

Gardner v Virtuoso Ltd.

2024 NY Slip Op 32671(U)

July 11, 2024

Supreme Court, New York County

Docket Number: Index No. 656244/2019

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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JENA GARDNER, JG WORLDWIDE LLC, JG BLACK
BOOK OF TRAVEL LTD, CITY ESCAPES INC. D/B/A
DISCOVER OUTDOORS, BIA LLC D/B/A MILLENNIUM
VOYAGES USA, MERCURY ADVERTISING INC. D/B/A
MERCURY CSC, REVEALED ENTERPRISES LLC D/B/A
REVEALED CALIFORNIA D/B/A REVEALED AMERICA,
and HERITAGE TOURS USA LLC,

Plaintiffs,

- v -

VIRTUOSO LTD and MATTHEW D. UPCHURCH,

Defendants.

INDEX NO. 656244/2019

MOTION DATE --

MOTION SEQ. NO. 014

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534

were read on this motion to/for

SEAL

In motion sequence 014, plaintiffs move pursuant to section 216.1 of the Uniform Rules for New York State Trial Courts (22 NYCRR § 216.1) to redact NYSCEF Doc. Nos. (NYSCEF) 422, 424, 451, 452, 453, 454, 455, 456, 457, 463, 464, and 469.¹ The motion is unopposed. There is no indication that the press or public have an interest in this matter.

“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 public’s right to access is, however, not absolute, and under certain circumstances, “public inspection of court records has

¹ Plaintiffs proposed highlighted redactions are filed at NYSCEF 517 through 528.

been limited by numerus statutes.” (*Id.* at 349.) One of those statutes is section 216.1 (a) of the Uniform Rules for Trial Courts, which empowers courts to seal documents upon a written finding of good cause. It provides:

“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.)

The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosalleem*, 76 AD3d 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 quotation marks omitted].)

Further, in the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosalleem*, 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].)

Additionally, Courts have recognized a compelling interest in sealing a third-party’s financial or private information as disclosure could imping upon the privacy rights

of these nonparties. (See *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]; *Natixis Real Estate Capital Tr. 2007-HE2 v Natixis Real Estate Capital, Inc.*, 77 Misc 3d 1224 [A] [Sup Ct, NY County 2023].)

Here, plaintiffs have demonstrated good cause to redact NYSCEF 422, 424, 451, 452, 453, 454, 455, 456, 457, 463, 464, and 469 as proposed.² The proposed redactions are narrowly tailored to protect *inter alia* sensitive personal information concerning third parties, as well as commercially sensitive financial information relating to defendant.

Accordingly, it is

ORDERED that motion sequence 014 is granted; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, and 528; and it is further

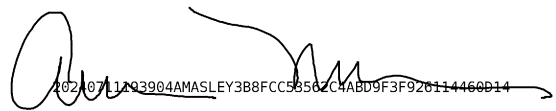
ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that movant shall serve a copy of this order on the County Clerk in accordance with the procedures set forth in the Protocol on Courthouse County Clerk Procedures for Electronically Filed Cases; and it is further

² These documents are filed publicly with the proposed redactions applied. This, plaintiff need not refile public redacted copies.

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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7/11/2024

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