

United Realty Mgt., Co., Inc. v Capital One, N.A.

2019 NY Slip Op 33509(U)

November 20, 2019

Supreme Court, New York County

Docket Number: 653721/2013

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

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INDEX NO. 653721/2013

UNITED REALTY MANAGEMENT, CO., INC. AND,
JONATHAN ROSEN,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 009

- v -

CAPITAL ONE, N.A.,

**DECISION + ORDER ON
MOTION**

Defendant.

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MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 243, 244, 245, 246, 247, 248, 249, 250, 251, 319, 321, 322, 323, 324, 325, 326, 327, 328, 329, 334

were read on this motion to/for

SEAL

In this action, plaintiffs United Realty Management, Co., Inc. (United) and Jonathan P. Rosen allege that defendant Capital One, N.A. (CONA), knowingly processed withdrawal transactions that were not authorized by the required account signatories. (NYSCEF Doc. No. 1 at ¶ 1.) CONA allegedly remitted these withdrawn funds to nonparty Louise E. Litvin in a manner intended to conceal the transactions from United. (*Id.*) Plaintiffs subsequently interposed their claims for breach of contract, fraud, aiding and abetting fraud, commercial bad faith, and conversion.

In motion sequence number 009, CONA moves to seal the deposition transcript of nonparty Mary Ann Cook, and numerous other documents relating to CONA's banking processes, policies, procedures, systems or anti-money laundering processes, policies, procedures, systems and guidelines. (NYSCEF Doc. No. 334, Tr at 12-15; NYSCEF Doc. No. 326.) Whereas CONA argues that good cause exists to seal this information from its competitors, plaintiffs argue that these matters involve the

misconduct of a major bank, and therefore, the public's interest weighs against sealing. Plaintiffs also contend that the information sought is primarily 10 years old, and therefore, CONA must show how this information presently affects CONA's business.

Discussion

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 the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.

(b) For purposes of this rule, ‘court records’ shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103 (a).”

Judiciary Law § 4 provides that judicial proceedings shall be public. “The public needs to know that all who seek the court's protection will be treated evenhandedly,” and “[t]here is an important societal interest in conducting any court proceeding in an open forum.” (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U],*2 [Sup Ct, NY County 2006] [citation omitted].) The public right of access, however, is not absolute. (*see Danco Lab, v Chemical Works of Gedeon Richter*, 274 AD2d 1, 8 [1st Dept 2000].)

The “party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosalleem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.”

(*Danco Labs.*, 274 AD2d at 9.) In the business context, 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].)

CONA fails to meet its burden of establishing good cause to seal the information at issue. Failure to show how decades-old information will cause harm to the present-day business of a party is fatal on a motion to seal. (*Mosallem*, 76 AD3d at 350 [“Nor have defendants shown that the documents, most of which are more than 10 years old, would cause harm to Grey’s present-day business”].) Here, plaintiffs argue that the information sought to be sealed relates to the period from 2009-2011, but CONA does not address this matter by providing any explanation of the policies and procedures at issue in this time-frame, or of those operative in 2019. Without an affidavit by an individual with personal knowledge fleshing out what the policies and procedures were, what they are, and how disclosure could threaten CONA’s competitive advantage, this court cannot make an informed decision. (*Id.* at 350 [“Nor was an affidavit submitted from anyone with knowledge about Grey’s employment policies and procedures”].) Although CONA submitted the affidavit of Nicholas R. Klaiber, CONA’s assistant general counsel, the affidavit is deficient. It merely provides in conclusory fashion that “CONA would be at a competitive disadvantage as a result of the informational asymmetry that disclosure would create.” (NYSCEF Doc. No. 245 at ¶ 7.) Under these circumstances where the court must balance the public interest in the alleged misconduct of a national bank with the need to protect the bank’s practices, this affidavit is insufficient, and rejected. (*Applehead Pictures LLC v Perelman*, 80 AD3d 181, 191-192 [1st Dept 2010][“The presumption of the benefit of public access to court proceedings takes

precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public's right to access”].)

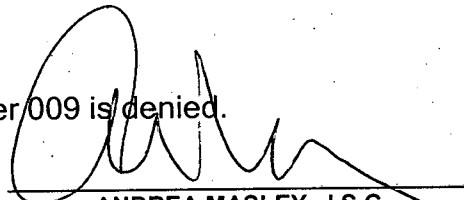
It is clear that CONA made a good faith effort to submit this sealing motion in accordance with the Part 48 rules; however, it is also clear that a number of these documents are not remotely sensitive. For instance, good cause does not exist to redact Tr. 102:12-23 insofar as this is just a general description of a product offered by CONA, and therefore, cannot threaten its competitive advantage. Good cause also does not exist with respect to Ex. P016 (CONA 041774-CONA 041792) because CONA fails to submit an unredacted version, preventing the court from determining what the information is and whether it is sensitive.

The court urges CONA to revisit these submissions and omit requests that concern patently insensitive information because onerous and unwarranted burdens on the court are not to be condoned. (*Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 625 [2d Dept 2006].) “[C]onfidentiality is clearly the exception, not the rule.” (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006].)

It is

ORDERED that motion sequence number 009 is denied.

11/26/19
DATE



ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN			