

**Access Advance LLC v Zhejiang Dahua Tech. Co.,
Ltd.**

2025 NY Slip Op 31356(U)

April 14, 2025

Supreme Court, New York County

Docket Number: Index No. 654061/2021

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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ACCESS ADVANCE LLC,

Plaintiff,

- v -

ZHEJIANG DAHUA TECHNOLOGY CO., LTD., DAHUA
TECHNOLOGY USA INC.,

Defendant.

-----X

INDEX NO. 654061/2021

MOTION DATE 11/08/2024

MOTION SEQ. NO. 018

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 018) 611, 612, 613, 630, 631, 632, 633, 634, 635, 636, 637, 639

were read on this motion to/for MISCELLANEOUS.

In this breach of contract action, the defendants, move by order to show cause pursuant to 22 NYCRR 216.1, to seal certain exhibits submitted by the parties in support of their respective summary judgment motions (NYSCEF Doc. Nos. 528 and 529, 546, 553-565, 569-582). The defendants also move to unseal certain exhibits filed by the plaintiff in opposition to defendant’s motion for summary judgment (NYSCEF Doc. Nos. 532-534) and certain exhibits filed by the defendants in opposition to the plaintiff’s motion for partial summary judgment (NYSCEF Doc. Nos. 544, 545, 548, 589, 591, 607). By order dated October 16, 2024, the court granted the defendants’ request for a TRO to maintain the subject exhibits under seal pending decision on the present motion. The plaintiff consents to the defendants’ requested relief. The motion is granted in part.

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 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]), the First Department 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). “Conclusory 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, 80 AD3d 181, 192 (1st Dept. 2010) (citations omitted); see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., *supra*; Liapakis v Sullivan, 290 AD2d 393 (1st Dept. 2002); Matter of Hofmann, *supra*.

The subject exhibits sought to be sealed are deposition transcripts of Lin Wang and David Gettelman (NYSCEF Doc. Nos. 528, 529, 546), expert reports from Andrew Wynn, Subodh Thali (NYSCEF Doc. Nos. 553-555), an exhibit attached to Thali’s expert report (NYSCEF Doc. No. 556), plaintiff’s duplicate royalty policies and explanations of royalty allocations (NYSCEF Doc. Nos. 557-564), a judgment rendered by the Regional Court of Dusseldorf on December 21, 2021 (NYSCEF Doc. No. 565), and side letters between the plaintiff and third parties who are not litigants herein (NYSCEF Doc. Nos. 569-582). The court finds “good cause” to seal the side letters between the plaintiff and certain of its licensees (NYSCEF Doc Nos. 570-580, and 582), and the plaintiff’s duplicate royalty policies and explanations of royalty allocations (NYSCEF Doc. Nos. 557-562, and 564). As the court stated in its order dated November 12, 2024, on MOT SEQ 014, disclosure of these letters could impinge on the privacy rights of third parties who are not litigants herein. See Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 (2nd Dept. 2007). The same reasoning also applies for the plaintiff’s duplicate royalty policies.

However, regarding NYSCEF Doc. Nos. 563, 569, and 581, these letters are identical to previous documents that were sealed under previous sealing motions. See NYSCEF Doc. Nos. 193, 438, and 443. As the court (Ostrager, J. [Ret.]), advised the parties in an August 23, 2023 order on MOT SEQ 009, “documents that have already been sealed by the Court . . . can be cited and not refiled,” and expressly warned that “no further sealing motions will be entertained from either party” and that the court would “decline[] to seal any documents filed [as in the present motion] in connection with post-Note of Issue dispositive motions in this case.” NYSCEF Doc. No. 248.

As to the remaining documents sought to be sealed, the defendants do not meet their burden of demonstrating “good cause.” 22 NYCRR 216.1(a). As the court ruled in MOT SEQ 014, the defendants’ assertion that disclosure of the remaining documents would reveal “sensitive and confidential business information” is conclusory and is offered without any meaningful explanation as to how disclosure would harm any of the parties’ competitive standing. See Matter of Hofmann, supra at 93-94. Likewise, the fact that the parties previously designated these documents as confidential pursuant to the so-ordered confidentiality stipulation entered in this action pertaining to the production of purportedly confidential documents in discovery “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. The court also notes that the defendants do not propose any redactions but instead seek to seal the subject documents in their entirety. 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, 187 AD3d 495 (1st Dept. 2020); Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd., 274 AD2d 1, 7 (1st Dept. 2000).

Finally, the branch of the defendants’ motion to unseal certain exhibits filed by parties for their respective motions for summary judgment (NYSCEF Doc. Nos. 532-534, 544, 545, 548, 589, 591, and 607) is granted, without opposition.

Accordingly, it is

ORDERED that the defendants’ motion to the extent that, upon a finding of “good cause”, to seal NYSCEF Doc. Nos. 557-562, 564, 570-580, and 582, and to unseal NYSCEF Doc. Nos. 532-534, 544, 545, 548, 589, 591, and 607, 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, 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. 557-562, 564, 570-580, and 582, and it is further,

ORDERED that the Clerk of the Court is directed to, upon service upon him of a copy of this order with notice of entry, unseal NYSCEF Doc. Nos. 532-534, 544, 545, 548, 589, 591, and 607.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

<u>4/14/2025</u>			
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE