

TS Falcon I, LLC v Golden Mtn. Fin. Corp.

2024 NY Slip Op 31472(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 655783/2023

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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TS FALCON I, LLC,

Plaintiff,

- v -

GOLDEN MOUNTAIN FINANCIAL CORP., GOLDEN
MOUNTAIN FINANCIAL HOLDINGS CORP., and GMF
MIDCO, LLC

Defendants.

INDEX NO. 655783/2023

MOTION DATE _____

MOTION SEQ. NO. 003 004 005
006 007 009
010

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 57

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 42, 43, 44, 45, 46, 47, 48, 49, 56

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 58, 59, 60, 61, 62, 63, 64, 70

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 74, 75, 76, 77, 78, 79, 100

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 80, 81, 82, 83, 99

were read on this motion to/for _____ INJUNCTION/RESTRAINING ORDER _____.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 93, 94, 95, 96, 97, 103

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 104, 105, 106, 107, 108, 110

were read on this motion to/for _____ SEAL _____.

“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 numerus statutes.” (*Id.* at 349.) One of those statutes is section 216.1 (a) of the Uniform Rules for Trial Courts, which empowers courts to seal documents upon a written finding of good cause. It provides:

“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 quotation marks 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].)

Motion Seq. No. 003

In motion seq. no. 003, plaintiff moves to seal, in their entirety, NYSCEF 7 (January 22, 2021 Revolving Loan and Security Agreement), NYSCEF 14 (January 21, 2021 Subscription Agreement), and NYSCEF 15 (January 21, 2021 Reorganization and

Shareholders Agreement). Plaintiff moves to redact NYSCEF 10 (Notice of Defaults and Events of Default), 11 (Payoff Letter to OpCo), 12 (Reservation of Rights and Discretionary Emergency Funding), 13 (Modifications of Payoff Letter), and 18 (Nominations for the Board of Directors).¹

As to the NYSCEF 7, 14, and 15, the court finds good cause to seal these Agreements in their entirety. Further, since these documents are clearly described in this decision, the public and press can meaningfully challenge the seal designation if they are so inclined.

As to NYSCEF 10, 11, 12, 13, and 18, the court finds good cause to redact and plaintiff's proposed redactions are narrowly tailored. Plaintiff shall e-file a copy of the redacted documents publicly.

Motion Seq. No. 004

In motion seq. no. 004, defendants move to seal in their entirety NYSCEF 50 (Defendants' Memo in Opposition to Plaintiff's Preliminary Injunction OSC), NYSCEF 44 (Affidavit of Shivan Govindan in Opposition to Plaintiff's Preliminary Injunction OSC [12/11/23]), NYSCEF 45 (December 8, 2023 Payoff Letter), NYSCEF 46 (January 21, 2021 Subscription Agreement), and NYSCEF 47 (October 2023 Notice of Exercise of Option).

As stated above, good cause exists to seal NYSCEF 46 (January 21, 2021 Subscription Agreement). However, defendants have not shown good cause to seal the remaining documents in their entirety. Defendants shall submit proposed highlighted

¹ These documents were refiled under seal in connection with motion seq. no. 003 at NYSCEF 35, 36, 37, 38, and 39.

redactions to NYSCEF 50, 44, 45 and 47 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 50, 44, 45 and 47.

Motion Seq. No. 005

In motion seq. no. 005, plaintiff moves to seal NYSCEF 63 (Action by Written Consent of the Board of Directors of Golden Mountain Financial Holdings Corp.) in its entirety.² Plaintiff also moves to redact NYSCEF 61 (Plaintiff's Reply Memo in Support of its Preliminary Injunction OSC) and 62 (Koplewicz Affirmation in Reply in Support of its Preliminary Injunction OSC).³

As to the NYSCEF 63, the court finds good cause to seal this Action by Written Consent in its entirety. Further, since this document is clearly described in this decision, the public and press can meaningfully challenge the seal designation if they are so inclined.

As to NYSCEF 61 and 62, the court finds good cause to redact and plaintiff's proposed redactions are narrowly tailored. Plaintiff shall e-file copies of the redacted documents publicly.

Motion Seq. Nos. 006, 007, and 010

In motion seq. no. 006, defendants move to seal NYSCEF 78 (Affidavit of Shivan Govindan in Opposition to Plaintiff's Preliminary Injunction OSC [12/22/23]) and NYSCEF 78 (Affidavit of Christopher Colon in Opposition to Plaintiff's Preliminary

² NYSCEF 63 is also filed under seal at NYSCEF 67.

³ NYSCEF 61 and 62 are also filed under seal at NYSCEF 65 and 66.

Injunction OSC). This motion was denied on the record on February 9, 2024.

Defendants shall submit proposed highlighted redactions to NYSCEF 78 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 78.

In motion seq. no. 007, defendants move to seal NYSCEF 86 (Defendants' Memo in Support of Defendants' Preliminary Injunction OSC) and 87 (Affidavit of Shivan Govindan in Opposition to Plaintiff's Preliminary Injunction OSC [1/22/24]). Again, this motion was denied on the record on February 9, 2024. Defendants shall submit proposed highlighted redactions to NYSCEF 86 and 87 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 86 and 87.

In motion seq. no. 010, plaintiff moves to seal NYSCEF 92 (Leeds Affirmation in Opposition to Defendants' Preliminary Injunction OSC) in its entirety. Plaintiff also moves to redact NYSCEF 91 (Plaintiff's Memo in Opposition to Defendants' Preliminary Injunction OSC).⁴ As to NYSCEF 92, the court denied plaintiff's application on the record on February 9, 2024. Plaintiff shall submit proposed highlighted redactions to NYSCEF 92 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file a redacted copy of that documents publicly. If plaintiff fails to do so, the court will direct the County Clerk to unseal NYSCEF 92.

⁴ NYSCEF 91 is also filed under seal at NYSCEF 106.

Upon closer review of NYSCEF 91 and the proposed highlighted redaction e-filed at NYSCEF 106, the court finds good cause to redact and plaintiff's proposed redactions are narrowly tailored. Plaintiff shall e-file the redacted document publicly.

Motion Seq. No. 009

In motion seq. no. 009, defendants move to seal NYSCEF 97 (Affirmation of Douglas Stein) in its entirety. Defendants have not shown good cause to seal this document in its entirety. Defendants shall submit proposed highlighted redactions to NYSCEF 97 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 97.

Accordingly, it is

ORDERED that motion seq. no. 003 is granted and plaintiff shall e-file redacted copies of NYSCEF 10, 11, 12, 13, and 18 within 7 days of the date of this decision; and it is further

ORDERED that motion seq. no. 004 is granted, in part. Defendants shall submit proposed highlighted redactions to NYSCEF 50, 44, 45 and 47 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 50, 44, 45 and 47; and it is further

ORDERED that motion seq. no. 005 is granted and plaintiff shall e-file redacted copies of NYSCEF 61 and 62 within 7 days of the date of this decision; and it is further

ORDERED that motion seq. no. 006 is denied. However, defendants shall submit proposed highlighted redactions to NYSCEF 78 to SFC-Part48@nycourts.gov

with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 78; and it is further

ORDERED that motion seq. no. 007 is denied. However, defendants shall submit proposed highlighted redactions to NYSCEF 86 and 87 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 86 and 87; and it is further

ORDERED that motion seq. no. 009 is denied. However, defendants shall submit proposed highlighted redactions to NYSCEF 97 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file redacted copies of those documents publicly. If defendants fail to do so, the court will direct the County Clerk to unseal NYSCEF 97; and it is further

ORDERED that motion seq. no. 010 is granted, in part. Plaintiff shall submit proposed highlighted redactions to NYSCEF 92 to SFC-Part48@nycourts.gov with 7 days of the date of this order and shall e-file a redacted copy of that documents publicly. If plaintiff fails to do so, the court will direct the County Clerk to unseal NYSCEF 92; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 7, 10, 11, 12, 13, 14, 15, 18, 35, 36, 37, 38, 39, 46, 61, 62, 63, 65, 66, 67, 91 and 106; and it is further

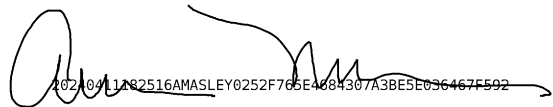
ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and

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 movant shall serve a copy of this order on the County Clerk in accordance with the procedures set forth in the Protocol on Courthouse County Clerk Procedures for Electronically Filed Cases; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial; and it is further

ORDERED that the parties are to submit the transcript of the February 9, 2024 argument.



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4/11/2024

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