

**Jaffrey v Scaminaci**

2023 NY Slip Op 32297(U)

July 6, 2023

Supreme Court, New York County

Docket Number: Index No. 653352/2022

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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OMAR JAFFREY,

Plaintiff,

- v -

CARLOS ANDRES SCAMINACI,

Defendant.

INDEX NO. 653352/2022

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003 004 005  
006

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 66, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81

were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 68, 69, 80, 94

were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 90, 91, 92, 93, 95, 102, 105, 106, 108

were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 99, 100, 101, 103, 104, 107

were read on this motion to/for \_\_\_\_\_ SEAL \_\_\_\_\_.

In these motions, plaintiff Omar Jaffrey, defendant Carlos Andres Scaminaci, and nonparties Melody Capital Partners, L.P. and Melody Capital Partners GP, LLC (collectively, Melody) submit that certain exhibits and memoranda of law submitted on motion sequence number 002 (Scaminaci’s motion to dismiss) contain confidential or proprietary information and must be sealed or redacted from the public. There is no indication that the press or public have an interest in this matter.

## Legal Standard

In each motion, the parties have moved under Section 216.1(a) of the Uniform Rules for New York State Trial Courts.

“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 public’s right to access is, however, not absolute, and under certain circumstances, “public inspection of court records has been limited by numerous statutes.” (*Id.* at 349.) One of those statutes is Section 216.1(a) of the Uniform Rules for New York State Trial Courts, which 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.”

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].) 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].)

Further, in the business context, courts have sealed records where the disclosure of documents “could threaten a business's competitive advantage.” (*Mosallem*, 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 Misc3d 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

## Discussion

### Motion Sequence Numbers 003 and 004

In motion sequence number 003, Melody<sup>1</sup> seeks to redact NYSCEF Doc. Nos. (NYSCEF) 48 (exhibit 21 to reply brief), 50 (exhibit 22 to reply brief), and 55 (reply brief).<sup>2</sup> One investor name was overlooked and remained in the proposed publicly available redacted copy of the reply brief. Thus, counsel for Scaminaci moved, in motion sequence number 004, to place the publicly filed redacted copy of the reply brief (NYSCEF 56) under temporary restricted status as it disclosed the name of the investor. Melody submits the sealing chart and the proposed redactions to these three documents—NYSCEF 77, proposed redactions to exhibit 21; NYSCEF 78, proposed redactions to exhibit 22; and NYSCEF 79, proposed redactions to the reply brief.<sup>3</sup>

Melody submits to the court that the identities and investment activities of certain investors, i.e., limited partnerships, (Investor Information) in private investment funds managed by Melody should be redacted. Scaminaci’s position is that nothing

<sup>1</sup> Scaminaci moved, by order to show cause, however, it is Melody that seeks to redact their information and submits the sealing chart and memo of law in support.

<sup>2</sup> NYSCEF 59 and 60 are identical to NYSCEF 48 and 50, respectively.

<sup>3</sup> Melody placed their proposed highlights in both yellow and green. (NYSCEF 107, Danner aff ¶ 5.)

referenced or provided warrants sealing or redaction. Jaffrey has taken no position in this motion.

Melody seeks to redact from NYSCEF 77-79 references to Investor Information. NYSCEF 77 is an email thread dated July 18, 2019 that discloses the names and email address of certain investors and their representatives. NYSCEF 78 is an agreement titled “Written Consent of the Advisory Board” that contains the identities of investors and representatives. NYSCEF 79, a copy of Scaminaci’s reply brief, also contains Investor Information, specifically the identities of 2 investors and certain transactions of the investors.

Melody argues that it is contractually obligated, under various agreements, to prevent unnecessary disclosure of the Investor Information. Jonathan Cole, Melody’s General Counsel and Chief Compliance Officer, who has legal and compliance oversight responsibility over the entities managed by Melody, points to one agreement, the Amended and Restated Agreement of Limited Partnership of Melody Capital Partners Onshore Credit Fund, L.P. (LPA), and argues that the LPA contains a definition of “confidential information” and provisions governing the disclosure of such “confidential information.” (NYSCEF 73, Cole aff ¶ 1; see NYSCEF 74, excerpt of the LPA.) Cole states that Investor Information falls within the “confidential information” provisions of the LPA, specifically under section 6.3, and Melody is thus required to prevent the disclosure of the Investor Information. Section 6.3(b) defines Confidential Information as

“any information related to the activities of the Partnership, the General Partner, the Manager and their respective affiliates that a Partner may acquire from the Partnership, the General Partner, the Manager, any issuer of a Portfolio

Investment or any other Partner . . . Such Confidential Information may include, without limitation, information that pertains or relates to (A) the business and affairs of any other Partner, (B) any Investments or proposed Investments or (C) any other Partnership matters.”

(NYSCEF 74, excerpt of the LPA at 4.)

Melody argues that the emails contain confidential information, i.e., the Investor Information, and should be protected from public disclosure as the parties (including Jaffrey and Scaminaci) have a contractual right to maintain its private financial information. Cole further adds that the investors have a commercially reasonable expectation that their identities constitute nonpublic information. (NYSCEF 73, Cole aff ¶ 11.) Further, Melody argues that the parties’ interest in protecting the Investor Information outweighs the public’s right to access court records because the Investor Information is not relevant to the underlying dispute between the parties, and in fact, the investors in Melody are “bystanders.”

Melody has sufficiently demonstrated good cause to narrowly redact the Investor Information from the reply brief and two exhibits. Melody has indicated that the disclosure of the Investor Information would be in breach of the confidentiality provisions of certain agreements such as the LPA to keep information like the Investor Information confidential. (*Applehead Pictures LLC v Perelman*, 80 AD3d 181, 193 [1st Dept 2010]; see NYSCEF 73, Cole aff ¶¶ 13-14.) Melody’s proposed redactions are narrowly tailored and balance interest of the public, if any, with its interest in keeping the Investor Information private. (*D’Amour*, 17 Misc3d 1130[A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

### Motion Sequence Number 005

In motion sequence number 005, Melody seeks to redact the name of an investor from NYSCEF 88. NYSCEF 93 is an identical copy of NYSCEF 88.

NYSCEF 88 (exhibit 3 to Jaffrey's proposed sur-reply brief) is an email containing the identity of an investor and its representatives. The identity of the investor also appears in the documents to be redacted in motion sequence numbers 003 and 004. Consistent with the court's finding that Melody has demonstrated good cause to narrowly redact the identities of the investors, their activities, and their representatives, good cause exists to redact the name of the investor in NYSCEF 88. As there is a publicly available redacted version of NYSCEF 88 (located at NYSCEF 89), the parties need not refile a redacted version.

### Motion Sequence Number 006

In motion sequence number 006, Melody seeks to redact NYSCEF 97 (exhibit A to Scaminaci's letter responding to Jaffrey's proposed sur-reply brief), which is an email dated January 12, 2020 containing the identity of the same investor at issue in the preceding seal motions. NYSCEF 101 is an identical copy of NYSCEF 97.

As with motion sequence number 005, consistent with the court's finding that Melody has demonstrated good cause to redact the identity of this investor, good cause exists to redact the name of the investor in NYSCEF 97. The parties need not refile a redacted copy of NYSCEF 97 as one is publicly available (NYSCEF 98).

ORDERED that motion sequence number 003 is granted; and it is further

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

ORDERED that the New York County Clerk, upon service to him of his order, shall permanently seal NYSCEF 48, 50, 55, 56, 59, 60, 77, 78, and 79; and it is further

ORDERED that defendant shall file, under the appropriate sequence number, a publicly redacted version of its reply brief and the two exhibits at issue consistent with this order, within 10 days of this order; and it is further

ORDERED that motion sequence number 005 is granted; and it is further

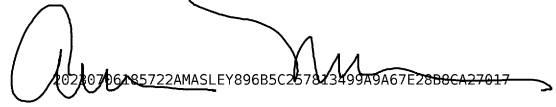
ORDERED that motion sequence number 006 is granted; and it is further

ORDERED that the New York County Clerk, upon service to him of his order, shall permanently seal NYSCEF 88, 93, 97, and 101; 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.

  
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7/6/2023  
DATE

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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