



--- N.Y.S.3d ----, 2021 WL 1202884  
(N.Y.Sup.), 2021 N.Y. Slip Op. 21074

**This opinion is uncorrected and subject to revision  
before publication in the printed Official Reports.**

**\*1** Cortlandt Street Recovery  
Corp., WILMINGTON TRUST  
COMPANY, AS TRUSTEE, Plaintiff,

v.

David Bonderman, JAMES COULTER,  
MARTIN HALUSA, JOHN MEGRUE,  
GIANCARLO ALIBERTI, MATTHIAS  
CALICE, TPG CAPITAL-NEWYORK.,  
INC., APAX PARTNERS, L.P. D/B/A  
APAX PARTNERS OF NEW YORK, TPG  
PARTNERS IV, L.P., TPG ADVISORS  
IV, INC., TPG GENPAR IV, L.P., TPG  
ADVISORS II, INC., T3 GENPAR II, L.P.,  
T3 PARTNERS II, L.P., T3 PARALLEL  
II, L.P., APAX PARTNERS EUROPE  
MANAGERS LIMITED, APAX EUROPE  
VI GP CO. LIMITED, APAX EUROPE VI  
GP, L.P., APAX EUROPE VI-A, L.P., APAX  
EUROPE VI-I, L.P., TROY, L.P. INC.,  
APAX WW NOMINEES LTD., TPG TROY,  
LLC, T3 TROY, LLC, TCW HT-CO-IINVEST  
I L.P., TCW HT CO-INVEST II L.P., TPG  
CAPITAL, L.P., TPG PARTNERS IV, L.P.,  
T3 PARTNERS II, L.P., APAX PARTNERS  
LLP, APAX PARTNERS, L.P., JOHN  
AND JANE DOES No.1 - 99, Defendant.

Supreme Court, New York County  
653357/2011  
Decided on March 25, 2021

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## **OPINION OF THE COURT**

Robert R. Reed, J.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 649, 650, 651, 653, 654, 655 were read on this motion to SEAL.

In this action, plaintiff seeks to enforce a judgment. In this motion, sequence No. 019, plaintiff seeks an order sealing the redacted portions of an opposition memorandum of law (OMOL) in motion sequence No. 18, and the entirety of many exhibits attached to plaintiff's attorney's opposition affirmation (Attorney Affirmation) in that motion. Defendants cross-move for an order sealing six deposition transcripts attached to the Attorney Affirmation.

Pursuant to [22 NYCRR § 216.1 \(a\)](#), a court is empowered to seal court records "upon a written finding of good cause." "[B]ecause 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] [internal citation omitted], quoting [Mosallem v Berenson](#), 76 AD3d 345, 349 [1st Dept 2010]) and must “overcome the broad presumption of public entitlement to judicial proceedings and court records” ([Norddeutsche Landesbank Girozentrale v Tilton](#), 165 AD3d 447, 448-449 [1st Dept 2018] [affirming trial court’s denial of sealing order for financial information which “[did] not involve trade secrets or information that could result in a competitive disadvantage”]; [Applehead Pictures LLC v Perelman](#), 80 AD3d 181, 191-192 [1st Dept 2010] [benefit of public access presumed and sealing allowed only for “compelling objectives”]). Sealing may be permissible if disclosure could be harmful to a party and would not serve a legitimate public purpose, and “no alternative to sealing can adequately protect the threatened interest” ([Mancheski v Gabelli Group Capital Partners](#), 39 AD3d 499, 502 [2d Dept 2007]; see e.g. [Jetblue Airways Corp. v Stephenson](#), 31 Misc 3d 1241(A), 2010 NY Slip Op 52405 \*7 [Sup Ct, NY County 2010], affd 88 AD3d 567 [1st Dept 2011] [sealing permitted of “sensitive proprietary and business information” where “[t]he parties ha[d] an interest in protecting these documents and there [wa]s no countervailing public interest that would be furthered by their disclosure”]). “[N]either the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records” ([Mosallem](#), 76 AD3d at 351).

In moving, plaintiff sought to seal over 60 documents and deposition transcripts (the Exhibits or Exhibits) for which it initially filed placeholder pages on NYSCEF pending plaintiff’s further review of those materials. Plaintiff acknowledged that it might not be \*2 necessary to seal all of the Exhibits, but requested a sealing order for the unspecified period of its review. Not long after, plaintiff filed unredacted copies of many of the Exhibits on NYSCEF, but did not update the court as to the status of its review.

Concerning commercial matters, the movant must demonstrate that the material it seeks to have sealed “contains trade secrets, confidential business information, or proprietary information” ([Vergara v Mission Capital Advisors, LLC](#), 187 AD3d 495, 496 [1st Dept 2020] [reversing trial court sealing order]; [Norddeutsche Landesbank](#), 165 AD3d at 449). Such materials and information generally would involve closely guarded information about current or future business plans or strategies, the disclosure of which likely would provide an advantage to a competitor (see [Mancheski](#), 39 AD3d at 503). Even though the motion and the cross motion are unopposed,

the court is required to make its own inquiry to determine whether sealing is warranted (see [Applehead Pictures](#), 80 AD3d at 181).

Plaintiff’s vague and conclusory assertions, which do not address any particular document or deposition transcript, or explain how or why public disclosure might cause potential harm, are insufficient to meet its burden on this motion. Review of several of the unfiled Exhibits reveals that they primarily involve transactions from as long as 15 years ago. One of the Exhibits indicate that information about certain of those transactions was provided to banks or rating agencies, so it is not clear what information was closely guarded. Plaintiff has not indicated what portions of the voluminous remaining withheld Exhibits it deems sensitive and confidential, and this is not self-evident from the materials, especially as many documents about this case have now been disclosed on NYSCEF.

For example, Exhibit 11 to the Attorney Affirmation is an expert’s opinion as to the alter ego status of certain entities, but what in the report requires sealing or why is not addressed. Exhibit 84 to the Attorney Affirmation primarily addresses the law of Luxembourg and financial instruments relating to a 2006 transaction, but why this information would require protection so many years later is not sufficiently addressed. In addition, redacted portions of the OMOL rely on documents, or are quotes from documents, that plaintiff has now filed in unredacted form (see e.g. NYSCEF Doc. No. 536 at 16 [n 17], 17 [n 18], 19 [n 38], 20, 21, 45). Thus, there no longer appears to be a reason for such redactions in the OMOL. That the documents and testimony have been designated confidential by the parties, is not sufficient alone to demonstrate entitlement to sealing.

In cross-moving, defendants contend that deposition transcripts of current or former employees of two private equity firms should be sealed because they concern the business operations and internal practices and procedures of those firms. This assertion is conclusory, does not address whether information about such operations or internal practices has been closely guarded, and thus is insufficient to meet a movant’s “burden to demonstrate compelling circumstances to justify restricting public access” ([Maxim, Inc.](#), 145 AD3d at 517 [internal quotation marks and citation omitted]; compare e.g. [MBIA Ins. Corp. v Countrywide Home Loans, Inc.](#), 2013 NY Slip Op 30184[U], \*\*11, \*\*13 [Sup Ct, NY County 2013] [“revelation of the specific amounts spent by BAC could harm its negotiations with

other vendors” and “[r]evelation of the formulas themselves, assumptions underlying the formulas, or other bases used to set reserves could cause competitive harm . . . as this information could reveal BAC's financial ability to resolve certain claims”]; *D'Amour v Ohrenstein & Brown, LLP*, 17 Misc 3d 1130(A), 2007 NY Slip Op 52207(U), \*20 [Sup Ct, NY County 2007] [sealing income tax returns with schedules for individuals, some of whom were no longer associated with the firm, \*3 financial statements and non-public, confidential firm agreements and memoranda]).

As an example, in exhibit 7 to the Attorney Affirmation, a deposition transcript, the deponent discusses certain entities, but his testimony is primarily about transactions that occurred prior to 2007. The court cannot assume that this information has been guarded, or that disclosure of it, at this point, would cause harm. In exhibit 23 to the Attorney Affirmation, the information discussed also appears dated and/or, primarily, general industry knowledge. In exhibit 49, the deponent does not appear to extensively address internal business operations or practices and procedures in a specific manner. Defendants have not sufficiently demonstrated what information discussed in the depositions: (1) is proprietary; (2) was maintained in a confidential manner over the years; or (3) would lead to an unearned advantage for competitors if disclosed. There also has been no showing that selected redaction, or the sealing of attachments to deposition transcripts, would not suffice to provide genuinely needed protection. While it may be that some of the Exhibits, including the ones discussed above, contain information such

that sealing or redaction would be permissible, this has not been sufficiently demonstrated here.

As neither party has met its burden, the motion and cross motion are denied, but denial is without prejudice to either party making another motion to seal which concisely and specifically addresses each exhibit that the party seeks to have sealed or redacted. Any currently unfiled Exhibits, or any portion of the OMOL, that is not the subject of a motion to seal made within 45 days of the date of this order shall be uploaded to NYSCEF, as described below.

In light of the foregoing, it is

ORDERED that the motion and cross-motion are denied without prejudice, in accordance with the decision above; and it is further

ORDERED that any exhibit to plaintiff's attorney's opposition affirmation in motion sequence No. 18, and any portion of NYSCEF Doc. No. 536, that has not already been filed in full on NYSCEF and that is not the subject of a motion to seal made within 45 days of the date of this order shall be uploaded to the NYSCEF system by the plaintiff within 45 days of the date of this order.

DATE 3/25/2021

ROBERT R. REED, J.S.C.

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