

11 Park Place LLC v 250 Broadway Assoc. Corp.

2021 NY Slip Op 32352(U)

November 16, 2021

Supreme Court, New York County

Docket Number: Index No. 655115/2020

Judge: Nancy M. Bannon

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

PRESENT: HON. NANCY BANNON PART 42

Justice

-----X

11 PARK PLACE LLC,

Plaintiff,

- v -

250 BROADWAY ASSOCIATES CORP., 250 BROADWAY
HOLDINGS CORP., 250 BROADWAY OWNER LLC

Defendants.

-----X

INDEX NO. 655115/2020

MOTION DATE 09/03/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 68, 69, 70
were read on this motion to/for SEAL.

In this breach of contract action arising from a limited license agreement, the plaintiff moves pursuant to 22 NYCRR 216.1(a) (MOT SEQ 001) to seal or redact the following documents filed in connection with the plaintiff's motion for partial summary judgment (MOT SEQ 002): Exhibits 3 and 7 to the affidavit of William E. Stempel (the "Stempel Affidavit"), pages 5 and 6 of the Stempel Affidavit, and page 11 of the plaintiff's memorandum of law in support of its motion for partial summary judgment. No opposition is submitted. The motion is granted in part.

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." In Danco Labs. v Chemical Works of Gedeon Richter, 274 AD2d 1, 6-7 (1st Dept. 2000), the First Department discussed the presumption of a broad right of public access to the courts and judicial records underlying this narrow rule, stating, in relevant part,

We start by taking note of the broad constitutional proposition, arising from the First and Sixth Amendments, as applied to the States by the Fourteenth Amendment, that the public as well as the press are generally entitled to have access to court proceedings. Since the right is of constitutional dimension, any order denying access must be narrowly tailored to serve compelling objectives, such as the need for secrecy that

outweighs the public's right to access (Globe Newspaper Co. v Superior Court, 457 U.S. 596, 605–07 [1982]) . . .

[A]ccess may still be respected in keeping with constitutional requirements while sensitive information is restricted in keeping with “the State’s legitimate concern for the well-being” of an individual (Globe Newspaper Co. v Superior Court, supra at 609).

Because “confidentiality is clearly the exception, not the rule” (Matter of Will of Hofmann, supra at 93–94), the First Department has authorized sealing “only in strictly limited circumstances.” Gryphon Domestic VI, LLC v APP International Finance Co., 28 AD3d 322, 325 (1st Dept. 2006); see Mosallem v Berenson, 76 AD3d 345 (1st Dept. 2010). “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, 180 AD3d 181, 191 (1st Dept. 2010) (quoting Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 [2nd Dept. 2007]) (some internal quotation marks and citation omitted).

“Generally, this Court has been reluctant to allow the sealing of court records (see Liapakis v Sullivan, supra; Matter of Brownstone, 191 AD2d 167 [1st Dept. 1993]), even where both sides to the litigation have asked for such sealing (Matter of Estate of Hofmann, [supra]).” Gryphon Domestic VI, LLC v APP International Finance Co., supra at 324. However, “confidentiality is, in certain circumstances, necessary in order to protect the litigants or encourage a fair resolution of the matter in controversy.” Matter of Twentieth Century Fox Film Corp., 190 AD2d 483, 486 (1st Dept. 1993). Sealing has been authorized to protect the confidentiality of trade secrets. See Matter of Bernstein v On-Line Software Inter. Inc., 232 AD2d 336 (1st Dept. 1996) *lv denied* 89 NY2d 810 (1997). Sealing has also been authorized to protect “third-party financial information since disclosure could impinge on the privacy rights of third parties who clearly are not litigants” to an action and where the disclosure of proprietary financial information “could harm [a] private corporation’s competitive standing.” Mancheski v Gabelli Group Capital Partners, supra at 503–04. Further, whether a relevant public interest in disclosure of non-parties’ financial information, “as opposed to mere curiosity” exists should be taken into account in determining whether sealing is appropriate. Dawson v White & Case, 184 AD2d 246, 247 (1st Dept. 1992) (citations omitted).

“A finding of ‘good cause’ presupposes that . . . no alternative to sealing can adequately protect the threatened interest.” Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 (2nd Dept. 2007) (citing In re Herald Co., 734 F.2d 93, 100 [2nd Cir. 1984]). Accordingly, “less restrictive alternatives to closure” should be employed whenever possible. Anonymous v Anonymous, 263 AD2d 341, 344 (1st Dept. 2000). Appropriate alternative relief may be granted to balance the competing interests of public access and the need for secrecy or confidentiality. See Danco Labs v Chemical Works of Gedeon Richter, supra. Thus, each application requires a fact-intensive inquiry and must be determined on a case-by-case basis. See Matter of Twentieth Century Fox Film Corp., supra.

In support of its application, the plaintiff asserts that good cause exists to file certain specified documents under seal because (i) they contain confidential information pertaining to the business operations of the plaintiff's tenant, an affiliate of WeWork, which is not a party to this action, (ii) the plaintiff agreed to maintain the confidentiality of that information in an express term of its lease with this tenant, and (iii) no substantial interest would be furthered by public access to private information concerning the finances of a non-party to the litigation. The plaintiff submits the provision of the subject lease, in which it agreed to keep "all terms and conditions of Tenant's business and operational matters (to the extent known or disclosed to Landlord) and [] the material terms and conditions of th[e] Lease confidential, ... [with certain enumerated exceptions, including] as may be required by law....".

As for Exhibits 3 and 7 to the Stempel Affidavit, the documents have not been submitted for the court's consideration. Instead, Exhibit 3 is described on the docket as "2019 WeWork 2 Agreement," and in the plaintiff's moving papers as the "Second Lease Modification Agreement," dated January 24, 2019, between the plaintiff and the nonparty tenant. Exhibit 7 is described on the docket as "Plaintiffs [sic] Rent Roll," and in the plaintiff's moving papers as the plaintiff's August 2019 rent roll for the building located at 11 Park Place in Manhattan. In lieu of these documents, the plaintiff has filed two pages stating that the documents are "subject to the confidentiality stipulation executed by the parties and filed at Docket # 14." The plaintiff further avers, in conclusory fashion, that the documents should be sealed because they contain "confidential information pertaining to the business and operations of Plaintiff's tenant."


Turning to pages 5 and 6 of the Stempel Affidavit, the court notes, again, that the plaintiff has not submitted un-redacted documents for the court's review. Nonetheless, it is clear from the plaintiff's submission that the plaintiff proposes redacting the amount of monthly rent due to the plaintiff from the nonparty WeWork affiliate tenant. Similarly, page 11 of the plaintiff's memorandum of law in support of its motion for partial summary judgment, the unredacted version of which has not been submitted, appears to exclude the amounts of rent owed by that tenant. Notably, the rent amounts due from other nonparty tenants in the same building are not redacted in the Stempel Affidavit or in the memorandum of law.

The plaintiff's submissions are insufficient to establish its entitlement to the wholesale sealing of Exhibits 3 and 7 or the redaction of the monthly rental amounts purportedly listed on pages 5 and 6 of the Stempel Affidavit or the plaintiff's memorandum of law in support of its motion for partial summary judgment. The information identified by the plaintiff as "confidential" appears to consist exclusively of the financial terms of a commercial lease agreement. It is not of the kind courts typically view as impinging on any recognized privacy interest. Nor is the existence of a confidentiality agreement alone a basis for the narrow relief permitted by 22 NYCRR 216.1(a). Confidentiality agreements between parties do not bind the court. The plaintiff's motion is denied.

Accordingly, it is

ORDERED that the plaintiff's motion pursuant to 22 NYCRR 216.1(a) to seal or redact certain specified documents is denied.

This constitutes the Decision and Order of the court.



 NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

11/16/2021

 DATE

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