

Embarq, L.L.C. v Bank of N.Y. Mellon Trust Co., N.A.

2023 NY Slip Op 32834(U)

August 13, 2023

Supreme Court, New York County

Docket Number: Index No. 651404/2023

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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EMBARQ, L.L.C.,

Plaintiff,

- v -

THE BANK OF NEW YORK MELLON TRUST COMPANY,
N.A., CAPITAL RESEARCH AND MANAGEMENT
COMPANY, and DISCOVERY CAPITAL MANAGEMENT,
LLC,

Defendants.

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INDEX NO. 651404/2023

MOTION DATE _____

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 86, 87, 88, 89, 90, 93

were read on this motion to/for SEAL.

In motion sequence number 005, plaintiff, Embarq, L.L.C., moves, pursuant to Section 216.1(a) of the Uniform Rules for New York State Trial Courts, to seal NYSCEF Doc. Nos. (NYSCEF) 53 and 55, which are Exhibits 6 and 7, respectively, to the parties' Joint Statement of Undisputed Material Facts. The public has indicated an interest in this matter.

Legal Standard

Section 216.1(a) 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].)

Both documents plaintiff seeks to redact are credit agreements entered into by plaintiff's parent company, Connect Holding II LLC. NYSCEF 53 is titled “First Lien Credit Agreement” (FLCA.) NYSCEF 55 is “Senior Secured Interim Credit Agreement (SSICA). Plaintiff contends that both documents contain “[c]ommercially sensitive

financial information regarding terms of secured loan, including interest rates and price terms.” (NYSCEF 88, sealing chart.) According to plaintiff, disclosure of this information could threaten the parties’ competitive advantage when negotiating such terms in the future, and also strain existing business relationships in which the parties may have offered different rates. (*Id.*)

Upon review, plaintiff’s narrowly tailored proposed redactions seek to redact limited negotiated business terms, e.g., various interest rates and pricing terms from the FLCA and SSICA. Plaintiff has sufficiently demonstrated good cause to redact this information from the FLCA and SSICA as disclosure could harm the parties’ ability to negotiate with other entities in the future by revealing the terms offered in this transaction. (*Mosallem*, 76 AD3d at 350 [citations omitted]; see *Dawson*, 184 AD2d at 247.) Moreover, the redactions are narrowly tailored and balance interest of the public, if any, with its interest in keeping the business terms under redaction. (*D’Amour*, 17 Misc 3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

Accordingly, it is

ORDERED that motion sequence number 005 is granted; and it is further

ORDERED that the New York County Clerk, upon service to him of his order, shall permanently seal NYSCEF 53 and 55; and it is further

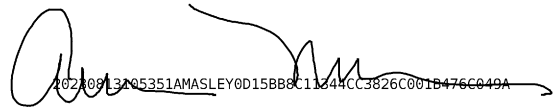
ORDERED that redacted copies of these documents are publicly available, and plaintiff need not refile duplicates; and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed

sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



8/13/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: