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| <b>CF 125 Holdings LLC v VS 125 LLC</b>  |
| 2022 NY Slip Op 32676(U)   |
| August 8, 2022   |
| Supreme Court, New York County   |
| Docket Number: Index No. 850143/2019   |
| Judge: Andrea Masley   |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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CF 125 HOLDINGS LLC,

Plaintiff,

- v -

VS 125 LLC,CINDAT USA LLC,NEW YORK CITY  
DEPARTMENT OF FINANCE, NEW YORK STATE  
DEPARTMENT OF TAXATION AND FINANCE,  
PLAZA/TIME SQUARE JOINT VENTURE GP, TT  
MECHANICAL CORP., LEXINGTON MAINTENANCE,  
LLC,BRUCE SUPPLY CORP., SAV-MOR MECHANICAL  
INC.,DELTA SHEET METAL CORP., GOTHAM  
DRYWALL, INC.,STRUCTURETECH NEW YORK  
INC.,NEMO TILE CO., INC.,THYSSENKRUPP  
ELEVATOR CORP., JANSONS ASSOCIATES INC.,KNS  
BUILIDNG RESTORATION INC.,STONWORK DESIGN  
& CONSULTING INC.,GERB VIBRATION CONTROL  
SYSTEMS, INC.,DAVIDE BIZZI, CINDAT 125  
GREENWICH (US) LLC,SAFWAY ATLANTIC  
LLC,ALUPROF AKCYJNA, and JOHN DOE,

Defendants.

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INDEX NO. 850143/2019  
MOTION DATE N/A  
MOTION SEQ. NO. 009 014

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411 were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 548, 550 were read on this motion to/for SEAL.

In motion sequence number 009, defendant Cindat 125 Greenwich (US) LLC (Cindat) moves, by order to show cause, to seal in their entirety NYSCEF Docs. No. (NYSCEF) 390-408 pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. In motion sequence number 014, Cindat moves, by order to show cause, to seal in their entirety NYSCEF 530-541 pursuant to Section 216.1 of the Uniform

Rules for New York State Trial Courts. There is no indication that the press or public have an interest in this matter.

NYSCEF 390-408 are all email communications among Cindat personnel, defendant Davide Bizzi, various third parties, and nonparty investors concerning the 125 Greenwich Project (Project). (See NYSCEF 409, Sealing Chart [mot. seq. no. 009].) Cindat argues that these email communications must be sealed in their entirety as they reveal proprietary, sensitive financial and business information, i.e., strategic communications relating to the pricing, pre-sale requirements, negotiations, internal sales and real estate reports, and financing of the Project, the disclosure of which would harm Cindat's competitive advantage. Further, Cindat argues that there are no countervailing public interest considerations in releasing Cindat's strategic discussions that weigh in favor of disclosure.

NYSCEF 530-535, 537, 539, and 541 are email communications between Cindat and Bizzi personnel, discussing business and financing strategy with third-party investors, sales information, and financial and market reports related to the Project. (See NYSCEF 542, Sealing Chart [mot. seq. no. 014].) NYSCEF 536 is a letter from Bizzi to Cindat personnel discussing the status of the Project, specifically the viability of certain financing, and financing offers from nonparty investors. NYSCEF 538 is a letter from Bizzi to a Cindat personnel concerning the financing options of the Project. NYSCEF 540 is a letter from Bizzi to Cindat personnel also concerning the Project's financing options and strategies. Cindat argues that these email and letter communications, either internally among Cindat personnel or between Cindat and its business partners, reveal confidential and private communications relating to the

Project's business strategy or strategic financial, pricing, and investor information. Therefore, Cindat contends that the disclosure of such proprietary information, contained within these letters and emails, would give a competitor an unearned advantage. Further, Cindat argues that there are no countervailing public interest considerations in releasing Cindat's strategic discussions that weigh in favor of disclosure.

### **Legal Standard**

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.”

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosalleh v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010] [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information” and that “sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.” (*D’Amour v Ohrenstein & Brown*,

17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

### **Discussion**

Cindat relies in part on the confidentiality stipulation that it signed in connection to this action for the purposes of discovery. (See NYSCEF 245, Confidentiality Stipulation; NYSCEF 247, So-Ordered Confidentiality Stipulation.) A party's designation of a document as confidential or restricted, without further explanation or supporting case law, is insufficient to support a finding of good cause to seal court records in whole or in part. (See *Mosallem v Berenson*, 76 AD3d 345 [noting, rather, that New York courts have found good cause where disclosure of documents could threaten a business's competitive advantage]; *Grande Prairie Energy LLC v Alstom Power, Inc*, 5 Misc 3d 1002(A) [Sup Ct, NY County 2004].) While reliance on the parties' confidentiality order is insufficient to support sealing of a document (*Mosallem*, 76 AD3d 345), Cindat has demonstrated good cause to prevent disclosure of information which could threaten its competitive advantage, discussed in more detail below.

Here, good cause exists to seal in their entirety NYSCEF 390-408 and NYSCEF 530-535, 537, 539, and 541 as these email communications all reveal proprietary information concerning business strategy surrounding the Project, specifically concerning the Project's financing and potential investors of the Project. (*Mosallem*, 76 AD3d at 350-35.)

However, the court cannot determine whether good cause exists to seal in their entirety NYSCEF 536, 538, and 540 as these letters, which were signed by Bizzi, without an affidavit from someone with knowledge explaining why the disclosure of the

statements in Bizzi's letters would harm Cindat's competitive standing in the industry. Sealing court records that contain statements that are merely inflammatory or embarrassing and do not implicate any proprietary or confidential information of the moving party do not constitute good cause to seal court documents. (*See In re Will of Hofmann*, 284 AD2d 92, [1st Dept 2001] [finding that embarrassing allegations do not constitute good cause, absent consideration of privacy interests and/or harm to competitive advantage].) Cindat may renew its motion to explain why NYSCEF 536, 538, and 540 should be sealed in their entirety.

Additionally, the court implores Cindat to read and follow Part 48 Procedures. (*See especially*, Part 48 Procedure, Rule 6 [f].) Cindat notes that the documents it seeks to seal in this motion are being used by plaintiff in connection to plaintiff's motion to compel (motion sequence number 010) and in plaintiff's reply to Cindat's motion to dismiss (motion sequence number 012). However, Cindat failed to reference, using NYSCEF docket numbers, the identically filed documents plaintiff used in its motions. For example, NYSCEF 390, which the court is permitting to be filed under seal, is identically filed as NYSCEF 429 in plaintiff's motion to compel. Cindat fails to provide this information and the court cannot determine which documents, that were filed in connection with plaintiff's motions, should be sealed in accordance with the court's decision. Within ten days of this order, plaintiff shall identify to the court the identically filed documents to be sealed in accordance with this decision.

ORDERED that motion sequence 009 is granted; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, and 408; and it is further

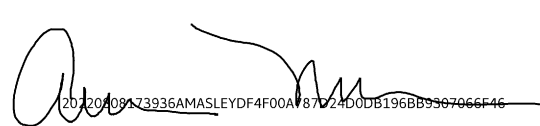
ORDERED that motion sequence 014 is granted in part and denied with respect to NYSCEF 536, 538, and 540; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 530, 531, 532, 533, 534, 535, 537, 539, and 541; and it is further

ORDERED that moving party shall file NYSCEF 536, 538, and 540 publicly within ten days of this order unless it files a new OSC giving reasons for their requests to seal within ten days of this order; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

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



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| <u>8/8/2022</u><br>DATE |   |                                 | <u>ANDREA MASLEY, J.S.C.</u>                              |
| CHECK ONE:              | <input type="checkbox"/> CASE DISPOSED              | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| APPLICATION:            | <input type="checkbox"/> GRANTED                    |                                 | <input checked="" type="checkbox"/> GRANTED IN PART       |
| CHECK IF APPROPRIATE:   | <input type="checkbox"/> SETTLE ORDER               |                                 | <input type="checkbox"/> OTHER                            |
|                         | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN |                                 | <input type="checkbox"/> FIDUCIARY APPOINTMENT            |
|                         |   |                                 | <input type="checkbox"/> REFERENCE                        |