

Abad v iAero Group Holdco 2 LLC
2022 NY Slip Op 32982(U)
September 6, 2022
Supreme Court, New York County
Docket Number: Index No. 652510/2022
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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CLAUDIA ABAD,

Plaintiff,

- v -

IAERO GROUP HOLDCO 2 LLC, IAERO GROUP
HOLDCO LLC, GSO CAPITAL PARTNERS LP, GSO COF
III AIV-AP LP, GSO COF III AIV-OS LP, GSO COF III AIV-
NOS LP, GSO COF III CO-INVEST AIV-AP LP, GSO COF
III CO-INVEST AIV-OS LP, GSO COF III CO-INVEST AIV-
NOS LP, GSO CO-INVESTMENT FUND-D LP, GSO
CAPITAL OPPORTUNITIES ASSOCIATES III LLC, GSO
COF III CO-INVESTMENT ASSOCIATES LLC, and GSO
CO-INVESTMENT FUND-D ASSOCIATES LLC,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11,
12, 13, 17, 18, 19, 26

were read on this motion to/for SEAL

In motion sequence number 001, plaintiff Claudia Abad moves, pursuant to
Section 216.1 of the Uniform Rules of the New York State Trial Courts to redact
NYSCEF Doc. No. (NYSCEF) 1, the complaint in this action, and NYSCEF 7, Blaine
Bortnick, Esq.'s affirmation in support of redacting the complaint.

There is no indication that the press or public have an interest in this matter.
Defendants GSO Capital Partners LP, GSO COF III AIV-AP LP, GSO COF III AIV-OS
LP, GSO COF III AIV-NOS LP, GSO COF III Co-Invest AIV-AP LP, GSO COF III Co-
Invest AIV-OS LP, GSO COF III Co-Invest AIV-NOS LP, GSO Co-Investment Fund-D
LP, GSO Capital Opportunities Associates III LLC, GSO COF III Co-Investment
Associates LLC, and GSO Co-Investment Fund-D Associates LLC (collectively, GSO

Defendants) submit a notice of non-opposition to plaintiff's motion to redact the complaint.

Plaintiff requests the redaction of the complaint, and the GSO Defendants agree, pursuant to a confidentiality provision in the Amended and Restated Limited Liability Company Agreement of iAero Group Holdco 2 LLC (LLCA). The complaint purportedly contains information that is subject to the confidentiality provision in the LLCA. However, plaintiff does not believe that the complaint should be redacted to any degree, but filed this application as precaution; instead, it is the GSO Defendants which provide the basis for why the complaint should be redacted. The GSO Defendants contend that the complaint reveals (i) financial information related to the operation of defendant iAero Group Holdco 2 LLC (iAero Holdco 2) and its affiliates, (ii) business and financial information of nonparties and nonparty private investors, (iii) the information is subject to the confidentiality provision of the LLCA, the disclosure of which would give others an unearned competitive advantage and would give rise to potential claims for breach of confidentiality.

Legal Standard

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

“(a) Except where otherwise provided by statute or rule, 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 the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.

The public right of access, however, is not absolute. (*See Danco Lab v Chemical Works of Gedeon Richter*, 274 AD2d 1, 8 [1st Dept 2000].) The “party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) The movant must demonstrate good cause to seal records by submitting “an affidavit from a person with knowledge explaining why the file or certain documents should be sealed.” (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], *2 [Sup Ct, NY County 2004].)

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (*See Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information” and that “sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.” (*D’Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

A party’s designation of a document as confidential or restricted, without further explanation or supporting case law, is insufficient to support a finding of good cause to seal court records in whole or in part. (*See Mosallem*, 76 AD3d 345 [noting, rather, that

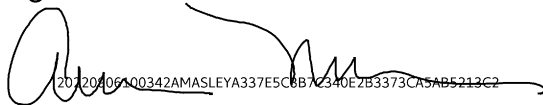
New York courts have found good cause where disclosure of documents could threaten a business's competitive advantage].)

Discussion

The GSO Defendants have failed to demonstrate that good cause exists to redact portions of the complaint that, for example, reiterate or refer to boilerplate provisions of the LLCA. At the outset, a party's reliance on the parties' confidentiality provision is insufficient to support sealing of a document. (*Mosallem*, 76 AD3d 345.) Further, there is no explanation as to why the disclosure of boilerplate contract language would harm a party's competitive advantage and no case law was provided to support sealing, in whole or part, boilerplate contract language. Next, the court cannot divine why portions of paragraph 25 in the complaint should be redacted as allegations that are merely inflammatory or embarrassing and do not implicate any proprietary or confidential information do not constitute good cause to redact court documents. (See *In re Will of Hofmann*, 284 AD2d 92, 94 [1st Dept 2001] [finding that embarrassing allegations do not constitute good cause, absent consideration of privacy interests and/or harm to competitive advantage].)

To the extent that the GSO Defendants believe that their private, financial arrangements with nonparties to this action or business strategy is revealed in the complaint, the court agrees those portions would satisfy the sealing standard; however, based on the overbroad proposed redactions, there is no basis for the court to find that good cause exists to every proposed redaction that does not appear to implicate confidentiality concerns. The parties must submit proposed redactions that are narrowly tailored to meet the standard.

Accordingly, it is
ORDERED that the motion is denied without prejudice; and it is further
ORDERED that NYSCEF Docs. No. 7, 8, 9, and 11 shall be filed publicly within
10 days of this order unless a new OSC is filed giving reasons to seal or redact.



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9/6/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE