

**Metropolitan Transp. Auth. v Westfield Fulton Ctr.,
LLC**

2022 NY Slip Op 34112(U)

December 6, 2022

Supreme Court, New York County

Docket Number: Index No. 450428/2021

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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METROPOLITAN TRANSPORTATION AUTHORITY,
NEW YORK CITY TRANSIT AUTHORITY

INDEX NO. 450428/2021

Petitioners,

MOTION DATE 11/07/2022

- v -

MOTION SEQ. NO. 005

WESTFIELD FULTON CENTER, LLC,

**DECISION + ORDER ON
MOTION**

Respondent.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 241

were read on this motion to SEAL.

Petitioners Metropolitan Transportation Authority and its affiliate, New York City Transit Authority (together, “MTA” or “Petitioner”) move to provide Respondent Westfield Fulton Center, LLC (“Westfield”) an opportunity to seal and/or redact certain documents (NYSCEF 94, 106, 107, 108, 111, 112, 113, 123, 130, 131, 132, 142, 143, 146, 148, 153, 157, and 159) that MTA filed under seal in support of MTA’s Motion to Vacate the Arbitration Awards (Mot. Seq. 004). Westfield filed an affirmation setting forth its arguments in support of this motion (NYSCEF 241). For the following reasons, Petitioner’s motion 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]).

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]).

As an initial matter, the fact that the parties have stipulated to sealing documents, or that they have designated the documents during discovery as “Confidential” or “Highly Confidential,” does not, by itself, require granting of the motion (*see, e.g., Maxim*, 145 AD3d at 518; *Gryphon*, 28 AD3d at 324). Agreements to seal do not, without more, establish “good cause” (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], * 9 [Sup Ct, NY County 2012]).

Here, however, Respondent has met its burden of showing good cause. New York has a “long and strong public policy favoring arbitration” (*Am. Intl. Specialty Lines Ins. Co. v Allied Capital Corp.*, 35 NY3d 64, 70 [2020]), and New York courts have authorized sealing the records of Article 75 proceedings where the matter properly belonged in arbitration, and thus “the material filed with the court belongs not in the court, but in the files of the arbitrating body” (*Matter of Cohen v S.A.C. CapitalAdvisors, LLC*, 11 Misc 3d 1054(A) [Sup Ct, NY County

2006], quoting *Feffer v Goodkind, Wechsler, Labaton & Rudolf*, 152 Misc 2d 812, 815 [Sup Ct, NY County 1991], *affd sub nom.*, 183 AD2d 678 [1st Dept 1992]). While there is not “a per se sealing rule for records submitted to the court in connection with arbitration proceedings” where, “as is common among parties to arbitration, the parties had a strong expectation of confidentiality even in court proceedings to confirm the award,” sealing and/or redaction may be appropriate (*Allstate Life Ins. Co. v Lincoln Ben. Life Co.*, 2020 WL 3819037 [Sup Ct, NY County 2020]). Here, the parties had designated certain documents as confidential in the underlying arbitration and have worked together to reduce the documents Westfield seek to be sealed or redacted in this action from seventy-seven to eighteen.

The Court finds that the remaining eighteen documents comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive non-public financial information pertaining to rents paid and/or negotiated in the Fulton Center (NYSCEF 94, 106, 107, 108, 111, 112, 113) (redactions set forth in docket entries 192, 194, 196, 198, 200, 202, and 204), and information reflecting schematics and plans for Fulton Center, including descriptions of emergency generators, which, if disclosed, could pose a security and safety risk to the tenants of Fulton Center and the public (NYSCEF 123, 130, 131, 132, 142, 143, 146, 148, 153, 157, 159).

Accordingly, it is:

ORDERED that Petitioner’s Motion to Seal and/or Redact is **Granted**; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 192, 194, 196, 198, 200, 202, and 204 in their current, redacted form; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 94, 106, 107, 108, 111, 112, 113, 123, 130, 131, 132, 142, 143, 146, 148, 153, 157, 159, 191, 193, 195,

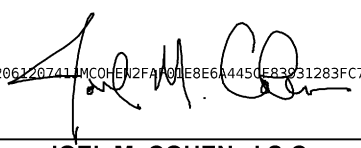
197, 199, 201, 203, 205, 207, 209, 211, 213, 215, 217, 219, 221, and 223 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED as it related 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; it is further

ORDERED that the Clerk unseal NYSCEF Document Numbers 93, 95, 96, 101, 102, 103, 104, 105, 109, 110, 114, 115, 116, 117, 118, 119, 120, 122, 124, 125, 126, 133, 134, 135, 136, 137, 138, 139, 140, 141, 144, 145, 147, 149, 150, 151, 152, 154, 155, 156, 158, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 180, and 182; and it is further

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

This constitutes the Decision and Order of the Court.

<p><u>12/6/2022</u> DATE</p>			 <small>202212061207411MCOHENJ2FAF01E8E6A4450E83031283FC7C616C</small> <hr/> JOEL M. COHEN, 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"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE