

**Resort Cayman Holdings, Ltd. v Partnerships & Invs.
LLC**

2020 NY Slip Op 31404(U)

May 14, 2020

Supreme Court, New York County

Docket Number: 651185/2020

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
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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RESORT CAYMAN HOLDINGS, LTD., BOTH ON ITS OWN
BEHALF AND AS ATTORNEY-IN-FACT TO
PARTNERSHIPS & INVESTMENTS LLC,

Plaintiffs,

INDEX NO. 651185/2020

MOTION DATE 02/28/2020

MOTION SEQ. NO. 002

- v -

PARTNERSHIPS & INVESTMENTS LLC, NICOLAS
KOGAN, AMERICAS LEADING FINANCE, LLC (NOMINAL
DEFENDANT), CENTERBRIDGE PARTNERS, L.P., CP
CARCO GP, LTD., CP CARCO INTERMEDIATE, LTD., CP
CARCO, LP

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 71, 72, 73, 74, 75,
76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to SEAL.

In Motion 002, Defendants and Nominal Defendant (together, “Defendants”) move to seal and/or redact various documents filed in connection with their submissions in opposition to defendants’ order to show cause filed as Motion 001.¹ They seek to permanently redact portions of the February 27, 2020 affidavit of Luis Roig (the “Roig Affidavit”), permanently seal the entirety of Exhibits A-D attached to the February 27, 2020 affirmation of Daniel Sullivan (Sullivan Affirmation), temporarily seal the entirety of Exhibits E-F to the Sullivan Affidavit Exhibits 1-13 to the Roig Affidavit, and to permanently redact the portions of Plaintiffs’

¹ As Plaintiffs in the related action, *Aktiv Assets LLC v Centerbridge Partners, L.P.*, Index No. 653259/2019 (Related Action), Partnerships & Investments, LLC, Americas Leading Finance LLC, and Nicolás A. Kogan seeks the same relief regarding the same documents filed in opposition to the Related Action’s Motion 008.

Memorandum of Law in Opposition to Motion 008 discussing the contents of those documents (see NYSCEF Docs. 40-61).

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal or redact a filing “upon a written finding of good cause, which shall specify the grounds thereof.” “[T]he court shall consider the interests of the interests of the public as well as of the parties” in determining whether there is good cause (22 NYCRR § 216.1 [a]). The Court must balance the risk of privacy concerns stemming from public access to the information against the “compelling public interest in exposure of this information,” if any (see *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 WL 450030, *9 (Sup Ct, NY County Jan. 3, 2013)). The moving party has the burden to set forth compelling circumstances to justify restricting public access and must demonstrate “a sound basis or legitimate need to take judicial action” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 6 [1st Dept 2000]). “[T]here is a broad presumption that the public is entitled to access to . . . court records” (*Mosallem v Berenson*, 76 AD3d 345, 348-350 [1st Dept 2010]).

The Court has reviewed the filings that Plaintiffs seek to seal and redact. Motion 002 is granted in part to the extent that the Roig Affidavit may be filed in redacted form as the redactions are narrow in scope and concern specific income information, payments to the parties’ partnership and to third parties, the name of a bank account, among other things. Likewise, the portions of the Memorandum in Opposition may be redacted to the extent it concerns the information redacted in the Roig Affidavit. The remainder of Motion 002 is denied.

Plaintiffs seek to wholesale seal four purchasing, servicing, and management agreements on the ground that they “refer to [Plaintiffs’] and the Partnership’s non-public financial information, as well as confidential information about the financial structure of their business

relationship,” “the disclosure of which could harm [their] competitive standing” (*see* NYSCEF Doc. 72 [Motion 002 mem.]). “Conclusory assertions of harm do not suffice . . . [and] a generalized preference for confidentiality is not enough” (*Landberg v National Enterprises*, 2007 N.Y. Slip Op. 32057[U] [Sup Ct, NY County 2007]).

Here, Plaintiffs make only conclusory statements regarding the confidential business and financial information in the agreements and “fail[] to specify the importance of the confidentiality of the transactions involved and any harm that would result to any party from the public knowledge of such transactions”; accordingly, they have not demonstrated “any compelling justification for restricting the public's access to court documents” (*see id.*). Plaintiffs’ arguments that that the public interest is minimal and that the agreements are subject to a confidentiality provision are unavailing. The confidentiality provision expressly excludes documents produced in court proceedings from the definition of “Confidential Information” and Plaintiffs have not demonstrated that “that public access to the documents at issue will *likely* result in harm to a compelling interest of the movant” or “that no alternative to sealing can adequately protect the threatened interest” (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [citation omitted]).

Motion 002 is also denied as to Exhibits E-F and Exhibits 1-13 because the only basis for sealing those documents is “that this information may contain the [Plaintiffs’] confidential information, and the [Plaintiffs] have designated some of this material as “Confidential Information” under the Protective Order” (*see* NYSCEF Doc. 72). Those statements are insufficient to warrant sealing and Plaintiffs have not responded or requested such relief in connection with those documents themselves.

As noted below, Defendants will have an opportunity to file a new motion proposing targeted redaction of information that satisfies the requirements of 22 NYCRR § 216.1 (a).

Accordingly, it is

ORDERED that Motion 002 is **granted in part and denied in part**; it is further

ORDERED that the motion is **granted** to the extent that the Roig Affidavit and the Memorandum in Opposition shall be filed in redacted form as set forth in this decision and order; it is further

ORDERED that, upon service of a copy of this Order upon the Clerk of the Court, the Clerk shall permit the Roig Affidavit (NYSCEF Doc. 48) and Plaintiff's Memorandum in Opposition to Motion 001 (NYSCEF Doc. 40) to be and remain filed in redacted form wherever they shall appear in connection with this action. Until further Order of the Court, the Clerk of the Court shall deny access to those unredacted documents to anyone other than the staff of the Clerk or the Court, counsel of record for any party to this case, and any party, provided that the Clerk of the Court shall not seal or redact any documents not referenced in this Order, or as otherwise described below, or as set forth in another Order of this Court; it is further

ORDERED that future submissions, made by any party, which contain the subject matter that the Court has authorized to be filed in redacted form by this Order may be filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; it is further

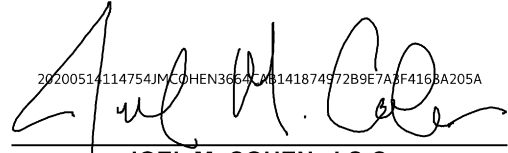
ORDERED that Motion 002 is **denied**, without prejudice to a new motion, to the extent it seeks to seal Exhibits 1-13 to the Roig Affidavit and Exhibits A-F to the Sullivan Affirmation in their entirety; it is further

ORDERED that Defendants shall have 20 days to file a motion to redact confidential portions of Exhibits 1-13 and Exhibits A-F (NYSCEF Docs. 41-47, 49-60). If no such motion is filed, Defendants shall file unredacted/unsealed copies of the documents within 20 days of the Court's entry of this decision and order on NYSCEF. If such motion is filed, however, the documents shall remain provisionally sealed pending resolution of the motion; 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.

5/14/2020
DATE


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JOEL M. COHEN, 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