

**Jaffrey v Scaminaci**

2023 NY Slip Op 30944(U)

March 26, 2023

Supreme Court, New York County

Docket Number: Index No. 653352/2022

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

OMAR JAFFREY,		INDEX NO. <u>653352/2022</u>
Plaintiff,		MOTION DATE _____
- v -		MOTION SEQ. NO. <u>001</u>
CARLOS ANDRES SCAMINACI,		
Defendant.		<b>DECISION + ORDER ON MOTION</b>

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43

were read on this motion to/for SEAL.

In motion sequence number 001, defendant Carlos Andres Scaminaci moves to file NYSCEF Doc. No. (NYSCEF) 28 publicly, which is “Exhibit 17” appended in support of his motion to dismiss. Scaminaci also moves to publicly file NYSCEF 9, his memorandum of law in support of his motion to dismiss (Dismiss Memo).

Plaintiff Omar Jaffrey informed Scaminaci that NYSCEF 28 should be filed in redacted form as the document purportedly contains proprietary and competitively sensitive information relating to the parties’ private equity business (Melody). (NYSCEF 34, email between parties’ counsel.) Scaminaci filed NYSCEF 28 under temporary seal, a redacted Dismiss Memo, and this motion, however, he opposes redaction because “nothing referenced or provided in his Motion to Dismiss or exhibits thereto satisfies New York’s ‘good cause’ requirement for sealing . . . .” (NYSCEF 33, Schryver aff ¶ 3.)

There is no indication that the public or press have an interest in this matter.

NYSCEF 28<sup>1</sup> is a June 13, 2019 email chain between Jaffrey and senior Melody personnel, which contains an attached document revealing what Jaffrey contends as private financial information (commercial terms of Melody's investments and loans), investment strategies, and financial information and valuations of non-parties and non-party businesses. (NYSCEF 41, sealing chart.)

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) Except 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 of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

“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].) The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

---

<sup>1</sup> NYSCEF 36 and 40 are identical versions of NYSCEF 28 with highlights showing the proposed redactions.

In the business context, courts have sealed records where the disclosure of documents “could threaten a business's competitive advantage.” (*Mosalleem*, 76 AD3d at 350 [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.” (*D'Amour v Ohrenstein & Brown*, 17 Misc 3d 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

Courts have also permitted sealing or redacting the private information of third-parties as disclosure could impinge on the privacy rights of parties who are not litigants. (See *Manufacturers and Traders Tr. Co. v Client Server Direct, Inc.*, 156 AD3d 1364, 1366 [4th Dept 2017][citation omitted].)

First, the Dismiss Memo does not reference any proposed redacted information, and thus, Scaminaci shall refile his Dismiss Memo publicly.

In support of his motion, Jaffrey submits an affidavit in support of his proposed redactions, which he states will prevent the disclosure of competitive information concerning Melody's credit-related investments in the technology, media, and telecom sector. (NYSCEF 43, Jaffrey aff ¶ 4.) Jaffrey explains that the proposed redactions reveal Melody's financial information, business offerings and strategies of these private investments, including commercial terms of investments and loans Melody made to third-parties and the rate of return of these investments. (*Id.* ¶¶ 5-6.) According to Jaffrey, should this information be public, Melody could suffer competitive disadvantage

and harm the value of its investments because “Melody’s main differentiating feature[ ] from its competitors is its origination of bespoke loan terms with issuers who place a premium on such customized solutions.” (*Id.* ¶ 7.) Upon review of NYSCEF 28 and Jaffrey’s affidavit, Jaffrey has demonstrated that good cause exists to redact the business terms, strategy, and offerings related to these third-party investments, the disclosure of which would not only infringe the privacy rights of the third-parties’ but also cause Melody competitive harm. (*Mosallem*, 76 AD3d at 350 [citations omitted]; *Manufacturers*, 156 AD3d at 1366, *citing Mancheski*, 39 AD3d at 502.) Although Scaminaci opposes the motion to redact, Scaminaci provides only a cursory explanation and no case law to support the position.

Accordingly, it is

ORDERED that motion sequence number 001 is granted; and it is further

ORDERED that the New York County Clerk, upon service to him of his order, shall permanently seal NYSCEF 28, 36, and 40; and it is further

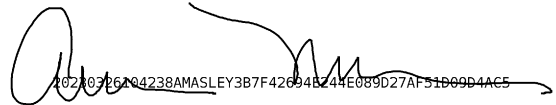
ORDERED that the County Clerk shall lift the temporary seal from NYSCEF 9 and 35; and it is further

ORDERED that within 10 days of this order, defendant shall file a redacted copy of Exhibit 17, consistent with this order, to NYSCEF under the appropriate sequence number; and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via [SFC-Part48@nycourts.gov](mailto:SFC-Part48@nycourts.gov) and NYSCEF) instead of filing another seal motion; and it is further

ORDERED the 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.



40280326104238AMASLEY3B7F426948244E089D27AF51009D4AC5

3/26/2023

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