

**Federal Hous. Fin. Agency v Morgan Stanley ABS
Capital I Inc.**

2022 NY Slip Op 32944(U)

August 31, 2022

Supreme Court, New York County

Docket Number: Index No. 650291/2013

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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 FEDERAL HOUSING FINANCE AGENCY, AS
 CONSERVATOR FOR THE FEDERAL HOME LOAN
 MORTGAGE CORPORATION, ON BEHALF OF THE
 TRUSTEE OF THE MORGAN STANLEY ABS CAPITAL I
 INC. TRUST, SERIES 2007-NC1 (MSAC 2007-NC1) and
 DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
 TRUSTEE FOR THE MORGAN STANLEY ABS CAPITAL
 I INC, TRUST, SERIES 2007-NCI,

Plaintiffs,

- v -

MORGAN STANLEY ABS CAPITAL I INC.,

Defendant.

INDEX NO. 650291/2013

MOTION DATE _____

MOTION SEQ. NO. 010

**DECISION + ORDER ON
 MOTION**

-----X
 HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 320, 321

were read on this motion to/for

SEAL

Upon the foregoing documents, it is

In motion sequence number 010, defendant Morgan Stanley ABS Capital I Inc. moves under Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause, to redact NYSCEF Docs. Nos. (NYSCEF) 281, 282, 283, 285, and 301, and to seal NYSCEF 300 on the grounds that these documents contain confidential information of third-party borrowers.¹ Defendant's motion is unopposed. There is no indication that the press or public have an interest in this action.

¹ The court notes that defendant's sealing chart (NYSCEF 310) does not follow the Part 48 Procedures, because it does not include citations to applicable law or authority supporting good cause to redact or seal each document.

NYSCEF 281 is an unredacted copy of the Expert Rebuttal Report of James H. Aronoff, dated November 24, 2021. NYSCEF 281 contains loan numbers of third-party borrowers. Defendant seeks to redact the full loan numbers.

NYSCEF 282 is an unredacted copy of the Expert Report of Richard W. Payne, III, dated May 26, 2021. NYSCEF 282 contains addresses, occupations, employers, and loan numbers of third-party borrowers. Defendant seeks to redact this information.

NYSCEF 283 is an unredacted copy of the Expert Rebuttal Report of Richard W. Payne, III, dated November 24, 2021. NYSCEF 283 contains occupations, employers, and loan numbers of third-party borrowers. Defendant seeks to redact this information.

NYSCEF 285 is an unredacted copy of Trustee Responses and Objections to Defendant's First Set of Requests for Admissions, dated February 15, 2021. NYSCEF 285 contains a loan number of a third-party borrower. Defendant seeks to redact this loan number in full.

NYSCEF 301 is an unredacted copy of the Expert Report of Charles Grice, dated September 27, 2021. NYSCEF 301 contains addresses, occupations, and loan numbers of third-party borrowers. Appendix C to NYSCEF 301 also contains long lists of loan numbers. Defendant seeks to redact this information as well as what appears to be additional non-confidential information on pages 5-7 of Appendix C.

NYSCEF 300 is 200-page excerpted copy of the Suspicious Activity Investigations Database with redactions. According to Defendant, NYSCEF 300 was produced in this action, and the related action, *Deutsche Bank National Trust Company, solely in its capacity as trustee for the Morgan Stanley ABS Capital I Inc. Trust, Series 2007-NC3 v Morgan Stanley ABS Capital I Inc.* (Index No. 651959/2013, NYSCEF 307),

with the present redactions “because the database contains information that cannot be disclosed under the Bank Secrecy Act.” (NYSCEF 309, Cormack Aff ¶ 5, n 1.)

Defendant seeks to seal NYSCEF 300 with the existing redactions.

“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 AD3d 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.”

“[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 AD3d 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*, 184 AD2d 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 a preliminary matter, good cause exists to redact NYSCEF 282 and 301 insofar as they contain third-party borrower addresses. (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 NY Slip Op 30184[U], *10 [Sup Ct, NY County 2013] [finding good cause to seal witnesses' home addresses].) However, defendant's proposed redactions of third-party borrowers' employers and occupations in NYSCEF 282, 283, and 301, and full loan numbers in NYSCEF 281, 282, 283, 285 and 301 are overly broad. Defendant cites to *MBIA Ins. Corp. v Countrywide Home Loans, Inc.* to support these proposed redactions, but the court in *MBIA Ins. Corp.* denied a request to seal “information related to borrowers' occupations and employers . . . except to the extent that the description of borrowers' employment information is so specific as to reveal the identity of individual borrowers.” (2012 NY Slip Op 33147[U], *13 [Sup Ct, NY County 2012].) Similarly, the court found that borrowers' loan numbers should not be redacted in full, but rather truncated so that they could not be traced to a particular borrower. (*Id.* [citation omitted] [“Such a remedy will enable public access to, and understanding of, the particular loan-specific evidence submitted by the parties, without exposing the identity of third-party borrowers.”].)

This court agrees that the borrowers' employment information and loan numbers should be redacted only to the extent that borrower identities may be exposed. Defendant shall revise their redactions to truncate borrower loan numbers and redact employment-related information only to the extent that it reveals the identity of borrower.

Moreover, defendant's proposed redactions on pages 5-7 of Appendix C to NYSCEF 301 include information that could not be used to identify individual borrowers.

Furthermore, defendant has failed to demonstrate good cause to seal NYSCEF 300. In support of its request to seal NYSCEF 300 in its entirety, defendant merely states that "many of the cells contain sensitive third-party information." (NYSCEF 308, Memorandum of Law in Support at 1); see *also* *Cormack Aff ¶ 5*.) In addition, defendant failed to file a highlighted copy of NYSCEF 300 showing the court which information it believes is confidential in accordance with the Part 48 Procedures for the submission of sealing motions. Thus, defendant has not met its burden with respect to NYSCEF 307 (*Mosallem v Berenson*, 76 AD3d at 350), and its motion is denied without prejudice to the extent it seeks to seal this document.

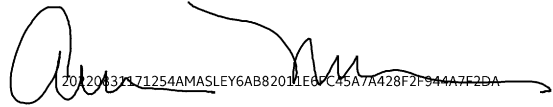
Accordingly, it is

ORDERED that motion sequence 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 Doc. Nos. 281, 282, 283, 285, and 301; Defendant may renew its request to seal NYSCEF 300 by August 24, 2022 or the temporary seal will be lifted; 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 defendant shall file new publicly redacted copies of NYSCEF 281, 282, 283, 285, and 301 with revised redactions in accordance with this decision; and it is further

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



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8/31/2022

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE