

BNP Dev. LLC v 9 Dekalb Fee Owner LLC
2025 NY Slip Op 33476(U)
September 16, 2025
Supreme Court, New York County
Docket Number: Index No. 652320/2025
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BNP DEVELOPMENT LLC,	INDEX NO. <u>652320/2025</u>
Plaintiff,	MOTION DATE <u>07/02/2025</u>
- v -	MOTION SEQ. NO. <u>004</u>
9 DEKALB FEE OWNER LLC, 340 FLATBUSH PARTNERS LLC	DECISION + ORDER ON MOTION
Defendant.	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 35, 36, 37, 38
were read on this motion to SEAL.

Defendant 340 Flatbush Partners LLC (“340 Flatbush”) moves for an order sealing the unredacted Complaint and exhibits thereto (NYSCEF 9-13), the unredacted Memorandum of Law in Support of Fee Owner’s Motion to Dismiss (NYSCEF 25), Exhibits A and B (NYSCEF 27-28) to the Affirmation of Jeffrey R. Wang in Support of Fee Owner’s Motion to Dismiss (NYSCEF 26), and the unredacted Memorandum of Law in Support of 340 Flatbush’s Motion to Dismiss (the “340 Flatbush Memorandum of Law”) (NYCEF 31), and permitting the filing of a redacted version of the 340 Flatbush Memorandum of Law. Plaintiff previously moved to seal some of these documents, which was denied without prejudice to the parties filing a new motion to seal or redact confidential portions of NYSCEF 9-13 (*see* NYSCEF 21). No parties oppose this motion. For the following reasons, 340 Flatbush’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 340 Flatbush’s application to seal NYSCEF 9, 10, 11, 12, 13, and 31 and finds that it comports with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain non-public confidential and proprietary information including agreements between and among the parties and other non-parties (*see Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [“disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein”]). Plaintiff previously filed public, redacted versions of the Complaint and its exhibits (NYSCEF 2-6). Additionally, 340 Flatbush has proposed and justified targeted redactions of 340 Flatbush Memorandum of Law. 340 Flatbush is directed to file the public, redacted version of 340 Flatbush Memorandum of Law (NYSCEF 38) on NYSCEF accordingly.

However, the application as to NYSCEF 25, 27, and 28 is denied without prejudice. While these documents may contain similar confidential information, 340 Flatbush has not explained why it cannot be protected through redaction rather than blanket sealing. Moreover, the Court will not seal a memorandum of law in its entirety. Thus, NYSCEF 25, 27, and 28 will remain provisionally under seal to permit the prompt filing of a follow-up motion proposing specific redactions. Any subsequent motion 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 the good faith basis for each proposed redaction.

Accordingly, it is:

ORDERED that 340 Flatbush's Motion is **GRANTED IN PART** as to NYSCEF 9, 10, 11, 12, 13, and 31; and otherwise **DENIED** as NYSCEF 25, 27, and 28 without prejudice filing a new motion within twenty-one (21) days to redact confidential portions of those documents consistent with this Decision and Order and applicable law; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 9, 10, 11, 12, 13, and 31 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that 340 Flatbush shall file a public redacted version of NYSCEF 31 within five (5) days of the date of this Order; it is further

ORDERED that the documents filed as NYSCEF 25, 27, and 28 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on

NYSCEF. If 340 Flatbush files a new motion to seal or 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 within three business days thereafter direct the County Clerk to file unredacted/unsealed copies of the documents on NYSCEF; it is further

ORDERED that 340 Flatbush shall serve a copy of this order upon the Clerk's Office within five (5) days of the date of this Order, and such service shall be made 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); 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.

9/16/2025

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

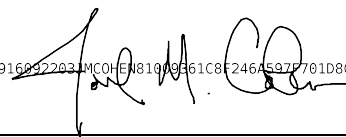
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OTHER

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REFERENCE

20250916032203 JMC01EN81000061C8F246A597F701D8CEDC6C79



JOEL M. COHEN, J.S.C.