

Coresite 32 Ave. of the Ams., LLC v 32 6th Ave. Co. LLC

2019 NY Slip Op 33551(U)

November 27, 2019

Supreme Court, New York County

Docket Number: 652792/2019

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

-----X

INDEX NO. 652792/2019

CORESITE 32 AVENUE OF THE AMERICAS, L.L.C.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 003, 006

- v -

32 SIXTH AVENUE COMPANY LLC, TELX - NEW YORK
6TH AVE. LLC

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 111

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 006) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

In a decision and order on motion sequence number 001 to seal (001), this court provided a full recitation of the facts, familiarity with which is presumed. (NYSCEF Doc. No. [NYSCEF] 70.) Because the movant in 001, plaintiff CoreSite 32 Avenue of the Americas LLC (CoreSite), established good cause, the court ordered the redacting of the lease entered into by CoreSite and defendant 32 Sixth Avenue Company LLC (Landlord). Permitted redactions included financial terms and information including rent rates, financing arrangements, capital expenditures, hub equipment rental rates, and information concerning hub access, use and capacity. (NYSCEF 70 at 5.) Defendant Telx - New York 6th Ave. LLC did not oppose 001, but requested to seal the agreement in which Landlord leased and transferred the business of operating the hub to Telx (Hub Agreement). (*Id.* at 3.) Telx asserted that the Hub Agreement contained sensitive

financial and non-party information that could damage its customers and business, if disclosed. The court denied this request because Telx failed to provide an unredacted version of the Hub Agreement. (*Id.* at 5.)

A. Motion Sequence Number 003

While 001 was pending, and before this court issued its decision, Telx moved by order to show cause in motion sequence number 003 to seal NYSCEF Doc. Nos. 21, 23, and 24 (003). In 003, Telx largely argues that disclosure of the information it seeks to redact would damage its business. The motion is unopposed.

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].)

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]). 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].) For instance, in *Dawson v White & Case*, the First Department stated that the plaintiff appellant failed to show “any legitimate public concern, as opposed to mere curiosity, to counter-balance

the interest of defendant's partners and clients in keeping their financial arrangement private." (*Id.* [internal quotation marks and citation omitted]).

1. NYSCEF Doc. No. 21

Good cause exists only to redact certain portions of NYSCEF Doc. No. 21. NYSCEF Doc. No. 21 is a memorandum of law from which Telx seeks to redact pricing terms from the lease entered into by Coresite and Landlord. (NYSCEF 31 at 1.) Pursuant to this court's prior decision on 001, financial terms and financing arrangements contained in the lease are already permitted to be redacted. (NYSCEF 70 at 5.) Therefore, good cause exists to redact the pricing terms from this lease on pages 2 - 3 of NYSCEF Doc. No. 21.

From NYSCEF Doc. No. 21, Telx also seeks to redact "certain revenue provisions in the ... "Telx Lease" ... between ... Landlord and Telx. (NYSCEF 31.) This "Telx Lease" is what the court referred to as the "Hub Agreement" in its decision on 001. (*see* NYSCEF 5; NYSCEF 70 at 2.) A review of the unredacted version of NYSCEF Doc. No. 21 indicates that this information is either an allegation (*see* NYSCEF 21 ["Coresite alleges that it leased ..."]) or reveals no information that could threaten a competitive advantage of the parties. Notably, Telx fails to submit an affidavit from a person with knowledge articulating how this information could threaten a party's competitive advantage. (*Mosallem*, 76 AD3d at 350.) For these reasons, good cause also does not exist to redact page 4 of NYSCEF Doc. No. 21.

2. NYSCEF Doc. No. 23

Good cause exists to redact NYSCEF Doc. No. 23 to the extent that the proposed redactions are permitted by this court's prior decision on 001. NYSCEF Doc. No. 23 appears to be a letter from nonparty Digital Realty to Coresite in which financial terms

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and financing arrangements in the lease are addressed. To the extent this letter contains information that is not permitted to be sealed pursuant to this court's prior decision, good cause does not exist to seal. As noted above, no affidavits were submitted by persons with knowledge explaining why or how any information at issue in this application could threaten the parties' competitive advantage. (*Mosallem*, 76 AD3d at 350.) Although Telx argues in conclusory fashion that its "pricing information is highly sensitive and proprietary," the letter at issue here is from nonparty Digital Realty to Coresite. (NYSCEF 28.) Telx does not explain how its pricing information is even implicated. The court gathers from the letter that Telx may have been Digital's predecessor, but that does not explain why Telx is seeking to conceal from the public practices that Digital Realty identifies as its own.

3. NYSCEF Doc. No. 24

Good cause exists to redact NYSCEF Doc. No. 24 to the extent that the proposed redactions are permitted by this court's prior decision on 001. NYSCEF Doc. No. 24 appears to be a demand for arbitration. To the extent that the information is not permitted to be sealed by this court's decision in 001, good cause does not exist to seal this demand for arbitration because there is no affidavit from a person with knowledge that explains how the information at issue could undermine Telx's competitive advantage. (*Mosallem*, 76 AD3d at 350.)

B. Motion Sequence Number 006

In motion sequence number 006, Telx moves for leave to renew 001 and redact the Hub Agreement. Telx asserts that it did not provide an unredacted copy of the Hub Agreement because it mistakenly believed that the court was provided with one. The motion is unopposed. "Although renewal motions generally should be based on newly

discovered facts that could not be offered on the prior motion, courts have discretion to relax this requirement and to grant such a motion in the interest of justice.” (*Mejia v Nanni*, 307 AD2d 870, 871 [1st Dept 2003].) Here, Telx made an administrative error, the penalties of which may harm nonparties to this action. It is therefore in the interest of justice to grant renewal otherwise confidential information concerning nonparties will be filed on the NYSCEF docket.

Good cause exists to redact portions of the Hub Agreement (NYSCEF Doc. No. 99), but not to the extent proposed by Telx. For instance, good cause exists to redact descriptions of customers who are not parties to this action along with their accompanying financial information. Indeed, “there [is] a compelling interest in sealing ... third-party financial information since disclosure could impinge on the privacy rights of third parties who clearly are not litigants.” (*Manufacturers & Traders Trust Co. v Client Server Direct, Inc.*, 156 AD3d 1364, 1366 [4th Dept 2017], citing *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007].) Similarly, good cause exists to redact Landlord’s account information, the design plans for various floor plans and installations, and the description of the emergency generators because disclosure of this information could jeopardize the safety and security of the Landlord or its building. Lastly, good cause exists to redact the financial terms and financial information in the Hub Agreement because disclosure may threaten the parties’ competitive advantage. (*Mosallem*, 76 AD3d at 350.) Significantly, there has been no showing of public interest sufficient to outweigh the parties’ interest in keeping their financial arrangements private. (*Dawson*, 184 AD2d at 247.)

Good cause, however, does not exist to redact other portions of the Hub Agreement. For instance, good cause does not exist to redact the indemnity and liability insurance obligations, much of which appear to be boilerplate.

Pursuant to, and in accordance with, Rule 216, having determined that good cause exists to redact as detailed in this decision, and the grounds having been specified, it is now accordingly,

ORDERED that the motion is granted to the extent that Telx shall redact all references to confidential information as directed by this decision from NYSCEF Doc. No. 21, 23, 24, and 99; and it is further

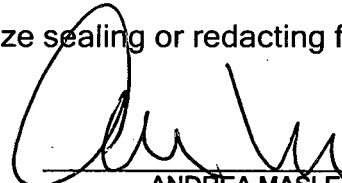
ORDERED that defendants are directed to re-file NYSCEF Doc. No. 21, 23, 24, and 99 in redacted form within 10 days of this date of this decision. Future submissions containing this confidential information as outlined in this decision, shall likewise be redacted prior to being filed publicly in NYSCEF; and it is further

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to accept NYSCEF Doc. No. 21, 23, 24 and 99 in redacted form; and it is further

ORDERED that NYSCEF Doc. Nos. 21, 23, 24 and 99 shall also be filed in unredacted form in accordance with this decision, and sealed. Until further order of the court, the County Clerk shall deny access to the unredacted documents to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from the counsel; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.

11/27/19
DATE


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

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: