

Aktiv Assets LLC v Centerbridge Partners, L.P.

2020 NY Slip Op 31417(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

Plaintiff,

- v -

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

Defendant.

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INDEX NO. 653259/2019
MOTION DATE 03/09/2019
MOTION SEQ. NO. 014

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 014) 323, 324, 325, 326, 327, 328, 374, 375, 376, 377

were read on this motion to/for SEAL

In Motion 014, Plaintiffs moved to permanently and temporarily redact approximately a portion of its Memorandum of Law submitted in connection with Motion 013 as well as 30 paragraphs and various footnotes contained in their Proposed Consolidated Complaint and Counterclaims (the "Proposed Pleadings") (see NYSCEF Docs. 317, 319-320). By the parties' May 6, 2020 stipulation (the "Stipulation") (NYSCEF Doc. 374), Plaintiffs limited their request to permanently seal only portions Paragraphs 66, 67, 86, and Footnotes 6 and 7, of the Proposed Pleadings (NYSCEF Docs. 375-377 [proposed consolidated complaint, red-line, and counterclaims]).¹

¹ As the Defendants in the related action, Resort Cayman Holdings, Ltd. v Partnerships & Investments, LLC, Index No. 651185/2020 (the "Related Action"), Partnerships & Investments,

Having reviewed the submissions, Motion 014 is granted as limited by the Stipulation.

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

Plaintiffs have carried their burden to redact Paragraphs 66, 67, and 86, as well as Footnotes 6 and 7. The proposed redactions are narrowly tailored to prevent disclosure of precise financial information and the public’s interest in the particularized information in the paragraphs and footnotes is minimal.

Motion 014 is also granted to the extent that it seeks to temporarily redact numerous other paragraphs and footnotes on the ground that they “*may* contain the [the Defendants’] confidential information” (*see* NYSCEF Doc. 324 [Motion 014 mem.]). While such statements alone are insufficient to warrant permanently redacting that information for good cause under 22

LLC, Americas Leading Finance, LLC, and Nicolás A. Kogan seek to redact the same information/documents in the corresponding docket (*see* Related Action, Motion 007).

NYCRR § 216.1 (a), Defendants have separately moved to permanently seal those additional paragraphs and footnotes in Motion 016.² Accordingly, those additional paragraphs and footnotes may remain provisionally sealed/redacted until resolution of Motion 016.

Accordingly, it is

ORDERED that Motion 014 is **granted**; it is further

ORDERED that Paragraphs 66, 67, 86, and Footnotes 6 and 7 shall be filed in redacted form as set forth in this Decision and Order (NYSCEF Docs. 375-377); it is further

ORDERED that, upon service of a copy of this Order upon the Clerk of the Court, the Clerk shall permit Paragraphs 66, 67, 86, and Footnotes 6 and 7 (NYSCEF Docs. 375-377) 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 permanently 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

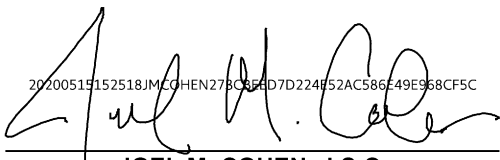
² In Motion 016, Defendants seek to permanently redact Paragraphs 56, 58, 59, 93, 118, and 122 of the Counterclaims and Paragraphs 75, 94, and 121 to Exhibit 1 to the Affirmation of Michael B. Carlinsky (the “Carlinsky Affirmation”). Plaintiffs further seek, in Motion 009, to redact portions of the Motion to Consolidate, including Paragraphs 56, 58, 59, 93, 118, 121, 122, 123, 124, and Footnote 9 to Exhibit A, Paragraphs 75 and 94 of Exhibit 2 to the Carlinsky Affirmation, Paragraphs 56, 58, 59, 93, 118, 121, 122, 123, 124, and Footnote 10 of Exhibit B, and Paragraphs 75 and 94 of Exhibit 3 to the Carlinsky Affirmation (*see* Motion 016).

ORDERED that the Paragraphs and Footnotes for which temporary sealing/redacting is requested (Paragraphs 56, 58, 59, 93, 118, and 122 of the Counterclaims; Paragraphs 75, 94, and 121 to Exhibit 1 to the Carlinsky Affirmation; the redacted portion of the Motion to Consolidate, including Paragraphs 56, 58, 59, 93, 118, 121, 122, 123, 124, and Footnote 9 to Exhibit A, Paragraphs 75 and 94 of Exhibit 2 to the Carlinsky Affirmation, Paragraphs 56, 58, 59, 93, 118, 121, 122, 123, 124, and Footnote 10 of Exhibit B, and Paragraphs 75 and 94 of Exhibit 3 to the Carlinsky Affirmation) may remain provisionally sealed/redacted until the Court has resolved Motion 016, Defendants’ motion to permanently redact that information; 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:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE