

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	Civil Action No. 18-cv-5587
v.)	
)	Hon. Manish S. Shah
EQUITYBUILD, INC., EQUITYBUILD)	
FINANCE, LLC, JEROME H. COHEN,)	Magistrate Judge Young B. Kim
and SHAUN D. COHEN,)	
)	
Defendants.)	

**RECEIVER’S MOTION FOR LEAVE TO PRODUCE CLAIMS SUBMISSIONS
ON CONFIDENTIAL BASIS IN RELATED LITIGATION**

Receiver Kevin B. Duff, by his counsel, hereby moves for an order allowing him to produce on confidential basis in a related litigation matter the claims submissions he has received from claimants in this action. In support of this motion, the Receiver states as follows:

1. On August 17, 2018, this Court took “exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Defendants” pursuant to its Order Appointing Receiver (the “OAR”). (Dkt. 16, ¶ 1)
2. The Court also appointed Kevin B. Duff as Receiver for the Estate of the Receivership Defendants. (*Id.* ¶ 2)
3. The Court froze all assets of the Estate and vested the Receiver with exclusive authority with respect to the assets. (*Id.* ¶¶ 1, 3)
4. The Court further authorized the Receiver to “bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver.” (*Id.* ¶ 8(M))

5. Pursuant to that authority, the Receiver has initiated certain actions against former lawyers of the Receivership Defendants. One of those actions is captioned *Duff v. Rock Fusco & Connelly, LLC, Ioana Salajanu, and Berbert Bregman Schwartz & Gilday, LLC*, Case No. 2020-L-8843, pending in the Circuit Court of Cook County, Law Division (the “state court action”).

6. In connection with the Court’s approved claims process in this action, the Receiver has received claims submissions from the claimants in this action. The docket in this action is replete with that information.

7. On December 19, 2020, this Court entered an Agreed Confidentiality Order (the “Confidentiality Order”) that governs, *inter alia*, the production and use of all claims and documentation submitted to the Receiver in connection with the claims process in this action. (Dkt. 917, at 1)

8. The Confidentiality Order states, among its provisions, that the use of documents and information governed by it are limited to use in this receivership action. (*Id.* ¶¶ 2, 5)

9. In the state court action, the Receiver has received discovery requests for the proofs of claim and supporting documentation submitted to the Receiver by the EquityBuild’s investors (“the claims documentation”).

10. In addition, in connection with the Receiver’s claims in the state court action, the Receiver also intends to use information in the claims documentation, including but not limited as proof of damages. The Receiver believes the use of such information in this manner will benefit eligible claimants in this receivership action, by increasing the Receiver’s likelihood of success in recovering funds through the state court action.

11. Through this motion, the Receiver seeks leave to produce and use the claims documentation in the state court action. The Receiver notes that a previous request made by

plaintiffs in a class action pending in California for relief from the stay order to subpoena this claims documentation was denied by the Court, primarily based upon the Court's desire to limit the expense to the Receivership who would bear the costs of having to comply with the subpoena in that situation. (Dkt. 1034, 1040) The Receiver believes this request is distinguishable because (a) the Receiver has brought the actions in which he seeks to use these materials pursuant to the powers vested in him by the Court, (b) the Receiver has a need to use the materials himself in these actions for the ultimate benefit of the Receivership Estate, and (c) as that litigation is on a contingency fee, the time associated with addressing such issues would not be borne by the Receivership Estate.

12. Should the Court grant this motion, the Receiver would only produce the claims documentation pursuant to the protective order entered in the state court action (attached hereto as Exhibit A) that protects the confidential information disclosed therein and limits the use of the claims documentation to the state court action.¹

13. Counsel for the SEC has informed the Receiver that the SEC has no objection to the relief requested in this motion.

¹ The Receiver is also involved in another action captioned *Duff v. Mark L. Rosenberg and Law Offices of Mark L. Rosenberg*, Civil Action No. 1:21-cv-6756 (N.D. Ill.). That action is currently stayed pending settlement discussions, but these defendants are also third-party defendants in the state court action. If the federal court matter is not resolved, the claims information will only be produced or used in the federal court matter upon entry of a suitable protective order similar to that entered in the state court action.

WHEREFORE, the Receiver respectfully requests that the Court:

- (i) grant this motion;
- (ii) issue an order allowing the Receiver to produce and use the claims documentation in connection with the state court action, subject to a protective order entered in the state court action that protects the confidential information contained therein and limits the use of the claims documentation to the state court action; and
- (iii) award such other relief as the Court deems just and equitable.

Dated: June 30, 2023

Respectfully submitted,

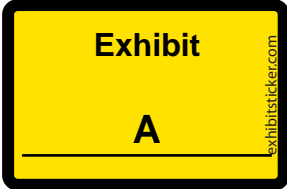
KEVIN B. DUFF, RECEIVER

By: /s/ Michael Rachlis

One of his attorneys

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Attorneys for Kevin B. Duff, Receiver



IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

_____)

KEVIN B. DUFF, RECEIVER FOR)

THE ESTATE OF EQUITYBUILD, INC., *et al.*)

Plaintiff,)

v.)

ROCK FUSCO & CONNELLY, LLC,)

IOANA SALAJANU, and BREGMAN,)

BERBERT, SCHWARTZ & GILDAY, LLC,)

Defendants.)

_____)

Case No. 2020-L-008843

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Handwritten signature/initials, possibly '4230'.

AGREED CONFIDENTIALITY ORDER

WHEREAS, the parties desire to enter into a confidentiality agreement for the purpose of safeguarding from public disclosure, among other things, certain personal identity information relating to individuals who invested in or loaned money to EquityBuild, Inc., EquityBuild Finance LLC, or their respective affiliates, including the entities on whose behalf this lawsuit was filed;

NOW, THEREFORE, the Court, for good cause shown, hereby ORDERS as follows:

1. Scope. The use of any and all tangible or electronically stored documentation, material, or information produced in this action, whether formally or informally, including responses to document requests, deposition testimony and exhibits, and information derived therefrom (hereinafter "Discovery Material") shall be subject to the terms of this Agreed Confidentiality Order (the "Order").

2. Confidential Information. As used in this Order, "Confidential Information" means information that falls within one or more of the following categories: (a) information prohibited from disclosure by statute; (b) personal identity information, including home addresses, e-mail addresses, and telephone phone numbers, social security numbers, taxpayer identification

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numbers, birthdates, driver's license numbers, state identification numbers, passport numbers, financial account numbers, passwords, and the names of any individuals known to be a minor; and (c) income tax returns (including attached schedules and forms), W-2 forms, and form 1099's, provided, however, that any information disclosed on a document filed with the Cook County Recorder of Deeds shall not be considered Confidential Information. Any and all Discovery Material that constitutes Confidential Information shall be subject to protection in accordance with the terms of this Order without the necessity of a written designation of confidentiality on the face of the document.

3. Protection Of Confidential Material.

(a) General Protections. Confidential Information shall not be used or disclosed by the parties, counsel for the parties, or any other persons identified in subparagraph (b) for any purpose whatsoever except in connection with this litigation.

(b) Limited Third-Party Disclosures. Confidential Information may not be used by, or divulged or disclosed to, any person or entity except:

- (1) the parties, their counsel of record, and employees of the parties and their counsel of record who require access to the Discovery Material to prosecute or defend, or to assist with the prosecution or defense of, the claims and defenses in the litigation;
- (2) the parties' insurers (for whose actions the respective insured parties shall be liable in connection with any violation of this Order);
- (3) the Court and its personnel;
- (4) court stenographers engaged for depositions or trial, provided that said court stenographers who are informed that certain testimony or Discovery Material marked as a deposition exhibit contains Confidential Information shall separately bind the pages of the applicable testimony or the deposition exhibit and refrain from publishing said testimony or deposition exhibits except as permitted under this Order;

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- (5) outside vendors engaged for the limited purpose of copying or duplicating Discovery Material or organizing or processing Discovery Material;
- (6) consultants, investigators, or experts employed by the parties or their counsel of record to assist with the trial of this action, or for trial preparation, but only after such persons have completed the certification contained on Attachment A;
- (7) fact and expert witnesses to whom disclosure of the Discovery Material is reasonably necessary to assist with the trial of this action, or for trial preparation, provided, however, that said witnesses shall not retain a copy of any Discovery Material containing Confidential Information except to the extent that Discovery Material containing Confidential Information is marked at their depositions and they have a need to review the transcripts and exhibits marked at those depositions; or
- (8) other persons upon the written consent of the producing party or order of the Court upon such conditions as may be agreed or ordered.

(c) Control of Information. Counsel for the parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Information and shall maintain the originals of all certifications obtained pursuant to Section 3(b)(5) for a period of three years following the conclusion of the litigation.

4. Filing Of Confidential Information. Any party wishing to file Discovery Material in connection with a motion, brief, or other submission to the Court shall redact all Confidential Information prior to filing. In the event that the Confidential Information cannot be redacted, then the pleading, motion, exhibit, or other document shall be filed under seal in accordance with the governing local rules and general administrative orders of the Circuit Court of Cook County.

5. Subpoenas And Judicial Orders.

(a) If a party is served with a subpoena or order requesting or compelling the production of Discovery Material containing Confidential Information, said party shall promptly notify the party that produced the Discovery Material, in writing, and in no event more than three

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court days after receipt of the subpoena or order. Such notification shall include a copy of the subpoena or court order.

(b) The receiving party shall also promptly inform in writing the party who caused the subpoena or order to issue that some or all of the material covered by the subpoena or order contains information governed by this Order and shall deliver a copy of this Order to the party requesting the Discovery Material.

(c) If the party that originally produced the Discovery Material containing the Confidential Information promptly notifies the party that received the subpoena or order that it intends to seek judicial protection to safeguard the Confidential Information, then the party that received the subpoena or order shall refrain from complying with the subpoena or order as long as reasonably possible in order to afford the party that originally produced the Discovery Material a reasonable opportunity to intervene and protect against the disclosure of the Confidential Information.

6. Challenges To Redactions And Filings Under Seal. A party or interested member of the public may challenge the redaction or sealing of Confidential Information, and in such event the party that originally produced the Discovery Material shall have the burden of demonstrating the propriety of the redaction or the filing under seal.

7. Inadvertent Disclosure of Privileged Materials. The disclosure of information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity shall neither constitute nor be deemed a waiver or forfeiture of any claim, protection, privilege, or immunity. In the event that a party determines that it has inadvertently disclosed material privileged or immune from disclosure, the producing party shall provide prompt written notice of the inadvertent disclosure to the receiving party. Upon receipt of such notification, the

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receiving party shall inform the producing party of the identity of all persons or entities to whom the inadvertently disclosed material has been disseminated and shall promptly undertake its best efforts to identify and return, or destroy or delete all copies of the inadvertently produced material, provided, however, that nothing herein shall prevent the receiving party from challenging the propriety of the producing party's claim of privilege or immunity from disclosure on grounds other than the inadvertent production, and, in the event of any such challenge, the producing party shall have the burden of seeking judicial relief and establishing the privileged or protected nature of the material.

8. Obligations Upon Conclusion Of Litigation.

(a) Unless otherwise ordered by the Court, this Order shall remain in full force and effect following the termination of this litigation

(b) Within sixty-three days after the dismissal of the litigation or the entry of final judgment not subject to further appeal, all Discovery Material shall be returned to the producing party unless (1) the Discovery Material has been offered into evidence, marked at a deposition, or otherwise filed in the case record, or incorporated into attorney work-product or (2) the producing party agrees to the destruction of the Discovery Material and thereafter certifies to the producing party that the Discovery Material has been destroyed.

9. Order Subject To Modification. This Order shall be subject to modification by the Court on its own initiative or upon motion of a party or any other person with standing concerning the subject matter.

10. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery and the production of Discovery Materials. Nothing herein shall be construed as a final judicial determination that any

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particular Confidential Information is entitled to protection against public disclosure until such time as the Court has ruled on the issue.

11. Persons Bound. This Order shall take effect when entered and shall be binding upon the parties, all counsel of record, and all other persons made subject to this Order by its terms.

AGREED:

KEVIN B. DUFF, RECEIVER, *et al.*

By: /s/ Michael C. Bruck
One of his attorneys
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ENTERED
Judge Daniel J. Kubasiak-2072
MAR 26 2021
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTERED:

As approved by Judge Kubasiak's email 3/26/21
The Honorable Daniel J. Kubasiak

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

 KEVIN B. DUFF, RECEIVER FOR
 THE ESTATE OF EQUITYBUILD, INC., *et al.*

 Plaintiff,

 v.

 ROCK FUSCO & CONNELLY, LLC,
 IOANA SALAJANU, and BREGMAN,
 BERBERT, SCHWARTZ & GILDAY, LLC,

 Defendants.

Case No. 2020-L-008843
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ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that s/he has read the Agreed Confidentiality Order dated _____ (the "Order") in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the Circuit Court of Cook County, Illinois in matters relating to the Order and understands that the terms of the Order obligate him/her to treat Confidential Information, as defined in said Order, in strict accordance with the terms of the Order.

The undersigned acknowledges that a violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Mailing Address (if different from Business Address):

Date: _____

Signature: _____