

**Fairstead Capital Mgt. LLC v Tredway Mgt. LLC**

2024 NY Slip Op 31897(U)

May 30, 2024

Supreme Court, New York County

Docket Number: Index No. 654958/2022

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NANCY M. BANNON PART 61M**

*Justice*

-----X

FAIRSTEAD CAPITAL MANAGEMENT LLC, and FSC  
REALTY MANAGEMENT LLC,

Plaintiffs,

- v -

TREDWAY MANAGEMENT LLC, TREDWAY  
ACQUISITIONS LLC, TREDWAY GROUP LLC, TREDWAY  
LLC, TREDWAY HOLDINGS LLC, and TREDWAY  
MANAGER LLC,

Defendants.

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INDEX NO. 654958/2022

MOTION DATE 05/28/2024,  
05/21/2024

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 74, 75, 76, 77, 78, 79, 86

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84, 85, 87

were read on this motion to/for SEAL.

**I. INTRODUCTION**

In this action seeking monetary damages and injunctive relief upon a theory, *inter alia*, of misappropriation of trade secrets, the defendants (“Tredway”) move pursuant to CPLR 2201 to stay this matter pending the resolution of an ongoing arbitration proceeding (the “Arbitration”) (MOT SEQ 002). The plaintiffs (“Fairstead”) oppose the motion and separately move by order to show cause pursuant to 22 NYCRR 216.1(a) to seal exhibits 1, 5 and 6 to Tredway’s Motion to Stay, as well as the unredacted version of Tredway’s Memorandum of Law in support of the Motion to Stay (NYSCEF Doc. Nos. 62-66) (MOT SEQ 003). Fairstead’s motion to seal is unopposed. On April 22, 2024, the court granted Fairstead’s request for a TRO to maintain the subject documents under seal pending a decision on Fairstead’s motion.

Tredway’s motion for stay is granted and Fairstead’s motion to seal is denied.

## II. BACKGROUND

Tredway's Founder and CEO, William Blodgett, initiated the Arbitration in May 2022 to remedy Fairstead's alleged improper termination of his employment. In December 2022, Fairstead filed its complaint in this action, asserting eleven causes of action against Tredway. Three months later, in February 2023, Fairstead filed the identical eleven claims in the Arbitration as counterclaims against Blodgett. In both cases, Fairstead alleges that Blodgett stole Fairstead's purported trade secrets and other Fairstead resources to improperly compete against Fairstead through his new venture, Tredway.

By an order dated May 3, 2023, the court (Ostrager, J. [Ret.]) denied, without prejudice, Tredway's pre-answer motion to dismiss the complaint herein on the ground of *forum non conveniens* (CPLR 327) but stayed the action in light of related actions pending in other forums—an action in the Delaware Chancery Court and the Arbitration (MOT SEQ 001). By an order dated November 20, 2023, the court (Ostrager, J. [Ret.]) lifted the stay to “to the extent that [Tredway] must file its contemplated motion to dismiss this action in accordance with a schedule to which the parties have agreed to stipulate,” and otherwise granted Fairstead leave to seek relief from what remained of the stay from the newly assigned judge. Upon the case being assigned to this court, and no motion having been filed by either party, the court, by an order dated March 28, 2024, vacated the stay in its entirety. The Arbitration is scheduled for a hearing before the arbitrator on June 4, 2024.

## III. DISCUSSION

### A. MOT SEQ 002 – Motion to Stay

CPLR 2201 provides this court with broad discretion, unless otherwise prescribed by law, to grant stays “upon such terms as may be just.” Stays of actions are appropriate where an arbitration proceeding could dispose of or limit the issues to be resolved in the pending litigation (see Oxbow Calcining USA Inc. v American Indus. Partners, 96 AD3d 646, 652 [1<sup>st</sup> Dept. 2012]), or to avoid the risk of inconsistent adjudications and potential waste of judicial resources (see Uptown Healthcare Mgmt., Inc. v Rivkin Radler LLP, 116 AD3d 631, 631 [1<sup>st</sup> Dept. 2014]). A court may grant a stay pending the outcome of arbitration even where the arbitration lacks a total identity of parties so long as there are overlapping issues of fact and law in the related actions. See Uptown Healthcare Mgmt., Inc. v Rivkin Radler LLP, *supra*; Belopolsky v Renew Data Corp., 41 AD3d 322, 322 (1<sup>st</sup> Dept. 2007).

Other than four claims that are unique to the Arbitration, Fairstead's counterclaims against Blodgett in the Arbitration are identical to the causes of action it asserts in this action against Tredway and incorporate all the factual allegations of its complaint herein. In both this case and the Arbitration, the crux of Fairstead's claims are that Blodgett stole Fairstead's purported trade secrets and other Fairstead resources while he was still a Fairstead employee to improperly compete against Fairstead through his new venture, Tredway. As such, a stay is warranted because the issues in the Arbitration are "inextricably interwoven" with the issues in this litigation, and the determination of the Arbitration will very likely dispose of or limit the issues to be determined in this action. See Uptown Healthcare Mgmt., Inc. v Rivkin Radler LLP, *supra*; Oxbow Calcining USA Inc. v American Indus. Partners, *supra*; Belopolsky v Renew Data Corp., *supra*; Pacer/Cats/CCS v MovieFone, Inc., 226 AD2d 127, 128 (1<sup>st</sup> Dept. 1996). The arbitrator will be asked to decide substantially the same factual and legal issues that are likely to arise in this action, such as whether Fairstead possessed any trade secrets for Blodgett to allegedly steal; whether Fairstead had valid non-compete agreements that were binding on Blodgett; whether Blodgett brought Fairstead materials with him to Tredway; and, if so, whether any such materials were improperly used to compete against Fairstead. Further, a stay would avoid the risk of inconsistent adjudications and potential waste of judicial resources arising from the commonality of factual and legal issues between this litigation and the Arbitration. See Uptown Healthcare Mgmt., Inc. v Rivkin Radler LLP, *supra*.

The court is satisfied that Fairstead will not be prejudiced by a brief stay pending the final determination of the Arbitration. Pursuant to a pre-hearing order in the Arbitration dated July 11, 2023, the parties agreed to coordinate discovery among this action, the Arbitration, and the Delaware Chancery Court action, and that discovery obtained in the Arbitration or the Delaware Chancery Court action will be usable in this action. Despite the prior stay in this action, discovery has proceeded in the two related proceedings, and in the Arbitration is now complete, or very nearly so. As such, Fairstead has already obtained extensive discovery in the other proceedings from Blodgett and Tredway including, but not limited to, a Rule 30(b)(6) deposition of Tredway, depositions of Blodgett and three additional Tredway partners, and forensic inspections of the personal computers of both Blodgett and another Tredway partner.

The court rejects Fairstead's contention that the court's status conference order dated March 28, 2024, which vacated the prior stay in this case, precludes the instant motion for a

further stay. There is no statement in that order precluding the instant motion. Although the order indicated that the parties presented no basis at the status conference to continue the prior stay, the court did not address the bases for a stay raised in the instant motion, which had just been filed two days prior and was not yet fully briefed. Moreover, the original stay was principally imposed based on the commonality of issues between this litigation and the action in Delaware, not the identity of claims between the claims herein and the counterclaims asserted in the Arbitration, and the determination to lift the original stay was likewise expressly motivated, in the main, by an understanding that the Delaware action would not be resolved until 2026. By contrast, the Arbitration is scheduled for an imminent hearing on June 4, 2024.

For these reasons, Tredway's motion to stay this matter pending the final determination of the Arbitration (MOT SEQ 002) is granted.

**B. MOT SEQ 003 – Motion to Seal**

22 NYCRR 216.1(a) provides that “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.” The Appellate Division, First Department, has emphasized that “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 (1<sup>st</sup> Dept. 2010). Because “confidentiality is clearly the exception, not the rule” (Matter of Hofmann, 284 AD2d 92, 93–94 [1<sup>st</sup> Dept. 2001]), that Court has authorized sealing “only in strictly limited circumstances.” Gryphon Dom. VI, LLC v APP Intl. Fin. Co., 28 AD3d 322, 325 (1<sup>st</sup> Dept. 2006); see Mosallem v Berenson, *supra*.

The burden is on the party seeking to seal court records to establish “good cause.” Maxim, Inc. v Feifer, 145 AD3d 516, 517 (1<sup>st</sup> Dept. 2017). “Since there is no absolute definition, a finding of good cause, in essence, ‘boils down to ... the prudent exercise of the court's discretion.’” Applehead Pictures, LLC v Perelman, 80 AD3d 181, 192 (1<sup>st</sup> Dept. 2010), quoting Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 (2<sup>nd</sup> Dept. 2007) (some internal quotation marks and citation omitted). In the business context, good cause may be established “where trade secrets are involved (Matter of Crain Communications, Inc., 135 AD2d 351, 352 [1<sup>st</sup> Dept. 1987]), or where the release of documents could threaten a business's competitive advantage.” Mosallem v Berenson, *supra* at 350, citing Matter of Twentieth Century Fox Film

Corp., 190 AD2d 483, 488 (1<sup>st</sup> Dept. 1993); see Vergara v Mission Capital Advisors, LLC, 187 AD3d 495 (1<sup>st</sup> Dept. 2020) (noting as bases for sealing that a document contains “trade secrets, confidential business information, or proprietary information”). However, “[c]onclusory claims of the need for confidentiality ... [are] not ... sufficient bas[es] for a sealing order” (Matter of Hofmann, supra at 93-94), and “the court will not approve wholesale sealing of [court] papers, even when both sides to the litigation request sealing.” Applehead Pictures, LLC v Perelman, supra (citations omitted); see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., supra; Liapakis v Sullivan, 290 AD2d 393 (1<sup>st</sup> Dept. 2002); Matter of Hofmann, supra. That is, a party’s own “designation of the materials as confidential or highly confidential is not controlling on the court’s determination whether there is good cause to seal the record pursuant to 22 NYCRR 216.1.” Eusini v Pioneer Electronics (USA), Inc. 29 AD3d 623, 625 (2<sup>nd</sup> Dept. 2006); see Mosallem v Berenson, supra. Even where there is a proper basis for sealing, redaction is favored over sealing of an entire document or record. See Vergara v Mission Capital Advisors, LLC, supra; Danco Laboratories, Ltd. v Chemical Works of Gedeon Richter, Ltd., 274 AD2d 1 (1<sup>st</sup> Dept. 2000).

Fairstead seeks to seal exhibits 1, 5, and 6 to Tredway’s Motion to Stay, as well as the unredacted version of Tredway’s Memorandum of Law in support of the Motion to Stay. Exhibit 1 is Fairstead’s Counterclaims/Counter-Demand in the Arbitration. Exhibits 5 and 6 are a transcript of deposition testimony from one of Fairstead’s agents taken in the Delaware Chancery Court action, and an excerpt therefrom. The redacted portion of Tredway’s Memorandum of Law in support of the Motion to Stay describes a portion of that deposition testimony. Fairstead contends that its Counterclaims/Counter-Demand in the Arbitration should be sealed because it was originally filed in a “confidential, non-public arbitration,” and sealing the document would “preserve the expectations of the parties . . . in electing to litigate their dispute in a confidential, non-public forum.” As to the subject deposition transcripts, and the redacted portion of Tredway’s Memorandum of Law that refers to them, Fairstead claims these documents contain “sensitive,” “confidential,” and “secret” information regarding its business strategies, and that disclosure of this information, in which the public has little to no legitimate interest, would harm its competitive advantage. It further contends that sealing these documents is warranted because the subject deposition testimony has previously been designated confidential pursuant to so-ordered stipulations and orders for the production and exchange of confidential information entered in the Delaware Chancery Court action.

To be sure, courts have found a compelling interest in the non-disclosure of trade secrets (see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., supra; Crain Comm., Inc. v Hughes, 135 AD2d 351 [1<sup>st</sup> Dept. 1987]), and in sealing information that is “proprietary” because it relates to “the nature of current or future business strategies,” such that disclosure “could harm [a] private corporation’s competitive standing” (Mancheski v Gabelli Group Capital Partners, supra at 502-03). Here, however, Fairstead fails to meet its burden of demonstrating “good cause” to seal the subject documents. Other than a memorandum of law in support of the request to seal, the motion is accompanied solely by an attorney affirmation that merely reiterates the assertions made in the memorandum of law and attaches copies of the so-ordered stipulations and orders for the production and exchange of confidential information entered in the Delaware Chancery Court action. No affidavits are submitted by persons with personal knowledge of the purportedly sensitive and confidential matters discussed in the subject documents that Fairstead seeks to seal. Instead, Fairstead offers mere conclusory assertions, without meaningful explanation, that the information contained in the subject documents is “sensitive,” “secret,” “proprietary,” and “confidential,” and that its disclosure could “harm Fairstead commercially.” However, such “[c]onclusory claims of the need for confidentiality ... [are] not ... sufficient bas[es] for a sealing order.” Matter of Hofmann, supra at 93-94.

Likewise, the fact that the subject deposition testimony was previously designated confidential pursuant to the so-ordered stipulations and orders entered in the Delaware Chancery Court action “is not controlling on the court’s determination whether there is good cause to seal the record pursuant to 22 NYCRR 216.1.” Eusini v Pioneer Electronics (USA), Inc., supra; see Mosallem v Berenson, supra. Indeed, the so-ordered stipulations and orders on which Fairstead relies expressly provide that they do not, in themselves, “[o]perate as an admission by any Party that any Discovery Material constitutes Confidential or Highly Confidential Discovery Material or contains or reflects trade secrets or any other type of confidential information[.]” Abe v New York Univ., 169 AD3d 445, 448-49 (1<sup>st</sup> Dept. 2019), cited by Fairstead, does not dictate a different result. That decision affirmed an order sealing documents designated as confidential under a prior so-ordered stipulation, but only after the Appellate Division determined that the motion court had made an independent finding of good cause before ordering the documents sealed.

Fairstead’s contentions, with regard to its Counterclaims/Counter-Demand in the Arbitration, are similarly unavailing. Its assertion that sealing is appropriate to “preserve the

expectations of the parties . . . in electing to litigate their dispute in a confidential, non-public forum,” is belied by the fact that Fairstead’s counterclaims in the Arbitration are largely identical in fact and law to the causes of action it asserted in its publicly filed complaint in this litigation. While the counterclaims include four additional claims that are unique to the Arbitration, as well as additional facts not included in the complaint herein, Fairstead makes no attempt to distinguish those unique elements or explain why they might warrant sealing. Further, Fairstead cites only a non-binding, federal District Court case in support of the proposition that filings in a “confidential, non-public arbitration” should be sealed, and even that case also required a determination that the subject documents contain confidential and sensitive business information that could be commercially damaging if obtained by competitors. See In re B&C KB Holding GmbH, 2023 WL 2021299, at \*1 (S.D.N.Y. Feb. 14, 2023).

For these reasons, Fairstead’s motion to seal (MOT SEQ 003) is denied.

IV. CONCLUSION

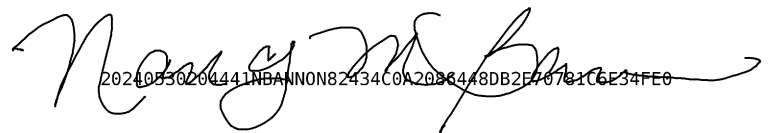
Accordingly, upon the foregoing papers, it is

ORDERED that the defendants’ motion to stay this action pending final determination of the arbitration proceeding captioned Blodgett v Fortitude Realty Management LLC, et. al., (JAMS Ref. No. 5425000366) (MOT SEQ 002), is granted and all proceedings in this action are hereby stayed except for an application to vacate or modify said stay; and it is further

ORDERED that any party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration; and it is further

ORDERED that the plaintiffs’ motion (MOT SEQ 003) to seal documents is denied.

This constitutes the Decision and Order of the court.



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5/30/2024

DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

OTHER