

**Radium2 Capital, LLC v Platinum Rapid Funding
Group Ltd.**

2023 NY Slip Op 32537(U)

July 22, 2023

Supreme Court, New York County

Docket Number: Index No. 652120/2020

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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RADIUM2 CAPITAL, LLC (F/K/A RADIUM2 CAPITAL INC.), <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> PLATINUM RAPID FUNDING GROUP LTD., PRFG SPV #1 LLC, PLATINUM ASSET FUNDING, LLC, ARENA PRFG, LLC, PRIME MERIDIAN SPECIAL OPPORTUNITIES FUND, LP, ARENA INVESTORS, LP, ALI MAYAR, VINCENT BARDONG, MICHAEL S. PERAGINE, CFG MERCHANT SOLUTIONS, LLC, and CETERIS PORTFOLIO SERVICES, LLC, <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: right;">652120/2020</td> </tr> <tr> <td style="padding-right: 20px;">MOTION DATE</td> <td style="border-bottom: 1px solid black; text-align: right;">N/A</td> </tr> <tr> <td style="padding-right: 20px;">MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black; text-align: right;">011</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	652120/2020	MOTION DATE	N/A	MOTION SEQ. NO.	011
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 480

were read on this motion to/for SEAL.

In motion sequence number 011, defendants Platinum Asset Funding, LLC (PAF), Arena Investors, LP (AILP), Arena PRFG, LLC (Arena PRFG), Prime Meridian Special Opportunities Fund, LP (Prime), and Ceteris Portfolio Services, LLC (Ceteris) move, pursuant to Section 216.1(a) of the Uniform Rules for New York State Trial Courts (22 NYCRR) for an order sealing NYSCEF Doc. Nos. (NYSCEF) 298-312. There is no indication that the press or public have an interest in this matter.

The Documents and Defendants’ Arguments

The following is taken from defendants’ sealing chart.¹ (NYSCEF 313, sealing chart.)

¹ The parties shall identify the NYSCEF docket number in addition to the bates identification numbers under the “document” column in future seal motions.

NYSCEF 298 is a spreadsheet that identifies over 1,000 merchants and contains information such as merchant payments, defaults, settlement terms and write offs. Defendants argue that this information constitutes trade secrets. Defendants contend that the disclosure of these terms would disadvantage them and the nonparty merchants while giving defendants' competitors an unearned advantage.

NYSCEF 299 is a document titled "Platinum Rapid Funding Group, Ltd, Consolidated Financial Statements, December 31, 2018 and 2017" and contains information concerning Arena PRFG's internal finances including Arena PRFG's assets, liabilities, revenue streams, operating expenses, cash flow, and liquidity. Defendants assert that this information constitutes trade secrets and that disclosing this information would give their competitors an unearned advantage.

NYSCEF 300 is an itemized list titled "Servicing Costs – Paid to Ceteris" and contains information about servicing fees paid and reimbursed. Defendants assert that this information constitutes trade secrets and that disclosing this information would give their competitors an unearned competitive advantage.

NYSCEF 301 is a chart titled "Assumptions – Projected Collections" and
NYSCEF 302 is a 72-page spreadsheet. Both documents bear the bates number RDEFS 016120. Defendants contend that the spreadsheet, which identifies the names of 274 merchants that received cash advances pursuant to an underlying merchant agreement, was created specifically for this litigation. Defendants assert that the information contained in these documents constitutes trade secrets. Defendants argue that disclosing the information contained in these two documents would give their competitors an unearned advantage.

NYSCEF 303-307 all bear the same bates identification number: RDEFS 016121. NYSCEF 303 is a 30-page spreadsheet titled “data tape” that contains the names of 277 merchants and discloses payment history. NYSCEF 304 appears to be a continuation of NYSCEF 303. NYSCEF 304 is 40 pages long and also titled “data tape.” NYSCEF 305 appears to be a continuation of NYSCEF 304. NYSCEF 305 is 40 pages long and also titled “data tape.” NYSCEF 306 is a 132-page spreadsheet. NYSCEF 307 is a 3-page document containing several charts and graphs. In their sealing chart, defendants merely describe “RDEFS 016121” as a “30-page document that names 277 merchants and highlights payment history constituting confidential trade secrets.” The description appears to only describe NYSCEF 303 without providing specific descriptions of NYSCEF 304-307.

NYSCEF 308 is a 280-page spreadsheet which identifies merchants, loan balances, and amounts paid, information that defendants claim to be confidential trade secrets. Defendants contend that disclosure would harm defendants and give their competitors an unearned advantage.

NYSCEF 309 is an email with a 35-page attachment described as a Financial Due Diligence Report used by defendants for purposes of underwriting the Arena PRFG credit facilities. Defendants contend that as this email and attachment discloses the underwriting strategies, considerations, financial information concerning assets, liabilities, income, and the identities of Arena PFRG’s leadership team. Defendants contend that disclosure would harm defendants and give their competitors an unearned advantage.

NYSCEF 310 is AILP's internal document titled "[AILP] Investment Memorandum" that discloses underwriting strategies and considerations, Arena PFRG's financial information including assets, liabilities, and income. Defendants contend that disclosure would harm defendants and give their competitors an unearned advantage.

NYSCEF 311 is a spreadsheet, which contains the identities of 32 deal participants and financial information. Defendants argue this information constitutes trade secrets and disclosure of such information would disadvantage them and deal participants while giving their competitors a competitive advantage.

NYSCEF 312 is a copy of an email dated August 17, 2015, which contains the identities of deal participants and information concerning settlement negotiation and litigation. Defendants assert that this information constitutes trade secrets and that disclosure of such information would disadvantage them and deal participants while giving their competitors a competitive advantage.

Legal Standard

Pursuant to 22 NYCRR § 216.1(a), courts are empowered to seal documents upon a written finding of good cause. It provides:

"[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 v Berenson*, 76 AD3d 345, 349 [1st Dept 2010] [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].)

Discussion

The motion is denied. As a preliminary matter, defendants’ blanket categorization of this information as trade secrets in their sealing chart is conclusory and unsupported. There is no explanation as to why the defendants’ financial information or third-party financial information would constitute as trade secrets.

Additionally, defendants argue that disclosure of financial information and third-party financial information would cause, for example, the nonparty merchants seeking cash advances, harm to the merchants’ ability to receive future financing. For one, defendants fail to explain why redaction of the merchants’ identities would not be sufficient. Defendants also contend that each merchant agreement contains a confidentiality clause. To the extent that defendants rely on this contention as a basis to wholesale seal these documents, this contention is unsupported by documentary proof.

(*In re Will of Hofman*, 284 AD2d 92, 94 [1st Dept 2001] [citation omitted] [explaining that “conclusory claims of the need for confidentiality of settlement agreements are insufficient to seal a record.”]; *Grande Prairie Energy LLC v Alstom Power, Inc*, 5 Misc 3d 1002 [A] [Sup Ct, NY County 2004].) Good cause requires a more detailed affidavit from a person with knowledge stating, for example, the type of harm the defendants would face if all of the information be disclosed, should defendants renew their request. To be clear, the affidavit must explain why the column titled “Report_Date” would reveal confidential information. If it is simply because defendants did not want to redact the documents due to the documents’ “vast nature,” as defendants say in a footnote, the court finds no merit in such an argument. Additionally, there is a question as to why the redaction of the merchant identities would not be sufficient.

Defendants also argue that disclosing their decisions related to settlements, discounts, and write offs would reveal Arena PRFG’s business strategies and damage the defendants’ ability to negotiate with their borrowers in the future. Based on defendants’ sealing chart, the court surmises that this information, i.e., the decision related to settlements, discounts, and write offs, which can be found, for example, in NYSCEF 298, is reflected in the numerical values listed in the spreadsheets. These numerical values do not, on their face, reveal strategy—they are numerical figures and nothing more without further explanation. The court takes no position on whether the numerical figures constitute confidential information or not—there is simply not enough information provided to the court. For example, should defendants renew, they must explain in detail how any given value on this spreadsheet reveals confidential information, especially given that any underlying formula is not disclosed on the

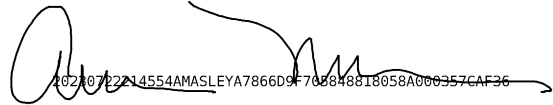
document. The explanation should also include why redaction of the column titles would be insufficient as those titles reveal what the figures refer to.

Lastly, there is no specific description provided in defendants' sealing chart or good cause stated to seal NYSCEF 304-307. The court cannot determine on this record whether NYSCEF 304-307 contain the same category of information to be sealed/redacted or why defendants seek to prevent disclosure of NYSCEF 304-307. Thus, the request to seal these documents is denied.

Accordingly, it is

ORDERED that the motion is denied in its entirety; and it is further

ORDERED that, should movants renew their motion, they should do so within 20 days of the date of this order otherwise the documents will be unsealed.



7/22/2023

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