

**Midway Wind, LLC v Siemens Gamesa Renewable
Energy, Inc.**

2025 NY Slip Op 30551(U)

February 13, 2025

Supreme Court, New York County

Docket Number: Index No. 651234/2023

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

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MIDWAY WIND, LLC,

Plaintiff,

- v -

SIEMENS GAMESA RENEWABLE ENERGY, INC.,

Defendant.

-----X

INDEX NO. 651234/2023

MOTION DATE 01/17/2025

MOTION SEQ. NO. 015 016

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 015) 235, 236, 237, 238 were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 016) 246, 250 were read on this motion to/for SEAL.

In this breach of contract action concerning alleged defects in wind turbines purchased by the plaintiff, the defendant moves pursuant to 22 NYCRR 216.1 to maintain redactions on the plaintiff’s memorandum of law filed in support of plaintiff’s motion compel (NYSCEF Doc. No. 212) and to seal certain other exhibit thereto (NYSCEF Doc. Nos. 201-205, 210) (MOT SEQ 015). The defendant separately moves pursuant to 22 NYCRR 216.1 to maintain under seal the plaintiff’s memorandum of law in reply to the plaintiff’s motion to extend the note of issue deadline (MOT SEQ 016). By orders dated December 17, 2024, and December 23, 2024, the court granted the defendant’s request for TROs to maintain the subject documents under seal pending decision on the present motions. The motions are granted in part, without opposition.

Pursuant to 22 NYCRR 216.1(a), “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 (1st Dept. 2010). Because “confidentiality is clearly the exception, not the rule”

(Matter of Hofmann, 284 AD2d 92, 93–94 [1st 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 (1st 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 (1st Dept. 2017). Furthermore “[a] finding of ‘good cause’ presupposes that ... no alternative to sealing can adequately protect the threatened interest.” Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 (2nd Dept. 2007) *citing* In re Herald Co., 734 F2d 93, 100 [2nd Cir. 1984]). Appropriate less restrictive alternative relief may and should be granted to balance the competing interests of public access and the need for secrecy or confidentiality. See Danco Labs v Chemical Works of Gedeon Richter, 274 AD2d 1 (1st Dept. 2000). It is well settled that redaction can be such an appropriate alternative relief and is favored over sealing. See *Id.*; Jose V. v Smiley & Smiley LLP, 214 AD3d 523 (1st Dept. 2023); Vergara v Mission Capital Advisors, LLC, 187 AD3d 495 (1st Dept. 2020); Gliklad v Derispaska, 185 AD3d 512 (1st Dept. 2020); Maxim, Inc. v Feifer, 145 AD3d 516 (1st Dept. 2016).

In the business context, good cause may be established where trade secrets are involved (see Matter of Bernstein v On-Line Software Inter. Inc., 232 AD2d 336 [1st Dept. 1996] *lv denied* 89 NY2d 810 (1997); Matter of Crain Communications, Inc., 135 AD2d 351 [1st Dept. 1987]) or “where the release of documents could threaten a business’s competitive advantage. (Matter of Twentieth Century Fox Film Corp., *supra* at 488).” Mosallem v Berenson, *supra* at 350; see Vergara v Mission Capital Advisors, LLC, *supra*; Mancheski v Gabelli Group Capital Partners, *supra*.

The defendant seeks to redact the plaintiff’s memorandum of law in support of the plaintiff’s motion to compel (NYSCEF Doc. No. 212), as well as exhibits attached to an affirmation of Jessica Sabbath filed in support of that motion, including exhibits 4-8 and 13 (NYSCEF Doc. Nos. 201-205, 210). These exhibits include reports, emails, and photographs of investigations of wind turbines purchased by the plaintiff and other non-parties. The defendant also seeks to redact the plaintiff’s reply memorandum of law filed in support of the plaintiff’s motion to extend the note of issue deadline (NYSCEF Doc. No. 218).

As to NYSCEF Docs. 212, 201-205, and 210, the defendant contends that redaction and sealing is necessary to maintain the confidentiality of its “highly sensitive” and “proprietary” business information, including details of its proprietary technology and the names of non-party

customers, as well as sensitive and confidential business information of non-litigant third parties. The defendant provides no basis to maintain redactions of NYSCEF Doc. 218.

The court finds “good cause” only to support maintaining the provisional redactions applied to NYSCEF Doc. 212 and to seal NYSCEF Doc. 201 and 204, and only to the extent of redacting the names of non-litigant third parties, as disclosure of this information could impinge on the privacy rights of third parties who are not litigants herein. See *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499 (2nd Dept. 2007). As to the remaining documents sought to be maintained entirely under seal, the defendant’s conclusory assertions fall short of a “good cause” showing. A review of the remaining exhibits that the defendant seeks to seal reveals that the defendant does not seek to protect information regarding product specifications or other specific technical information. Instead, just as it sought in their previous motions to seal (MOT SEQ 010 and 013), the defendant seeks to seal information regarding problems with products it provided to or serviced for other wind farms.

As the court ruled on January 30, 2025, regarding MOT SEQ 010 and 013, the interests of the public weigh in favor of disclosure in cases concerning an allegedly defective product. See *In Re East 51st Street Crane Collapse Litigation*, 106 AD3d 473 (1st Dept. 2013). Furthermore, as the court previously noted in the same order, the fact that these documents sought to be sealed discuss information previously designated as confidential pursuant to a so-ordered confidentiality stipulation “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 (2nd Dept. 2006); see *Mosallem v Berenson*, supra. Finally, the court denies the defendant’s motion to maintain the redactions applied to NYSCEF 218, as the defendant fails to submit papers in support of this motion.

Accordingly, it is

ORDERED that the defendant’s motion to seal documents (MOT SEQ 015) is granted to the extent that the names of non-litigant third parties in NYSCEF Doc. Nos. 212 shall be redacted, and NYSCEF Doc. Nos. 201 and 204 shall remain sealed, as “good cause” was shown for such relief, and the motion is otherwise denied; and it is further

ORDERED that service upon the Clerk of the Court of this order shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk*

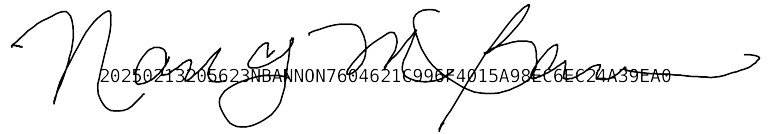
Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Clerk of the Court is directed to accept for filing a redacted copy of NYSCEF Doc. No. 212, to be available for viewing by the public via NYSCEF, with revised redactions limited to those approved herein, and it is further

ORDERED that the Clerk of the Court is directed, upon service upon him of a copy of this order with notice of entry, to permanently seal to all parties except counsel, the court, and court personnel the documents e-filed at NYSCEF Doc. Nos. 201 and 204; and it is further

ORDERED that the defendant's motion to seal documents (MOT SEQ 016) is denied in its entirety.

This constitutes the Decision and Order of the court.


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2/13/2025
DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: