45, 53-57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, and 83, 92, 95 and 99, and 104, with only those redactions permitted by Section 202.5 (e) of the Supreme Court Rules or file a new OSC in accordance with this decision.



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7/13/2023

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