

JZ Intl. LLC v Hernando
2023 NY Slip Op 30118(U)
January 12, 2023
Supreme Court, New York County
Docket Number: Index No. 651216/2022
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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JZ INTERNATIONAL LLC and EUROMICROCAP FUND-B, L.P., <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> MIGUEL RUEDA HERNANDO, OLE GROTH, and STATOR MANAGEMENT, S.L.U., <p style="text-align: center;">Defendants.</p>	<table border="0"> <tr> <td style="padding-right: 20px;">INDEX NO.</td> <td style="border-bottom: 1px solid black; text-align: center;">651216/2022</td> </tr> <tr> <td>MOTION DATE</td> <td style="border-bottom: 1px solid black; text-align: center;">N/A</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black; text-align: center;">004</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	651216/2022	MOTION DATE	N/A	MOTION SEQ. NO.	004
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 107, 108, 109, 110, 121, 122, 123, 126, 138 were read on this motion to/for SEAL.

In motion sequence number 004, plaintiff JZ International LLC (JZI) moves, pursuant to Section 216.1(a) of the Uniform Rules of the New York State Trial Courts, to seal or redact NYSCEF Doc. Nos. (NYSCEF) 58, 73-77, 79, 81, 84, 86, 88, 90-93, 95, 97, 99, 102, 104, and 106. Plaintiff Euromicrocap Fund-B, L.P. (Fund-B) joins in this motion. There is no indication that the press or public have an interest in this matter. Defendant Stator Management, S.L.U (Stator) conditionally opposed JZI’s motion.¹

¹ Stator’s counsel, Donald J. Kravet, submitted an affirmation in opposition to this motion and concurrently filed a separate motion (mot. seq. no. 005) requesting the court strike the English translations of certain documents as the translations were not provided at the time the non-English copies were filed to the docket. (NYSCEF 126, Kravet aff in opp ¶ 22.) Kravet requested that in the event the court grants the relief sought in motion sequence number 005 that the court also deny this motion to seal/redact the documents based on the untimely translations. Alternatively, Kravet requested that the court grant leave to Stator to file a Supplemental Reply to respond to the translated documents. The court granted the alternative relief requested and directed the plaintiffs to file an affidavit from a person with knowledge with respect to motion sequence number 004. (NYSCEF 137, decision and order [mot. seq. no. 005].)

Documents Plaintiffs Seeks to Seal or Redact²

NYSCEF 73 is a one-page spreadsheet detailing defendant Miguel Rueda Hernando's annual payments, the terms of employment, and compensation structure. Plaintiffs argue that this document should be sealed because the amount of compensation and structure of compensation of investment managers is proprietary to JZI and the document reveals Hernando's personal assets.

NYSCEF 74 is a one-page spreadsheet detailing defendant Ole Groth's annual payments, the terms of employment, and compensation structure of Groth. Plaintiffs argue that this document should be sealed because the amount of compensation and structure of compensation of investment managers is proprietary to JZI and the document reveals Groth's personal assets.

NYSCEF 75 contains a letter dated April 15, 2021 from nonparty Jordan Zalaznick Advisors, Inc. (JZAI³) to HSBC Bank USA (HSBC Letter) and an email dated April 13, 2021 from Hernando to nonparty JZ Asset Management LLC's (JZAM's) CCO (April 2021 Email). Plaintiffs argue that NYSCEF 75 should be sealed as it reveals the transaction fee amounts paid to various JZI employees who are not parties to this action, the amount and structure of compensation of investment managers is JZI's proprietary information, reveals transactions of JZI's two portfolio companies not involved in this action, personally identifying information and personal bank account numbers of employees who are not parties to this action.

² Plaintiffs' contentions and descriptions are taken from their sealing chart submitted pursuant to this part's procedure on sealing. (NYSCEF 110, sealing chart.)

³ Plaintiffs use capitalized terms from their complaint. (NYSCEF 110, sealing chart, n 2.)

NYSCEF 76 contains two exhibits, “Exhibit 4.1” and “Exhibit 4.2.” Exhibit 4.1 is an email dated April 10, 2019 from Hernando to “Limited Partner-1,” “Individual-1,” “JZAM’s CCO,” and “JZAI Employee-1.”⁴ Exhibit 4.2, an attachment to the April 2019 Email, appears to be an informational packet and is titled “Strategic Business Review.” Plaintiffs contend that NYSCEF 76 should be sealed because it reflects business strategies of JZI’s portfolio companies, including a portfolio company unrelated to this action, discloses information concerning the financing needs and cash position of “PackBenefit,” a current portfolio company of Fund-B, and information concerning Fund-B’s investment and divestiture strategy for PackBenefit.

NYSCEF 77 contains two exhibits, “Exhibit 5.1” and “Exhibit 5.2.” Exhibit 5.1 is an email dated November 7, 2019 from Groth to JAZI Employee-1. (November 7, 2019 Email). Exhibit 5.2, an attachment to the November 2019 Email, is PackBenefit Capital Call Memorandum dated October 29, 2019 (Call Memo). Plaintiffs contend that the November 2019 Email should be redacted as it reveals email addresses and names of JZI’s employees who are not parties to this action and that the Call Memo should be sealed because it reveals PackBenefit’s investment strategy, financial performance and budget, recurring customers, contracts and financing arrangements, and growth strategy.

NYSCEF 79 contains two exhibits, “Exhibit 6.1” and “Exhibit 6.2.” Exhibit 6.1 is an email from Goth to “Individual-1” and “JZAI Employee-1” dated April 23, 2020 (April 2020 Email). Exhibit 6.2 is PackBenefit memorandum (PackBenefit Memo) dated April

⁴ JZI anonymized certain names of nonparties using descriptive pseudonyms. JZI seeks to seal the key it created identifying these nonparties, some of whom are subordinates of Rueda. (NYSCEF 1, summons and compl. ¶ 65.)

10, 2020. Plaintiffs contend that the April 2020 Email should be redacted as it reveals email addresses and names of JZI's employees who are not parties to this action and that the PackBenefit Memo should be sealed because it reveals PackBenefit's investment strategy, financial performance and budget, recurring customers, contracts and financing arrangements, and growth strategy.

NYSCEF 81 is an email thread from March 21-23, 2021. Plaintiffs contend that this document should be redacted to prevent the disclosure of personal information of JZI's employees, such as email addresses, phone numbers, and names, who are not involved in this action, and information regarding JZI's liquidity positions, investor relationships, and financing strategies.

NYSCEF 84 contains two exhibits, "Exhibit 9.1" and "Exhibit 9.2." Exhibit 9.1 is an email from Stator Partner-2 to Groth and Gedesco Executive-1 dated November 26, 2019 (November 26, 2019 Email). Exhibit 9.2 is PackBenefit Indicative Term Sheet dated November 26, 2019 (Term Sheet). Plaintiffs contend that Exhibit 9.1 should be redacted to prevent the disclosure of the personal contact information of a nonparty and Exhibit 9.2 should be sealed to prevent the disclosure of information related to PackBenefit's financing needs and strategy.

NYSCEF 86 is an email from Stator Partner-1 to Hernando and Groth dated July 17, 2020 (July 2020 Email). Plaintiffs contend that the proposed redactions to the July 2022 Email target personal contact information of a nonparty and bank account information.

NYSCEF 88 contains two exhibits, "Exhibit 11.1" and "Exhibit 11.2." Exhibit 11.1 is an email between Stator Partner-1, Groth, and others dated December 23, 2019

(December 2019 Email). Exhibit 11.2 is a draft of a loan contract (Draft Loan Contract) between nonparty Mookameli Investment, S.L.U. (Mookameli) and PackBenefit. Plaintiffs argue that the December 2019 Email should be redacted as it contains personal contact information of nonparties and discloses business dealings of nonparties. Plaintiffs contend that the Draft Loan Contract should be sealed as this document discloses the financing needs of PackBenefit, terms and conditions of accepting or rejecting financing, discussions of financing negotiations, and discloses personal information of nonparties. The December 2019 Email and the Draft Loan Contract are in Spanish and a translation of these documents to English are included in NYSCEF 88.⁵

NYSCEF 90 contains two exhibits, “Exhibit 12.1” and “Exhibit 12.2.” Exhibit 12.1 is an email from Stator Partner-1 to Groth and Gedesco Executive-1 dated March 26, 2021 (March 2021 Email). Exhibit 12.2 is an accounting firm study of the “Mookameli Operation” (Accounting Study). Plaintiffs argue that the March 2021 Email and Accounting Study should both be sealed as both documents contain business, tax, and financing advice provided by a nonparty, PackBenefit’s financing needs and strategy, personally identifying information of nonparties, and a bank account number.

NYSCEF 91 is an email exchange between Groth and what JZI describes as Groth’s personal banker dated between May 11 and May 19, 2021 (May 2021 Emails). Plaintiffs argue that the May 2021 Emails contain confidential discussions between

⁵ It appears that the translated copy is much shorter (2 pages) than the original copy (12 pages). Lee acknowledges that NYSCEF 88 includes only a partial translation but provides no explanation as to why an apparently incomplete translation was provided to the court.

Groth and his personal banker and reveal aspects of PackBenefit's financing needs and strategy.

NYSCEF 92 contains two exhibits, "Exhibit 14.1" and "Exhibit 14.2." Exhibit 14.1 is an email from JAZI Employee-1 to Hernando, Individual-1, and others dated August 2, 2021 (August 2021 Emails). Exhibit 14.2 are spreadsheets and tables reflecting distribution proceeds from JZI's sale of nonparty Faus International SL (Faus) and its property company, a former JZI asset involved in this action (Proceed Tables). Plaintiffs contend that both the August 2021 Emails and the Proceed Tables reveal JZI's business information, including divestiture strategy with respect to Faus and its property company, contact information of JAZI and JZI. Plaintiffs argue that the Proceed Tables disclose the distribution of profits to various nonparties as well as JZI's use of funds to meet other business obligations related to the Faus divestiture.

NYSCEF 93 contains two exhibits, "Exhibit 15.1" and "Exhibit 15." Exhibit 15.1 is an email dated April 17, 2019 between JZAI-Employee-1 and Growth (April 2019 Email). Exhibit 15.2 is titled "Faus Memorandum." Plaintiffs argue that the April 2019 Email reveals JZI's divestiture strategy for assets unrelated to this action and the personal contact information, as well as identities, of nonparties to this action and thus should be redacted. Plaintiffs argue that the Faus Memorandum should be sealed because the document discloses Faus' confidential business information, such as capital structure, sales, earnings, customers, personnel decisions, financial performance, budget, and strategic growth plans, and JZI's investment and divestiture strategy.

NYSCEF 95 is an email exchange between August 26, 2019 and September 2019 between JZAI Employee-1 and Groth. Plaintiffs argue that this document should be redacted because it discloses JZI's investment and divestiture strategy for assets unrelated to this action.

NYSCEF 97 is an email from Groth to JZAI Employee-1 dated September 30, 2019. Plaintiffs argue that this document should be sealed because it discloses JZI's investment strategy and divestiture strategy with respect to Faus, details about JZI's strategy with respect to other portfolio companies that are not involved in this action, and JZI and JZAI employees' identities and contact information.

NYSCEF 99 contains two exhibits, "Exhibit 19.1" and "Exhibit 19.2." Exhibit 19.1 is an email from Groth to Gedesco Executive-2 dated December 5, 2019 and plaintiffs argue should be redacted as it reveals the identity and contact information of nonparties in this action. Exhibit 19.2 is a draft offer letter for the purchase of Faus (Draft Offer Letter), which plaintiffs argue should be sealed because it contains Faus' business condition, details about the Faus sale, including Faus' debt and earnings, and the terms of the offer to acquire Faus.

NYSCEF 102 contains two exhibits, "Exhibit 22.1" and "Exhibit 22.2." Exhibit 22.1 is an email from Groth to Gedesco Executive-2 dated December 17, 2019, which Plaintiffs argue should be redacted as it reveals the identity and contact information on a nonparty to this action. Exhibit 22.2 is a different draft offer letter for the purchase of Faus and plaintiffs contend that this document should be sealed as it discloses Faus' business condition, the Faus sale, including Faus' debt and earnings, and the terms of the offer to acquire Faus.

NYSCEF 104 contains two exhibits, “Exhibit 23.1” and “Exhibit 23.2.” Exhibit 23.1 is an email from a nonparty attorney to Groth and Gedesco Executive-2 dated December 23, 2019, which Plaintiffs contend should be redacted as it discloses the identity and contact information of nonparties to this action. Exhibit 23.2 is a draft offer letter for the purchase of Faus dated December 23, 2019 (December 2019 Draft Offer Letter). Plaintiffs contend that the December 2019 Draft Offer Letter reveals Faus’ business condition, the Faus sale, including Faus’ debt and earnings, and the terms of the Faus acquisition.

NYSCEF 106 is a document that contains what JZI describes as a key of “Anonymized Names.” Plaintiffs contend that the document contains the names of third-party individuals and entities who are not parties of this action.

NYSCEF 58 contains two exhibits, “Exhibit 20.1” and “Exhibit 20.2.” Exhibit 20.1 is an email dated February 8, 2022 from Groth to an attorney. Exhibit 20.2 is a document plaintiffs describe as Groth’s personal holdings statement. Plaintiffs request that these two exhibits in NYSCEF 58 be maintained under seal due to Groth’s assertion of attorney-client privilege.⁶

⁶ Matthew Laroche explains in his revised affirmation in support of plaintiffs’ opposition to defendants’ motion to dismiss (NYSCEF 72) that Groth’s attorney in this action asserted that Exhibits 20.1 and 20.2 are subject to attorney-client privilege, which Laroche does not agree with. However, Laroche states that “out of an abundance of caution, and pending the resolution of the privilege claim,” he does not append a “revised” version (which the court understands to be a translated copy as NYSCEF 58 appears to be in the Spanish language). In Hernando and Groth’s reply memo, defendants address in a footnote that NYSCEF 58 is protected by the attorney-client privilege as it is “obvious from the addressee email.” (NYSCEF 111, reply at 15, n 2.) Defendants also state that they intend and reserve their right to seek appropriate relief and possible sanctions, although the court notes there is no motion to that end at the time of writing this decision and order.

Sang Lee, manager of JZI, files an affidavit in support of the motion. (NYSCEF 138, Lee aff ¶ 2.) Lee also serves as Chief Compliance Officer of JZAI and JZAM and has previously been employed as the Chief Financial Officer of JZAI. (*Id.* at ¶ 3.)

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. (*Mosallem*, 76 AD3d 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 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 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. (*Mosallem*, 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 Misc3d 1130 [A], 2007 NY Slip Op 52207 [U], *20 [Sup Ct, NY County 2007] [citations omitted].)

Section 202.5(e)(1)(iv) of the Uniform Rules for the New York Supreme Court and Civil Courts provides that confidential personal information, including bank account numbers, may be redacted without leave of court.

Discussion

As a general matter, plaintiffs’ request to seal documents is denied as overbroad. Good cause exists to the extent plaintiffs seek to redact information that would actually harm plaintiffs should that information be revealed. For example, in NYSCEF 73 and 74, which is the compensation histories of Hernando and Groth, respectively, Lee states that the documents reveal the amounts and structure of investment managers’ compensation, the disclosure of such proprietary information could harm plaintiffs’ business operations if competitors had access to this information. Lee also states that the documents disclose information concerning Hernando and Groth’s personal assets. While good cause may exist to redact the amounts and details concerning the structure of Hernando and Groth’s compensation from JZAM and personal assets, plaintiffs’

request to seal NYSCEF 73 and 74 in their entirety is overbroad, for one, because the fact that Hernando and Groth are being paid by JZAM is already a matter of public record. (See NYSCEF 1, summons and compl. ¶ 2.) Thus, there is no basis to seal the entire document, including the descriptive title of the spreadsheet. “We recognize that it may be easier for the parties and the motion court to seal an entire court record, rather than make a determination on a document by document basis about sealing, but administrative convenience is not a compelling reason to justify sealing.” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 518 [1st Dept 2016].) Plaintiffs shall propose narrow redactions to prevent the disclosure of the specific amounts for which plaintiffs argue would cause the business harm if revealed and for which good cause exists to redact.

Further, plaintiffs’ request to seal documents in their entirety is overbroad because many of the documents contain non-confidential items that should not be hidden from the public. For example, while NYSCEF 75 contains detailed wiring and financial information to individuals that may or may not be involved in the action, there are emails between Lee and Hernando that do not implicate confidential items, including discussions on timing and deadlines, which warrant narrow redactions and not wholesale sealing. In another instance, plaintiffs do not explain why good cause exists to seal entire document when the preamble appears to recite boilerplate confidentiality terms. (See NYSCEF 84.)

The same reasoning applies to NYSCEF 76, 77, 79, 88, 90, 91, 92, 93, 97, 99, 102, 104, and 106,⁷ all documents that plaintiffs seek to seal. For example, in NYSCEF 76, an informational packet titled “Strategic Business Review,” Lee asserts that the

⁷ NYSCEF 106 is discussed in more detail below.

disclosure of business strategy, investment and divestiture strategy, and related financial performance and cash needs information could harm Fund-B and PackBenefit because competitors would have access to an unearned advantage or affect PackBenefit's relationships with its customers and ability to execute future business plans or obtain financing. Again, while good cause exists to disclosure from view information concerning business, investment, and divestiture strategy, financial performance and cash needs of PackBenefit, plaintiffs' request to seal is overbroad as they seek to withhold from public view, for one, a "Seal of Excellence" from the European Commission. Plaintiffs fail to explain how disclosure of this certificate included in the Strategic Business Review would arm competitors with an unearned advantage or affect PackBenefit's relationships with its customers.

Plaintiffs do not need to make a showing of good cause to the extent that the documents reveal bank account numbers, social security numbers, dates of birth, all of which are subject Section 202.5(e)(1)(iv) of the Uniform Rules for the New York Supreme Court and Civil Courts. Plaintiffs shall, however, abide by the requirement that any redaction of such information should only be redacted to the extent permitted—for example, bank account numbers shall be redacted except for the last four digits. The court notes that many of the documents that contain bank account numbers are included in plaintiffs' request to seal, which goes beyond what is permitted by Section 202.5(e)(1)(iv). Moreover, as plaintiffs' request to seal documents in their entirety is denied, plaintiffs shall submit redactions consistent with Section 202.5(e)(1)(iv).

With regard to plaintiffs' request to redact the names of former and current JZI employees, plaintiffs make no showing as to why good cause exists to redact the

names of these former or current employees or otherwise nonparties to this action. Plaintiffs cite to *Mancheski v Gabelli Group Partners* for the proposition that disclosure could impinge on the privacy rights of third parties who are clearly not litigants to the action. (39 AD3d 499, 205 [2d Dept 2007].) However, the court in *Mancheski* found that there was a “compelling interest in sealing the third-party financial information since disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein.” (*Id.* [emphasis added].) Thus, while good cause may exist to redact third parties’ private financial information and contact information, the court has no basis, as none was proffered, to redact the identities of the employees or any third parties for that matter.

Particularly concerning is plaintiffs’ effective redaction of certain individuals in the complaint without a motion to redact their names, e.g., “JZ-Employee-1.” Plaintiffs have proffered no support for the effective redactions of these names and have not sought proper authorization to do so. Therefore, if plaintiffs seek a redaction of these names in the complaint, they shall follow this part’s procedures on sealing/redacting. Moreover, Lee, who provides an affidavit of personal knowledge in support of this motion, publicly identifies himself as the JZAM’s Chief Compliance Officer in the publicly available affidavit yet is anonymized as “JZAM’s Chief Compliance Officer” in the complaint.

Finally, as to NYSCEF 58, which is currently under temporary seal, the court does not opine on the apparent attorney-client privilege dispute. However, for the purposes of this motion, Groth does not address the privilege dispute outside of a footnote in the reply memo and plaintiffs do not provide law in support of sealing. Thus, NYSCEF 58 will be unsealed.

Accordingly, it is

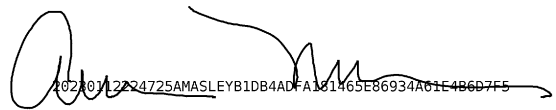
ORDERED that motion sequence number 004 is denied; and it is further

ORDERED that the movant shall serve a copy of this decision and order on the County Clerk’s Office who is directed to unseal NYSCEF 58, 73-77, 79, 81, 84, 86, 88, 90-93, 95, 97, 99, 102, 104, and 106; and it is further

ORDERED that within 5 days of the date of this order, plaintiffs shall refile the complaint using the actual names of the parties who have been anonymized; and it is further

ORDERED that plaintiffs shall refile the documents, made publicly available, redacting confidential personal information consistent with this decision and order and Section 202.5(e)(1)(iv) within 5 days of this order; and it is further

ORDERED that the parties shall e-file and email SFC-Part48@nycourts.gov the transcript of the argument on motion sequences number 004 and 005 to NYSCEF.



1/12/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE