

**James Riv. Group Holdings, Ltd. v  
Fleming Intermediate Holdings LLC**

2024 NY Slip Op 32504(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 651281/2024

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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JAMES RIVER GROUP HOLDINGS, LTD.,

Plaintiff,

- v -

FLEMING INTERMEDIATE HOLDINGS LLC,

Defendant.

INDEX NO. 651281/2024

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

MOTION SEQ. NO. 001 006 008

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 35, 59, 60

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 143, 144, 146

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

The following e-filed documents, listed by NYSCEF document number (Motion 008) 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 174, 179, 182

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

Upon the foregoing documents, it is

In mot. seq. no. 001, plaintiff James River Group Holdings, Ltd. moves, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF 9, 10, 12-18 and seal NYSCEF 19 in its entirety.<sup>1</sup> In mot. seq. no. 006, plaintiff seeks to redact NYSCEF 115-134 and seal NYSCEF 135-138 in their entirety. In mot. seq. no. 008, plaintiff seeks to redact NYSCEF 160-162

<sup>1</sup> Copies of these documents with portions sought to be redacted/sealed highlighted in yellow have also been filed as NYSCEF 37, 38, 40-47.

and seal NYSCEF 163 in its entirety. The motions are unopposed. There is public interest in this action.

## Discussion

### Legal Standard

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

“(a) [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.”

“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 “party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting “an affidavit from a person with knowledge explaining why the file or certain documents should be sealed.” (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], \*2 [Sup Ct, NY County 2004].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Labs.*, 274 AD2d at 8.)

Courts have sealed records where trade secrets are involved or where the disclosure of documents “could threaten a business’s competitive advantage.”

(*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Additionally, the First Department has affirmed the sealing of records concerning financial information where there has not been a showing of relevant public interest in disclosure of the financing. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].)

Mot. Seq. No. 001

In mot. seq. no. 001, plaintiff seeks to redact NYSCEF 9, 10, 12-18 (and the copies of these documents filed as NYSCEF 37, 38, 40-46) to the extent they disclose parties' financial information or information that could threaten plaintiff's competitive advantage. Plaintiff also seeks to seal NYSCEF 19 (and its copy filed as NYSCEF 47) in its entirety. The redactions are narrowly tailored and there is no public interest in the disclosure of the information sought to be redacted. The court finds that the plaintiff has demonstrated good cause to redact NYSCEF 9, 10, 12-18 and NYSCEF 37, 38, 40-46. The plaintiff has also established good cause to seal NYSCEF 19 (and NYSCEF 47) as the document is a report prepared by third-party Compass, is explicitly marked "[u]nauthorized distribution prohibited" and contains information which if disclosed could threaten plaintiff's competitive advantage. The court grants plaintiff's motion to redact NYSCEF 9, 10, 12-18 and NYSCEF 37, 38, 40-46 and seal NYSCEF 19 (and NYSCEF 47).

Mot. Seq. No. 006

In mot. seq. no. 006, plaintiff seeks to redact NYSCEF 115-134<sup>2</sup> and seal NYSCEF 135-138<sup>3</sup> in their entirety. Plaintiff seeks to narrowly redact NYSCEF 115-134 to the extent they disclose plaintiff's financial information or information that could threaten plaintiff's competitive advantage. The court finds good cause to redact NYSCEF 115-132. NYSCEF 133 and 134 are transcripts of arguments held in this action on March 27, 2024 and April 2, 2024. Transcripts of arguments which were open to the public (as these arguments very much were) will not be redacted or sealed. The courts finds that the plaintiff has failed to establish good cause to redact NYSCEF 133-134. Plaintiff also seeks to seal NYSCEF 135 (12/21/23 Draft of the terms of defendant Fleming Intermediate Holdings Inc.'s Right of First Refusal (ROFR) under the Stock Purchase Agreement (SPA)), 136 (1/23/24 Draft of the terms of the defendant's ROFR), 137 (02/29/24 Draft of the terms of the defendant's ROFR) and 138 (Level of Unencumbered Cash and Investments Chart). While wholesale sealing of documents is generally disfavored, plaintiff has established good cause to seal NYSCEF 135-138 as these documents contain plaintiff and nonparty's sensitive financial information and information which if disclosed could threaten plaintiff's competitive advantage. There is no public interest in the disclosure of the information contained in these documents and members of the public can meaningfully challenge the sealing of these documents, if they so wish. The court grants plaintiff's motion to redact NYSCEF 115-132 (and their

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<sup>2</sup> Copies of NYSCEF 115-132 have also previously been filed as NYSCEF 67-71, 73-74, 79, 81-82, 84-86, 90, 93, 102, 103 and 101.

<sup>3</sup> Copies of NYSCEF 135-138 have also previously been filed as NYSCEF 76, 78, 87 and 92.

copies at NYSCEF 67-71, 73-74, 79, 81-82, 84-86, 90, 93, 102, 103 and 101) and seal NYSCEF 135-138 (and their copies at NYSCEF 76, 78, 87 and 92).

Mot. Seq. No. 008

In mot. seq. no. 008, plaintiff seeks to redact NYSCEF 160-162 and seal NYSCEF 163 in its entirety. Plaintiff seeks to narrowly redact NYSCEF 160-162 to the extent they disclose plaintiff's financial information. The court finds good cause to redact NYSCEF 160-162. Plaintiff seeks to seal NYSCEF 163, a Credit Facilities Commitment Letter because the letter includes a confidentiality provision at Section 10 that states that "none of the Fee Letter and its terms or substance, or this Commitment Letter and its terms or substance, shall be disclosed, directly or indirectly, to any other person or entity[.]" (NYSCEF 165, Plaintiff's MOL [mot. seq. no. 008] at 3.) A confidentiality clause contained in an agreement between the parties is not binding on this court. An alleged breach of a confidentiality provision by itself does not constitute a basis to seal and does not excuse a party from making a showing of good cause as to why certain information should be redacted or sealed. (*See Eccles v Shamrock Capital Advisors, LLC*, 2023 NY Slip Op 32730[U] \*\* 5 [Sup Ct, NY County 2023] [citation omitted].) At most such a clause supports redaction. (*Id.*) The plaintiff must independently establish good cause for sealing NYSCEF 163 in its entirety.

Accordingly, it is

ORDERED that mot. seq. no. 001 is granted; and it is further

ORDERED that the County Clerk is directed to permanently seal NYSCEF 9, 10, 12-18, 37, 38, 40-46, 19 and 47). The plaintiff is directed to ensure that copies of the redacted documents are publicly filed if not already done; and it is further

ORDERED that mot. seq. no. 006 is granted, in part, to the extent it seeks to redact NYSCEF 115-132, 67-71, 73-74, 79, 81-82, 84-86, 90, 93, 102, 103 and 101 and seal NYSCEF 135-138, 76, 78, 87 and 92; and it is further

ORDERED that the County Clerk is directed to permanently seal NYSCEF 115-132, 67-71, 73-74, 79, 81-82, 84-86, 90, 93, 102, 103, 101, 135-138, 76, 78, 87 and 92. The plaintiff is directed to ensure that copies of the redacted documents are publicly filed if not already done; and it is further

ORDERED that the County Clerk is directed to unseal NYSCEF 133 and 134; and it is further

ORDERED that mot. seq. no. 008 is granted, in part, to the extent it seeks to redact NYSCEF 160-162. The County Clerk is directed to permanently seal NYSCEF 160-162. The plaintiff is directed to ensure that copies of the redacted documents are publicly filed if not already done; and it is further

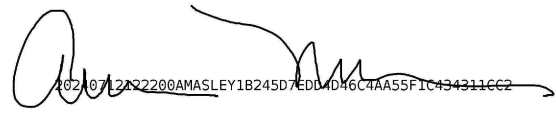
ORDERED that mot. seq. no. 008 is denied to the extent it seeks to seal NYSCEF 163 in its entirety without prejudice, and leave is granted to refile an application to seal NYSCEF 163. Plaintiff shall comply with Part 48 procedures in this regard and any application shall also be accompanied by an affidavit from a person with knowledge explaining why NYSCEF 163 should be sealed in its entirety. If plaintiff does not refile within 10 days of the date of this decision, the court will direct the County Clerk to unseal NYSCEF 163; 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 counsel for the movant shall serve a copy of this order upon the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).



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7/12/2024  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE