Otsuka Am., Inc. v. Crum & Forster Specialty Ins. Co.

INDEX NO. 650463/2018

09-26-2019

OTSUKA AMERICA, INC, PHARMAVITE LLC, Plaintiff, v. CRUM & FORSTER SPECIALTY INSURANCE COMPANY, Defendant.

HON. ANDREA MASLEY Justice

NYSCEF DOC. NO. 141 **PRESENT: HON. ANDREA MASLEY *Justice*** MOTION DATE _____ MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

MASLEY, J The following e-filed documents, listed by NYSCEF document number (Motion 004) 85, 86, 87, 88 were read on this motion to/for SEAL.

In motion sequence number 004, defendant Crum & Forster Specialty Insurance Company (CF) moves to seal NYSCEF Doc. Nos. 35, 36, 38, 39, 40, 41, 45, 46, 50, 51, 52, and 56.

Background

Plaintiff Pharmayite is a manufacturer of dietary supplements and a wholly owned subsidiary of plaintiff Otsuka America, Inc (Otsuka). (NYSCEF Doc. No. (NYSCEF) 1 at ¶ 3). Otsuka purchased an insurance policy from CF for a premium of $142,550. (Id. at ¶ 2). The policy, issued on August 5, 2015, names Otsuka and Pharmavite as insureds. (Id. at ¶ 15). The policy further defines "Insured Event" as Accidental Contamination, Malicious Product Tampering, Adverse Publicity, and Governmental Recall. (Id. at ¶ 15).

On June 7, 2016, Pharmavite, in connection with an audit by the Food and Drug Administration (FDA), recalled certain products. (NYSCEF Doc. No. 1 at ¶ 27). This recall allegedly caused the plaintiffs a "Loss" under the policy in the amount of $9,000,000. (Id. at ¶ 38). Plaintiff filed an initial proof of loss dated June 7, 2016. (NYSCEF 36). However, on February 7, 2017, CF disclaimed coverage. (Id. at ¶ 45). The plaintiffs objected and their final statement of Loss with CF on October 5, 2017. (NYSCEF 4). Otsuka and Pharmavite subsequently commenced this action for breach of contract and a declaratory judgment. They allege that CF breached its obligations under the policy by failing to reimburse them, and therefore, seek a declaration that CF is obligated to reimburse the plaintiffs in accordance with the policy.

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, 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]). 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]).

Preliminarily, good cause does not exist to redact NYSCEF 35 because it is a "press release issued by Pharmavite in connection with the product recall." (NYSCEF 86 at ¶ 4). CF fails to articulate how this press release could threaten its competitive advantage especially because CF is not mentioned once within the document. Additionally, CF fails to address how this press release contains any sensitive information whatsoever.

Good cause does not exist to redact NYSCEF 36, "a First Report of Loss provided to [CF] in connection with the product recall." (NYSCEF 86 at ¶ 5). CF also fails to articulate how this report could threaten its competitive advantage, and fails to show any other legitimate need that warrants judicial action.

Good cause does not exist to redact NYSCEF 38, 39, 40, 41, 45, 47, 48, 49, and 50, "Pharmavite email communications in connection with the product recall." (NYSCEF 86 at ¶ 6.) CF has failed to articulate how these emails could threaten its competitive advantage. Indeed, the general desire for privacy does not constitute good cause to seal court records. (*Mosallem*, 76 AD3d at *351* .)

It is unclear whether CF refers to the unredacted email in this filing or the information already redacted. Regardless, CF has not articulated or shown good cause to redact. --------

Good cause does not exist to redact NYSCEF 43, "a letter from the FDA to Pharmavite regarding the product recall." (NYSCEF 86 at ¶ 7.) Again, CF fails to articulate how this letter could threaten its competitive advantage. Although the FDA addresses the recall in this letter, "neither the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records." (*Mosallem*, 76 AD3d at *351* .)

Good cause does not exist to redact NYSCEF 46, "a letter from Pharmavite to [CF] regarding the product recall." CF fails to articulate how this letter could threaten its competitive advantage. Although the letter contains questions and answers concerning Pharmavite's alleged error in testing the vitamins, again the potential for embarrassment and danger to reputation are not grounds to redact. (*Mosallem*, 76 AD3d at *351* .)

Good cause does not exist to redact NYSCEF 51, "invoices related to the destruction of the recalled product." (NYSCEF 86 at ¶ 9.) CF fails to articulate how these invoices could threaten its competitive advantage, and does not show a legitimate need to take judicial action.

Good cause does not exist to redact NYSCEF 52, plaintiffs' responses to CF's first set of interrogatories. (NYSCEF 86 at ¶ 10). CF fails to articulate how this information might threaten its competitive advantage, and fails to show a legitimate need for judicial intervention.

Good cause does not exist to redact NYSCEF 56, a letter from CF's counsel to counsel for plaintiffs. (NYSCEF 86 at ¶ 11). Although the letter contains an analysis from CF's counsel concerning the coverage issues here, CF has not shown how this letter might threaten its competitive advantage.

Accordingly, it is

ORDERED that defendant CF's motion to seal is denied. 9/26/19

DATE

/s/ _____

ANDREA MASLEY, J.S.C.
