

Glencore LTD. v Freepoint Commodities LLC

2022 NY Slip Op 34221(U)

December 13, 2022

Supreme Court, New York County

Docket Number: Index No. 653431/2019

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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GLENCORE LTD.,

Plaintiff,

- v -

FREEPOINT COMMODITIES LLC,

Defendant.

INDEX NO. 653431/2019

MOTION DATE 10/24/2022,
N/A, N/A

MOTION SEQ. NO. 005 006 008

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 109, 110, 111, 112, 251, 252, 254

were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 255, 256, 257, 258

were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 275, 276, 277, 278, 279, 280

were read on this motion to SEAL.

In Mot. Seq. 005, Plaintiff Glencore LTD. (“Plaintiff”) moves for an order sealing and/or redacting certain portions of documents listed in Entries Nos. 1 to 37 of the Sealing Spreadsheet (NYSCEF 146, 147, 148, 150, 151, 153, 154, 155, 157, 161, 162, 163, 183, 184, 185, 195, 196, 197, 198, 199, 200, 201, 202, 204, 205, 206, 207, 208, 220, 224, 225, 226, 227, 228, 229, 230, 231, 232). Plaintiff also moved to provisionally seal Entries Nos. 38 to 81 and 82 to 88 of the Sealing Spreadsheet (NYSCEF 146, 147, 148, 150, 151, 152, 153, 154, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 173, 176, 177, 178, 179, 180, 181, 182, 183, 185, 186, 187, 189, 193, 203, 204, 208, 209, 210, 211, 212, 215, 217, 218, 219, 229, 235, 244, 245, 247, 248)

and the information that has been redacted in Glencore's motion papers (NYSCEF 221, 222, 233, and 250) to allow Defendant Freepoint Commodities LLC ("Defendant") and non-party Bureau Veritas Commodities and Trade, Inc. f/k/a Inspectorate America Corporation ("Inspectorate") to move to seal pursuant to the parties' confidentiality agreement. Neither Defendant nor Inspectorate filed any papers in support of or in opposition to Plaintiff's motion. Thus, there is no basis for sealing and/or redacting Entry Nos. 38 to 81 and 82 to 88 of the Sealing Spreadsheet.

However, Defendant appears to file its response to Plaintiff's motion in a separate motion, Mot. Seq. 006. Defendant states that it does not oppose Mot. Seq. 005, and through this motion, requests that additional information be redacted and pursuant to the parties' confidentiality order, seeks an order sealing and/or redacting NYSCEF 146, 148, 154, 160, 177, 178 and 207.¹ Similarly, in Mot. Seq. 008, Inspectorate appears to respond to Plaintiff's motion by moving to seal and/or redact NYSCEF 247 and 248. No parties oppose these motions. For the following reasons, Mot. Seq. 005 is **granted in part**, Mot. Seq. 006 is **granted**, and Mot. Seq. 008 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]).

¹ Going forward, where a party has moved to seal documents pursuant to a confidentiality order containing information that the opposing party has designated confidential, the opposing party should file a brief in opposition or in support of the moving party's application (providing a basis to support the proposed sealing or redaction), rather than file a separate motion covering the same documents.

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]).

a. Mot. Seq. 005

The Court has reviewed the proposed redactions in Plaintiff's Sealing Spreadsheet (NYSCEF 252) 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 property information relating to the identity of Glencore's customers and which customers Glencore attempted to sell the low sulfur fuel at issue in this action (NYSCEF 146, 147, 148, 150, 151, 153, 154, 155, 157, 163, 183, 184, 15, 195, 196, 197, 198, 199, 200, 201, 202); pricing terms at which Glencore was willing to purchase and/or sell low sulfur fuel oil (NYSCEF 150, 151, 153, 161, 162, 184, 198, 200, 201, 205, 206, 207, 208, 220); and the terms of agreements between Glencore and third parties for services ancillary to the transaction with Freepoint (NYSCEF 220, 226, 227, 228, 229, 224, 225). Plaintiff has proposed and justified targeted redactions that satisfy the requirements of 22 NYCRR § 216.1 (a). Finally, the Court finds good cause to seal NYSCEF 230, 231, and

232 as they reflect Glencore's hedging transactions to protect against potential additional losses after Glencore's customer rejected the LSFO.

b. Mot. Seq. 006

The Court has also reviewed the proposed redactions in Defendant's Sealing Spreadsheet (NYSCEF 258) 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 commercially sensitive and proprietary information relating to the identity of Defendant's suppliers, customers, and counterparties (NYSCEF 146, 148, 154, 160, 177 and 178), and information regarding a Freepoint bank account, including the account number (NYSCEF 207). Defendant has proposed and justified targeted redactions that satisfy the requirements of 22 NYCRR § 216.1 (a).

c. Mot. Seq. 008

The Court has also reviewed the documents in Inspectorate's Sealing Spreadsheet (NYSCEF 277) 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 commercially sensitive and proprietary information related to Inspectorate's clients and prospective clients (NYSCEF 247, 248).

The remaining documents that Plaintiff filed under seal provisionally, which neither Defendant nor Inspectorate have supported with evidence to warrant sealing or redaction (NYSCEF 152, 164, 165, 166, 167, 168, 169, 170, 171, 173, 176, 179, 180, 181, 182, 186, 187, 189, 193, 203, 209, 210, 211, 212, 215, 217, 218, 219, 235, 244, 245) shall be unsealed, and the parties must file public versions of 221, 222, 233, and 250 without redactions.

Accordingly, it is:

ORDERED that Plaintiff's Motion to Seal and/or Redact (Mot. Seq. 005) is **granted in part**;² it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 146, 147, 148, 150, 151, 153, 154, 155, 157, 161, 162, 163, 183, 184, 185, 195, 196, 197, 198, 199, 200, 201, 202, 204, 205, 206, 207, 208, 220, 224, 225, 226, 227, 228, 229, 230, 231, 232 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that Defendant's Motion to Seal and/or Redact (Mot. Seq. 006) is **granted**; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 160, 177 and 178 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that Inspectorate's Motion to Seal and/or Redact (Mot. Seq. 008) is **granted**; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 247 and 248 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

² Because Plaintiff moved to provisionally seal documents pursuant to the parties' confidentiality agreement that neither Defendant nor Inspectorate have moved to seal and/or redact, and as to which no party has supplied evidence to warrant sealing or redaction, Plaintiff's motion is denied in part.

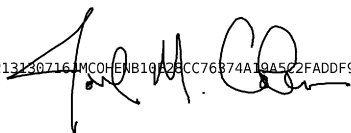
ORDERED that the parties shall file public, redacted versions of the above listed documents³ and public versions of 221, 222, 233, and 250 without redactions within five (5) business days of the date of this Order; it is further

ORDERED that the County Clerk shall unseal NYSCEF 152, 164, 165, 166, 167, 168, 169, 170, 171, 173, 176, 179, 180, 181, 182, 186, 187, 189, 193, 203, 209, 210, 211, 212, 215, 217, 218, 219, 235, 244, 245; 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; 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.

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JOEL M. COHEN, J.S.C.

<u>12/13/2022</u> DATE				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

³ To the extent both Plaintiff and Defendant seek different redaction of the same documents, the parties are directed to confer as to the redactions and file a single document reflecting the combined redactions.