

**Aktiv Assets LLC v Centerbridge Partners, L.P.**

2020 NY Slip Op 31415(U)

May 14, 2020

Supreme Court, New York County

Docket Number: 653259/2019

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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AKTIV ASSETS LLC, PARTNERSHIPS & INVESTMENTS, LLC, AMERICAS LENDING FINANCE LLC, NICOLAS KOGAN, CAROLA ACUM, JOSE CORREA, RICARDO CRUZ, JOSE PENCHI, CARLOS PEREZ, IVAN RIVERA, ALEJANDRO RODRIGUEZ, KATIA RODRIGUEZ, CARLO RODRIGUEZ, DORIS RODRIGUEZ, LUIS ROIG, MONICA ROMERO

Plaintiffs,

- v -

CENTERBRIDGE PARTNERS, L.P., CP CARCO GP, LTD., CP CARCO INTERMEDIATE, LTD., RESORT CAYMAN HOLDINGS, LTD., CP CARDO, LP,

Defendants.

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Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258

were read on this motion to SEAL

In Motion 009, Plaintiffs move to seal and/or redact various documents filed in connection with their submissions in opposition to defendants' motion, by order to show cause, which sought to vacate or modify a stay (Motion 008).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 Defendants in the related action, Resort Cayman Holdings, Ltd. v Partnerships & Investments LLC, Index No. 651185/2020 (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 001.

Memorandum of Law in Opposition to Motion 008 discussing the contents of those documents (see NYSCEF Docs. 205-226).

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 009 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 009 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. 237 [Motion 009 mem.]). “Conclusory assertions of harm do not suffice . . . . Such 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 009 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 [Defendants’] confidential information, and the [Defendants] have designated some of this material as “Confidential Information” under the Protective Order” (*see* NYSCEF Doc. 237). Those statements are insufficient to warrant sealing and Defendants have not responded or requested such relief in connection with those documents themselves.

As noted below, Plaintiffs 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 009 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. 213) and Plaintiff's Memorandum in Opposition to Motion 008 (NYSCEF Doc. 205) 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

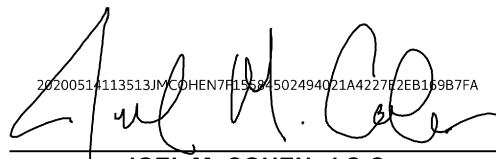
**ORDERED** that Motion 009 is **denied**, without prejudice to a new motion, to the extent it seeks to seal Exhibits 1-13 to the Roig Affidavit and Exhibits A-F to the Sullivan Affirmation in their entirety; it is further

ORDERED that Plaintiffs shall have 20 days to file a motion to redact confidential portions of Exhibits 1-13 and Exhibits A-F (NYSCEF Docs. 207-212, 214-226). If no such motion is filed, Plaintiffs 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  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
 REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: