

**Amazing Grace Movie, LLC v Neon Rated, LLC**

2024 NY Slip Op 32829(U)

August 9, 2024

Supreme Court, New York County

Docket Number: Index No. 652869/2022

Judge: Nancy M. Bannon

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

<b>PRESENT:</b>	<u>HON. NANCY M. BANNON</u>	<b>PART</b>	<b>61M</b>
	<i>Justice</i>		
-----X		<b>INDEX NO.</b>	<u>652869/2022</u>
AMAZING GRACE MOVIE, LLC,		<b>MOTION DATE</b>	<u>05/03/2024</u>
Plaintiff,			
- v -		<b>MOTION SEQ. NO.</b>	<u>007 010 011 012 013</u>
NEON RATED, LLC and DOES 1-10,		<b>DECISION + ORDER ON MOTION</b>	
Defendants.			
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 007) 185, 186, 187, 188, 189, 190, 239, 304, 314, 351  
 were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 305, 315, 352  
 were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 309, 310, 311, 312, 313, 349  
 were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 346, 347, 348, 350, 399  
 were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 392, 393, 394, 395, 397, 400  
 were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

**I. INTRODUCTION**

In this breach of contract action arising from an agreement for distribution of a documentary film about the singer Aretha Franklin (the "Film"), the defendant moves by order to show cause pursuant to 22 NYCRR 216.1(a) to seal and/or redact certain documents filed by the parties in support of or opposition to the plaintiff's motion to vacate the note of issue, MOT SEQ 008 (MOT SEQ 007 [NYSCEF Doc. Nos. 160-61, 176-78, 180-81, 183, 187-89] and MOT

SEQ 011 [NYSCEF Doc. Nos. 298, 302, 312-13]), and the defendant's motion for summary judgment, MOT SEQ 009 (MOT SEQ 010 [NYSCEF Doc. Nos. 192, 196, 206-38, 244-76], MOT SEQ 012 [NYSCEF Doc. Nos. 318-19, 321-22, 324-25, 327-35, 337-42], and MOT SEQ 013 [NYSCEF Doc. Nos. 369, 380-85]). The court granted the defendant's requests for TROs to keep the subject documents (or the unredacted versions thereof) temporarily under seal pending a decision on the instant motions. The plaintiff opposes MOT SEQ 007 and opposes in part MOT SEQ 010, 012, and 013. MOT SEQ 011 is unopposed. MOT SEQ 007 is denied, MOT SEQ 011 is granted, and MOT SEQ 010, 012, and 013 are granted in part.

## II. DISCUSSION

22 NYCRR 216.1(a) provides that "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." "[P]ublic access to court proceedings is strongly favored, both as a matter of constitutional law (Richmond Newspapers v Virginia, 448 U.S. 555 [1980]) and as a statutory imperative (Judiciary Law § 4)." Anonymous v Anonymous, 158 AD2d 296, 297 (1<sup>st</sup> Dept. 1990); see also Herald Co. v Weisenberg, 59 NY2d 378 (1983) [closure of courtroom]. Moreover, "the public interest in openness is particularly important on matters of public concern, even if the issues arise in the context of a private dispute." Danco Labs. v Chemical Works of Gedeon Richter, 274 AD2d 1, 7 (1<sup>st</sup> Dept. 2000). Accordingly, the Appellate Division, First Department, 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 (1<sup>st</sup> Dept. 2010). Because "confidentiality is clearly the exception, not the rule" (Matter of Hofmann, 284 AD2d 92, 93–94 [1<sup>st</sup> Dept. 2001]), that Court has authorized sealing "only in strictly limited circumstances." Gryphon Dom. VI, LLC v APP Intl. Fin. Co., 28 AD3d 322, 325 (1<sup>st</sup> Dept. 2006); see Mosallem v Berenson, *supra*.

As stated, in any application to seal court records, the burden is on the party seeking sealing to establish "good cause." 22 NYCRR 216.1(a). "Since there is no absolute definition, a finding of good cause, in essence, 'boils down to ... the prudent exercise of the court's discretion.'" Applehead Pictures, LLC v Perelman, 80 AD3d 181, 192 (1<sup>st</sup> Dept. 2010), quoting Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 (2<sup>nd</sup> Dept. 2007) (some internal

quotation marks and citation omitted). In the business context, good cause may be established “where trade secrets are involved (Matter of Crain Communications, Inc., 135 AD2d 351, 352 [1<sup>st</sup> Dept. 1987]), or where the release of documents could threaten a business’s competitive advantage.” Mosallem v Berenson, *supra* at 350, citing Matter of Twentieth Century Fox Film Corp., 190 AD2d 483, 488 (1<sup>st</sup> Dept. 1993); see Vergara v Mission Capital Advisors, LLC, 187 AD3d 495 (1<sup>st</sup> Dept. 2020); Matter of Bernstein v On-Line Software Inter. Inc., 232 AD2d 336 (1<sup>st</sup> Dept. 1996) *lv denied* 89 NY2d 810 (1997). However, these circumstances are the exception, not the rule.

“Conclusory claims of the need for confidentiality ... [are] not ... sufficient bas[es] for a sealing order” (Matter of Hofmann, *supra* at 93-94), and “the court will not approve wholesale sealing of [court] papers, even when both sides to the litigation request sealing.” Applehead Pictures, LLC v Perelman, *supra* (citations omitted); see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., *supra*; Liapakis v Sullivan, 290 AD2d 393 (1<sup>st</sup> Dept. 2002); Matter of Hofmann, *supra*. That is, a party’s own “designation of the materials as confidential or highly confidential is not controlling on the court’s determination whether there is good cause to seal the record pursuant to 22 NYCRR 216.1.” Eusini v Pioneer Electronics (USA), Inc. 29 AD3d 623, 625 (2<sup>nd</sup> Dept. 2006); see Mosallem v Berenson, *supra*. Even where there is a proper basis for sealing, redaction is favored over sealing of an entire document or record. See Vergara v Mission Capital Advisors, LLC, *supra*; Danco Laboratories, Ltd. v Chemical Works of Gedeon Richter, Ltd., 274 AD2d 1 (1<sup>st</sup> Dept. 2000).

The defendant has shown “good cause” for sealing to the extent indicated below.

A. Motion Sequence 007

In MOT SEQ 007, the defendant seeks to: (1) seal the memorandum of law in support of the plaintiff’s motion to vacate the note of issue (NYSCEF Doc. No. 160), the affirmation of the plaintiff’s counsel, Maurice D. Pessah, in support of said motion (the “Pessah Aff.”) (NYSCEF Doc. No. 161), exhibits 15-17, 19-20, and 22 to the Pessah Aff. (NYSCEF Doc. Nos. 176-78, 180-81, and 183), and exhibits A-C to the affirmation of the defendant’s counsel, Marc L. Greenwald, in support of MOT SEQ 007 (the “Greenwald Aff.”) (NYSCEF Doc. Nos. 187-89), and (2) allow for the public filing of the memorandum of law (NYSCEF Doc. No. 160), the Pessah Aff. (NYSCEF Doc. No. 161) and exhibit 17 to the Pessah Aff. (NYSCEF Doc. No. 178) with the proposed redactions highlighted in exhibits A-C to the Greenwald Aff. (NYSCEF Doc.

Nos. 187-89). Exhibits 15-16, 19-20, and 22 to the Pessah Aff. are excerpts from the deposition transcript of the defendant's accounting expert, Philip Green. Exhibit 17 to the Pessah Aff. is an excerpt from the deposition transcript of James Wehrfritz, the defendant's former Vice President of Finance. The portions of the memorandum of law and Pessah Aff. that the defendant seeks to redact quote from the portions of Green's deposition testimony that the defendant requests to permanently seal. The memorandum of law also includes brief descriptions of the defendant's relationship with non-parties Google, YouTube, and Meta. The defendant contends that the above documents should be sealed or redacted because they contain "financial and otherwise competitively sensitive information," and that disclosure of this information, in which the public has no legitimate interest, would harm the defendant's competitive standing. Additionally, the defendant contends that sealing of exhibits 15-16, 19-20, and 22 to the Pessah Aff. is warranted because those exhibits have been designated as confidential pursuant to the parties' so-ordered Stipulation and Order for the Production and Exchange of Confidential Information in this action (see NYSCEF Doc. No. 58).

To be sure, courts have found a compelling interest in the non-disclosure of trade secrets (see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., supra; Crain Comm., Inc. v Hughes, 135 AD2d 351 [1<sup>st</sup> Dept. 1987]), and in sealing information that is "proprietary" because it relates to "the nature of current or future business strategies," such that disclosure "could harm [a] private corporation's competitive standing" (Mancheski v Gabelli Group Capital Partners, supra at 502-03). Here, however, the defendant fails to meet its burden of demonstrating "good cause" to seal the subject documents. Other than a memorandum of law in support of the request to seal, the motion is accompanied solely by an attorney affirmation that merely attaches copies of the plaintiff's memorandum of law, the Pessah Aff., and exhibit 17 to the Pessah Aff. with the defendant's proposed redactions. No affidavits are submitted by persons with personal knowledge of the purportedly sensitive and confidential matters discussed in the subject documents the defendant seeks to seal or redact. Instead, the defendant, a distributor of independent films, offers mere conclusory assertions, without meaningful explanation, that the information contained in the subject documents is "competitively sensitive" and "proprietary," and that its disclosure would "harm [its] competitive standing." However, such "[c]onclusory claims of the need for confidentiality ... [are] not ... sufficient bas[es] for a sealing order." Matter of Hofmann, supra at 93-94.

Likewise, the fact that the subject portions of Green's deposition testimony was previously designated confidential pursuant to the so-ordered stipulation previously entered in this action pertaining to the production of purportedly confidential documents in discovery "is not controlling on the court's determination whether there is good cause to seal the record pursuant to 22 NYCRR 216.1." Eusini v Pioneer Electronics (USA), Inc., *supra*; see Mosallem v Berenson, *supra*. Indeed, the so-ordered stipulation and order on which the defendant relies expressly provides that documents previously designated as confidential by one of the parties, if filed with the court, must be filed in redacted form "until the Court renders a decision on any motion to seal[.]" and that, if no sealing motion is made or the motion to seal is denied, the party making the filing "shall take steps to replace the Redacted Filing with its corresponding unredacted version." See NYSCEF Doc. No. 58 at 6.

Moreover, the subject documents and the defendant's proposed redactions do not include the type of highly sensitive, proprietary information that would warrant sealing. The purportedly "sensitive" and "proprietary" information in the subject exhibits to the Pessah Aff. consist of testimony regarding potential accounting discrepancies and the defendant's use of outside consultants to perform and/or aid with certain accounting functions. This information does not reveal trade secrets, business strategies, or proprietary financial information that, if disclosed, could harm the defendant's competitive standing. See Norddeutsche Landesbank Girozentrale v Tilton, 165 AD3d 447, 448-49 (1<sup>st</sup> Dept. 2018); Gryphon Dom. VI, LLC v APP Intl. Fin. Co., *supra*; Mancheski v Gabelli Group Capital Partners, *supra*. Similarly, the information in the plaintiff's memorandum of law concerning the defendant's use of Google, YouTube, and Meta in its marketing and distribution efforts does not obviously constitute a trade secret or proprietary business information that would threaten the defendant's competitive advantage if revealed. Thus, to that extent, the defendant has not met its burden.

#### B. Motion Sequence 010

In MOT SEQ 010, the defendant seeks to: (1) seal its statement of material facts (NYSCEF Doc. No. 192) and memorandum of law (NYSCEF Doc. Nos. 236 and 238) in support of its motion for summary judgment, as well as exhibit 3 to its affirmation of counsel in support of said motion (NYSCEF Doc. No. 196), the affirmation of its employee, Jessica Nickelsberg, in support of said motion (the "Nickelsberg Aff.") (NYSCEF Doc. Nos. 206 and 237), exhibits 1-11 to the Nickelsberg Aff. (NYSCEF Doc. Nos. 207-17), the affirmation of its Executive Vice President for Finance and Business Development, Ryan Friscia, in support of said motion (the

“Frischia Aff.”) (NYSCEF Doc. No. 218), exhibits 1-15 to the Friscia Aff. (NYSCEF Doc. Nos. 219-33), the affirmation of its CEO, Tom Quinn, in support of said motion (the “Quinn Aff.”) (NYSCEF Doc. No. 234), exhibit 1 to the Quinn Aff. (NYSCEF Doc. No. 235), and exhibits 1-33 to Corey Struble’s affirmation in support of MOT SEQ 010 (NYSCEF Doc. Nos. 244-76); and (2) allow for the public filing of NYSCEF Doc. Nos. 192, 196, and 206-38 with the proposed redactions highlighted in exhibits 1-33 to Struble’s affirmation in support of MOT SEQ 010.

The defendant contends the redactions it proposes in exhibits 1-3, 12, 15, 18-27, and 31-33 to Struble’s affirmation in support of MOT SEQ 010 are designed to prevent the disclosure of certain terms of the parties’ Distribution Agreement. The court (Ostrager, J. [Ret.]) previously granted motions to seal/redact the Distribution Agreement, as well as portions of the defendant’s financial statements referencing the terms of said agreement, to protect the confidentiality of the “business and financial terms upon which Defendants agreed to distribute the Film.” See NYSCEF Doc. Nos. 79 & 101. The defendant’s proposed redactions reflected in exhibits 2-3, 12, and 18-27 to Struble’s affirmation in support of MOT SEQ 010 (NYSCEF Doc. Nos. 245-46, 255, 261-270), corresponding to NYSCEF Doc. Nos. 196, 206, 215, 221-30, and 237, are narrowly tailored to maintain the confidentiality of the same “business and financial terms” of the Distribution Agreement that were the subject of Justice Ostrager’s prior sealing orders. So too are the redactions proposed to paragraphs 12-14 and 21-25 of the defendant’s statement of material facts (NYSCEF Doc. No. 192), and to paragraphs 6, 11, and 54-55 of the Friscia Aff. (NYSCEF Doc. No. 218), as reflected in exhibits 1 and 15, respectively, to Struble’s affirmation in support of MOT SEQ 010 (NYSCEF Doc. Nos. 244 and 258). Therefore, MOT SEQ 010 is granted to the extent it seeks to seal/redact these documents in accordance with Justice Ostrager’s prior sealing orders.

The defendant further contends the redactions it proposes in exhibits 6 and 7 to Struble’s affirmation in support of MOT SEQ 010 (NYSCEF Doc. Nos. 249-50), corresponding to NYSCEF Doc. Nos. 209-10, should be granted to prevent disclosure of certain financial terms of its agreement with non-party Hulu. And the defendant seeks the redactions proposed in exhibits 28-30 to Struble’s affirmation (NYSCEF Doc. Nos. 271-73), corresponding to NYSCEF Doc. Nos. 231-33, to maintain the confidentiality of certain bank account and reference identification numbers reflected therein. The plaintiff does not oppose these redactions, nor does it oppose additional proposed redactions to the personal phone numbers and email addresses of various individuals reflected throughout most of the exhibits to Struble’s

affirmation. The court finds there is good cause for these redactions to prevent the disclosure of information that “could impinge on the privacy rights of third parties who clearly are not litigants herein” (Mancheski v Gabelli Group Capital Partners, *supra* at 502), and because there is a compelling interest in preventing the potentially harmful disclosure of the defendant’s bank account details. Therefore, MOT SEQ 010 is also granted to the extent it seeks the redactions proposed in NYSCEF Doc. Nos. 249-50 and 271-73, as well as all proposed redactions to personal phone numbers, email addresses, and other personal contact information.

However, MOT SEQ 010 is denied to the extent it seeks the redactions imposed in exhibits 16 and 17 to Struble’s affirmation (NYSCEF Doc. Nos. 259 and 260), corresponding to NYSCEF Doc. Nos. 219 and 220. The defendant contends these redactions are necessary to prevent the disclosure of the names of vendors from whom the defendant incurred expenses relating to the Film and exhibitors who remitted revenue to the defendant for the Film. However, the defendant fails to meet its burden of demonstrating “good cause” for these redactions. Other than a memorandum of law in support of the request to seal, the motion is accompanied solely by an attorney affirmation that merely attaches copies of the subject documents with proposed redactions. No affidavits are submitted by persons with personal knowledge of the purportedly sensitive and confidential vendor and exhibitor information contained in the subject documents. Instead, the defendant offers mere conclusory assertions, without any meaningful explanation, that the vendor and exhibitor information contained in the subject documents is “confidential” and “proprietary.” However, such “[c]onclusory claims of the need for confidentiality ... [are] not ... sufficient bas[es] for a sealing order.” Matter of Hofmann, *supra* at 93-94.

### C. Motion Sequence 011

In MOT SEQ 011, the defendant seeks to: (1) seal exhibit 18 to the affirmation of its counsel, Cory D. Struble, in opposition to the plaintiff’s motion to vacate the note of issue (NYSCEF Doc. No. 298), its memorandum of law in opposition to said motion (NYSCEF Doc. No. 302), and exhibits 1-2 to Struble’s affirmation in support of MOT SEQ 011 (NYSCEF Doc. Nos. 312-13); and (2) allow for the public filing of NYSCEF Doc. Nos. 298 and 302 with the proposed redactions highlighted in exhibits 1-2 to Struble’s affirmation in support of MOT SEQ 011. The defendant contends the information it seeks to redact are statements that disclose certain terms of the parties’ Distribution Agreement. As already discussed, the court (Ostrager, J. [Ret.]) previously granted motions to seal/redact the Distribution Agreement to protect the

confidentiality of the “business and financial terms upon which Defendants agreed to distribute the Film.” See NYSCEF Doc. Nos. 79 & 101. The defendant’s proposed redactions to NYSCEF Doc. Nos. 298 and 302 are narrowly tailored to maintain the confidentiality of the same “business and financial terms” of the Distribution Agreement that were the subject of Justice Ostrager’s prior sealing orders. Therefore, MOT SEQ 011 is granted.

D. Motion Sequences 012 and 013

In MOT SEQ 012 and MOT SEQ 013, the defendant seeks to have the following documents sealed and filed publicly with proposed redactions that the defendant has provided to the court: the plaintiff’s memorandum of law in opposition to the defendant’s summary judgment motion (NYSCEF Doc. No. 318), the plaintiff’s response to the defendant’s statement of material facts (NYSCEF Doc. No. 319), and exhibits 1-2, 4-5, 6-12, and 14-19 to the affirmation of the plaintiff’s counsel, Maurice Pessah, in opposition to the defendant’s summary judgment motion (NYSCEF Doc. Nos. 321-22, 324-25, 327-35, and 337-42), the plaintiff’s partially redacted version of exhibit 11 to Pessah’s affirmation (NYSCEF Doc. No. 369), exhibit 1-4 to the affirmation of counsel in further support of the defendant’s summary judgment motion (NYSCEF Doc. Nos. 380-83), the defendant’s reply memorandum of law in further support of its summary judgment motion (NYSCEF Doc. No. 384), and the defendant’s reply statement of material facts (NYSCEF Doc. No. 385).

The defendant seeks redactions for all the same reasons already discussed in connection with the other sealing motions addressed herein, based on the same arguments, conclusory assertions, and evidence (or lack thereof). As such, for the reasons already discussed above, these motions are granted to the extent they seek to prevent disclosure of information pertaining to the terms of the parties’ Distribution Agreement, the terms of the defendant’s agreements with Hulu and other non-parties, the defendant’s bank account details, and individuals’ personal contact information. This encompasses the defendant’s proposed redactions to the following documents: NYSCEF Doc. Nos. **318** (only as to personal contact information); **319** (only as to paragraphs 12-14 and 21-25); **321-22**; **324** (only as to pages 56, 59, 87, 89, 92, 117-20, 123-25, 143, 149-50, 155, 157, 211); **325** (only as to pages 94, 101, 185, 265, 276-78, 280, 289, 292, 294, 302-04, 307-09); **327** (only as to pages 97, 99-100, 311-12, 314); **328** (only as to pages 34 and 83); **329** (only as to pages 56-57, 61, 66, 71-72, 82, 92, 98-99); **332** (only as to pages 182, 184-89); **334** (only as to paragraphs 26-27, 32, 37, 46, 48-49, 51, 59-61, 82, 85-86, and associated tables and charts, but only insofar as they reveal the

terms of the parties' Distribution Agreement or other agreements with non-parties); **338**; **339** (only as to personal contact information); **340**; **341** (only as to personal contact information); **342**; **369** (only as to paragraphs 45 and 60); and **385** (only as to paragraphs 12-14 and 21-25).

The motions are otherwise denied with respect to the defendant's remaining proposed redactions concerning the names of its vendors and exhibitors and various expenses incurred and revenue earned by the defendant in connection with the Film. the defendant fails to meet its burden of demonstrating "good cause" for these redactions. Other than a memorandum of law in support of each motion, these motions are accompanied solely by attorney affirmations that merely attach copies of the subject documents with proposed redactions. No affidavits are submitted by persons with personal knowledge of the purportedly sensitive and confidential information contained in the subject documents. Instead, the defendant offers mere conclusory assertions, without any meaningful explanation, that the vendor and exhibitor information and information concerning its revenues and expenses is "confidential" and "proprietary." However, such "[c]onclusory claims of the need for confidentiality ... [are] not ... sufficient bas[es] for a sealing order." Matter of Hofmann, supra at 93-94; see also Norddeutsche Landesbank Girozentrale v Tilton, supra; Gryphon Dom. VI, LLC v APP Intl. Fin. Co., supra; Mancheski v Gabelli Group Capital Partners, supra.

### III. CONCLUSION

Accordingly, upon the foregoing papers, it is

ORDERED that MOT SEQ 007 is denied, MOT SEQ 011 is granted, and MOT SEQ 010, 012, and 013 are granted to the extent outlined herein and are otherwise denied; and it is further

ORDERED that service upon the Clerk of the Court of this order 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 the Clerk of the Court is directed, upon service upon him of a copy of this order with notice of entry, to permanently seal to all parties except counsel, the court, and court personnel the unredacted copies of the documents efiled at NYSCEF Doc. Nos. 192, 196,

206-18, 221-33, 237, 244-58, 261-273, 298, 302, 312-13, 318-19, 321-22, 324-25, 327-29, 332, 334, 338-42, and 385, as well as the redacted copy of the document efiled at NYSCEF Doc. No. 369; and it is further

ORDERED that the Clerk of the Court is directed to accept for filing the redacted copies of the sealed documents available for viewing by the public via NYSCEF, with the redactions limited to those approved herein.

This constitutes the Decision and Order of the court.

*Nancy M. Brown*  
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8/9/2024  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART

OTHER