

**Fred Alger Mgt., LLC v Impulse Dynamics PLC**

2023 NY Slip Op 34298(U)

December 7, 2023

Supreme Court, New York County

Docket Number: Index No. 654908/2023

Judge: Margaret A. Chan

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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 49M

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FRED ALGER MANAGEMENT, LLC, ALGER 35 FUND, ALGER DYNAMIC RETURN FUND, ALGER HEALTH SCIENCES FUND, ALGER DYNAMIC OPPORTUNITIES FUND, ALGER LIFE SCIENCES INNOVATION FUND, ALGER SICAV ALGER DYNAMIC OPPORTUNITIES FUND, ALGER SICAV ALGER SMALL CAP FOCUS FUND, ALGER SICAV ALGER WEATHERBIE SPECIALIZED GROWTH FUND, ALGER SMALL CAP FOCUS FUND, ALGER SMALL CAP GROWTH FUND, ALGER SMALL CAP GROWTH INSTITUTIONAL FUND, ALGER SMALL CAP GROWTH PORTFOLIO, ALGER WEATHERBIE SPECIALIZED GROWTH FUND, REDMILE GROUP, LLC, RAF, L.P., REDMILE BIOPHARMA INVESTMENTS III, L.P., and REDMILE STRATEGIC TRADING SUB, LTD.

INDEX NO. 654908/2023  
MOTION DATE 11/20/2023, 11/21/2023  
MOTION SEQ. NO. 002 003

**DECISION + ORDER ON MOTION**

Plaintiffs,

- v -

IMPULSE DYNAMICS PLC, SHLOMO BEN-HAIM, HERON HO, RAY YANG, JAMES TOBIN, JOSEPH CAPPER, DANIEL SCAVILLA, ANTONY OWERS, SHLOMI NACHMAN, JOHN LIDDICOAT, HOBART HEALTHCARE INVESTMENT LIMITED, IMPULSE DYNAMICS BV, TEODORO 29 CORP, CLIFORD INVESTMENT LIMITED, CSI CAPRICORNUS LIMITED, WARMLIGHT LIMITED, and RIGHT DIRECT INVESTMENTS LIMITED,

Defendants.

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 66, 67, 68

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72

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

In this action to enjoin defendants from taking out a loan allegedly in violation of plaintiff-shareholders' minority consent rights, both sides separately move by order to show cause, to seal certain documents.

In MS 002, defendant Impulse Dynamics PLC (Impulse Dynamics) seeks to seal two documents, each one filed twice, for a total of four docket entries to be sealed. The first document is a slide deck consisting of an “April 26, 2022 Impulse Dynamics board presentation,” filed first as Exhibit 3 to the affidavit of Scott Way, and then filed again as Exhibit 1 to the affirmation of Robert A. Fumerton (NYSCEF # 31 & 49).

The second document defendant seeks to seal is another slide deck, this time detailing Impulse Dynamics’ August 2023 budget. This document was first filed as Exhibit 5 to the affidavit of Shlomi Nachman, and then again as Exhibit 2 to the Fumerton affirmation (NYSCEF # 34 & 50). Both documents (all four docket entries) contain information about defendant Impulse Dynamics’ anticipated revenue, sales, income, cash flow, operating expenses, and balance sheet (NYSCEF # 51 at 2).

Finally, defendant also seeks to seal “any future filings containing the same information” as the documents listed above (NYSCEF # 51 at 1).

In MS 003, plaintiffs seek to seal five documents: an unredacted reply memorandum of law in support of plaintiffs’ motion for a preliminary injunction (NYSCEF # 53); the unredacted affidavit of Anders Hove (NYSCEF # 54); the unredacted affidavit of Konstantin Poukalov (NYSCEF # 55); the unredacted affirmation of attorney Isaac B. Zaur (NYSCEF # 56); and Exhibit N to Zaur’s affirmation (NYSCEF # 58). Plaintiffs filed redacted public copies of all these documents except Exhibit N (NYSCEF #s 62, 63, 64, 65). The documents and redactions all concern “detailed, sensitive, non-public terms of an agreement affecting both parties to this lawsuit and others, all of whom have agreed to maintain those terms in confidence” (NYSCEF # 70 at 1).

Under New York law, there is a presumption that the public is entitled to access to judicial proceedings and court records (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010], citing *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 501 [2d Dept 2007]). The public right to access, however, is not absolute (*Danco Labs. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 8 [1st Dept 2000]), and a court is empowered to seal or redact court records pursuant to section 216.1(a) of the Uniform Rules for Trial Courts upon a showing of “good cause” (22 NYCRR 216.1 [a]). At the same time, “[c]onfidentiality is clearly the exception, not the rule” (*Matter of Hoffman*, 284 AD2d 92, 93-94 [1st Dept 2001]), and the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access (*Mancheski*, 39 AD3d at 502).

To the extent that both parties ask to seal or redact documents in front of the court *right now*, the court finds that good cause exists for the redactions under 216.1 of the Uniform Rules of Trial Courts because they pertain to proprietary business information and are of minimal public interest (*see Dawson v White &*

*Case*, 184 AD2d 246, 247 [1st Dept 1992] [sealing is warranted in the absence of “any legitimate public concern, as opposed to mere curiosity, to counter-balance the interest [a business’] partners and clients have in keeping their financial arrangements private”]; *D’Amour v Ohrenstein & Brown, LLP*, 17 Misc 3d 1130[A], \*20 [Sup Ct, NY County 2007] [“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”]).

However, the court does not find good cause to grant defendant’s request to seal “any future filings containing the same information” as the documents at issue today. Should defendants file documents in the future that “contain[] the same information,” they can move to seal or redact those documents at that time.

Accordingly, it is

ORDERED that defendant Impulse Dynamics’ motion in MS 002 to seal Exhibit 3 to the affidavit of Scott Way, Exhibit 5 to the affidavit of Shlomi Nachman, and Exhibits 1 and 2 to the affirmation of Robert A. Fumerton (NYSCEF #s 31, 34, 49, 50) is granted in part, and denied in part as to defendant’s request to seal any future filings containing the same information as the sealed documents; and it is further

ORDERED that plaintiffs’ motion in MS 003 to seal the unredacted reply brief, the unredacted affidavit of Anders Hove, the unredacted affidavit of Konstantin Poukalov, the unredacted affirmation of Isaac B. Zaur, and Exhibit N to Zaur’s affirmation (NYSCEF #s 53, 54, 55, 56, 58) is granted; and it is further

ORDERED that the Clerk of the Court is directed, upon service upon the clerk of a copy of this Decision and Order with notice of entry, to seal these documents (NYSCEF #s 31, 34, 49, 50, 53, 54, 55, 56, 58), and it is further

ORDERED that until further order of the court, the Clerk of the Court shall deny access to these documents (NYSCEF #s 31, 34, 49, 50, 53, 54, 55, 56, 58) to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this action, any party, and any representative of the counsel of record for a party upon presentation to the County Clerk of written authorization from said counsel and appropriate identification; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address [www.nvcourts.gov/supctmanh](http://www.nvcourts.gov/supctmanh)).

12/7/2023

DATE

MARGARET A. CHAN, 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