

China Dev. Indus. Bank v Morgan Stanley & Co. Inc.
2012 NY Slip Op 33874(U)
February 2, 2012
Supreme Court, New York County
Docket Number: 650957/2010
Judge: Melvin L. Schweitzer
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3. documents and communications concerning the CDIB Swap itself, including CDIB's execution of the May 2009 amendment;
4. documents concerning CDIB's familiarity and communications with the credit rating agencies, their models and their processes for rating U.S. mortgage-related securities like the CDIB Swap; and
5. documents concerning other investments CDIB made in U.S. mortgage-related securities like the CDIB Swap, including, among other things, documents reflecting due diligence, analyses, and financial performance.

There is no valid dispute that the documents sought by Morgan Stanley are material and necessary in the defense of this action (CPLR 3101). The court finds no merit in CDIB's claim that since Morgan Stanley allegedly has not complied with its own discovery obligation, CDIB should be excused from complying with Morgan Stanley's demands. In addition, the court refuses to try to determine to what extent, if any, CDIB has complied with Morgan Stanley's demands as CDIB invites the court to do.

In motion sequence 009, CDIB seeks to make public certain email correspondence which defendant Morgan Stanley wants sealed in accordance with a confidentiality order in this case. By agreement between the parties the court is requested to rule with respect to seven exhibits and the court will continue to deem the documents as confidential and not available to the public until its ruling is effective with respect to the documents. The documents, attached to the Affirmation of Jason C. Davis, dated November 14, 201, are identified as follows:

- Exh. 3: Email from Graham Jones of Morgan Stanley to Belinda Ghetti of S&P, et al., dated March 14, 2006.
- Exh. 5: Email from Brian Neer of Morgan Stanley to Elwyn Wong of S&P, dated May 20, 2006.
- Exh. 7: Email from Elwyn Wong of S&P to Brian Neer of Morgan Stanley, dated June 24, 2006.

Exh. 11: Email from Elwyn Wong of S&P to Shawn Stoval of Constantine Cannon, dated July 20, 2006.

Exh. 12: Email from Todd Jaeger of S&P to Graham Jones of Morgan Stanley, dated July 26, 2006.

Exh. 15: Email from Belinda Ghetti of S&P to Shawn Stoval of Constantine Cannon, dated August 16, 2006.

There is a broad constitutional presumption that the public as well as the press are entitled to access to court proceedings, and denying such access must be narrowly tailored to serve compelling objectives. *Danco Labs, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 (1st Dept 2000); *see also Applehead Pictures LLC v Perelman*, 80 AD3d 181, 191 (1st Dept 2010). Thus, with this in mind, the court is obligated to weigh the claimed basis for confidentiality against the public interest in accordance with 22 NYCRR § 216.1 (Section 216.1), which provides:

(a) Except 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 of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

(b) For the purposes of this rule, “court records” shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103 (a).

The First Department has recently provided the following guidelines for interpreting

Section 216.1 as follows:

Although the term “good cause” is not defined, “a sealing order should clearly be predicated upon a sound basis or legitimate need to take judicial action.” “A finding of ‘good cause’ presupposes that public access to the documents at issue

will likely result in harm to a compelling interest of the movant.” “Confidentiality is clearly the exception, not the rule,” and the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access.”

See Mosallem v Bergenson, 76 AD3d 345, 349 (1st Dept 2010) (citations omitted).

Applying these principles, the court concludes that on balance there is not good cause to seal exhibits 3, 5, 7, 11, 12, 15 and 19.

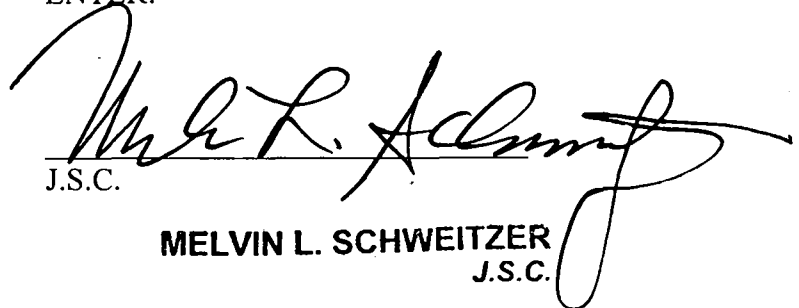
Accordingly, it is

ORDERED that Morgan Stanley’s motion to compel is granted, and CDIB shall produce a copy of all responsive documents not already produced within thirty days of the entry of this decision and order, and to the extent CDIB asserts that it has already produced responsive documents it shall identify them by bates number; and it is further

ORDERED that within thirty days of the entry of this decision and order CDIB may treat the documents identified as exhibits 3, 5, 7, 11, 12, 15 and 19 as not sealed from the public.

Dated: February 2, 2012

ENTER:


J.S.C.
MELVIN L. SCHWEITZER
J.S.C.