

Dorilton Capital Mgt. LLC v Stilus LLC

2024 NY Slip Op 32513(U)

July 16, 2024

Supreme Court, New York County

Docket Number: Index No. 652428/2023

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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DORILTON CAPITAL MANAGEMENT LLC, WILLIAMS IP HOLDINGS LLC,	INDEX NO.	<u>652428/2023</u>
Plaintiff,	MOTION DATE	<u>05/10/2024, 05/13/2024</u>
- v -	MOTION SEQ. NO.	<u>021 022</u>
STILUS LLC, CLAUDIA SCHWARZ,		
Defendant.	DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 373, 405, 406, 407, 408, 409 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 370, 371, 372, 374, 375, 402 were read on this motion to/for SEAL.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 7.16.24), the plaintiffs’ motion (Mtn. Seq. No. 022) to seal NYSCEF Doc. Nos. 333, 335, 338, 340, and 348 is granted for good cause shown pursuant to Part 216 of the Uniform Rules for the Trial Courts.

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.”

(22 NYCRR § 216.1 [a]).

“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]) 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). 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]).

Courts have recognized a compelling interest in sealing a third-party's financial or private information as disclosure could impinge upon the privacy rights of these nonparties (*GNHC 1703-518, LLC v Venari Partners, LLC*, 2023 N.Y. Slip Op. 30941[U], 3 [N.Y. Sup Ct, New York County 2023]). In the business context, courts have sealed records when their disclosure could threaten a business's competitive advantage (*Urban Commons 2 W. LLC v Battery Park City Auth.*, 2022 N.Y. Slip Op. 33992[U], 3 [N.Y. Sup Ct, New York County 2022]).

NYSCEF Doc. No. 348 contains confidential medical information of a former employee of one of the plaintiffs' affiliates, including a medical document containing a diagnosis and an email transmitting that document which discusses the causes of that diagnosis and specifically requests that the recipient treat the information contained therein as confidential. The former employee is a non-party to this action, and information concerning a person's health and healthcare implicate grave privacy concerns and should be sealed (*Natixis Real Estate Capital Tr. 2007-HE2 v Natixis Real Estate Capital, Inc.*, 77 Misc 3d 1224(A) [Sup Ct 2023]). The proposed redactions

(NYSCEF Doc. No. 347) are well-tailored and appropriate. The court notes that the defendants withdrew any objection to sealing this information (*tr.* 7.16.24).

NYSCEF Doc. Nos. 333, 335, 338, and 340 are portions of deposition transcripts containing the name of a certain person (a non-party to this case) whom the plaintiffs contend is an “outside investor” of the plaintiffs’ (the **Third Party**). The plaintiffs contend that the name of this Third Party investor is sensitive competitive information that should remain confidential and under seal because its disclosure would put them at a competitive disadvantage (*Urban Commons*, 2022 N.Y. Slip Op. 33992[U], at 3). In support of their position, the plaintiffs adduce the affidavit of Aidan Lyons, who avers to the competitive nature of the Formula One racing industry and the importance of keeping funding sources confidential like the Third Party confidential (NYSCEF Doc. No. 56). The defendants oppose sealing these documents, contending that the named person is not merely an investor but the de facto CEO of the plaintiffs and other affiliated entities. The role of the Third Party may be a factual issue for another day, however, the plaintiffs have demonstrated good cause to seal these documents as containing competitive information regarding funding sources, the disclosure of which could threaten their competitive advantage (*Id.*; *GNHC 1703-518, LLC*, 2023 N.Y. Slip Op. 30941[U], at 4). The proposed redactions (NYSCEF Doc. Nos. 332, 334, 337, and 339) are well-tailored and appropriate. Thus, the plaintiffs’ request to seal NYSCEF Doc. Nos. 333, 335, 338, 340, and 348 is granted.

The defendants’ motion (Mtn. Seq. No. 021) to declassify certain documents designated confidential by the plaintiffs is granted solely to the extent that the Court will appoint Jeremy Feinberg, Esq. pursuant to CPLR 3104 to hear and report as to whether confidentiality

designations in this case are appropriate or overbroad. It is very clear on the record before the Court, that the defendants objections to the plaintiffs confidentiality designations are overbroad. It is also clear that some of the confidentiality designations made by plaintiff are also overbroad. To wit, the plaintiff is not required to have documents produced in discovery which disclose their internal business plan and/or decision making process de-designated as confidential. On the other hand, factual non-proprietary information, like for example, where the individual defendant signed some papers should not be designated as confidential. These disputes as to the breadth of the designations shall be submitted to Mr. Feinberg following an appropriate meet and confer to see if these issues can be resolved. Any unresolved issues shall be submitted to Mr. Feinberg no later than August 15, 2024. The Court reserves the right to make additional referrals but for the avoidance of doubt, all other discovery disputes shall be handled by the Court.

For the avoidance of doubt, following submission by the parties as to an appropriate special master referral, the Court received objection from the defendant as to the appointment of a private lawyer relying on *Ploski v Riverwood Owners Corp.*, 255 AD2d 24, 25 (2d Dept 1999) and *Schlau v City of Buffalo*, 125 AD3d 1546, 1547 (4th Dept 2015). Thus, the Court has appointed Jeremy Feinberg, Esq. for the limited appointment outlined above.

Accordingly, it is hereby

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this interim order with notice of entry, to seal NYSCEF Doc. Nos. 333, 335, 338, 340, and 348 and to

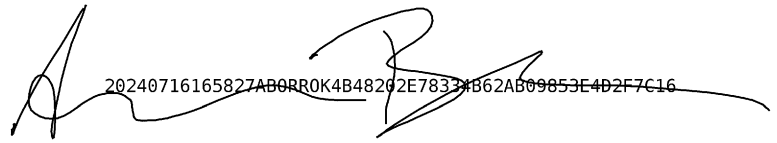
separate these documents and to keep them separate from the balance of the file in this action;
and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that Jeremy Feinberg, Esq. is to supervise the discovery dispute in this matter indicated above , with all the powers conferred upon him by CPLR 3104; and it is further

ORDERED that the parties shall meet with Mr. Feinberg forthwith.



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7/16/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: