

MDEV10 LLC v JDS Monad Terrace LLC
2021 NY Slip Op 32840(U)
December 13, 2021
Supreme Court, New York County
Docket Number: Index No. 656554/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MDEV10 LLC, ACK SCH MONAD INVESTOR LLC,
ACKERMD MONAD INVESTOR LLC, MONAD TERRACE
JV LLC, MONAD TERRACE INVESTMENT LLC, MONAD
MANAGER LLC, MONAD TERRACE LLC, MONAD
TERRACE MEZZ LLC, MONAD TERRACE PROPERTY
OWNER LLC

Plaintiff,

- v -

JDS MONAD TERRACE LLC, JDS MONAD TERRACE
DEVELOPER LLC, JDS CONSTRUCTION SERVICES
LLC, JDS CONSTRUCTION GROUP LLC,

Defendant.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 103, 105, 106, 107, 108, 109, 132

were read on this motion for a TEMP. RESTRAINING ORDER & PRELIM. INJUNCTION.

Upon the foregoing documents, and for the reasons stated on the record following oral argument on December 6, 2021, Plaintiffs' motion for preliminary injunctive relief is

GRANTED in part; it is further

ORDERED that, on or before December 31, 2021, Defendants shall produce to Plaintiffs the following information and documents, in electronic format, (maintaining the native format of data stored in any accounting software and/or excel spreadsheet) for JDS Monad Terrace JV LLC ("GP JV") as well as, Monad Terrace Investment LLC ("Ackerman JV"), Monad Manager LLC, Monad Terrace LLC, Monad Terrace Mezz LLC, and/or Monad Terrace Property Owner

LLC (cumulative, and other than the GP JV, the “Subsidiaries”) covering the period 2015 –

present, to the extent that it has not been previously provided in the above-mentioned format:

- a. Pursuant to § 9.1 of the Second Amended and Restated Limited Liability Company Operating Agreement of GP JV dated October 10, 2017 (the “Amended GP Agreement”), data contained within and constituting the comprehensive system of office records, books, and accounts showing, fully and accurately, “each and every financial transaction with respect to the operations” of GP JV and the Subsidiaries (of which identical obligations are mirrored in the Limited Liability Company Operating Agreement of Monad Terrace Investment LLC dated May 14, 2015 (“Original GP Agreement”) § 9.1, and Limited Liability Company Operating Agreement of Monad Terrace Investment LLC (the “Ackerman Agreement”) § 9.1).
- b. Pursuant to Amended GP Agreement § 9.1, any “bills, receipts and vouchers,” and “accounts” including, without limitation, bills, receipts, vouchers, and accounts, evidencing capital contributions to the GP JV and the Subsidiaries (of which identical obligations are mirrored in Original GP Agreement § 9.1, Ackerman Agreement § 9.1).
- c. Capital account summaries and loan balance information for GP JV and Ackerman JV which are part of the “sources of each item of income, gain, loss, and deduction,” as required under the Limited Liability Company Agreement of Monad Terrace LLC dated as of May 14, 2015 (“NV Agreement”) § 9.6.3(B) (obligations of which are incorporated by reference in Ackerman Agreement § 9.6, and Amended GP Agreement § 9.6) and as “required disclosures that are considered an integral part of the financial statements as prepared in conformity with industry standards” and “necessary additional disclosures” under Amended GP Agreement § 9.2 and part of a comprehensive system of books under Amended GP Agreement § 9.1.
- d. All audited and unaudited financial statements from whatever period of the GP JV and Subsidiaries, including “balance sheets and income statements” under Amended GP Agreement § 9.2; “unaudited but reviewed quarterly financial statements consisting of a balance sheet as of the end of such calendar quarter, a statement of income, and a statement of cash flow prepared by the Managing Member” under Ackerman Agreement § 9.2; and the obligation in Amended GP Agreement § 6.9 “to cause each . . . Company, Property Owner and each other Subsidiary . . . to maintain, separate financial statements showing its assets and liabilities separate and apart from those of any other Person.”
- e. Tax returns, with (i) all K-1s for all members (not just the parties to this litigation); (ii) supporting schedules of all tax returns; and (iii) estimated taxable income, in each case of GP JV and its Subsidiaries, pursuant to Ackerman Agreement § 9.2, copies of “federal, state and local income information tax returns, and the information with respect to the Company necessary for all such Members, if and as

applicable, to prepare their federal and state income tax returns, including Schedule K-1 (Form 1065) forms for all of the Members;” pursuant to Amended GP Agreement § 9.2 which provides, “[S]upplemental schedules shall be included” and NV Agreement § 9.6.3(ii)-(iii) which provides that “schedule K-1s” and “detailed supporting schedules” “estimate of taxable income” shall be provided (incorporated by reference into Amended GP Agreement § 9.6 and Ackerman Agreement § 9.6.1).

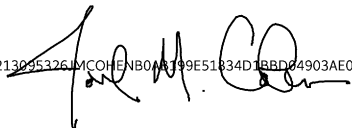
- f. “[A] reconciliation of book-to-tax in order clearly to identify, document and support all book-tax differences” for the GP JV and all Subsidiaries as required under Amended GP Agreement § 9.2, Ackerman Agreement § 9.2, and NV Agreement § 9.6.3.
- g. Pursuant to Amended GP Agreement § 9.6, and Ackerman Agreement § 9.6.1, any “financial reports, notices or information required to be delivered to any Lender” including: (i) “any reports, notice or information actually delivered or requested by Lender”; (ii) reporting of “comparison of the budgeted income and expenses and the actual income and expenses” and other budget and reporting information required by the Loan Agreement between Monad Terrace Property Owner LLC and EO Monad Terrace LLC dated June 15, 2015 (the “2015 EO Monad Loan”) §§ 6.3.3, 6.3.5.
- h. Pursuant to Amended GP Agreement § 9.6, and Ackerman Agreement § 9.6.1, any “reports, notices, or information required to be delivered to any Lender” including “[p]ursuant to the NV Agreement.”
- i. As stated in the Amended GP Agreement § 6.11, all “annual budgets” “for each partial or full calendar year after the Substantial Completion date,” including any annual budget for 2022.

ORDERED that, on or before December 31, 2021, Defendants, through an authorized representative with personal knowledge of Defendants’ records and recordkeeping practices, shall execute an affidavit, under penalty of perjury, describing in reasonable detail (i) the system and format in which financial information is and records are maintained; (ii) the efforts to search for information; and (iii) to the extent Defendants maintain that any information or records set forth in this Order do not exist, confirming that no such document(s) exist; it is further

ORDERED that, Plaintiff’s request for temporary restraining order and to direct an immediate audit of the Defendants at the expense of GP JV is **DENIED without prejudice** to requesting this relief after Defendants have responded to the Order; and it is further

ORDERED that, the parties shall appear for a preliminary conference on January 6, 2022
at 10:00 a.m.

This constitutes the Decision and Order of the Court.

<u>12/13/2021</u>			
DATE		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