

CSI IT, LLC v Dungey

2024 NY Slip Op 32647(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 655457/2023

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 48

-----X

CSI IT, LLC,

Plaintiff,

- v -

SCOTT W. DUNGEY,

Defendant.

INDEX NO. 655457/2023

MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 47, 48, 49, 50

were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In mot. seq. no. 002, defendant Scott W. Dungey moves, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to seal the Confidential Severance Agreement and Release (Severance Agreement) (filed as NYSCEF 11, 26), the Amendment to the Confidential Severance Agreement and Release (Amended Severance Agreement) (filed as NYSCEF 12, 27), and redact portions of the Defendants' (The Services Group IT LLC (TSG), Scott W. Dungey, and Dungey Enterprises, Inc.) Amended Answer to Amended Complaint and Amended Counterclaims (NYSCEF 15, 25¹). Plaintiff CSI IT, LLC (CSI) cross-moves, by notice of motion to redact the Severance Agreement (filed as NYSCEF 11, 26) and Defendants' Amended Answer to Amended Complaint and Amended Counterclaims

¹ A publicly available redacted version of the Amended Answer to Amended Complaint and Amended Counterclaims has been filed as NYSCEF 24.

(NYSCEF 15) to the extent these documents disclose confidential financial and business information belonging to CSI.

Discussion

Legal Standard

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) [e]xcept 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 the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an 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 bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting “an affidavit from a person with knowledge explaining why the file or certain documents should be sealed.” (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], *2 [Sup Ct, NY County 2004].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Labs.*, 274 AD2d at 8.)

Courts have sealed records where trade secrets are involved or where the disclosure of documents “could threaten a business’s competitive advantage.”

(*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Additionally, the First Department has affirmed the sealing of records concerning financial information where there has not been a showing of relevant public interest in disclosure of the financing. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].)

Analysis

Plaintiff's cross-motion to redact NYSCEF 11, 26 and 15 is denied without prejudice for failure to comply with Part 48 Procedures (available at [JMasley-PracticeRules.pdf \(nycourts.gov\)](#)) for sealing and/or redacting. In its memorandum of law and affirmation in support of its cross-motion, the plaintiff objects, in part, to defendant's motion to seal the Severance Agreement and Amended Severance Agreement. The court will treat this memorandum of law as plaintiff's memorandum of law in opposition to defendant's motion to seal/redact.

Defendant seeks to seal the Severance Agreement and Amended Severance Agreement in their entirety because these documents are subject to a sealing order dated August 14, 2023 (Florida Sealing Order²) issued by the Honorable Lee Marsh, Circuit Judge, Leon County, Florida (Florida Court) in the litigation pending in that court between the same parties (*CSI IT Holdings, LLC, et al. v. The Services Group IT LLC, et al.*, Case No. 2022-CA-002287.) Further, defendant also contends that the Severance Agreement and Amended Severance Agreement contain terms of employment and separation which are the defendant and its parent company's trade secrets. (NYSCEF 33, Defendants' MOL [mot. seq. no. 002] at 2-3.) Plaintiff contends that a wholesale sealing of the Severance Agreement is not required as only

² The Florida Sealing Order has been filed as NYSCEF 23 in this action.

paragraphs 2, 3, 4, 21, and 23 of the agreement contain any confidential financial and business information belonging to CSI. (NYSCEF 49, Plaintiff's MOL [mot. seq. no. 002] at 2.) Further, plaintiff claims that the Amended Severance Agreement does not contain any highly confidential financial and business information belonging to CSI or the defendant. (*Id.*) The Florida Court has already determined that the Severance Agreement and the Amended Severance Agreement contain confidential information and placed them under seal. The interests of comity require this court to also seal these documents. In any event, courts in New York have sealed records where trade secrets are involved or where the disclosure of documents "could threaten a business's competitive advantage" and there independently exists good cause to seal the Severance Agreement and the Amended Severance Agreement.

The defendant also seeks to redact paragraph 63 of the Amended Answer to Amended Complaint and Amended Counterclaims (filed as NYSCEF 15, 25) because it quotes from the Severance and Amended Severance Agreements. The court finds good cause to redact paragraph 63 of the Amended Answer to Amended Complaint and Amended Counterclaims.

Accordingly, it is

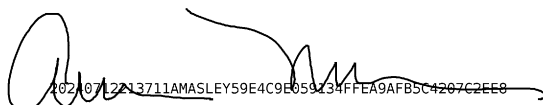
ORDERED that defendants' motion to seal/redact (mot. seq. no. 002) is granted and the County Clerk is directed to permanently seal NYSCEF 11, 26, 12, 27, 15, 25; and it is further

ORDERED that plaintiff's cross-motion to redact (mot. seq. no. 002) is denied without prejudice; 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 counsel for the movants shall serve a copy of this order upon the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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 at the address www.nycourts.gov/supctmanh).



20240712213711AMASLEY59E4C9E059234FFEA9AFB5C4207C2EE8

7/12/2024

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