

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL S. NEWMAN, as Receiver for
Founding Partners Capital
Management Company; Founding
Partners Stable-Value Fund, L.P.;
Founding Partners Stable-Value
Fund, II, L.P.; Founding Partners
Global Fund, Ltd. and Founding
Partners Hybrid-Value Fund, L.P.,

Plaintiff,

v.

Case No: 2:09-cv-445-FtM-29CM

SUN CAPITAL, INC., SUN
CAPITAL HEALTHCARE, INC.
and HLP PROPERTIES OF PORT
ARTHUR, LLC,

Defendants.

ORDER

This matter comes before the Court upon review of Plaintiff's Motion to Extend Order Governing the Use of Confidential Discovery Information Dated March 18, 2010 [D.E. 178] (Doc. 346) filed on March 13, 2017. Defendants have not filed a response to this motion, and their time to do so has expired. Defendants' non-response to the present motion creates a presumption that the motion is unopposed. *Great Am. Assur. Co. v. Sanchuk, LLC*, No. 8:10-cv-2568-T-33AEP, 2012 WL 195526, at *3 (M.D. Fla. Jan. 23, 2012).

On July 14, 2009, Plaintiff filed this action in his capacity as the appointed Receiver for various companies including Founding Partners Capital Management

Company. Doc. 1 at 1. On March 18, 2010, then United States Magistrate Judge Sheri Polster Chappell entered an Order Governing the Use of Confidential Discovery Information (“Order”). Doc. 178. The Order’s Paragraph 4 specifically states that:

Confidential Discovery Material (including Highly Confidential material) may be used only for the purposes of this Action, the SEC action to which it is ancillary (no. 2:09- cv-229) (“the SEC Action”) (including for appropriate reports to the Court by the Receiver in the SEC Action), and any other action brought by the Receiver pursuant to the Order Appointing Replacement Receiver entered in the SEC Action for which such information is reasonably necessary (a “Receiver Action”), provided that in the event of such Receiver Action, the Receiver shall specifically apply to the Court to extend this Order to said Receiver Action after giving notice to the Defendants and any non-parties providing information under the protections of this Order of his intention to do so. Such material shall not be used for any other purpose, including, without limitation, any business or commercial purpose or any other litigation or proceeding, except for a business resolution of this Action between the Parties to this Action or a Receiver Action; provided, however, that the foregoing shall not apply to Discovery Material that properly is or becomes part of the public record.

Id. at 4.

Under Paragraph 4, Plaintiff seeks that the Court permit the use of confidential discovery information in a related action initiated by Plaintiff, *Daniel Newman v. Ernst & Young, LLP and Mayer Brown, LLP*, in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Receiver Action”). Doc. 346 at 1. Plaintiff provides a copy of the Order Governing the Use of Confidential Discovery Information entered on December 9, 2016 in the Receiver Action, which provides:

discovery and other proceedings in this Action will necessarily involve the production and use of certain documents and information produced pursuant to the SEC Action Confidentiality Order and/or the Sun Capital Confidentiality Order, and other documents and information of

a similar nature to the documents and information subject to the SEC Action Confidentiality Order and/or Sun Capital Confidentiality Order[.]

Doc. 346-1 at 2. Plaintiff also argues that he provided the requisite notice to Ernst & Young and the Sun Capital entities. Doc. 346 at 3.

Because Plaintiff alleges that he provided the requisite notice under Paragraph 4 of the Order, and Defendants did not file an opposition to the request relief, the Court will grant the present motion and extend the Order to permit the use of confidential discovery information in the Receiver Action. Doc. 346 at 3.

ACCORDINGLY, it is hereby

ORDERED:

1. Plaintiff's Motion to Extend Order Governing the Use of Confidential Discovery Information Dated March 18, 2010 [D.E. 178] (Doc. 346) is **GRANTED**.

2. The Order Governing the Use of Confidential Discovery Information (Doc. 178) is extended to permit the use of confidential discovery information in *Daniel Newman v. Ernst & Young, LLP and Mayer Brown, LLP*, Case No. 10-49061, filed in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida.

DONE and **ORDERED** in Fort Myers, Florida on this 19th day of April, 2017.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record