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| Roc Capital Holdings LLC v Civic Fin. Servs., LLC |
| 2022 NY Slip Op 32935(U) |
| August 30, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 651328/2022 |
| Judge: Andrew Borrok |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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| ROC CAPITAL HOLDINGS LLC, | INDEX NO. | 651328/2022 |
| Plaintiff, | | 06/28/2022, |
| | | 06/30/2022, |
| - v - | | 07/06/2022, |
| | | 07/19/2022, |
| CIVIC FINANCIAL SERVICES, LLC, PACIFIC WESTERN BANK, NOAH DLOTT | MOTION DATE | 08/24/2022 |
| Defendant. | MOTION SEQ. NO. | 005 006 007 008 009 |

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 170, 171, 179, 192, 193, 194, 195, 218
were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 140, 141, 142, 172
were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 175, 176, 177, 178, 180, 181
were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 184, 185, 186, 187, 188, 190
were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 211, 212, 213, 215, 216, 217
were read on this motion to/for SEAL.

Upon the foregoing documents and for the reasons set forth on the record (8.30.22), (i) the motion to reargue (Mtn. Seq. No. 005) is denied and the cross-motion for contempt is denied

without prejudice, and (ii) the sealing motions (Mtn. Seq. Nos. 006, 007, 008, 009) are granted to the extent as set forth below.

The facts are set forth in this Court's prior Decision and Order (the **Prior Decision**; NYSCEF Doc. No. 121) dated June 14, 2022. Familiarity is presumed.

I. Motion to reargue or renew (Mtn. Seq. No. 005) – Denied; Cross-motion for sanctions – Denied, without prejudice

A motion to reargue requires that the movant “establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law” (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]; CPLR § 2221[d]).

Civic argues that it is entitled to reargument or renewal based on “evidence” that was in its possession at the time of the motion was decided that it did not submit to this Court -- *i.e.*, not evidence that it discovered in discovery or that it somehow could not have presented to this court on the prior motion. This is entirely improper and the motion must be denied (*Grafov v Chelsea Bicycles Corp.*, 134 AD3d 492, 493 [1st Dept 2015]).

For completeness, even if the Court were to consider any such evidence, it does not change the analysis. Indeed, on the record before the court, the additional documents firmly establish that this information was proprietary. Mr. McCarthy would not even speak with any potential correspondent lender (*i.e.*, client) unless and until they executed a Non-Disclosure Agreement (NDA). As the Court previously discussed, the defendant is just wrong that the date of Mr.

Dlott's actual departure from the plaintiff and the date in which the client relationships were memorialized are collars to the potentially misappropriated sensitive proprietary information. These leads well may have been leaked prior to Mr. Dlott's departure as part of the plan to gain employment. It also does not matter that the Roc360 may not have finalized its relationship with a particular prospect until on or about the time or immediately after Mr. Dlott's departure. In addition, it is simply not correct that the defendant is not responsible for the false information that was previously provided to this court – *i.e.*, that Mr. Dlott is not working on any clients that came from Roc360 or that it can simply disavow its exposure or limit discovery based on its client's assertion that it is no longer doing business with that client "for other reasons."

The cross-motion seeking contempt must be denied without prejudice. It is procedurally defective. Pursuant to Judiciary Law § 756, Roc Capital's cross-motion lacked the requisite statutory bold-font warning notice as is required on an application for civil contempt. That said, Civic's refusal to provide the customer list in accordance with the Court's Prior Decision was willful and contumacious (*Baralan Int'l, S.p.A. v Avant Indus.*, 242 AD2d 226, 227 [1st Dept 1997]). The Court's Prior Decision was not ambiguous. Civic was ordered to produce its "entire client list" on or before June 28, 2022. The assertion that Civic was merely seeking clarification of the order is frivolous. Following the issuance of the order, the parties engaged the court in email. The plaintiffs asked the court to revisit whether the "attorney's eyes only" designation could be modified to include "one designated business person from Roc360 (Eric Abramovich)" (NYSCEF Doc. No. 138). The defendants did not seek any clarification as to whether the court meant what it wrote which would warrant withholding the ordered information. The defendants never emailed the court and requested a conference or otherwise. Instead, the defendants simply

did not comply with the order and produced only a “truncated” 32 client list. This is particularly concerning given its assertion that it does not even do business in New York. Nor given Mr. Dlott’s involvement in the weekly strategy meetings was it ever suggested by the Court that the client list should be limited to correspondent lender relationships. The defendant’s attempt to limit discovery on that basis and define the case as such fails. The plaintiff simply does not know at this stage of the proceedings the extent of the alleged misappropriation of their undeniably proprietary information. The plaintiff’s counsel comments at the hearing seeking an injunction that the case primarily involves those relationships based on what he knew at the time does not change the answer. The order did not limit the production of the client list to be based on correspondent lender relationships and it was never suggested that it should be. As discussed above, the court limited production to be on an “attorney’s eyes only” basis. Stated differently, it was clear that the court considered the defendant’s concerns and thread the needle. Leave is granted to the plaintiff to bring a motion seeking sanctions. Civic is ordered to provide the client list by August 31, 2022 at 9:00 AM. If Civic fails to do so, Roc Capital may file a motion by order to show cause seeking appropriate relief.

II. *Sealing Motions (Mtn. Seq. Nos. 006, 007, 008, 009) – Granted*

22 NYCRR § 216.1(a) provides that:

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

(22 NYCRR § 216.1[a]).

The motion is granted to the extent that the Clerk of the Court is directed to seal NYSCEF Doc. Nos. 131-35, 137, 143-45, 147-66, 168, 173, 183, and 194-95 because the Court finds “good cause” that outweighs the interests of the public to warrant sealing of these documents (*Danco Lab., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000]; 22 NYCRR § 216.1[a]). As to NYSCEF Doc. Nos. 130 and 139, the parties are not entitled to the sealing of these entire documents simply because part of the document contains client names. They are entitled to redactions of the client names and shall redact the client names and uploaded replacement documents with the client names redacted for these documents no later than September 6, 2022. The Court shall direct the Clerk of the Court to seal these documents pending the replacement documents with only the client names redacted uploaded in their place.

Accordingly, it is

ORDERED that the motion to reargue is denied; and it is further

ORDERED that the cross-motion for sanctions is denied; and it is further

ORDERED that Civic Financial Services, LLC shall provide on an attorney’s eyes only basis their entire client list with names and addresses (and dates which the relationships were formed) by August 31, 2022 by 9:00 AM; and it is further

ORDERED that Civic Financial Services, LLC shall order a copy of the transcript (8.30.22) and upload it to NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to seal NYSCEF Doc. Nos. 130-35, 137, 139, 143-45, 147-66, 168, 173, 183, and 194-95 in this action in its entirety upon service on him (60 Centre Street, Room 141B) of a copy of this order with notice of entry; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to NYSCEF Doc. Nos. 130-35, 137, 139, 143-45, 147-66, 168, 173, 183, and 194-95 to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the parties shall upload redacted versions of NYSCEF Doc. Nos. 130 and 139; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to determine the issue of costs, which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further


ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).


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8/30/2022
DATE

ANDREW BORROK, J.S.C.

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: