

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

2020 NY Slip Op 31405(U)

May 15, 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,

Plaintiff,

- 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

Defendant.

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INDEX NO. 651185/2020
MOTION DATE 03/06/2020
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148

were read on this motion to SEAL

Defendants Partnerships & Investments LLC, Nicolas Kogan, and Americas Leading Finance, LLC (together, the "Defendants") move to permanently redact portions of the March 5, 2020 affidavit of Carola Acum (Affidavit), Exhibits 1-6 and 12 of the Affidavit, and the March 6, 2020 discovery letter of Daniel Sullivan (Letter), and to temporarily seal the entirety of Exhibits 7-8 and 13 of the Affidavit (see NYSCEF Docs. 116 [Letter], 118 [Affidavit], 119-124 [Exhibits 1-6], 125-126 [Exhibits 7-8], 130-131 [Exhibits 12-13]).¹

The redacted portions of the Letter largely concern provisions in the underlying loan and services agreements but generally do not pertain to any particular financial information. Only

¹ As the 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 seek the same relief regarding the same documents (see Related Action, Motion 012).

the redacted portion of ¶ 14 of the Affidavit pertains to financial information; the remainder of the redactions generally concern or quote the underlying agreements.

Exhibit 1 is a performance graph. Exhibits 2-6 are emails between a Defendant and consultants hired to conduct inspections. Exhibit 12 is a chart concerning data fields maintained by a Defendant in its database and loan servicing system. Exhibits 7-8 are emails concerning obtaining a backup servicer. Exhibit 13 is a copy of the Servicing Agreement.

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 MBLA 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]; *see Mosallem v Berenson*, 76 AD3d 345, 348-350 [1st Dept 2010] [noting “there is a broad presumption that the public is entitled to access to” court filings]).

Defendants argue that there is good cause to permanently seal or redact: (1) Exhibit 1 as it contains business performance information; (2) Exhibits 2-6 because those emails “reflect confidential information about ALF’s financial performance and business strategies”; (3) Exhibit 12 because the chart contains “confidential information about which data fields [a Defendant]

maintains in its database and loan servicing system”; and (4) the Letter and the Affidavit largely because they references to the Servicing Agreement.

The Court has reviewed these submissions and finds that Defendants have demonstrated good cause to redact Exhibits 1-6, Exhibit 12, as well as ¶ 14 of the Affidavit. The redacted information is narrowly tailored and concerns the business’s performance, financial figures, and strategies. The public’s interest in that particular information is minimal and outweighed by Defendants’ legitimate interest in nondisclosure.

Defendants have not met their burden of demonstrating good cause to seal/redact the Letter or the remainder of the Affidavit. Defendants fail to explain why all references to, and information in, the Servicing Agreement and other agreements should be redacted or sealed and do not demonstrate a compelling justification to prevent public disclosure (*see Landberg v National Enterprises*, 2007 N.Y. Slip Op. 32057[U] [Sup Ct, NY County 2007] [noting that “(c)onclusory assertions of harm do not suffice” and “a generalized preference for confidentiality is not enough”]).

Defendants have also not met their burden to justify sealing/redacting Exhibits 7-8 and Exhibit 13. Defendants assert only that those documents “may reference material [a Plaintiff] considers confidential” and do not establish good cause to warrant sealing/redacting. Plaintiffs have not joined in or otherwise responded to this motion.

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 005 is **granted in part and denied in part**; it is further

ORDERED that the motion is **granted** to the extent that Exhibits 1-6, Exhibit 12, and ¶ 14 of the Affidavit may be redacted as proposed (NYSCEF Doc. 118, ¶ 14; NYSCEF Docs. 119-124, 130); it is further

ORDERED that, upon service of a copy of this Order upon the Clerk of the Court, the Clerk shall permit Exhibits 1-6, Exhibit 12, and ¶ 14 of the Affidavit (NYSCEF Doc. 118, ¶ 14; NYSCEF Docs. 119-124, 130) to be and remain filed in redacted form as set forth in this Decision and Order 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 005 is **denied**, without prejudice to a new motion, to the extent that it seeks to seal and/or redact Exhibits 7-8, Exhibit 13, the Letter, and the portions of the Affidavit apart from ¶ 14 (NYSCEF Docs. 116, 118, 125-126, 131); it is further

ORDERED that Defendants shall have 20 days to file a motion to redact confidential portions of Exhibits 7-8, Exhibit 13, the Letter, and the portions of the Affidavit apart from ¶ 14. 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

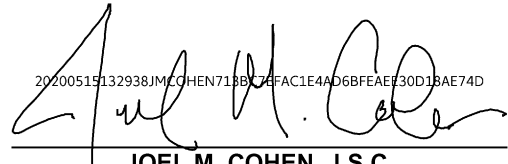
filed, however, the documents shall remain provisionally sealed pending resolution of the motion; and it is further

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.

5/15/2020

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