

**Cohen Realty Enters. Holdings LLC v Fortress Credit Corp.**

2024 NY Slip Op 34197(U)

November 22, 2024

Supreme Court, New York County

Docket Number: Index No. 652147/2024

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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COHEN REALTY ENTERPRISES HOLDINGS LLC,  
COHEN REALTY ENTERPRISES LLC

INDEX NO. 652147/2024

Plaintiffs,

MOTION DATE 07/02/2024

- v -

MOTION SEQ. NO. 003

FORTRESS CREDIT CORP.,

**DECISION + ORDER ON  
MOTION**

Defendant.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 180, 181, 182, 183, 184, 185, 243, 247, 248, 249, 250

were read on this motion to SEAL.

Plaintiffs Cohen Realty Enterprises Holdings LLC and Cohen Realty Enterprises LLC (together, “CRE”) move for an order sealing unredacted copies and redacting certain portions of the documents filed as NYSCEF 103, 105, 141, 155, 157, 158, 177, 247, 248, and 249 in connection with this action. For the following reasons, CRE’s motion is **granted in part**.

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal a filing “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” (22 NYCRR § 216.1 [a]).

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]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public's right to access”

(*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed the proposed redactions to the documents filed as NYSCEF 105, 141, 157, 158, 177, 247, and 248, and finds that they comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive non-public financial information. CRE has proposed and justified targeted redactions that satisfy the requirements of 22 NYCRR § 216.1 (a).

On the other hand, CRE proposes no redactions to the document filed as NYSCEF 103, and to the extent CRE seeks to seal this document completely, its generalized assertion of good cause for complete sealing does not meet the standard for sealing. Additionally, CRE’s proposed redactions to the documents filed as NYSCEF 155 and 249 do not meet the standard for sealing. CRE has presented no authority for the proposition a document containing “emotional comments and invective” constitutes a recognized basis for sealing. While *portions* of NYSCEF 103 (and narrow portions of NYSCEF 155 and 249) may contain confidential and sensitive business information, the proposed sealing is not adequately explained or justified. The parties may propose and justify targeted redactions (or more narrowly targeted redactions, as the case may be) that satisfy the requirements of 22 NYCRR § 216 [a] and applicable case law.

Any subsequent motion seeking to address the above concerns should adhere to this Part’s Sealing Practices and Procedures (*see*

<https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part3-sealing-practices.pdf>), including the requirement to submit an affidavit based on personal knowledge attesting to the factual bases for redaction and a spreadsheet setting forth a non-conclusory good faith basis for each proposed redaction.

Accordingly, it is:

**ORDERED** that CRE's Motion to Seal and/or Redact is **granted in part** to the extent it seeks to seal and/or redact the documents filed as NYSCEF 105, 141, 157, 158, 177, 247, and 248; it is further

**ORDERED** that the motions to seal/redact the Exhibits are **denied** as to the document filed as NYSCEF Document Numbers 103, 155, and 249, without prejudice to filing a new motion within 21 days to **redact confidential portions** of this Exhibit consistent with this Decision and Order and applicable case law; it is further

**ORDERED** that the documents filed as NYSCEF Document Numbers 105, 141, 157, 158, 177, 247, and 248 may be filed to or remain on the docket in their redacted form; it is further

**ORDERED** that the County Clerk shall maintain NYSCEF Document Numbers 105, 141, 157, 158, 177, 247, and 248 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

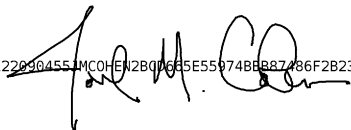
**ORDERED** that the documents filed as NYSCEF Document Numbers 103, 155, and 249 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If any party files a new motion to redact confidential **portions** of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is filed

within 21 days from the entry of this Decision and Order, the parties shall alert the County Clerk that the motion to seal the above-referenced documents have been denied by the Court and that the documents should be unsealed on NYSCEF; it is further

**ORDERED** as it related to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; and it is further

**ORDERED** that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

11/22/2024  
\_\_\_\_\_  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: