

Brooklyn Acquisition Holding LLC v Cipriani
2023 NY Slip Op 32804(U)
August 11, 2023
Supreme Court, New York County
Docket Number: Index No. 652749/2021
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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BROOKLYN ACQUISITION HOLDING LLC,NORTHSIDE
WHITE KNIGHT LLC,JAMES P. WISEMAN, JACOB L.
SACKS, SEA WOLF SERVICES LLC,BROOKLYN
CLEANING & MAINTENANCE SERVICES LLC,SEA OF
WOLVES LLC,SEA WOLF TOO LLC,CYPRESS
SERVICES LLC

INDEX NO. 652749/2021
MOTION DATE N/A, N/A, N/A
MOTION SEQ. NO. 004 005 006

Plaintiff,

**DECISION + ORDER ON
MOTION**

- v -

DANIEL L. CIPRIANI, DLC HOSPITALITY LLC,DOE
COMPANIES I-X,

Defendant.

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 204, 207, 209, 210, 211, 212, 213, 214, 215, 216

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 197, 198, 205
were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 006) 199, 200, 201, 202, 203, 206, 208

were read on this motion to/for DISCOVERY

The Counterclaim Plaintiffs’ motion (Mtn. Seq. No. 004) to compel is granted solely to the extent that the Counterclaim Defendants must produce (i) all email threads on which Mr. Cipriani is a sender or recipient (however any privileged communications as part of the thread can be redacted solely to the extent of the privilege asserted but must indicate who all of the recipients and senders [and ccs] were), (ii) the formation documents for Sea Wolf Services, Brooklyn Acquisition Holding, and Brooklyn Cleaning and (iii) a revised privilege log indicating sufficient information to demonstrate the basis upon which privilege is being asserted with

respect to communications and documents in which third parties were included so that to the extent the Counterclaim Plaintiffs wishes to challenge any assertion of privilege, they may do so.

Previously, the Counterclaim Plaintiff brought a motion to compel seeking some of the information sought here. In this lawsuit, Mr. Cipriani alleges that he was supposed to be a 30% owner of the restaurant -- *i.e.*, a 30% owner of Sea Wolf Services LLC and that he was also supposed to be a 30% owner of Northside White Knight LLC (**Northside**) and that Northside was to be the beneficial owner of the restaurant. The restaurant was actually owned by Brooklyn Acquisition Holding. At the hearing on the prior motion to compel, the Court acknowledged that the court (Rivera, J. Francois) held that Mr. Cipriani was a 30% owner of Sea Wolf Services LLC (tr at 5, lines 22-25 [NYSCEF Doc. No. 210]) and this Court ordered documents sufficient to show the operation of the restaurant and the records of Brooklyn Acquisition Holding so that Mr. Cipriani could see if any money was being misdirected as he asserts. The Court also ordered documents related to a PPP loan and a management fee, both to which Mr. Cipriani claims beneficial interest.

Now, he seeks certain of those documents not previously produced and also (x) tax returns and schedules of BAH MM LLC, Northside, Havemeyer Hospitality LLC, and Cayuga Capital LLC for 2016 through the present and (y) bank statements and supporting documents showing the transfers of monies from Brooklyn Acquisition Holding LLC to any of its members or beneficial members, (ii) documents listed on the privilege log that were either shared with Daniel Cipriani or involve communications between February and May 2016 relating to the documentation of the

BAH MM LLC Management Services Agreement or the Northside Management Services Agreement, and (iii) a revised privilege log.

New York State has a policy of liberal discovery of all information material and necessary to the prosecution of an action (*Kapon v Koch*, 23 NY3d 32, 38 [2014]). The words “material and necessary” are to be interpreted liberally to require disclosure of any facts bearing on the controversy which will assist in preparation for trial by sharpening the issues and reducing delay (*id.*). To the extent that this Court already ordered documents sufficient to show the operations of the restaurant, at the hearing (8.9.23), the Counterclaim Defendants indicated that they obtained food and beverage reports from the restaurant and that they were bates stamping such documents and would produce them no later than Monday, August 14, 2023. They also indicated that they would produce tax returns for Brooklyn Acquisition Holding and bank statements for Brooklyn Acquisition Holding, Sea Wolf Services, and Brooklyn Cleaning by Monday August 14, 2023 at 10 am.

In addition, the Counterclaim Defendants also must produce the requested tax returns and bank statements for Northside to the extent they exist. On the record before the Court, a hand-written structure chart indicates a relationship between Northside and Mr. Cipriani. This Mr. Cipriani indicates is evidence that he was to be a 30% owner of Northside. The Counterclaim Defendants dispute this and say that this chart shows that Mr. Cipriani was supposed to be retained by Northside but not an owner. The chart makes no mention of any percentage ownership and merely has an almost horizontal line between Northside and Mr. Cipriani, among other things. The Resolution of what the “line” between Mr. Cipriani and Northside means is for a later date.

For today's purposes, Mr. Cipriani is entitled to the information he seeks from Northside as it is relevant to his claim that he is in fact a 30% owner of Northside. The Counterclaim Plaintiffs are also entitled to the production of email threads on which Mr. Cipriani is a sender or recipient. No privilege exists as to these documents. As to other documents in which third parties are included, although the Counterclaim Defendants may redact privileged information, they must leave unredacted the information as to who sent and received such documents (including ccs) and such information must be properly reflected on the privilege log. To the extent that this has not been done, it too must be produced by Monday at 10 am.

The Counterclaim Plaintiffs are not however entitled to tax returns or account information from the other companies which are not parties to this case and which there is no basis to assert a relationship between them and the Counterclaim Plaintiffs. As to these documents, the request is overbroad and must be denied. Any amounts that Mr. Cipriani alleges he should be entitled to would be reflected in the records of the restaurant, Sea Wolf Services, Brooklyn Acquisition Holdings (which owned the restaurant), and Brooklyn Cleaning. Thus, the balance of this motion is denied.

The Counterclaim Defendants' motion (Mtn. Seq. No. 006) to compel is granted and the Counterclaim Plaintiffs shall produce (i) a bank statement sufficient to show monies received for the restaurant via a GoFundMe account and any documentation as to the progress of such account (including any monies taken out of such account), (ii) payroll records from the restaurant and any other restaurant records in their possession sufficient to demonstrate their counterclaim that the Counterclaim Defendants' principals manipulated the books of the restaurant, (iii)

documents concerning the application for and use or distribution of any PPP loans, and (iv) bank statements and tax returns sufficient to show distributions or other payments to the Counterclaim Plaintiffs from the restaurants by Monday, August 14, 2023 at 10 am. The Court notes that this motion is largely granted on consent of the Counterclaim Plaintiffs. To the extent that the Counterclaim Plaintiffs claim that they are unable to produce documents as to the progress of the GoFundMe account because they are shut out of the restaurant email system, they must produce what they have and should the Counterclaim Defendants require additional documents, they shall facilitate access to the account by providing a password reset.

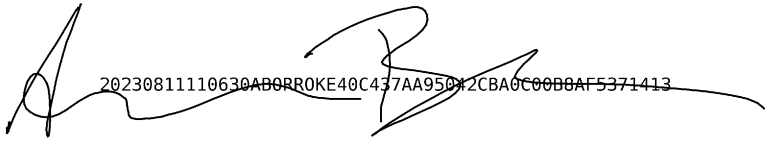
Finally, the motion (Mtn. Seq. No. 005) to seal NYSCEF Doc. Nos. 181, 186, 188-189, and 191-196 is also granted in accordance with Part 216 of the Uniform Rules for the Trial Courts for good cause shown because the documents contain confidential and proprietary business information.

It is hereby ORDERED that the motions are decided as set forth above; and it is further

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal NYSCEF Doc. Nos. 181, 186, 188-189, and 191-196 and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).



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8/11/2023

DATE

ANDREW BORROK, 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: