

Audax Credit Opportunities Offshore Ltd. v TMK Hawk Parent, Corp.
2022 NY Slip Op 30736(U)
March 7, 2022
Supreme Court, New York County
Docket Number: Index No. 565123/2020
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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AUDAX CREDIT OPPORTUNITIES OFFSHORE LTD.,
AUDAX CREDIT OPPORTUNITIES (SBA), LLC, AUDAX
CREDIT BDC INC., AUDAX SENIOR LOAN INSURANCE
FUND SPV, LLC, AUDAX SENIOR LOAN FUND III SPV,
LLC, AUDAX SENIOR LOAN FUND III (OFFSHORE) SPV,
LTD., KOCAA/AUDAX PRIVATE DEBT FUND, LP,
AUDAX SENIOR DEBT (AZ) SPV, LLC, AUDAX SENIOR
DEBT (MP) SPV, LLC, AUDAX SENIOR LOAN FUND I
(OFFSHORE) SPV, LTD., AUDAX SENIOR LOAN FUND
(ST) SPV, LLC, AUDAX SENIOR LOAN FUND I
(OFFSHORE) SPV II, LTD., BLUEMOUNTAIN CLO 2012-
2 LTD, BLUEMOUNTAIN CLO 2013-1 LTD,
BLUEMOUNTAIN 2013-2 LTD, BLUEMOUNTAIN CLO
2015-2 LTD, BLUEMOUNTAIN CLO 2015-4 LTD,
BLUEMOUNTAIN CLO 2016-1 LTD, BLUEMOUNTAIN
CLO 2016-2 LTD, BLUEMOUNTAIN CLO 2018-2 LTD,
BLUEMOUNTAIN CLO 2018-3 LTD, BLUEMOUNTAIN
CLO XXII LTD, BLUEMOUNTAIN FUJI US CLO II LTD,
BLUEMOUNTAIN FUJI US CLO III LTD, GOLUB CAPITAL
PARTNERS CLO 19(B)-R, LTD., GOLUB CAPITAL
PARTNERS CLO 22(B)-R, LTD., GOLUB CAPITAL
PARTNERS CLO 23(B)-R, LTD., GOLUB CAPITAL
PARTNERS CLO 26(B)-R, LTD., GOLUB CAPITAL
PARTNERS CLO 35(B), LTD., GOLUB CAPITAL
PARTNERS CLO 37(B), LTD., GOLUB CAPITAL
PARTNERS CLO 39(B), LTD., GOLUB CAPITAL
PARTNERS CLO 40(B), LTD., ICG US CLO 2014-1, LTD.,
ICG US CLO 2014-2, LTD., ICG US CLO 2014-3, LTD.,
ICG US CLO 2015-2R, LTD., ICG US CLO 2016-1, LTD.,
ICG US CLO 2017-1, LTD., ICG US CLO 2017-2, LTD.,
ICG US CLO 2018-1, LTD., ICG US CLO 2018-2, LTD.,
ICG US CLO 2013-3, LTD., NEW MOUNTAIN FINANCE
DB, L.L.C., NEW MOUNTAIN FINANCE HOLDINGS,
L.L.C., NEW MOUNTAIN GUARDIAN III SPV, L.L.C.,
ROMARK CLO-I LTD., ROMARK CLO-II LTD., ROMARK
WM-R LTD., BROOKSIDE MILL CLO LTD., JEFFERSON
MILL CLO LTD., JACKSON MILL CLO LTD., ADAMS MILL
CLO LTD., SUDBURY MILL CLO LTD., YORK CLO-1
LTD., YORK CLO-2 LTD., YORK CLO-3 LTD., YORK
CLO-4 LTD., YORK CLO-5 LTD., YORK CLO-6 LTD., Z
CAPITAL CREDIT PARTNERS CLO 2018-1 LTD., Z
CAPITAL CREDIT PARTNERS CLO 2019-1 LTD.,

