

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

2024 NY Slip Op 34421(U)

December 4, 2024

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 10/21/2024
MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 212, 213, 214, 215, 216, 217, 218, 240, 241, 284

were read on this motion to/for SEAL.

In this action alleging, *inter alia*, breach of a Credit Agreement, defendants 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, and DXE Management LLC (collectively, "Brightline") and non-party Fortress Investment Group LLC ("Fortress") move pursuant to 22 NYCRR 216.1 to seal and publicly file a redacted version of the plaintiffs' memorandum of law in support of the their motion to compel Brightline to produce

certain documents withheld or redacted for privilege (NYSCEF Doc. No. 193), to seal exhibit F to the affirmation of Brian T. Burns in support of that motion (NYSCEF Doc. No. 201), and to likewise redact and seal any future filings containing information from or excerpting NYSCEF Doc. Nos. 193 and 201. By the order to show cause dated September 18, 2024, the court granted the movants' request for a TRO to maintain NYSCEF Doc. Nos. 193 and 201 under seal pending a decision on the present motion. The plaintiffs oppose the motion to the extent it requests to redact and seal future filings without further motion. The motion is denied.

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]). Accordingly, 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); Anonymous v Anonymous, 263 AD2d 341 (1st Dept. 2003).

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).” Mosalleem v Berenson, supra at 350; see Vergara v Mission Capital Advisors, LLC, 187 AD3d 495 (1st Dept. 2020); Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 (2nd Dept. 2007). In Mancheski, the Appellate Division upheld the sealing of certain of the defendant’s financial documents which contained proprietary financial information because “disclosure could harm the private corporation’s competitive standing” and “give a competitor an unearned advantage” and also found a “compelling interest in sealing ... third-party financial information since disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein.” Mancheski v Gabelli Group Capital Partners, supra at 502-503 (internal citations omitted). None of these circumstances are present in this business context.

Brightline and Fortress seek to seal the deposition transcript of Fortress employee Ken Nicholson (NYSCEF Doc. No. 201) and to redact the portions of the plaintiffs’ memorandum of law reflecting Nicholson’s testimony. Brightline and Fortress do not, however, 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 the transcript and memorandum of law reveal Brightline’s sensitive financial information and confidential business strategy is conclusory, offered without any meaningful explanation as to how disclosure would harm Brightline’s competitive standing. See Matter of Twentieth Century Fox Film Corp., supra. A review of the transcript and reveals that that no personal financial information of third-party investors is at risk of improper disclosure of non-litigant third parties. See Mancheski v Gabelli Group Capital Partners, supra at 502. The deposition transcript contains no specific discussion of any third-party financial information. Rather, the testimony principally concerns the roles of Nicholson—who Brightline designated in this litigation as its corporate-representative witness—and other Fortress-affiliated individuals with respect to Brightline; the general fact that Fortress and certain individuals associated with it invested in one of the Brightline entities (but not the details of their investments); the fact that Fortress has a contractual relationship to manage the private-equity funds that are Brightline’s indirect shareholders (but not the contract details); and Nicholson’s knowledge, or lack thereof, as to whether Brightline and Fortress shared legal representation, either generally or with respect to a particular transaction. The court does not discern in this testimony specific financial information that might impinge on the privacy rights of Fortress or other third-parties. See Id. Nor do Brightline and Fortress provide any controlling authority to support a contrary conclusion.

Accordingly, upon the foregoing papers, it is

ORDERED that the motion to seal documents is denied.

This constitutes the Decision and Order of the court.

Nancy M. Bannon
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12/4/2024
DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: