

<b>Matter of Dentsu Aegis Network US v Robt Ventures, LLC;</b>
2020 NY Slip Op 34312(U)
December 24, 2020
Supreme Court, New York County
Docket Number: 654657/2020
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*

-----X INDEX NO. 654657/2020

In the Matter of the Application for an Order Staying Arbitration between DENTSU AEGIS NETWORK US HOLDINGS, INC.,

MOTION DATE \_\_\_\_\_

Petitioner,

MOTION SEQ. NO. 004, 005, and 007

- v -

ROBT VENTURES, LLC; OLIVER RALPH; BENJAMIN PHAM; PATRICIA EVANGELISTA; and RISHI SHOURIE;

**DECISION + ORDER ON MOTION**

Respondents.

EFM

-----X

**MASLEY, J.:**

The following e-filed documents, listed by NYSCEF document number (Motions 004, 005 and 007) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, 46, 95, 56, 57, 58, 64, 70, 71, 72, 73, 74, 83, 84, 85, 88, 89, 96, 97, 98, and 99.

were read on these motions to/for SEAL

In motion sequence number 004, petitioner Dentsu Aegis Network US Holdings, Inc. (Dentsu) moves to seal all filings in this proceeding. Alternatively, Dentsu moves to seal and redact NYSCEF Doc. Nos. 1, 3, 4, 5, 6, 7, 8, 9, 24, 29, 30, 32, 33, 34, 35, 36, 37, and 38. Alternatively, Dentsu moves to seal and redact NYSCEF Doc. Nos. 1, 3, 4, 5, 6, 7, 8, 9 and 24. Dentsu lastly requests that the parties are permitted to redact future filings that incorporate the same confidential information.

In support, Dentsu submits the affidavit of Laurence Hinz, the head of Mergers & Acquisitions for DAN Americas which includes Dentsu. (NYSCEF 30, Hinz Affidavit ¶ 1.) Hinz states that Dentsu “employs certain acquisition strategies, payment structures, pre-and/or post-closing payments, calculation methodologies, valuation structures and other commercial terms, the nature, structure, terms for and calculation of which reflect Dentsu’s confidential, competitive and proprietary business processes regarding its private acquisitions.” (*Id.* ¶ 7.) Dentsu categorizes this information as “Acquisition Information” and asserts that if it were publicly known Dentsu “would be at a competitive disadvantage with respect to other acquirers that may be soliciting the same companies for acquisition and use the information to ‘outbid’ or undercut Dentsu’s competitive future position.” (*Id.*) Dentsu further argues that it would be at a commercial disadvantage in negotiations with companies it seeks to acquire going forward. (*Id.*)

Dentsu also seeks to seal "Operations Information" which concerns the private business operations by one of Dentsu's acquired companies. (*Id.* ¶ 9.) Dentsu argues that its acquired company only has these industry operations based in its own investment and experience. (*Id.*)

Dentsu argues that the entirety of a contract known as the "Membership Interest Purchase Agreement" (MIPA) should be sealed because it contains confidential business information concerning the acquired company Character SF, LLC such as "acquisition price, assets, liabilities, valuation, contracts, management, structure, [and] employment matters." (*Id.* ¶¶ 14-15.)

Dentsu argues that certain employment agreements should be sealed because they contain the "structure, relationship, compensation, restrictions and obligations" of respondents Oliver Ralph, Benjamin Pham, Patricia Evangelista and Rishi Shourie. (*Id.* ¶ 18.) Dentsu asserts that if competitors know the compensation and employment structure of these individuals, they will know how to compete with Character and Dentsu for employees.

Dentsu indicates throughout its papers that another basis for sealing is confidentiality provisions to which the parties agreed.. (*Id.* ¶¶ 16, 20.)

The motion is unopposed. The court understands that the press contacted Dentsu in connection with this matter although the court was not contacted by the press. The court is not otherwise aware of any members of the press or public who have expressed interest in this case.

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) [e]xcept 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, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 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. (*Mosallem 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].) 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].)

Dentsu’s request to carte blanche seal all filings in this proceeding is denied because “[c]onfidentiality is clearly the exception, not the rule.” (*Mosallem v Berenson*, 76 AD3d 345, 349 [1st Dept 2010] [internal citation omitted].) That the parties may have agreed to confidentiality provisions in and of itself is not sufficient to establish good cause. (*See Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016]; *Gryphon Dom VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006].)

Nevertheless, good cause exists to redact the Acquisition Information from NYSCEF Doc. No. 1 because disclosure could threaten a competitive advantage with respect to other acquirers as articulated by Hinz. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Moreover, the parties have a legitimate interest “in keeping their financial arrangement private” and there has been no legitimate showing of public concern, as opposed to mere curiosity, to counter-balance that interest. (*Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) Good cause does not exist to redact the “Operations Information” as described by Hinz, without more, because his affidavit is vague and conclusory on this point.

Good cause only exists to redact Acquisition Information from NYSCEF Doc. No. 4 for the reasons stated above. A review of the proposed redactions for this Statement of Claim filed on NYSCEF Doc No. 33 indicates that Dentsu is also seeking to redact allegations that are embarrassing. “[N]either the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records.” (*Mosallem v Berenson*, 76 AD3d 345, 351 [1st Dept 2010].) Accordingly, good cause does not exist to redact these embarrassing allegations. Additionally, good cause does not exist to redact the entirety of the MIPA because portions of it are clearly not sensitive. Good cause does exist to redact the Acquisition Information from the MIPA for the reasons described above.



Good cause exists to redact financial terms from the employment agreements filed on NYSCEF Doc. Nos. 6, 7, 8 and 9 because disclosure of the compensation could threaten Character and Dentsu's competitive advantage. Additionally, the parties have a legitimate interest "in keeping their financial arrangement private" and there has been no legitimate showing of public concern, as opposed to mere curiosity, to counter-balance that interest. (*Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992]). Good cause does not exist to redact the balance of these agreements as there has been no showing as to how these seemingly boilerplate terms could threaten a competitive advantage.

Good cause exists to redact NYSCEF Doc. No. 24 to the extent it contains Acquisition Information only for the reasons stated above. To the extent Dentsu seeks to redact embarrassing allegations, good cause does not exist.

The balance of the motion is denied with leave to renew by January 11, 2021. Otherwise Dentsu waives the right to request this relief. Dentsu's request is granted insofar as future filings containing Acquisition Information or the financial terms mentioned above may be redacted.

In motion sequence number 005, respondents move to seal NYSCEF Doc. Nos. 48, 53, 54 and 55. Because the application does not comport with the Part 48 Rules, lacks a memorandum of law, and at least one affidavit from a person with knowledge, it is denied with leave to renew by January 11, 2021; otherwise waived.

In motion sequence number 007, Dentsu moves to seal all filings in this proceeding. (NYSCEF Doc. No. 88.) Alternatively, Dentsu moves to seal NYSCEF Doc. Nos. 67, 68, 69, 72, and 73. Alternatively, Dentsu moves to seal NYSCEF 67, 68, and 69. Dentsu argues that "these additional documents ... contain certain references and quotations from the Verified Petition and Exhibits thereto, which themselves contain commercially sensitive Acquisition Information, Operations Information, and MIPA Information, as those terms are defined and described within [Dentsu's] first Memorandum of Law in Support of Sealing." (NYSCEF 74, Memorandum of Law p. 3.) This motion is denied with leave to renew because it does not comport with the Part 48 rules for sealing. Nevertheless, this motion is duplicative of motion sequence number 004 because it seeks to seal the same categories of information. The court has already found good cause to redact Acquisition Information and provided that the parties may redact it in future filings. On these grounds, the motion is also moot. To the extent this motion seeks to seal Operations Information and "MIPA Information," it is denied for the same reasons as motion sequence number 004.

Accordingly, it is

ORDERED that the motion is granted to the extent that Dentsu shall redact Acquisition Information from NYSCEF Doc. Nos. 1, 4 and 24; and it is further

ORDERED that Dentsu shall redact financial terms from NYSCEF Doc. Nos. 6, 7, 8, and 9

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. Nos. 1, 4, 6, 7, 8, 9 and 24; and it is further

ORDERED that within 30 days of this order being filed on NYSCEF, Dentsu shall file redacted versions of NYSCEF Doc. Nos. 1, 4, 6, 7, 8, 9, and 24 in accordance with this decision; and it is further

ORDERED that 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; and it is further

ORDERED that the parties may redact Acquisition Information and the financial terms discussed above from future court records; and it is further

ORDERED that the balance of the motion sequence number 004 is denied with leave to renew in accordance with the Part 48 rules on or before January 11, 2021 otherwise Dentsu waives its right; and it is further

ORDERED that motion sequence number 005 is denied with leave to renew by January 11, 2021 otherwise waived; and it is further

ORDERED that motion sequence number 007 is denied with leave to renew by January 11, 2021 otherwise waived; and it is further

ORDERED that the parties review the Part 48 rules and procedures for sealing; and it is further

004

DATE 12/24/2020

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<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"/>	OTHER
		<input type="checkbox"/>	REFERENCE

005

12/24/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

007

12/24/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: