

**CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC**

2024 NY Slip Op 34515(U)

December 24, 2024

Supreme Court, New York County

Docket Number: Index No. 653277/2018

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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CWCAPITAL COBALT VR LTD.,

Plaintiff,

- v -

CWCAPITAL INVESTMENTS LLC and CWCAPITAL  
 ASSET MANAGEMENT LLC,

Defendants.

INDEX NO. 653277/2018

MOTION DATE -

MOTION SEQ. NO. 037 038

**DECISION + ORDER ON  
 MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 037) 1565, 1566, 1567, 1568, 1569, 1570, 1588, 1589

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 038) 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1587, 1590

were read on this motion to/for SEAL.

In motion sequence number 037, nonparty Sculptor Capital Management, Inc. (Sculptor) moves pursuant to the Uniform Rules of the New York State Trial Courts (22 NYCRR) § 216.1 to redact the following documents:

1. Blair Wallace’s affirmation (NYCSEF Doc. No. [NYSCEF] 914, 1111, 1569)<sup>1</sup>
2. Matthew Tuten’s affirmation (NYSCEF 942, 1110, 1569)<sup>2</sup>
3. CWCapital memorandum of law (NYSCEF 1117, 1569)<sup>3</sup>
4. CWCapital opposition (NYSCEF 1222, 1569)<sup>4</sup>

<sup>1</sup> A publicly redacted copy is filed at NYSCEF 1570.

<sup>2</sup> A publicly redacted copy is filed at NYSCEF 1570.

<sup>3</sup> A publicly redacted copy is filed at NYSCEF 1570.

<sup>4</sup> A publicly redacted copy is filed at NYSCEF 1570.

5. CWCcapital reply (NYSCEF 1230, 1569)<sup>5</sup>

The motion is unopposed. There is no indication that the press or public have an interest in this matter.

In motion sequence number 038, nonparty Midland Loan Services, a Division of PNC Bank, NA (PNC Bank) moves pursuant to the Uniform Rules of the New York State Trial Courts (22 NYCRR) § 216.1 to seal and/or redact the following documents:

1. Amendment to Letter Agreement, dated July 9, 2014 (NYSCEF 1271, 1573)
2. Letter Agreement dated Feb. 11, 2011 (NYSCEF 1287, 1573)
3. Letter Agreement dated Apr. 1, 2014 (NYSCEF 1288, 1573)
4. Letter Agreement dated Jul. 9, 2014 (NYSCEF 1289, 1573)
5. CWCcapital Cobalt memorandum of law to supplement the record (NYSCEF 1284,1470, 1575)<sup>6</sup>
6. CWCcapital Cobalt memorandum of law for summary judgment (NYSCEF 1300, 1471, 1575)<sup>7</sup>
7. Jonathan Pickhardt's affirmation (NYSCEF 1285, 1472, 1575)<sup>8</sup>
8. CWCcapital Cobalt reply to supplement the record (NYSCEF 1327, 1473, 1575)<sup>9</sup>

The motion is unopposed. There is no indication that the press or public have an interest in this matter.

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<sup>5</sup> A publicly redacted copy is filed at NYSCEF 1570.

<sup>6</sup> A publicly redacted copy is filed at NYSCEF 1575.

<sup>7</sup> A publicly redacted copy is filed at NYSCEF 1575.

<sup>8</sup> A publicly redacted copy is filed at NYSCEF 1575.

<sup>9</sup> A publicly redacted copy is filed at NYSCEF 1575.

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 has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* 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 quotations omitted].)

Mot. Seq. No. 037

Sculptor has demonstrated good cause to redact NYSCEF 941, 1111, 942, 1110, 1117, 1222, 1230 and 1569 which contain nonparty financial information. Courts have recognized a compelling interest in sealing a third-party’s financial or private information as disclosure could imping upon the privacy rights of these nonparties. (See *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]; *Natixis Real Estate Capital Tr. 2007-HE2 v Natixis Real Estate Capital, Inc.*, 77 Misc 3d 1224 [A] [Sup Ct, NY County 2023].) Here, disclosure of Sculptor’s financial information would impair its privacy rights and result in harm to its competitive advantage. Accordingly, these documents shall be redacted.

Mot. Seq. No. 038

PNC Bank has demonstrated good cause to seal NYSCEF 1271, 1287, 1288, 1289 and 1573 which contain nonparty price terms, financial calculations, and deal term. Courts have recognized a compelling interest in sealing a third-party's financial or private information as disclosure could impinge upon the privacy rights of this nonparty. (See *Mancheski*, 39 AD3d at 502 ; *Natixis Real Estate Capital Tr. 2007-HE2*, 77 Misc 3d 1224 [A].) Here, disclosure of PNC Bank financial information would impair its privacy rights and result in competitive harm. Accordingly, these documents shall be sealed.

PNC Bank seeks to seal, or in the alternative redact, NYSCEF 1284, 1470, 1300, 1471, 1285, 1472, 1327, 1473 and 1575, which are memoranda of Law that cite nonparty confidential financial information. Wholesale sealing of the entire record is generally disfavored, even if both parties to the litigation request sealing. (See *Applehead Pictures LLC v Perelman*, 80 AD3d 181, 192 [1st Dept 2010] [citation omitted].) Besides the nonparty financial information, the memoranda of law on their face, do not disclose any other confidential information which makes wholesale sealing unduly broad and unfavorable. Accordingly, these documents shall be redacted rather than sealed.

Accordingly, it is

ORDERED that motion sequence 037 is granted, and the County Clerk, upon service of this order, shall seal NYSCEF 941, 1111, 942, 1110, 1117, 1222, 1230 and 1569; and it is further

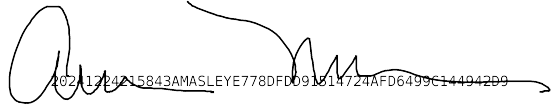
ORDERED that motion sequence 038 is granted, and the County Clerk, upon service of this order shall seal NYSCEF 1271, 1287, 1288, 1289, 1573, 1284,1470, 1300, 1471, 1285, 1472, 1327, 1473, 1575; and it is further

ORDERED that movant serve a copy of this order upon the Clerk of the Court and the Clerk of the General Clerk's Office 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)); 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 this 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 if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via [SFC-Part48@nycourts.gov](mailto:SFC-Part48@nycourts.gov) and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial or other court proceedings on the record, e.g., arguments on motions.



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12/24/2024

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