

ACS Group Acquisitions LLC v Kate Spade LLC

2023 NY Slip Op 34256(U)

December 5, 2023

Supreme Court, New York County

Docket Number: Index No. 653181/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ACS GROUP ACQUISITIONS LLC,	INDEX NO.	<u>653181/2023</u>
Plaintiff,	MOTION DATE	<u>08/09/2023</u>
- v -	MOTION SEQ. NO.	<u>004</u>
KATE SPADE LLC, COACH SERVICES INC., TAPESTRY, INC.	DECISION + ORDER ON MOTION	
Defendants.		

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 112, 113, 114

were read on this motion to

SEAL

Plaintiff ACS Group Acquisitions LLC (“ACS”) seeks an order sealing Exhibits to be filed in connection with this proceeding. ACS submitted the Exhibits for in-camera review and filed slip copies on NYSCEF. For the reasons stated below, ACS’s motion is **granted in part** and otherwise **denied in part** without prejudice.

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal a filing “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” (22 NYCRR § 216.1 [a]).

The Appellate Division has emphasized that “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]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must *be narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to

access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g., Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]). The fact that parties have a confidentiality clause or otherwise stipulate to sealing is not sufficient to warrant sealing, as the Court has an independent obligation to determine whether sealing is appropriate (*see, e.g., Maxim*, 145 AD3d 516, 518 [1st Dept 2016]; *Gryphon Dom.*, 28 AD3d at 324).

The Court has reviewed ACS’s proposed sealing of the documents labeled Exhibits O-2, P, Q, R, and S (which correspond to NYSCEF Doc. Nos. 95, 96, 97, 98, and 99), and finds that they comport with the applicable sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that they contain sensitive and confidential business and financial information.

However, ACS’s generalized assertions of good cause for sealing the documents labeled Exhibits L, M, N, and O-1 (corresponding to NYSCEF Doc. Nos. 91, 92, 93, and 94) do not establish a compelling justification for the complete sealing that is proposed. While *portions* of these Exhibits may include competitively sensitive and confidential business information, the proposed sealing of the documents in their entirety is not adequately explained or justified. ACS makes no attempt to isolate through targeted redaction the specific portions of this document which genuinely require sealing under the rigorous standard described above.

Any subsequent motion seeking to address the above concerns should adhere to this Part’s Sealing Practices and Procedures (*see*

<https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part3-sealing-practices.pdf>), including the requirement to submit an affidavit based on personal knowledge attesting to the factual bases for redaction and a spreadsheet setting forth the good faith basis for each proposed redaction.

Accordingly, it is

ORDERED that ACS's motion to seal the Exhibits is **granted** insofar as it seeks to seal the documents labeled Exhibits O-2, P, Q, R, and S (NYSCEF Doc. Nos. 95, 96, 97, 98, and 99), and is otherwise **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of the remaining documents (Exhibits L, M, N, and O-1) consistent with this Decision and Order and applicable case law; it is further

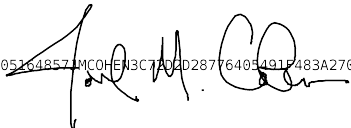
ORDERED that the parties shall upload all proposed Exhibits (L, M, N, O-1, O-2, P, Q, R, and S) in unredacted form with a request to seal in connection with Mot. Seq. 004; it is further

ORDERED that the parties shall alert the County Clerk of the Court's Order to maintain the unredacted Exhibits O-2, P, Q, R, and S under seal, specifying the NYSCEF Document Numbers of these unredacted Exhibits subject to sealing under this Order, so that access to these unredacted Exhibits may be accessible only by the parties, their counsel, and authorized court personnel, and further specifying the NYSCEF Document Numbers of the unredacted Exhibits which are not subject to sealing under this Order (L, M, N, and O-1), which shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If ACS files a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is filed within 21 days from the entry of this Decision and Order, the parties shall alert the County Clerk that the motion

to seal the above-referenced documents has been denied by the Court and that the documents should be unsealed on NYSCEF; it is further

ORDERED that, except for submissions made in connection with this Order, with respect to future submissions made by any party that contain subject matter that the court has authorized to be sealed by this Decision and Order, the parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any document is contemporaneously filed under seal.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

12/5/2023
DATE

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: