

Iacovacci v Brevet Holdings, LLC

2023 NY Slip Op 34162(U)

November 27, 2023

Supreme Court, New York County

Docket Number: Index No. 158735/2016

Judge: Alexander M. Tisch

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

-----X

PAUL IACOVACCI,

Plaintiff,

INDEX NO. 158735/2016

MOTION DATE 05/25/2022,
05/25/2022

MOTION SEQ. NO. 044 045

- v -

BREVET HOLDINGS, LLC A DELAWARE LIMITED LIABILITY COMPANY, BREVET SHORT DURATION PARTNERS, LLC F/K/A BREVET CAPITAL PARTNERS III, LLC, A DELAWARE LIMITED LIABILITY COMPANY, BREVET SHORT DURATION HOLDINGS, LLC F/K/A BREVET CAPTIAL HOLDINGS III, LLC, A DELAWARE LIMITED LIABILITY COMPANY, BREVET CAPITAL PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, BREVET CAPTIAL HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, DOUGLAS MONTICCIOLO, MARK CALLAHAN, JOHN TRIPP,

DECISION + ORDER ON MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 044) 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1518, 1519, 1520, 1533

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 045) 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1542

were read on this motion to/for SEAL

Upon the foregoing documents, defendant Brevet Holdings moves by order to show cause to seal certain documents filed in redacted form by the plaintiff on Motion Sequence Number 43 and filed unredacted and temporarily sealed by Brevet Holdings in support of the instant motions to seal.

When determining whether to seal records,

“the court must make an independent determination of whether to seal court records in whole or in part for ‘good cause’. This task involves weighing the interests of the public against the interests of the parties. The party seeking to seal documents must demonstrate compelling circumstances. A finding of ‘good cause’ presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant, and that no alternative to sealing can adequately protect the threatened interest. However, since there is no absolute definition, good cause, in essence, ‘boils down to ... the prudent

exercise of the court's discretion', and thus a case-by-case analysis is warranted" (*Mancheski v Gabelli Grp. Cap. Partners*, 39 AD3d 499, 502 [2d Dept 2007]).

Brevet argues it will endure financial harm and disadvantage if the Court declines to maintain the seal of the profit and loss statements of Brevet Short Duration Holdings, LLC from January 2016 and 2017 (NYSCEF Docs. No. 1488-89 filed as slip sheets, Docs. No. 1499-1500 sealed); the 2018 tax return of Brevet Short Duration Partners, LLC (NYSCEF Doc. No. 1490 filed as a slip sheet, filed and sealed at Doc. No. 1501); a portion of Brevet's prior chief financial officer's deposition testimony that contains information concerning Brevet's business strategies and methodologies (NYSCEF Doc. No. 1491 filed as a slip sheet, filed and sealed at Doc. No. 1502) in Motion Sequence Number 44; and the Reply on the motion for sanctions (Motion Sequence No. 43, a redacted version filed at NYSCEF Doc. No. 1513 and filed unredacted and sealed at Doc. No. 1525); monthly profit and loss statements of Brevet Capital Holdings, LLC from January 2016 to November 2019 (NYSCEF Doc. No. 1515 filed as a slip sheet, filed and sealed at Doc. 1526); yearly profit and loss statements and acquired assets of Brevet Short Duration Partners, LLC and Brevet Short Duration Holdings, LLC from 2015 to 2018 (NYSCEF Doc. No. 1516 filed as a slip sheet and filed and sealed at Doc. No. 1527); and a fact sheet for Brevet Direct Lending – Short Duration Fund, L.P. (NYSCEF Doc. No. 1517 filed as a slip sheet, filed and sealed at Doc. No. 1528) because these documents are highly confidential financial information. Brevet argues that lifting the seal of these documents will provide its competitors access to its business strategies and financial information, which Brevet has invested substantial amounts of money and time to develop.

Plaintiff argues in opposition that Brevet's requests to seal these documents should be denied because Brevet's application does not overcome the strong presumption of public access to litigation documents. In support of the motions to seal, Brevet submits the affidavit of Mark Callahan, Brevet's Managing Director of Brevet Capital Management and a Founding Member of Brevet Short Duration Holdings, LLC and Brevet Short Duration Partners, LLC, in support of its motion to seal to elaborate on

the potential disadvantages Brevet can possibly experience if the seal of these documents were lifted. Callahan's affidavit establishes that the documents are highly confidential financial and business records that are not publicly available or publicly disclosed by Brevet. According to Callahan, Brevet protects these documents via confidentiality agreements and protective orders to preserve the confidentiality of said information within.

"New York's presumption of public access is broad...requ[ing] that a legitimate basis justify the sealing of court documents . . . a sealing order should rest on a sound basis or legitimate need to take judicial action, a showing properly burdening the party seeking to have a sealed record remain sealed" (*Danco Lab'ys, Ltd. v Chem. Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 7–8, [1st Dept 2000] internal quotations omitted). However, defendant Brevet has met its burden to show good cause for the sealing of these documents because they contain sensitive financial information and other "[p]roprietary information, in the nature of current or future business strategies which are closely guarded by a private corporation, [and are] akin to a trade secret, which, if disclosed, would give a competitor an unearned advantage" (*Mosallem v Berenson*, 76 AD3d 345, 351 [1st Dept 2010]; *Mancheski v Gabelli Grp. Cap. Partners*, 39 AD3d at 503).

Accordingly, the court, having determined in accordance with Part 216 of the Uniform Rules for the Trial Courts, that good cause exists for the sealing in part of the file in this action and the grounds therefor having been specified, it is now hereby

ORDERED that motions sequence numbered 44 and 45 are granted; and it is further

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to mark the slip sheets filed on NYSCEF as rejected, specifically the profit and loss statements of Brevet Short Duration Holdings, LLC from January 2016 and 2017 (NYSCEF Docs. No. 1488-89); the 2018 tax return of Brevet Short Duration Partners, LLC (NYSCEF Doc. No. 1490); a portion of Brevet's prior chief financial officer's deposition testimony that contains information concerning

Brevet's business strategies and methodologies (NYSCEF Doc. No. 1491) in Motion Sequence Number 44; the monthly profit and loss statements of Brevet Capital Holdings, LLC from January 2016 to November 2019 (NYSCEF Doc. No. 1515); yearly profit and loss statements and acquired assets of Brevet Short Duration Partners, LLC and Brevet Short Duration Holdings, LLC from 2015 to 2018 (NYSCEF Doc. No. 1516); and a fact sheet for Brevet Direct Lending – Short Duration Fund, L.P. (NYSCEF Doc. No. 1517); and it is further

ORDERED that once those documents are rejected, plaintiff shall resubmit those documents and an unredacted copy of the Reply on the motion for sanctions (Motion Sequence No. 43) to be filed unredacted and sealed; and it is further

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry and the resubmission of the documents mentioned above, to seal the resubmitted documents where they are substituted for the slip sheets and where they are filed in support of these motions, including profit and loss statements of Brevet Short Duration Holdings, LLC from January 2016 and 2017 (NYSCEF Docs. No. 1488-89, 1499-1500); the 2018 tax return of Brevet Short Duration Partners, LLC (NYSCEF Doc. No. 1490, 1501); a portion of Brevet's prior chief financial officer's deposition testimony that contains information concerning Brevet's business strategies and methodologies (NYSCEF Doc. No. 1491, 1502) in Motion Sequence Number 44; the monthly profit and loss statements of Brevet Capital Holdings, LLC from January 2016 to November 2019 (NYSCEF Doc. No. 1515, 1526); yearly profit and loss statements and acquired assets of Brevet Short Duration Partners, LLC and Brevet Short Duration Holdings, LLC from 2015 to 2018 (NYSCEF Doc. No. 1516, 1527); a fact sheet for Brevet Direct Lending – Short Duration Fund, L.P. (NYSCEF Doc. No. 1517, 1528); and the unredacted version of the Reply on the motion for sanctions (Motion Sequence No. 43, NYSCEF Doc. No. 1525) and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry upon the Clerk of the Court 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).

11/27/2023

DATE

ALEXANDER M. TISCH, 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