

Zydus Worldwide DMCC v Teva Pharms. Indus. Ltd.
2023 NY Slip Op 33422(U)
September 30, 2023
Supreme Court, New York County
Docket Number: Index No. 654824/2019
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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ZYDUS WORLDWIDE DMCC,

INDEX NO. 654824/2019

Plaintiff,

MOTION DATE _____

- v -

TEVA PHARMACEUTICALS INDUSTRIES LTD.,

MOTION SEQ. NO. 008

Defendant.

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 149, 150, 151, 152, 153, 154, 155, 156, 157, 158

were read on this motion to/for SEAL.

In motion sequence number 008, plaintiff Zydus Worldwide DMCC moves, by order to show cause, to redact NYSCEF 126-128¹ pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. The motion is unopposed. There is no indication that the press or public have any interest in this matter.

Defendant Teva Pharmaceuticals Industries Ltd. previously moved to seal NYSCEF 126 and 127, and redact NYSCEF 128, because plaintiff designated information contained therein as “Attorneys’ Eyes Only.” (NYSCEF 148, decision and order [mot. seq. no. 006] [April 1 Order].) The court denied defendant’s motion for failure to demonstrate good cause to seal those documents. (*Id.*) Plaintiff now moves to redact specific portions of the documents.

NYSCEF 126 is plaintiff’s first supplemental objections and responses to

¹ Publicly redacted copies of these documents are filed at NYSCEF 129, 151, and 152.
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defendant's first interrogatories. NYSCEF 127 is plaintiff's second supplemental objections and responses to defendant's first set of interrogatories (together with NYSCEF 126, Interrogatory Responses.) Plaintiff seeks to redact from the Interrogatory Responses various costs related to the pharmaceutical products at issue in this action and a litigation against a nonparty that it asserts make up its damages. Plaintiff also seeks to redact a table setting forth the date, payee, and amount for each payment to various entities related to its seeking regulatory approval. Finally, plaintiff seeks to redact the names of current and former Zydus employees or representatives.

NYSCEF 128 is defendant's memorandum of law in support of its renewed motion to stay. Plaintiff seeks to redact from NYSCEF 128 a paragraph referencing the Interrogatory Responses, which includes some of the amounts that plaintiff seeks to redact from the Interrogatory Responses, as well as quotations from the Interrogatory Responses describing what those numbers are.

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].)

Plaintiff has demonstrated good cause to redact the amounts highlighted in NYSCEF 126-128, as well as the table contained in the Interrogatory Responses. Plaintiff states that this information is not public and if disclosed, could “threaten [plaintiff's] competitive advantage by revealing to [plaintiff's] competitors in the generic pharmaceuticals industry its cost structures for purchasing pharmaceutical lines, obtaining regulatory approval for its generic pharmaceutical products, and prosecuting related patent litigation.” (NYSCEF 156, Memo of Law at 5².) Thus, plaintiff has demonstrated that this information, if revealed, could put plaintiff at a competitive

² References to page numbers are to the NYSCEF-generated page numbers.

disadvantage. (*Mosallem*, 76 AD3d at 350 [citations omitted].) Moreover, there has been no showing of legitimate public concern (see *Dawson*, 184 AD2d at 247 [1st Dept 1992]), and the redactions requested by plaintiff are narrowly tailored. (See *Danco Lab, Ltd.*, 274 AD2d at 6.)

In regard to NYSCEF 128, plaintiff may only redact the number amounts that it seeks to redact in the Interrogatory Responses, not the portions quoted from the Interrogatory Responses. Plaintiff does not seek to redact these same quoted portions from the responses themselves. Thus, the motion is denied to this extent.

Finally, plaintiff has demonstrated good cause to redact the names of former or current employees or representatives from the Interrogatory Responses. Plaintiff can only redact the names of individuals though, not the information in parentheses on page 3 of NYSCEF 153 or the same information on page 5 of NYSCEF 154.

Accordingly, it is

ORDERED that motion sequence number 008 is granted in part and otherwise denied; and it is further

ORDERED that within 10 days of the date of this order, plaintiff shall file revised publicly redacted copies of NYSCEF 126-128 in accordance with this decision; and it is further

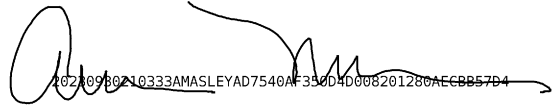
ORDERED that the County Clerk, upon service to him of this order, shall permanently seal NYSCEF 126-128, 153, and 154; and it is further

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



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9/30/2023

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