

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

2020 NY Slip Op 31416(U)

May 15, 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

INDEX NO. 653259/2019  
MOTION DATE 03/06/2020  
MOTION SEQ. NO. 012

Plaintiffs,

- v -

**DECISION + ORDER ON MOTION**

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

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314

were read on this motion to SEAL.

Plaintiffs 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. 282 [Letter], 284 [Affidavit], 285-290 [Exhibits 1-6], 291-292 [Exhibits 7-8], 296-297 [Exhibits 12-13]).<sup>1</sup>

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

<sup>1</sup> As the 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 seek the same relief regarding the same documents (*see* Related Action, Motion 005).

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 Plaintiff and consultants hired to conduct inspections. Exhibit 12 is a chart concerning data fields maintained by a Plaintiff 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]).

Plaintiffs 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 contain references to the Servicing Agreement.

The Court has reviewed these submissions and finds that Plaintiffs 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 Plaintiffs’ legitimate interest in nondisclosure.

Plaintiffs have not, however, met their burden of demonstrating good cause to seal/redact the Letter or the remainder of the Affidavit. Plaintiffs do not 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”]).

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

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 012 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. 284, ¶ 14; NYSCEF Docs. 285-290, 296); 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. 284, ¶ 14; NYSCEF Docs. 285-290, 296) 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 012 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. 282, 284, 291-292, 297); it is further

**ORDERED** that Plaintiffs 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, 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

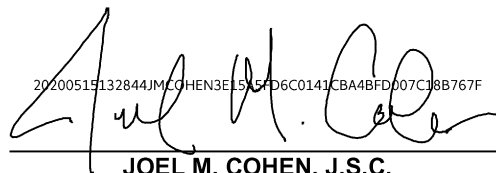
filed, however, the documents shall remain provisionally sealed pending resolution of the motion; and it is further

**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.

5/15/2020

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