

Directional Capital LLC v Butterfly Equity L.P.

2023 NY Slip Op 33746(U)

October 16, 2023

Supreme Court, New York County

Docket Number: Index No. 653741/2022

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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DIRECTIONAL CAPITAL LLC,

Plaintiff,

- v -

BUTTERFLY EQUITY L.P.,

Defendant.

INDEX NO. 653741/2022

MOTION DATE _____

MOTION SEQ. NO. 002

**AMENDED DECISION +
ORDER ON MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 52, 53, 54

were read on this motion to/for SEAL.

In motion sequence number 002, defendant moves, pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts, to redact NYSCEF Doc. No. (NYSCEF) 43 and 45, both exhibits were filed in connection to defendant’s motion to dismiss.¹ The motion is unopposed and there has been no indication that the press or public have an interest in this matter.

NYSCEF 45 is a Letter of Intent from plaintiff to defendant regarding a potential acquisition of Qdoba Restaurant Corporation (Qdoba). NYSCEF 43 is a presentation deck titled “Qdoba Management Presentation.” Defendants argue that both exhibits contain nonpublic financial and business terms that defendants argue is commercially

¹ The identical unredacted copies of these documents, filed in motion sequence number 003 (the motion to dismiss) are NYSCEF 34 and 37. The redacted copies are publicly available at NYSCEF 44 and 46.

sensitive and could cause competitive harm to defendants if the documents are disclosed. (NYSCEF 47, sealing chart.)

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].)

Generally, this action is about defendant's alleged breach of a non-circumvention provision, which is contained in an agreement entered into between defendant and plaintiff. (NYSCEF 1, compl. ¶ 1.) The parties entered into this agreement because defendant expressed interest in investing in plaintiff's acquisition of Qdoba and, accordingly, asked plaintiff for more information. (*Id.* ¶ 30.) Plaintiff alleges that before it would share information with defendant, they needed to agree to keep information confidential and not use the information to circumvent plaintiff. (*Id.* ¶ 31.) Defendant allegedly agreed to keep confidential the information it received from Qdoba and plaintiff. (*Id.* ¶ 32.) One document shared with defendant was the Qdoba Management Presentation, at issue here. (*Id.* ¶ 37.)

Defendant has demonstrated that good cause exists to redact NYSCEF 43, the Qdoba Management Presentation, to prevent disclosure of Qdoba's, a third-party in this action, internal financial information, investments, and business strategy and future business plans, which would harm both Qdoba and defendant. (*Mosallem*, 76 AD3d at 350 [citations omitted].) Courts permit sealing or redacting private information of third-parties as disclosure could impinge on the privacy rights of nonlitigants. (See *Manufacturers and Traders Tr. Co. v Client Server Direct, Inc.*, 156 AD3d 1364, 1366 [4th Dept 2017] [citation omitted].)

Defendant has also demonstrated that good cause exists to redact NYSCEF 45, the letter of intent. Defendant has narrowly redacted the information revealing the

valuation of the transaction, how proceeds will be calculated and distributed, how the transaction would be financed, terms of the financing provided by the investment bank, and negotiated terms of the buyout and has demonstrated that the disclosure of such information would harm plaintiff in future negotiations of similar agreements with other parties.² However, defendant has not sufficiently demonstrated why the identity of the investment bank providing the credit facility and the boilerplate terms at the end of Appendix A within the letter of intent warrants redaction. Thus, defendants shall submit a redacted version of the NYSCEF 45 in accordance with this decision and order.

Accordingly, it is

ORDERED that motion sequence number 002 is granted in part; and it is further

ORDERED that the New York County Clerk, upon service to him of this order, shall permanently seal NYSCEF 34, 37, 43, 45; and it is further

ORDERED that within 10 days of this order, defendant shall file a redacted copy of NYSCEF 45, consistent with this order, to NYSCEF under the appropriate sequence number, and email the court when completed (SFC-Part48@nycourts.gov); and it is further

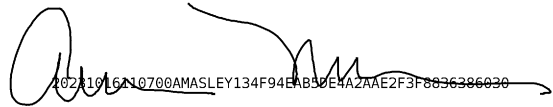
ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

² Directional alleges that it is an equity owner of a “number of fast-casual, quick service, and full-service restaurants that operated out of airport terminals, universities, and golf courses,” and was “seeking to expand its portfolio and increase its impact in the fast-casual restaurant sector by acquiring full-service locations.” (NYSCEF 1, compl. ¶ 15.)

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 the parties are to describe the exhibits submitted on NYSCEF; for example, "Letter of Intent" instead of "Exhibit 3- Exhibit 1 to the D'Arcangelo Affirmation" as describing an exhibit as "Exhibit 3" is not helpful to the court; and it is further

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



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10/16/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE