

**RSM US LLP v Notes**

2025 NY Slip Op 32423(U)

July 1, 2025

Supreme Court, New York County

Docket Number: Index No. 650401/2022

Judge: Margaret A. Chan

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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 49M

-----X  
RSM US LLP,

Plaintiff,

- v -

RANDOLF NOTES,

Defendant.

INDEX NO. 650401/2022

MOTION DATE 02/21/2025

MOTION SEQ. NO. MS 016

**DECISION + ORDER ON  
MOTION**

-----X  
HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 016) 392, 393, 394, 396, 397, 398

were read on this motion to/for

SEAL

Plaintiff RSM US LLP moves, by order to show cause, for an order permanently sealing Exhibits 1 through 5 to the Affirmation of Jacob M. Kaplan in Support of Plaintiff's Opposition to Defendant's Motion for Sanctions (NYSCEF #s 387-391). The motion is unopposed.

Exhibit 1 is a spreadsheet that "identifies documents from [defendant's] production relating to [plaintiff's] clients or prospective clients at issue in this case" (NYSCEF # 386, Kaplan Sanctions Aff, ¶ 2; NYSCEF # 387, Kaplan Ex. 1). Plaintiff argues the spreadsheet should be sealed because it "depicts [plaintiff's] current and prospective clients" which constitutes "commercially sensitive information [that] the public does not have an interest in knowing" (NYSCEF # 393, Plt's Br, at 1).

Exhibits 2 and 3 are emails produced by defendant in this case. Exhibit 2 is an email depicting defendant's "solicitation of [non-party] St. Joseph Regional Medical Center on behalf of Impact Advisors on October 31, 2022" (Kaplan Sanctions Aff ¶ 5; NYSCEF # 388, Kaplan Ex. 2). Exhibit 3 is an email defendant "sent to Connie Lockhart on February 1, 2022 instructing her to submit a RFI to [non-party] OhioGuidestone on behalf of Impact" (Kaplan Sanctions Aff ¶ 6; NYSCEF # 389, Kaplan Ex. 3). Plaintiff argues these emails should be sealed because they contain "confidential information from third-party entities not party to this dispute" (Plt's Br at 2). Plaintiff also argues these documents have been marked "Confidential" pursuant to the parties' confidentiality agreement (*id.* at 1, 2, citing NYSCEF # 163, Confidentiality Agreement).

Exhibits 4 and 5 are redacted versions of spreadsheets produced by plaintiff in this action. Exhibit 4 is a redacted version of Connie Lockhart's "All My Opportunities This FY List" spreadsheet created "during her employment with [plaintiff]" (Kaplan Sanctions Aff ¶ 7; NYSCEF # 390, Kaplan Ex. 4). Exhibit 5 is a redacted excerpt of "a sales report created during [defendant's] tenure at [plaintiff] showing that [plaintiff] won the opportunity with OhioGuidestone and [defendant] was the Client Service Lead" (Kaplan Sanctions Aff ¶ 8; NYSCEF # 391, Kaplan Ex. 5). Both spreadsheets have been almost completely redacted save for a single row in each. Plaintiff argues these spreadsheets should be sealed because they "contain[] highly sensitive client and internal pricing information" regarding the "fees and revenues RSM generates" (Pltf's Br. at 2, 3). Plaintiff also argues these spreadsheets have been designated "Attorneys Eyes Only" under the confidentiality agreement (*id.*).

Notably, the contents of all five exhibits are discussed in Kaplan's Affirmation in the sanctions motion and in plaintiff's brief in opposition to the sanctions motion (*see* Kaplan Sanctions Af ¶¶ 2-8; NYSCEF # 385, Pltf's Sanctions Opp, at 11, 15). Plaintiff does not seek to seal the affirmation or brier nor to redact the descriptions of Exhibits 1-5 in those documents.

Under New York law, there is a presumption that the public is entitled to access judicial proceedings and court records (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010] citing *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 501 [2d Dept 2007]). The public right to access, however, is not absolute (*Danco Labs v Chemical Works of Gedeon Richter*, 274 AD3d 1, 8 [1st Dept 2000]), and a court is empowered to seal or redact court records pursuant to section 216.1 (a) of the Uniform Rules for Trial Courts upon a showing of "good cause" (22 NYCRR 216.1 [a]).

At the same time, "[c]onfidentiality is clearly the exception, not the rule" (*Matter of Hoffman*, 284 AD2d 92, 93-94 [1st Dept 2001]), and the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access (*Mancheski*, 39 AD3d at 502). Sealing has been found to be appropriate to preserve the confidentiality of materials which involve internal finances of a party which are of minimal public interest (*see D'Amour v Ohrenstein & Brown, LLP*, 2007 NY Slip Op 52207[U] [Sup Ct, NY County 2002]). In the business context, courts permit records to be sealed when trade secrets are involved or when disclosure of information contained in documents "could threaten a business's competitive advantage" (*Mosallem*, 76 AD3d at 350-351). Moreover, sealing has been allowed in the absence of "any legitimate public concern, as opposed to mere curiosity, to counter-balance the interest of [a business's] partners and clients in keeping their financial arrangement private" (*Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992]).

Here, the documents each contain at least some sensitive confidential business information whose disclosure “could threaten [plaintiff’s] competitive advantage” and which is of minimal public interest, thus constituting good cause to seal under 216.1 of the Uniform Rules of Trial Courts (*see Mosallem*, 76 AD3d at 350-351 [citations omitted]; *Dawson*, 184 AD2d at 247; *D’Amour*, 17 Misc 3d 1130[A], \*20)).

However, given that plaintiff has already described and relied on the non-confidential parts of several of these documents in its publicly-filed sanctions opposition brief and in Kaplan’s affirmation, plaintiff must also file public-facing versions of most of these documents redacting the irrelevant confidential information. Specifically, Exhibits 2 can be redacted to remove all data and confidential information about St. Joseph Regional Medical Center, while Exhibit 3 can be redacted to show only defendant’s basic instruction about RFI and not the details of those instructions that could show how non-party Impact Advisors LLC conducts business (*i.e.*, redact everything but the first sentence of the first bullet). Exhibits 4 and 5 can similarly be redacted to remove any confidential data about non-party OhioGuidestone while still showing the “work that [plaintiff] performed for” that non-party as mentioned in plaintiff’s sanctions opposition brief (*see* Plt’s Sanctions Opp at 11). Only Exhibit 1 may be sealed in its entirety given the burden of redacting twenty pages of spreadsheet entries and the fact that the same information is reflecting in Exhibit 3 (*see id.* at 7, 11).

Accordingly, it is hereby

ORDERED that plaintiff RSM US LLP’s motion, by order to show cause, for an order permanently sealing Exhibits 1 through 5 to the Affirmation of Jacob M. Kaplan in Support of Plaintiff’s Opposition to Defendant’s Motion for Sanctions is granted in part to the extent all five documents are sealed (NYSCEF #s 387-391), and denied to the extent plaintiff does not propose filing redacted versions of the documents; and it is further


ORDERED that plaintiff is ordered to provide public versions of Exhibits 2, 3, 4, and 5 (NYSCEF #s 388-391) on the docket, with redactions comporting with the instructions above, and that failure to do so may result in unsealing of the documents sealed here; and it is further

ORDERED that the Clerk of the Court is directed, upon service upon the Clerk of a copy of this decision and order with notice of entry, to seal the documents at NYSCEF Doc. Nos. 387, 388, 389, 390, and 391; and it is further

ORDERED that until further order of the court, the Clerk of the Court shall deny access to the documents (NYSCEF Doc. Nos. 387, 388, 389, 390, and 391) to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this action, any party, and any representative of the counsel of

record for a party upon presentation to the County Clerk of written authorization from said counsel and appropriate identification; 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).

<u>7/01/2025</u> DATE	 MARGARET A. CHAN, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT