

**CK Opportunities Fund I, L.P. v Morgan Stanley
Senior Funding, Inc.**

2025 NY Slip Op 32589(U)

July 1, 2025

Supreme Court, New York County

Docket Number: Index No. 654526/2023

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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CK OPPORTUNITIES FUND I, L.P., KNIGHTHEAD (NY) FUND, LP, KNIGHTHEAD ANNUITY & LIFE ASSURANCE COMPANY, KNIGHTHEAD MANAGED OPPORTUNITIES FUND, LP, KNIGHTHEAD MASTER FUND, LP, KNIGHTHEAD CAPITAL MANAGEMENT, LLC,KNIGHTHEAD OPPORTUNITIES CAPITAL MANAGEMENT, LLC,CERTARES OPPORTUNITIES LLC,

Plaintiffs,

- v -

MORGAN STANLEY SENIOR FUNDING, INC.,BRIGHTLINE HOLDINGS LLC,AAF JACKSONVILLE SEGMENT LLC,BRIGHTLINE MANAGEMENT LLC,BRIGHTLINE PROPERTY HOLDINGS LLC,NEW FLAGLER DEVELOPMENT LLC,BL WEST HOLDINGS LLC,BL TRAIN HOLDINGS WEST LLC,BREVARD FGT LLC,FLAGLER MANAGEMENT LLC,FLAGLER MANAGEMENT WEST LLC,BL PROPERTY HOLDINGS WEST LLC,LV PROPERTY HOLDINGS ONE LLC,VICTORVILLE PROPERTY HOLDINGS LLC,DXE MANAGEMENT LLC

Defendants.

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INDEX NO. 654526/2023
MOTION DATE 11/08/2024
MOTION SEQ. NO. 010

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 286, 287, 304, 305, 306, 307

were read on this motion to/for SEAL.

In this action alleging, *inter alia*, breach of a Credit Agreement, all of the defendants save for Morgan Stanley Senior Funding, Inc. (collectively, "Brightline") and non-party Fortress Investment Group LLC ("Fortress") move pursuant to 22 NYCRR 216.1 to seal various exhibits attached to the affirmation of Jacob G. Lefkowitz (NYSCEF Doc. Nos. 246-248, 254), various exhibits attached to the affirmation of Kevin Kreiger (NYSCEF Doc. Nos. 264-265), all filed in opposition to the plaintiffs' motion to compel (MOT SEQ 008). Brightline and Fortress also move to maintain redacted versions of Brightline's memorandum of law in opposition to the plaintiffs' motion to compel (NYSCEF Doc. No. 242), several exhibits to the Lefkowitz affirmation (NYSCEF Doc. Nos. 244, 245, 249-253, 262), the Krieger affirmation (NYSCEF Doc. No. 263),

the affirmation of Michael J. Schwartz filed in opposition to the plaintiff's motion compel (NYSCEF Doc. No. 266), and the affirmation of Cynthia Bergman filed in opposition to the plaintiff's motion to compel (NYSCEF Doc. No. 267). Redacted versions of these documents were filed in support of this motion under NYSCEF Doc. Nos. 271-282. Brightline and Fortress also move to redact and seal any future filings containing information from or excerpting these documents. By order dated October 16, 2024, the court granted Brightline and Fortress' request for a TRO to maintain these documents under seal pending a decision on the present motion. The plaintiffs oppose only the branch of Brightline and Fortress' motion seeking to redact and seal future filings containing information from or excerpting these documents. Regarding NYSCEF Doc. No. 246, the plaintiffs "propose" to file a version with proposed redactions instead, filed under temporary seal under NYSCEF Doc. No. 307 in this motion. 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, 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. See *id.*; Jose V. v Smiley & Smiley LLP,

214 AD3d 523 (1st Dept. 2023); 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, 187 AD3d 495 (1st Dept. 2020); Mancheski v Gabelli Group Capital Partners, supra.

Brightline and Fortress seek to seal a list of potential investors to whom Citibank and defendant Morgan Stanley marketed preferred equities in defendant BL West Holdings LLC (NYSCEF Doc. No. 248), a management agreement and employee sharing agreement among entities related to Fortress (NYSCEF Doc. No. 264 and 265), and the deposition transcripts of Andrew Shannahan Alexandra Levin, and Darrin Halcomb (NYSCEF Doc. Nos. 246, 247, and 254). Brightline and Fortress also seek to redact Brightline’s memorandum of law filed in opposition to the plaintiffs’ motion to compel (NYSCEF 242), the affirmations of Kevin Kreiger, Michael J. Schwartz, and Cynthia Bergman (NYSCEF Doc. Nos. 263, 266, 267), an action by written consent signed by the board of directors of Fortress (NYSCEF Doc. No. 253) and emails between Fortress and Brightline employees, and their counsel. (NYSCEF Doc. Nos. 244-245, 249-252, and 262). The proposed redacted versions of these documents are attached to an attorney affirmation of Kamali P. Willett filed in support of this motion and filed under NYSCEF Doc. Nos. 271-282.

The court finds “good cause” to maintain the proposed redactions as to NYSCEF Doc. Nos. 249, 251, 252 and 262, and to seal NYSCEF Doc. No. 248, 264, and 265. These documents contain the names of potential third-party investors, and 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, supra. Notably, NYSCEF Doc. Nos. 252 and 262 contain identical emails as NYSCEF Doc. No. 160, which is under permanent seal pursuant to a court order dated November 11, 2024. (MOT SEQ 006).

However, as to the remaining documents, Brightline and Fortress do not meet their burden of demonstrating “good cause” to seal or redact these documents within the meaning of the statute and the relevant decisional authority. Their contention that these documents reveal Brightline’s sensitive financial information and confidential business strategy is conclusory and offered without any meaningful explanation as to how disclosure would harm Brightline’s competitive standing. See Matter of Twentieth Century Fox Film Corp., *supra*. The emails in NYSCEF Doc. Nos. 244, 245, and 250 do not contain any information from third-party investors. The same is true for the action by written consent signed by the board of directors of Fortress (NYSCEF Doc. No. 253), as well as the Kreiger, Schwartz, and Bergman affirmations (NYSCEF Doc Nos. 263, 266 and 267). Likewise, regarding the deposition transcripts of Shannahan, Levin, Halcomb (NYSCEF Doc. Nos. 246, 247, and 254), which Brightline and Fortress seek to seal in their entirety, they do not meet its burden of demonstrating “good cause.” 22 NYCRR 216.1(a). Brightline and Fortress do not propose any redactions to these transcripts or otherwise identify with any specificity any information contained within them similarly warrants sealing. As such, Brightline and Fortress have not met their burden with respect to these documents, as “[a] finding of ‘good cause’ presupposes that ... no alternative to sealing can adequately protect the threatened interest.” Mancheski v Gabelli Group Capital Partners, *supra*.

Regarding Brightline’s memorandum of law in opposition to plaintiffs’ motion to compel (NYSCEF Doc. No. 242), Brightline is directed to file a redacted version of this document, with redactions limited only to portions which reference NYSCEF Doc. Nos. 248, 249, 251, 252, 262, 264, and 265.

Finally, the branch of Brightline and Fortress’ motion to redact and seal any future filings containing information from or excerpting these documents is denied.

Any documents that were temporarily sealed by the TRO and for which sealing was not continued or redactions not permitted by this order shall be unsealed by the Clerk.

The movants’ remaining contentions have been considered and rejected as unpersuasive.

Accordingly, upon the foregoing papers and this court’s prior orders, it is

ORDERED that the motion of the Brightline defendants and non-party Fortress Investment Group LLC is granted as to NYSCEF Doc. Nos. 248, 249, 251, 252, 262, 264, and 265, 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, 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. 248, 264, and 268; and it is further

ORDERED that the Clerk of the Court is directed to accept the redactions on NYSCEF Doc. Nos. 249, 251, 252, and 262 as found in their respective redacted copies under NYSCEF Doc. Nos. 277, 279, 280, and 282, and to accept for filing a redacted copy of NYSCEF Doc. No. 242 to be available for viewing by the public via NYSCEF, with the redactions limited to those approved herein.

This constitutes the Decision and Order of the court.


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

7/1/2025
DATE

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: