

Formation Group (Cayman) Fund I, L.P. v Yesco Holdings Co., Ltd.

2022 NY Slip Op 31294(U)

April 18, 2022

Supreme Court, New York County

Docket Number: Index No. 650983/2022

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
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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FORMATION GROUP (CAYMAN) FUND I, L.P.	INDEX NO. <u>650983/2022</u>
Petitioner,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>002</u>
YESCO HOLDINGS CO., LTD.,	
Respondent.	DECISION + ORDER ON MOTION
-----X	

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 51 were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In motion sequence number 002, petitioner Formation Group (Cayman) Fund I, L.P. (FG Cayman), moves, by order to show cause, to redact NYSCEF Doc Nos. [NYSCEF] 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40,¹ documents submitted as exhibits in connection with FG Cayman’s petition seeking a permanent stay of third-party arbitration claims. (See NYSCEF 19, Damani C. Sims, Esq. aff; NYSCEF 43, Sealing Chart; NYSCEF 1, Verified Petition ¶ 1.) There is no opposition to this motion and there is no indication that the public or press have an interest in this matter.

NYSCEF 3 is the First EVA Option Agreement dated July 6, 2016, and NYSCEF 6 is the Second EVA Option Agreement dated June 7, 2018, both documents containing the number of shares purchased, the price at which the shares were purchased, a confidential

¹ The documents FG Cayman seeks to redact on this motion are also filed in unredacted form, in connection with motion sequence number 001, as NYSCEF 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 14.

and sensitive put option price formula, and confidential description of collateral pledged in accordance with these agreements. NYSCEF 4 and 5 is the First Honestbee Option Agreement and Second Honestbee Option Agreement, respectively, which contain the number of shares purchased, the price at which the shares were purchased, a confidential and sensitive put option price formula, and confidential description of collateral pledged in accordance with these agreements (together with NYSCEF 3 and 6, Option Agreements). NYSCEF 7 is the First Extension Letter February 12, 2019, which contains financial information regarding the put option securities and prices, and confidential information regarding specific collateral in connection to the securities. NYSCEF 8 is the Security Agreement, which contains confidential financial terms referenced in the Option Agreement. NYSCEF 9 is the Letter Agreement dated September 20, 2019, which contains the terms of the Option Agreements. NYSCEF 10 is the Demand for Arbitration, which contains confidential information referenced in the Option Agreements and letter agreements; NYSCEF 11 is the First Amended Demand for Arbitration which also includes confidential information referenced in the Option Agreements and letter agreements. NYSCEF 2 is the Affirmation of Damani C. Sims, Esq. in Support of FG Cayman's Petition to Stay Arbitration and NYSCEF 14 is FG Cayman's Memorandum of Law in Support of Petition to Permanently Stay Arbitration, both filed in connection with motion sequence number 001 and containing the confidential financial information described in the preceding court documents, such as option prices, identification and names of option securities, confidential pricing formulas, and description of pledged collateral.

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) [e]xcept 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.”

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010] [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information” and that “sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.” (*D’Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

Here, FG Cayman has demonstrated that good cause exists to keep its confidential and proprietary financial terms and information private. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Additionally, there has been no showing of legitimate public concern in these terms to counterbalance the interests of the parties in keeping private their nonpublic financial terms and information. (See *Dawson*, 184 AD2d at 247 [1st Dept 1992].) Furthermore, rather than requesting a wholesale sealing of the documents at issue, defendants have sought a narrow redaction pertaining to option prices, identification and names of option securities, confidential pricing formulas, and description of collateral. This tailored redaction effectively balances the interests of the public with the interest of the parties in keeping private their nonpublic and sensitive business and financial

information. (See *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 9 [1st Dept 2010].)

Accordingly, it is

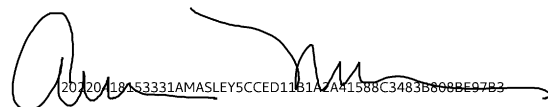
ORDERED that the motion is granted; and it is further

ORDERED that as redacted versions of NYSCEF 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40 have already been filed publicly and unredacted copies under seal, petitioner need not re-file duplicates; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



4/18/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE