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| Coresite 32 Ave. of the Americas, LLC v 32 Sixth Ave. Co. LLC |
| 2019 NY Slip Op 32567(U) |
| August 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. 001

- v -

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

DECISION + ORDER ON MOTION

Defendants.

-----X

MASLEY, J.S.C.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 35, 36, 37, 38, 39, 40, 41, 42, 45

were read on this motion to/for _____ SEAL _____

In motion sequence number 001, plaintiff CoreSite 32 Avenue of the Americas, LLC (CoreSite) moves to seal the complaint and all of its exhibits filed as NYSCEF Doc. Nos. 2, 3, 4, 5, and 6. (NYSCEF Doc. No. 12 at 2.)

Background

CoreSite provides high performance data center and interconnection solutions to companies, network operators and cloud providers. (NYSCEF Doc. No. 9 at ¶ 3.) CoreSite conducts this business in data centers, highly specialized and secure buildings that house networking, storage, and technology infrastructure. (*Id.* at ¶ 4.) Certain data centers, located where many communications networks converge, function as "hubs" where customers can connect to multiple networks. (*Id.*) One such hub is located on the 24th floor at 32 Avenue of the Americas, a building allegedly owned by defendant 32 Sixth Avenue Company LLC (Landlord). CoreSite allegedly leases the 24th floor from Landlord, and the lease establishes the rates CoreSite is charged for that occupancy

and use of telecommunications equipment in the hub. (*Id.* at ¶¶ 4,5,6.) As to CoreSite's usage of telecommunications equipment in the hub, a separate agreement entered into by CoreSite and Landlord (2008 Letter Agreement) also governs. (*Id.* at ¶ 6.) In August 2013, Landlord leased and transferred the business of operating the hub to defendant Telx-New York 6th Ave. LLC (Telx) pursuant to an agreement (Hub Agreement). (*Id.* at ¶ 7.) In the Hub Agreement, Telx allegedly assumed Landlord's obligations to CoreSite, including the rates to be charged for CoreSite's usage of the hub. (*Id.*) To discuss these rates, CoreSite allegedly exchanged emails with Telx's general counsel in November 2013 (November 2013 Emails). (*Id.* at ¶ 7.) On October 16, 2018, Telx, along with Digital Realty Trust, Inc. (DRT), a company that acquired Telx's parent corporation, quoted CoreSite a rate for using the hub that represented a 350% increase over the rate allegedly memorialized in the lease. (*Id.* at ¶ 9.) In an attempt to resolve this dispute, CoreSite provided DRT with a redacted copy of the lease, and DRT provided CoreSite with a redacted copy of the Hub Agreement. (*Id.* at ¶ 12.) Ultimately, these parties did not resolve their dispute, and CoreSite commenced this action against Landlord and Telx for breach of contract, indemnification from Landlord, and a judgment declaring the obligations of Landlord and Telx. (*Id.* at ¶ 13.)

CoreSite now moves to redact the lease (NYSCEF Doc. No. 3), the 2008 Letter Agreement (NYSCEF Doc. No. 4), the Hub Agreement (NYSCEF Doc. No. 5), the November 2013 Emails (NYSCEF Doc. No. 6) and the complaint (NYSCEF Doc. No. 2). CoreSite argues that these filings should be redacted because businesses competitively secure pricing for data center space and connections which affect the prices that they can offer to their customers. (NYSCEF Doc. No. 9 at ¶ 17.) Specifically, CoreSite asserts that the lease contains confidential information concerning CoreSite's rent and

terms of occupancy (*Id.* at ¶ 19) while the Hub Agreement contains confidential information about the manner in which Telx may operate the hub. (*Id.* at 20.)

Telx does not oppose this motion, and argues that the Hub Agreement, specifically, should be redacted because it contains sensitive information concerning finances, customers and accounts, along with descriptions of the building and detailed information regarding the location and nature of certain telecommunications equipment. (NYSCEF Doc. No. 35 at ¶¶ 3,4.) It asserts that disclosure of such information could allegedly damage Telx or create a safety and security risk. (*Id.* at ¶¶ 3,4.)

Discussion

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) 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 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, v Chemical Works of Gedeon Richter*, 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].) 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].) Good cause must "rest on a sound basis or legitimate need to take judicial action." (*Danco Labs*, 274 AD2d at 9.) Agreements to seal are insufficient as such agreements do not establish "good cause." (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], * 9 [Sup Ct, NY County 2012].)

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]).

No member of the press or public appeared or sought to file a motion.

Here, good cause exists to redact the lease at i, 1, and 81-83 because disclosure of these provisions could threaten CoreSite's competitive advantage insofar as these provisions would enable competitors to understand the structure of CoreSite's deal with the Landlord. Disclosure might assist CoreSite's competitors in developing their own strategies for providing services while undermining those provided by CoreSite. Good cause also exists to redact financial terms and information including rent rates, financing arrangements, and capital expenditures from the lease because the parties have an interest in keeping their financial arrangements private. For this reason, good cause exists to redact the hub equipment rental rates and information concerning hub access, use and capacity from the lease, 2008 Letter Agreement and November 2013 Emails. Good cause further exists to redact information concerning the building and hub's access points, equipment, locations, and floor plans from the lease and 2008 Letter Agreement because disclosure may jeopardize the safety and security of the building. Additionally, good cause exists to redact details concerning CoreSite's subletting, assignment and assumption of rights in the lease because disclosure might similarly help competitors develop strategies for providing their own services. To the extent the complaint quotes or references the sensitive information in these filings, good cause exists to redact the complaint.

Good cause does not exist, at this time, to redact the Hub Agreement (NYSCEF Doc. No. 5) because Telx has failed to file an unredacted version. Without an unredacted version of the Hub Agreement, the court has no way of knowing what information is actually redacted, and therefore, cannot make a determination as to whether good cause exists.

Pursuant to, and in accordance with, Rule 216, having determined that good cause exists for the redacting of NYSCEF Doc. Nos. 2, 3, 4, and 6 it is now accordingly,

ORDERED that the motion is granted such that the parties shall redact all references as directed by this decision from NYSCEF Doc. Nos. 2, 3, 4 and 6; and it is further

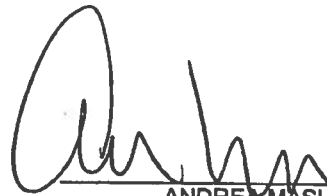
ORDERED that future submissions containing or referencing confidential information, as outlined in this decision, shall likewise be redacted prior to being filed publicly in NYSCEF, and shall also be filed in unredacted form and sealed¹; and it is further

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to seal the unredacted version of NYSCEF Doc. Nos. 2, 3, 4 and 6; 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

8/27/19
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

HON. ANDREA MASLEY

GRANTED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

¹ To the extent that the proposed redactions filed on NYSCEF Doc. Nos. 38, 39, 41 and 42 comport with this order, the court accepts them and the parties need not refile unredacted versions of NYSCEF Doc. Nos. 2, 3, 4 and 6.