

**Strategic Funding Source, Inc. v Platinum Rapid  
Funding Group Ltd.**

2022 NY Slip Op 34237(U)

December 12, 2022

Supreme Court, New York County

Docket Number: Index No. 655783/2021

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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STRATEGIC FUNDING SOURCE, INC. D/B/A KAPITUS,  
KAPITUS SERVICING, INC.,

Plaintiffs,

- v -

PLATINUM RAPID FUNDING GROUP LTD., PLATINUM  
ASSET FUNDING LLC, ARENA PRFG, LLC, ARENA  
INVESTORS LLP, and CETERIS PORTFOLIO  
SERVICES, LLC

Defendants.

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INDEX NO. 655783/2021

MOTION DATE N/A

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126

were read on this motion to/for SEAL.

In motion sequence number 006, plaintiffs Strategic Funding Source, Inc. d/b/a Kapitus (SFS) and Kaptius Servicing, Inc. move, pursuant to Section 216.1(a) of the Uniform Rules for the New York State Trial Courts, to seal, or in the alternative redact, NYSCEF Doc. No. (NYSCEF) 2, the Master Participation Agreement (MPA), and NYSCEF 38, which contain 110 funding agreements between SFS and third-party merchants (Funding Agreements). There is no indication that the press or public have an interest in this matter.

According to David Wolfson, SFS’s Vice President, Risk Management, the MPA was entered into between SFS and defendant Platinum Rapid Funding Group, Ltd. (PRFG) and governs the PRFG’s participation in certain SFS transactions. (NYSCEF 114, Wolfson aff ¶ 7.) Wolfson states that the terms and conditions of the MPA are trade secrets and the disclosure would arm plaintiffs’ competitor, namely merchants in

need of financing and potential participants who wish to enter into an MPA with SFS, with an unearned advantage and seeks to redact certain provisions in the MPA. (*Id.*)

From the Funding Agreements, plaintiffs seek to redact information concerning the nonparty merchants, such as the terms of the financial transactions, the participants' individual names and entities, and the terms of the security agreements and personal guaranty.<sup>1</sup> (*See id.* ¶ 8.) Wolfson states that the disclosure of this nonpublic information would cause harm to SFS by disadvantaging SFS in the marketplace and also harm the nonparty merchants by revealing the various merchants' identities, that they are in need of financing, the amount of financing, and other sensitive information. (*Id.*) Wolfson also states that the Funding Agreements contain tax identification numbers, social security numbers, and driver's license numbers that should remain hidden.<sup>2</sup>

### Legal Standard

"Under New York law, 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] [citations omitted].) However, the public right to access is not absolute and exceptions exist to shield court documents from public view. (*Id.* at 349.) As the public's right to access is "of constitutional dimension, any order denying access must be narrowly tailored to serve compelling objectives, such as a need for secrecy

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<sup>1</sup> Included in the Funding Agreements are "Funding Certificates" but not the UCC Financial Statements. (NYSCEF 114, Wolfson aff ¶ 2.)

<sup>2</sup> It appears that the tax identification numbers, social security numbers, and driver's license numbers have already been redacted.

that outweighs the public's right to access." (*Danco Laboratories, Ltd. v Chemical Works of Gedeon Richter, Ltd*, 274 AD2d 1, 6 [1st Dept 2000].)

Pursuant to Section 216.1(a) of the Uniform Rules for New York State Trial Courts, courts are empowered 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."

The "party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access" to the documents. (*Mosalem*, 76 AD3d at 349 [citations omitted].) In the business context, courts have sealed records where the disclosure of documents "could threaten a business's competitive advantage." (*Id.* at 350-51.) 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].)

## Discussion

Plaintiffs argue that if the MPA's terms and conditions were disclosed, the disclosure would provide a competitive advantage to plaintiffs' competitors and prospective merchants. Here, plaintiffs have demonstrated good cause to redact the MPA only to the extent that this document reveals proprietary terms and conditions between SFS and PRFG. (*Mosallem*, 76 AD3d at 350-51.) For example, plaintiffs have demonstrated good cause to warrant redaction where the MPA reveals a formula to calculate a fee in the section titled "Termination." However, plaintiffs' proposed redactions are nevertheless overbroad because, for one, plaintiffs fail to demonstrate how the information under the section titled "Recitals" in the MPA is proprietary or confidential information and how the disclosure of such information would harm plaintiffs' competitive standing in the industry. Plaintiffs also propose to redact all of the definitions given in the MPA without providing any justification of why the disclosure of each definition would harm the plaintiffs. Further, and specifically, no good cause exists to redact the definition of the term "Parties" where the unredacted preamble to the MPA defines who the parties are, nor is there good cause to redact the self-referential definition of "Agreement."

With regard to the Funding Agreements, plaintiffs argue the identities of merchants in need of financing, the financing amounts, and reveal to plaintiffs' competitors and potential merchants competitive financing terms, the disclosure of which would not only harm the nonparty merchants but would also harm the competitive standing of SFS, should be redacted. Here, good cause exists to narrowly redact the identities of the merchants in need of financing, addresses, names of guarantors, phone

numbers, and other confidential personal information as these proposed redactions effectively balance the nonparties' privacy interests and the interests of the public, if any. (See *Mancheski v Gabelli Group Capital Partners*, 39 AD 499, 502 [2d Dept 2007]; 22 NYCRR 202.5 [e] [1] [iv] [permitting redaction of "confidential personal information"].) Plaintiffs have also demonstrated that good cause exists to narrowly redact the amount of funding the nonparty merchant receives, the contract rates, and information that would identify the merchant and the merchant's confidential personal information. (See *id.*; see also *Mosallem*, 76 AD3d at 350-51.) However, plaintiffs fail to explain why the information following the section "Syndication" should be redacted. (See, e.g., NYSCEF 120, Funding Agreements at 211.<sup>3</sup>) Notably, plaintiffs fail to describe what this information is.

Accordingly, it is

ORDERED that motion sequence number 006 is granted in part and denied in part without prejudice; and it is further

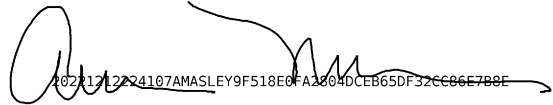
ORDERED that plaintiffs shall submit a new proposed redacted version of the MPA and a more detailed affidavit from a person with knowledge supporting plaintiffs' new proposed redactions consistent with this decision within 10 days of this order; and it is further

ORDERED that plaintiffs shall submit a more detailed affidavit from a person with knowledge regarding the Funding Agreements consistent with this decision within 10 days of this order, or alternatively submit a proposed redacted version and publicly available redacted version of the Funding Agreements consistent with and to the extent

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<sup>3</sup> Pages refer to NYSCEF generated pagination.

permitted by this decision, i.e., without redactions to the "Syndication" portion of the Funding Agreements within 10 days of this order.



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12/12/2022

DATE

ANDREA MASLEY, J.S.C.

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