INDEX NO. 565123/2020

MOTION DATE N/A

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

Plaintiffs,

- v -

TMK HAWK PARENT, CORP., CENTERBRIDGE PARTNERS, L.P., BLACKSTONE TACTICAL OPPORTUNITIES FUND L.P., OAKTREE STAR INVESTMENT FUND II, L.P., SEVENTH STREET HOLDINGS 1, L.P., SEVENTH STREET HOLDINGS 2, L.P., SEVENTH STREET HOLDINGS 3, L.P., SEVENTH STREET HOLDINGS 4, L.P., SEVENTH STREET HOLDINGS 5, L.P., SEVENTH STREET HOLDINGS 6, L.P., SEVENTH STREET HOLDINGS 7, L.P., SEVENTH STREET HOLDINGS 8, L.P., SEVENTH STREET HOLDINGS 9, L.P., SEVENTH STREET HOLDINGS 10, L.P., SEVENTH STREET HOLDINGS 11, L.P., SEVENTH STREET HOLDINGS 12, L.P., SEVENTH STREET HOLDINGS 13, L.P., SEVENTH STREET HOLDINGS 14, L.P., OAKTREE HUNTINGTON INVESTMENT FUND II, L.P., ASOF HOLDINGS I L.P., ARES INSTITUTIONAL LOAN FUND, L.P., ARES XXVII CLO LTD., ARES XXVIII CLO LTD., ARES XXIX CLO LTD., ARES XXXI CLO LTD., ARES XXXII CLO LTD., ARES XXIV CLO LTD., ARES XXXV CLO LTD., ARES XXXVII CLO LTD., ARES XXXVIII CLO LTD., ARES XXXIX CLO LTD., ARES XL CLO LTD., ARES XLI CLO LTD., ARES XLII CLO LTD., ARES XLIII CLO LTD., ARES XLIV CLO LTD., ARES XLV CLO LTD., ARES XLVI CLO LTD., ARES XLVII CLO LTD., ARES XLVIII CLO LTD., ARES XLIX CLO LTD., ARES L CLO LTD., ARES LI CLO LTD., ARES LII CLO LTD., ARES LIII CLO LTD., ARES LIV CLO LTD., DENALI CAPITAL CLO X LTD., ARES SENIOR LOAN TRUST, FUTURE FUND BOARD OF GUARDIANS ON BEHALF OF FUTURE FUND AND MEDICAL RESEARCH FUTURE FUND, TRANSATLANTIC REINSURANCE COMPANY, RSUI INDEMNITY COMPANY, INC., CIBC ASSET MANAGEMENT INC. AS TRUSTEE OF RENAISSANCE FLOATING RATE INCOME FUND, STICHTING PENSIOENFONDS HOOGOVS, ARES INSTITUTIONAL CREDIT FUND LP, SEI INVESTMENTS MANAGEMENT CORPORATION ON BEHALF OF SEI INSTITUTIONAL INVESTMENTS TRUST, BOWMAN PARK CLO, LTD., BRISTOL PARK CLO, LTD., BURNHAM PARK CLO, LTD., BUTTERMILK PARK CLO, LTD., CATSKILL PARK CLO, LTD., CHENANGO PARK CLO, LTD., COLE PARK CLO LIMITED, CUMBERLAND PARK CLO, LTD., DEWOLF PARK CLO, LTD., DORCHESTER PARK CLO DESIGNATED ACTIVITY COMPANY, GILBERT PARK CLO, LTD., GRIPPEN PARK CLO, LTD., JAY PARK CLO, LTD., LONG POINT PARK CLO, LTD., SENECA PARK CLO, LTD., STEWART PARK CLO, LTD., TACONIC PARK CLO, LTD., THACHER PARK CLO, LTD., THAYER PARK CLO, LTD., TREMAN PARK CLO, LTD., WEBSTER PARK CLO, LTD., WESTCOTT PARK CLO, LTD., SCOTTISH WIDOWS PENSION TRUSTEES LIMITED AS TRUSTEE OF SCOTTISH WIDOWS RETIREMENT BENEFITS SCHEME, OZLM XVII, LTD., OZLM FUNDING, LTD., OZLM FUNDING IV, LTD., OZLM XIX, LTD., OZLM XI, LTD., OZLM XXI, LTD., OZLM XXII,

LTD., OZLM XVI, LTD., OZLM FUNDING II, LTD., OZLM FUNDING III, LTD., OZLM VI, LTD., OZLM VII, LTD., OZLM VIII, LTD., OZLM IX, LTD., OZLM XII, LTD., OZLM XIII, LTD., OZLM XV, LTD., OZLM XVIII, LTD., OZLM XX, LTD., OZLM XIV, LTD., ABR REINSURANCE LTD., CHUBB EUROPEAN GROUP SE, ACE PROPERTY & CASUALTY INSURANCE COMPANY, J.P. MORGAN BANK (IRELAND) PUBLIC LIMITED COMPANY ON BEHALF OF BLACKROCK BANK LOAN FUND, BLACKROCK ADVISORS, LLC ON BEHALF OF BLACKROCK FLOATING RATE INCOME TRUST, BLACKROCK LIMITED DURATION INCOME TRUST, BLACKROCK CREDIT STRATEGIES FUND, BLACKROCK FUNDS II, AND BLACKROCK FUNDS V, BLACKROCK MULTI-STRATEGY CREDIT FUND LTD., COMMISSION DE LA CONSTRUCTION DU QUEBEC, CORPORATION DES MAITRES ELECTRICIENS DU QUEBEC ON BEHALF OF FONDS DE FORMATION DES SALARIES DE L'INDUSTRIE DE LA CONSTRUCTION DU QUEBEC, BLACKROCK DEBT STRATEGIES FUND, INC.,BLACKROCK FLOATING RATE INCOME STRATEGIES FUND, INC.,BLACKROCK FUND MANAGEMENT COMPANY S.A. ON BEHALF OF BLACKROCK GLOBAL INVESTMENT SERIES, LOAN FUNDING II, LLC,MAGNETITE XII, LTD., MAGNETITE XIV-R, LIMITED, MAGNETITE XV, LIMITED, MAGNETITE XVI, LIMITED, MAGNETITE XVII, LIMITED, MAGNETITE XVIII, LIMITED, MAGNETITE XIX, LIMITED, MAGNETITE XX, LIMITED, MAGNETITE XXI, LIMITED, MAGNETITE XXII, LIMITED, MAGNETITE VII, LIMITED, MAGNETITE VIII, LIMITED, BLACKROCK MULTI-STRATEGY CREDIT MASTER FUND LTD., CAAPS TRUSTEE LIMITED AS TRUSTEE OF CIVIL AVIATION AUTHORITY PENSION SCHEME, NC GARNET FUND, L.P., FIXED INCOME OPPORTUNITIES NERO, LLC,BLACKROCK SENIOR FLOATING RATE PORTFOLIO

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134

were read on this motion to

SEAL

Defendant TMK Hawk Parent, Corp. (“TriMark”) moves for an order sealing certain documents filed in connection with the motions to dismiss in this action (MS 002-005).

Plaintiffs do not oppose the motion. For the following reasons, the motion to seal is **granted**.

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]). Courts must balance the risk of privacy concerns stemming from the “disclosure of documents and information, including “personal and financial information,” against the “compelling public interest in exposure of this information,” if any (*see MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, 2013 WL 450030, at *9 [NY Sup Ct, NY County, Jan. 3, 2013] [Bransten, J.]).

In New York, “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348-50 [1st Dept 2010]). The party seeking to seal the court records has the burden to demonstrate compelling circumstances to justify restricting public access, which requires demonstrating “a sound basis or legitimate need to take judicial action” (*Danco Laboratories, Ltd. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 6 [1st Dept 2000]).

The Court has reviewed the documents which TriMark proposes to be sealed in their entirety or redacted and finds that they comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive financial information and confidential business strategies.

It is therefore

ORDERED that Motion Sequence Number 008 is **granted** and NYSCEF docket nos. 23-33 and 57-59 will remain under seal, accessible by only the parties, their counsel, and authorized court personnel; it is further

ORDERED that the publicly-available, redacted versions of Exhibits A-N amended to the Noskov Affirmation (NYSCEF 121-134), shall remain redacted; and it is further

ORDERED that with respect to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal.

This constitutes the decision and order of the Court.

3/7/2022

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

☒

GRANTED

☐

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

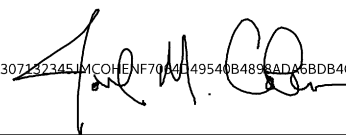
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FIDUCIARY APPOINTMENT

☐

REFERENCE

20220307132345 JMCHE NF7044E49540B489BAD46BDB4C898099F



JOEL M. COHEN, J.S.C.