

Deutsche Bank Nat'l Tr. Co. v. Morgan Stanley ABS Capital I Inc.

2022 N.Y. Slip Op. 33740
Decided Nov 1, 2022

Index Nos. 651959/2013 010

11-01-2022

DEUTSCHE BANK NATIONAL TRUST COMPANY, SOLELY IN ITS CAPACITY AS TRUSTEE FOR THE MORGAN STANLEY ABS CAPITAL I INC. TRUST, SERIES 2007-NC3, Plaintiff, v. MORGAN STANLEY ABS CAPITAL I INC., Defendant.

HON. ANDREA MASLEY PART JUSTICE

Unpublished Opinion

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY PART JUSTICE

The following e-filed documents, listed by NYSCEF document number (Motion 010) 385, 386, 387, 388, 389,390,391,392,393,394 were read on this motion to/for SEAL.

In motion sequence number 010, plaintiff Deutsche Bank National Trust Company, in its capacity as Trustee for the Morgan Stanley ABS Capital I Inc. Trusts Series 2007-NC1 and 2007-NC3 moves under Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause, to redact NYSCEF Doc. Nos. (NYSCEF) 355, 359, and 383¹ on the ground that these documents contain confidential information of third-party borrowers. Plaintiff's motion is unopposed. There is no indication that the press or public have an interest in this action.

¹ Publicly redacted copies of these documents are filed at NYSCEF 389-391.

NYSCEF 355 is unredacted excerpts from the deposition of Richard W. Payne, III, dated March 25, 2022. NYSCEF 355 contains loan numbers of third-party borrowers. Plaintiff seeks to redact the loan numbers in full.

2 *2

NYSCEF 359 is unredacted excerpts from the deposition of Steve Covington, dated January 15, 2021. NYSCEF 359 contains a third-party borrower's name which plaintiff seeks to redact.

NYSCEF 383 is the parties' supplemental joint statement of undisputed facts (the Supplemental Statement). The Supplemental Statement contains names, addresses, phone numbers, and loan numbers of third-party borrowers. Plaintiff seeks to redact the full names, addresses, phone numbers, and portions of the loan numbers.

"Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records." (*Mosallem v Berenson*, 76 A.D.3d 345, 348 [1st Dept 2010] [citations omitted].) However, the public right to access is not absolute and exceptions exist to shield the court documents from public view. (*Id.* at 349.)

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

"(a) [e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard."

3 "[T]he party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access" to the documents. (*Mosallem*, 76 A.D.3d at 349 [citations omitted].) The First Department has affirmed the sealing of records concerning financial information where there has not been a showing of relevant public interest in disclosure of the financing. (*See Dawson v White & Case*, *3 184 A.D.2d 246, 247 [1st Dept 1992].) For instance, in *Dawson v White & Case*, the First Department stated that the plaintiff appellant failed to show "any legitimate public concern, as opposed to mere curiosity, to counter-balance the interest of defendant's partners and clients in keeping their financial arrangement private." (*Id.* [internal quotation marks and citation omitted].)

As this court previously held on defendant's motion to redact certain documents (NYSCEF 399, Decision & Order [mot. seq. no. 009]), good cause exists to redact the addresses of third-party borrowers. (*See MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 NY Slip Op 30184[U], *10 [Sup Ct, NY County 2013].) The court finds good cause also exists to redact third-party borrowers' names and phone numbers, as this information is confidential and there is no showing of a legitimate public concern. (*See id.*, *8-9 [finding good cause to redact personal information including borrowers' names and dates of birth]; *Dawson*, 184 A.D.2d at 247.)

As the court previously decided (NYSCEF 399, Decision & Order [mot. seq. no. 010]), good cause also exists to redact the loan numbers, but only to the extent that borrowers' identities may be exposed. (*See MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], *13 [Sup Ct, NY County 2012].) The loan numbers in NYSCEF 355 are fully redacted while the loan numbers in NYSCEF 383 are partially redacted. Plaintiff shall revise its redactions in NYSCEF 355 to truncate borrower loan numbers only to the extent that they reveal the identity of a borrower.

4 Accordingly, it is *4

ORDERED that motion sequence number 010 is granted in part to the extent that, upon service of this Decision and Order upon him by movant, the County Clerk is directed to seal NYSCEF 355, 359, and 383; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that plaintiff shall file a new publicly redacted copy of NYSCEF 355 with revised redactions in accordance with this decision; and it is further

5 ORDERED that this order does not authorize sealing or redacting for purposes of trial. *5
