

<b>Soifer v SD Second Ave. Member LLC</b>
2022 NY Slip Op 30441(U)
February 4, 2022
Supreme Court, New York County
Docket Number: Index No. 654475/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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CLAUDIO SOIFER, SD SECOND AVENUE VENTURE,  
LLC, SD SECOND AVENUE CS MEMBER, LLC, SD  
SECOND AVENUE HOLDING, LLC, SD SECOND  
AVENUE PROPERTY, LLC,

Plaintiffs,

- v -

SD SECOND AVENUE MEMBER LLC, JOSHUA  
SCHUSTER, 359 SECOND AVENUE GRAMERCY LLC,  
JVEM SILVERBACK GRAMERCY LLC, SD SECOND  
AVENUE MANAGER LLC, SCHUSTER ENTERPRISES  
LLC, SILVERBACK ACQUISITIONS AND  
DEVELOPMENT LLC, 67 LIVINGSTON LLC, SB GERARD  
AVENUE, L.L.L.C., J.S.I.K. INTERNATIONAL LLC, SILBER  
ACQUISITIONS LLC, HARRY KARTEN

Defendants.

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INDEX NO. 654475/2021  
MOTION DATE N/A  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29,  
30, 31, 32, 33, 34, 40, 46, 47

were read on this motion to SEAL.

Defendants J.S.I.K. International LLC and Harry Karten (together, the “JSIK  
Defendants”) move for an order sealing and/or redacting of the JSIK Defendants’ Memorandum  
of Law to Dismiss the Complaint and four of the Exhibits in support thereof.

Defendants SD Second Avenue Member LLC, Joshua Schuster, 359 Second Avenue  
Gramercy LLC, JVEM Silverback Gramercy LLC, SD Second Avenue Manager LLC, Schuster  
Enterprises, Silverback Acquisitions and Development LLC, and 67 Livingston, LLC  
(collectively, the “Schuster Entities”), move, by way of joinder, for an order permitting the JSIK  
Defendants to file under seal unredacted copies of the above documents. Defendants’ motion is  
**denied** without prejudice to filing a new motion consistent with the guidance provided below.

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing “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” (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

Here, Defendants seek to redact portions of NYSCEF 31 (Motion to Dismiss) and seal in their entirety NYSCEF 26 (Second Amended Operating Agreement), 27 (Development Agreement), 28 (Membership Interest Purchase Agreement), and 29 (Amended and Restated Operating Agreement), because the Agreements contain confidentiality provisions barring the JSIK Defendants from publicly disclosing the terms of the agreements without the consent of Defendant Schuster Enterprises, LLC. The Membership Interest Purchase Agreement provides that even where JSIK intends to disclose such agreements as required by law or court order, JSIK must notify Schuster of such disclosure and cooperate with any reasonable request to maintain

the confidentiality of such documents, including obtaining an order to seal the documents.

Defendants further argue that the Agreements contain confidential business information, including the developer fees and consulting fees paid to JSIK, and the parties' specific financial investments in the project.

The Schuster Defendants further support this motion by arguing that each of the Exhibits referenced in the JSIK Defendants' Motion to Seal contain commercially sensitive information, including fee arrangements, fee payment information, and confidential and proprietary investment information for multiple parties, the disclosure of which could cause the parties competitive harm.

Defendants' generalized assertions of confidential or propriety information are not sufficient to establish a compelling justification to seal the documents at issue (*see Darabont v AMC Network Entertainment LLC*, 2020 WL 3799132 [Sup Ct, NY County 2020]).

First, while Defendants submit they are seeking to narrowly redact only those parts of the Motion to Dismiss (NYSCEF 31) that contain non-public and confidential information, Defendants did not provide the Court with any proposed redactions as set forth in this Part's Sealing Practices and Procedures, [part3-sealing-practices.pdf \(nycourts.gov\)](#). As such, the Court is unable to make a determination on this request.

Second, the fact that the parties have entered into Agreements with a confidentiality provisions, is not, by itself, a reason to grant the motion (*see Aktiv Assets LLC v Centerbridge Partners, L.P.*, 2020 WL 2520019 [Sup Ct, NY County 2020] [finding that parties argument that "the Agreements are subject to a confidentiality provision [was] unavailing," as they did not demonstrate "that public access to the documents at issue will likely result in harm to a

compelling interest or that no alternative to sealing can adequately protect the threatened interest”] [internal citations omitted]).

Finally, while *portions* of the Agreements may include confidential business information or proprietary information, the record on this motion does not provide enough context for the Court to determine whether and to what extent that is the case, particularly since the Court cannot determine exactly what terms are confidential or proprietary. To the extent the Exhibits contain some information related to fee arrangements, fee payment information, and/or investment information, Defendants have not shown why references to these terms cannot be properly protected through redaction. In view of the admonition that sealing of court records must be “narrowly tailored to serve compelling objectives,” (*Danco*, 274 AD2d at 6), Defendants will need to propose and justify targeted redactions that satisfy the requirements of 22 NYCRR § 216 (a) and applicable case law.

The documents will remain provisionally under seal to permit the prompt filing of a follow-up motion proposing and explaining the need for specific redactions.

Accordingly, it is:

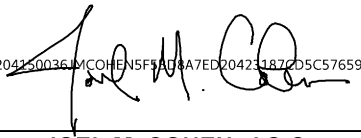
**ORDERED** that Motion Seq. No. 001 is **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of documents consistent with this Decision and Order and applicable law; it is further

**ORDERED** that the documents filed as NYSCEF 26, 27, 28, 29, and 31 shall remain provisionally sealed for 21 days from the date of the Court’s entry of this Decision and Order on NYSCEF. If the parties file a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is

filed within 21 days from the entry of this Decision and Order, the parties shall within three business days thereafter file unredacted/unsealed copies of the documents on NYSCEF; and it is further

**ORDERED** that nothing in this Order shall be construed as authorizing the sealing or redaction of any documents or evidence to be offered at trial.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

2/4/2022  
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE