

In the United States Court of Federal Claims

No. 13-465C
(Filed: November 9, 2015)

 FAIRHOLME FUNDS, INC. et al., *
 *
 Plaintiffs, *
 *
 v. *
 *
 THE UNITED STATES, *
 *
 Defendant. *

ORDER

On July 29, 2015, Fairholme Funds, Inc. (“Fairholme”), with this court’s permission, filed protected information under seal in the United States Court of Appeals for the District of Columbia (“D.C. Circuit”) as part of a motion requesting that the D.C. Circuit take judicial notice of that protected information. Subsequently, on August 6, 2015, the D.C. Circuit entered an order suspending the merits briefing on the appeal. Perry Capital, No. 14-5243, Aug. 6, 2015. On November 3, 2015, the D.C. Circuit motions panel referred Fairholme’s motion for judicial notice to the merits panel for resolution. Then on November 5, 2015, the court entered a merits briefing schedule.

Now before this court is a renewed motion by Perry Capital LLC (“Perry Capital”) requesting that its attorneys be admitted to the amended protective order in this case and granted access to the protected information that will be discussed in its pending appeal before the D.C. Circuit. Perry Capital advises that the United States opposes its renewed motion, but that Fairholme consents to Perry Capital’s attorneys’ admissions to the protective order and access to the protected information currently lodged under seal before the D.C. Circuit.

Perry Capital’s request is reasonable. Because the D.C. Circuit’s November 3, 2015 order permits “[t]he parties [to] refer to the lodged supplement to the appellate record in their remaining briefs[.]” Perry Capital, No. 14-5243, Perry Capital would suffer extreme prejudice if counsel were denied access to the protected information lodged with the D.C. Circuit. If denied access, counsel for Perry Capital would be precluded from reviewing portions of Fairholme’s and the government’s respective legal memoranda, thus preventing Perry Capital from responding either in support or opposition to those parties’ legal arguments, and precluding Perry Capital’s counsel from using pertinent protected information on behalf of its client. In sum, without admission to the protective order and access to the protected information, Perry Capital would be denied the ability to fully prosecute its pending appeal in the D.C. Circuit.

In its renewed motion, counsel for Perry Capital represent that they are fully familiar with the provisions of this court's July 29, 2015 amended protective order and will abide by its provisions. The necessary declarations from Perry Capital's counsel are attached as Exhibit A to that renewed motion.

Accordingly, for abundant good cause shown, Perry Capital's renewed motion is **GRANTED**. By this order, Perry Capital's counsel are admitted to the protective order and **GRANTED IMMEDIATE ACCESS** to the protected information lodged with the D.C. Circuit in Perry Capital LLC v. Lew. A Second Amended Protective Order shall also be entered on this date.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge