

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY  
PRESENT: Hon. Eileen Bransten, Justice PART 3

-----X  
SEAPORT LOAN PRODUCTS, LLC and ALDWYCH,  
CAPITAL PARTNERS, LLC

Plaintiffs,

-against-

LOWER BRULE COMMUNITY DEVELOPMENT  
ENTERPRISE, LLC,

Index No.: 651492/12  
Motion Seq. No. 003  
Motion Date: 7/24/13

Defendant.

-----X  
The following papers, numbered 1 to 1, were read on this motion for a protective order.

Papers Numbered

Notice of Motion/Order to Show Cause - Affidavits - Exhibits	<u>1</u>
Answering Affidavits - Exhibits	<u>2</u>
Replying Affidavits	<u>3</u>
Cross-Motion: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

This matter comes before the Court on Defendant's motion for a protective order. For the reasons stated on the March 12, 2013 record (Angela Tolas, CSR), Defendant's motion is denied.

Dated: July 25, 2013

  
Hon. Eileen Bransten

- 1. CHECK ONE: ..... CASE DISPOSED  NON-FINAL DISPOSITION
  - 2. CHECK AS APPROPRIATE: Motion Is:  GRANTED  DENIED  GRANTED IN PART  OTHER
  - 3. CHECK IF APPROPRIATE: ..... SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

Proceedings

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY - CIVIL BRANCH - PART: 3

-----X  
SEAPORT LOAN PRODUCTS, LLC, and ALDWYCH CAPITAL  
PARTNERS, LLC,

-against-

DEX NO.  
492/12

LOWER BRULE COMMUNITY DEVELO  
LLC,

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*7/24/13*  
*No Jacket*

60 Cent  
New York

March 1.

B E F O R E:

HONORABLE EILEEN BRANSTEN, Justice

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ANGELA TOLAS, CSR  
OFFICIAL COURT REPORTER

## Proceedings

1  
2 THE COURT: Set up on Seaport Loan. So let's just  
3 say hello to everybody. For Seaport loan Products I have  
4 from the Manatt, Phelps & Phillips firm, I have Ronald Blum.

5 MR. BLUM: Yes.

6 THE COURT: How are you?

7 MR. BLUM: Good afternoon, your Honor.

8 THE COURT: And for the Aldwych Capital Partners,  
9 I have Michael Naporano.

10 MR. NAPORANO: Yes, your Honor. Good afternoon.

11 THE COURT: Good afternoon. For the Lower Brule  
12 Community from the Lazare, Potter & Giacovas firm I have  
13 Robert Giacovas.

14 MR. GIACOVAS: Yes, your Honor.

15 THE COURT: Did I pronounce your name right?

16 MR. GIACOVAS: Yes, you did, perfect.

17 THE COURT: Then I also have Marci  
18 Goldstein-Kokallas.

19 MS. GOLDSTEIN-KOKALAS: Yes, your Honor.

20 THE COURT: All right, it is motion sequence  
21 number three, and it's Lower Brule's motion for a protective  
22 order. And this goes back now a little bit of distance.  
23 And indeed in my decision that I wrote on December 14, I  
24 stated the Court ordered that the information and documents  
25 regarding Lower Brule's assets and tax returns, and this is  
26 a quote, "are relevant to two important ransom factors

## Proceedings

1  
2 whether the tribe had legal title or ownership of property  
3 used by Lower Brule, and whether the corporate entity  
4 generates its own revenue, and whether a suit against the  
5 corporation will impact the tribe's fiscal resources." End  
6 quote.

7           So the last time you were here I think that I  
8 stated because it was an objection that this was  
9 confidential and material. So I said enter into a  
10 confidentiality agreement pursuant to the one that we  
11 suggest you use, which is the New York City Bar  
12 confidentiality agreement. I assume that was done.

13           MR. BLUM: Yes, your Honor.

14           MR. GIACOVAS: That was done, your Honor.

15           THE COURT: It was?

16           MR. BLUM: Yes.

17           THE COURT: All right. So then your idea of  
18 getting a protective order after you have a confidentiality  
19 agreement is not appropriate. Not when I already have found  
20 that the assets and the tax returns and income, all right,  
21 is relevant for plaintiff to find out who has legal title of  
22 ownership of the property used by Lower Brule, and whether  
23 the corporate entity generates its own revenues, and whether  
24 a suit against the corporation will impact the tribe's  
25 fiscal accounts. So, therefore, your request for a  
26 protective order has to be denied.

## Proceedings

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2 MR. GIACOVAS: If I may be heard, your Honor?

3 THE COURT: I don't think I need to hear much  
4 because I read your papers.

5 MR. GIACOVAS: Okay, well, I don't disagree with  
6 any of the ransom factors that your Honor articulated. But  
7 the confidentiality stipulation which has now been so  
8 ordered by this Court is irrelevant to the issue that we  
9 have with respect to confidentiality of the information.  
10 The document in question has exact dollar figures of what is  
11 sitting in LBCDE's bank accounts, okay. We have given, if  
12 you read our papers, we have given the plaintiffs ranges of  
13 the information.

14 The question is whether or not we have access. We  
15 have access, but the confidentiality, the proprietary nature  
16 of that information is we don't want our adversary, who's  
17 suing us for significant money, to know the exact amount  
18 that's in the bank account. It's as though we did our tax  
19 return or bank account statement and we have to turn it over  
20 showing the exact figure. But, wait, let me finish just for  
21 the record, the ransom factor which you articulated, which  
22 we obviously agreed with, we know that's what your Honor is  
23 going to consider with respect to the determination of  
24 sovereign immunity, whether they have legal title to the  
25 assets, we've addressed those.

26 The exact amount that's sitting in a bank account

## Proceedings

1  
2 is irrelevant to determine that question. Whether my  
3 client, which is a subsidiary, generates its own revenue,  
4 we've addressed that through the discovery. Again the exact  
5 amount of that revenue is irrelevant to that determination.  
6 And the third factor whether the suit against my client  
7 would impact the tribal resources we will demonstrate that  
8 they didn't ask about that, but we've demonstrated that.

9           And, again, whether there is a dollar or \$10 or  
10 \$15 sitting in a specifically designated account on that  
11 financial statement, that information is irrelevant to their  
12 argument and to the ransom factors. So I understand the  
13 confidentiality concerns discovery to third parties. But  
14 this is discovery, they are not a judgment creditor yet. If  
15 they ever become a judgment creditor, your Honor, we'd have  
16 to turn over our bank accounts, we'd have to show them  
17 what's in the account, I agree with you. But at this stage  
18 they are our adversaries. We should not have to turn over  
19 to them our most confidential, the exact amount of money  
20 that's sitting in a bank account.

21           THE COURT: I will let Mr. Blum talk, but I'll  
22 answer you in a minute. Yes, Mr. Blum.

23           MR. BLUM: Whether the suit will impact the  
24 tribe's fiscal resources depends on the numbers that appear  
25 on, not in the bank account, we didn't get bank statements,  
26 we got their P & L's basically, their financial statements.

## Proceedings

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2 And if they were so concerned that my client would see this,  
3 they could have asked, and the New York Bar Association form  
4 makes reference to it, the form that your Honor uses, they  
5 could have tried for an attorney's eyes only if they are  
6 worried that my client would do something with these  
7 numbers. Certainly they are not, I don't hear them saying  
8 that I am going to do something improper, or the attorneys  
9 here will do something improper with these numbers.

10 The information is directly on point. They never  
11 raised this before. Your Honor's decision speaks directly  
12 to this, the December decision, and all they are saying now  
13 is: Well, you're acting a judgment creditor. But that's  
14 not the case. It's how will it impact its fiscal resources  
15 when we have every line blacked out of every number.

16 THE COURT: Let me put it to you this way, I have  
17 another case, all right, and that case is rather famous, I  
18 suppose, but it's engendered incredible amount of financial  
19 information. And there came a time with that case when it  
20 was ready for summary judgment motions. And what's  
21 different from discovery portion to summary judgment portion  
22 is that in a discovery section everything is really open for  
23 grabs and must be produced. In a summary judgment motion,  
24 now your dealing with the public's information. Because in  
25 order to produce a summary judgment motion, you have to  
26 support your argument with documents that are open to the

Proceedings

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public, in the public's eye.

And so we had actually a hearing on what should be produced, in a sense. And basically we whittled it down, the parties did, all right, encouraged by the Judge, they actually got a series of documents that had information in it that should it go public might really affect the future of the defendants, and even the future of the plaintiff because it was information on the plaintiff's side too.

So after a great deal of argument and discussion about it, all in open Court, what the Court did do in that circumstance, this is after discovery has been complete, but for the summary judgment motion I took out the actual figures. Not that the monies went from X to Y, but how much money went from X to Y, all right. And that was, in a sense, the resolution of that problem of that it could have had a very negative impact on the people in front of me to allow the public to know that figure.

But how different was my ruling in the discovery phase? Because there the knowledge of how much money was passing, and who was passing from what, and et cetera, is very much part of what the plaintiff is entitled to know. I mean, plaintiff is suing because the plaintiff says they have been hurt. And so this is their attempt to, after all, they have the burden of proof to establish this. And if you don't want it established, there are other ways of going



## Proceedings

1  
2 about resolving the matter. You may not want to do that,  
3 but you can, all right. But it does not include, it does  
4 not include a decision, a desire on your part not to turn  
5 over the information.

6 If you said to me it is too sensitive to go public  
7 even to the degree of their clients, and I want this  
8 information to be for attorneys eyes only, I mean, I don't  
9 know whether Mr. Blum would argue against it or argue  
10 against all of it, but, I don't know. But that is one  
11 resolution that is permitted. But certainly the fact that  
12 I -- and I gave reasons why I believe this information  
13 should be turned over, and I have not changed my mind.

14 MR. GIACOVAS: Let me just address one thing  
15 first. Mr. Blum commented, and your Honor's statement with  
16 respect to the relevance of this information, I heard it,  
17 the same argument that I have heard, because we had a  
18 deposition about this, whether or not this lawsuit will  
19 impact the tribe resources. We can stipulate to what is on  
20 those financial statements. We're going to argue those are  
21 the tribe resources. But, again, the amount, I believe the  
22 amount of those resources if there is a \$100 or \$10 in an  
23 account is irrelevant to the argument that they want to make  
24 which is that this particular entity is not entitled to  
25 sovereign immunity. That's in our papers. But I hear your  
26 Honor.

## Proceedings

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2 Let me just go a different method. With respect  
3 to what counsel just said, we do not want to see in our  
4 motion papers, because we've withdrawn our motion, we had to  
5 refile for our motion to dismiss which includes both the  
6 sovereign immunity ground and the most substantive, failure  
7 to state a claim. We do not want to see figures parted back  
8 and publically filed motion papers as to what is in the  
9 tribe's bank accounts. These are the tribe's bank accounts.  
10 I'll just finish the point, that information is --

11 THE COURT: But, sir, that's the whole point of  
12 the confidentiality agreement. You know, and I tell you the  
13 Commercial Division worked on that confidentiality agreement  
14 along with members of the City Bar for about two-and-a-half  
15 years. The language of each and every paragraph in there  
16 has been well thought out and vetted you might say. And if  
17 you think you have concerns for the Lower Brule Community  
18 development tribe, you think that's a concern, think about  
19 some of the bigger law firms and who they are representing,  
20 and some of the cases you hear about constantly.

21 I assure you they do not want in their papers in  
22 their motion to dismiss or the answer to the motion to  
23 dismiss, or even as what we just went through in terms of  
24 the summary judgment motion, they don't want those figures  
25 out either. Of course they don't. It impacts that company,  
26 it impacts the people involved directly right between the

## Proceedings

1  
2 eyes. And everybody is very much aware of that. Should a  
3 mistake be made, sometimes people make mistakes, I'm giving  
4 a general mistake, should that happen, the punishment is  
5 severe. It doesn't happen. I have never had that happen.

6 I've had one occasion where one of the people  
7 said: Oh my God, we filed the wrong thing. You know, we  
8 took care of it. But that was an up in arms. Everybody was  
9 up at 3:00 o'clock in the morning. Not I, but everybody  
10 else was so that they would be prepared when I got in that  
11 morning. It happens. I'm not saying that nothing will ever  
12 happen. But I am saying that confidentiality agreement,  
13 that is the purpose of it. The purpose is to make sure that  
14 you do not use the private information in a public paper.

15 MR. BLUM: And, your Honor, if I may, they filed  
16 this order to show cause under seal. They know how to do  
17 that. We didn't violate that. It's very easy to --

18 THE COURT: Let me talk about under seal. You  
19 can't do things under seal unless it's by Court order, all  
20 right. You just don't do that. What you do is that you go  
21 and talk to the E-filing people downstairs and you have, in  
22 a sense, a vanilla version of what you are talking about  
23 that's in your memoranda of law because I don't need figures  
24 to get the idea of the memoranda of law. I can figure it  
25 out probably myself.

26 In the exhibits you put in what's called holders,

## Proceedings

1  
2 all right, Exhibit A. Exhibit A is redacted, redacted  
3 Exhibit A, redacted Exhibit B, redacted Exhibit AA, Exhibit  
4 DD or quadruple D, all right. And then for me you arrive  
5 with wonderful boxes of things, actually there, back there,  
6 up in my chambers. You should see my chambers, big  
7 unredacted boxes. But they are under my supervision and my  
8 control. Because I may want to look at those documents. I  
9 may need to look at them. But they are not public. They  
10 are not public. So I really do think that I understand your  
11 concern, but I do think that this is taken care of.

12 MR. BLUM: Your Honor, the last time you directed  
13 them to bring the unredacted document with them today so  
14 that they could be produced.

15 THE COURT: Yes, I did.

16 MR. GIACOVAS: I have two questions, two  
17 additional points, your Honor. One is your Honor mentioned  
18 attorney's eyes only. I haven't spoken to counsel about  
19 attorney's eyes only. Is that something that I should  
20 discuss with counsel or get your Honor involved?

21 THE COURT: No, I don't get involved with that. I  
22 don't think I have to. I sign a confidentiality agreement.  
23 I do think that inside the confidentiality agreement there  
24 is a section in there about attorney's eyes only. No.

25 MR. BLUM: There is not, your Honor. Actually the  
26 Bar Association provision says that they do not recommend

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1  
2 including that because there is so much contention over  
3 whether something should or should not be attorney's eyes  
4 only because of over designating.

5 THE COURT: Look, I suggest maybe you go and talk  
6 to each other about it. But I also suggest you have to  
7 trust Mr. Blum who is a practitioner.

8 MR. GIACOVAS: This is not about mistrusting  
9 counsel, your Honor, not at all. This is I represent a  
10 client, he represents a client, and that's where it is.

11 THE COURT: So why don't you go and talk about  
12 exactly what document you're looking to be attorney's eyes  
13 only. The categories of documents at every level, all  
14 right.

15 MR. GIACOVAS: We produced our documents already.  
16 It is one particular document.

17 MR. BLUM: It's 11 pages of financial statements.  
18 They produced a total of 48 pages. Eleven of them, which  
19 they didn't produce originally, but only after we came back  
20 to them have all the numbers redacted except the dates.  
21 That's what should not be redacted.

22 THE COURT: These are not your boxes over there  
23 ready to be turned over?

24 MR. GIACOVAS: No, those aren't ours, your Honor.

25 THE COURT: I think that we can turn things over,  
26 all right.

## Proceedings

1  
2 MR. GIACOVAS: Your Honor, I will speak to my  
3 client. I understand your Honor's order. We have our  
4 motion papers, we filed motions we filed on April 5. I  
5 think the return date is set for?

6 MR. BLUM: May 13.

7 MR. GIACOVAS: May 13. I will speak to my client.  
8 Could we have until Friday to turn over the records?

9 THE COURT: I did order them specifically, I  
10 think. It's up to you. I ordered them specifically to be  
11 here today.

12 MR. GIACOVAS: I understand.

13 MR. BLUM: And, your Honor, we would take them as  
14 attorney's eyes only. My client doesn't need to see the  
15 numbers. If we can make our arguments, that's certainly  
16 sufficient for these purposes.

17 MR. NAPORANO: I concur with that, your Honor.

18 MR. GIACOVAS: If he'll take them for attorney's  
19 eyes only, we'll turn them over, your Honor.

20 THE COURT: Terrific. By the way when you get  
21 them home make sure you stamp attorney's eyes only, okay.

22 MR. BLUM: Yes.

23 THE COURT: Why don't you send in a stipulation to  
24 the effect of attorney's eyes only and that way we have it  
25 part of the record, and we can E-file that.

26 MR. GIACOVAS: That's fine. We'll do that, your

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Honor, and that includes the records.

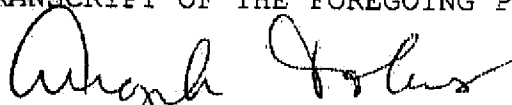
THE COURT: Thank you. Your motion for a protective order is denied for the reasons stated on the record.

MR. GIACOVAS: Thank you, your Honor.

MR. NAPORANO: Thank you, your Honor.

\* \* \*

CERTIFIED TO BE A TRUE AND CORRECT  
TRANSCRIPT OF THE FOREGOING PROCEEDINGS.



ANGELA TOLAS, OFFICIAL COURT REPORTER