

<b>HSBC Bank USA, N.A. v PHH Mtge. Corp.</b>
2021 NY Slip Op 31480(U)
April 29, 2021
Supreme Court, New York County
Docket Number: 655868/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

*Justice*

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HSBC BANK USA, N.A.,

Plaintiff,

- v -

PHH MORTGAGE CORPORATION,

Defendant.

-----X

INDEX NO. 655868/2020

MOTION DATE 03/01/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for SEAL.

In motion sequence number 002, plaintiff HSBC Bank USA, N.A. and defendant PHH Mortgage Corporation jointly move to seal NYSCEF Doc. Nos. 38, 39, 40, 41, 42, 43, 44, 45 and 46, which contain, respectively, unredacted copies of the complaint and exhibits 1, 3, 4, 7, 9, 10, 12, and 13 to the complaint.

NYSCEF Doc. No. 38 contains the complaint, from which the parties seek to redact the dollar amounts of fees and rates paid between the parties, as well as mention of specific contractual provisions regarding performance requirements, indemnification and liability, and dispute resolutions. NYSCEF Doc. No. 39, Exhibit 1 to the complaint, contains the parties' Subservicing Agreement from which the parties seek to redact the dollar amounts of fees and rates paid between the parties, as well the section of the agreement pertaining to performance requirements, certain provisions regarding indemnification and liability, and the section pertaining to dispute resolution. NYSCEF Doc. No. 40, Exhibit 3 to the complaint, contains Exhibit B to the Subservicing Agreement detailing the scope of services under that agreement which the parties seek

to seal in its entirety. NYSCEF Doc. No. 41, Exhibit 4 to the complaint, contains Exhibit D to the Subservicing Agreement detailing pricing under that agreement from which the parties seek to redact the dollar amounts of fees and rates paid between the parties. NYSCEF Doc. No. 42, Exhibit 7 to the complaint, contains the parties' Origination Assistance Agreement from which the parties seek to redact the dollar amounts of fees and rates paid between the parties, as well as the section of the agreement pertaining to performance requirements, certain provisions regarding indemnification and liability, and the section pertaining to dispute resolution. NYSCEF Doc. No. 43, Exhibit 9 to the Complaint, contains Exhibit B to the Origination Assistance Agreement detailing the scope of services under that agreement which the parties seek to seal in its entirety. NYSCEF. Doc. No. 44, Exhibit 10 to the complaint, contains Amendment No. 1 to the Subservicing Agreement from which the parties seek to redact the dollar amount of a payment between the parties. NYSCEF Doc. No. 45, Exhibit 12 to the complaint, contains meeting minutes from the parties' August 14, 2015 meeting concerning the management of foreclosure law firms. The parties seek to redact this document in its entirety except the last page of the document from which the complaint quotes. NYSCEF Doc. No. 46, Exhibit 13 to the complaint, contains a mortgage system note from which the parties seek to redact the names, addresses, and phone numbers of nonparty individual borrowers.

With respect to NYSCEF Doc. Nos. 38-44, the parties argue that disclosure of the scope of services, certain contractual provisions, and specific fees and rates paid would harm the parties' competitive advantage in the market as well as harm the parties' position in future negotiations regarding these terms. With respect to NYSCEF

Doc. No. 45, the parties argue that disclosure of the confidential business strategy would similarly harm the parties' competitive advantage. With respect to NYSCEF Doc. No. 46, the parties argue that disclosure of personally identifying information would impinge on the privacy rights of the non-litigant individual borrowers and that this disclosure would not serve the public interest.

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.”

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosalleh v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010] [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information” and that “sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.” (*D'Amour v Ohrenstein & Brown*, 17 Misc 3d 1130[A], 1130A, 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].)

Here, the parties seek to redact sensitive and nonpublic business and financial information that if disclosed would confer unearned insight and advantages upon the parties' competitors. To the extent that the parties seek to file the proposed documents under seal because those documents contain sensitive business and financial information the disclosure of which would cause competitive harm, plaintiffs have demonstrated that good cause exists. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].)

Additionally, this motion is unopposed, and there has been no showing of legitimate public concern to counterbalance the parties' interest in keeping private their sensitive and nonpublic business and financial information. (See *Dawson*, 184 AD2d at 247 [1st Dept 1992].) Furthermore, with respect to NYSCEF Doc. Nos. 38, 39, 41, 42, 44, and 46, the parties seek only to narrowly redact those portions of the documents containing sensitive and nonpublic information. With respect to NYSCEF Doc. No. 45, which the parties seek to redact almost in its entirety, the proposed redactions nonetheless pertain to confidential business strategy. NYSCEF Doc. Nos. 40 and 43 also contain sensitive, nonpublic business and financial terms the disclosure of which would cause competitive harm and for which good cause exists to seal; however, these documents also contain other terms that are not similarly sensitive. To the extent that the parties assert that these documents must be completely sealed and not simply redacted, the argument is unavailing. Redaction will "strike the proper balance." (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 9 [1st Dept 2010].)

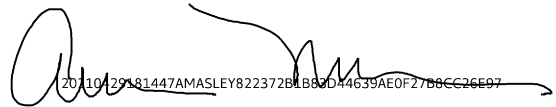
Accordingly, it is

ORDERED that the motion is granted to the extent that the parties shall file a copy of NYSCEF Doc. Nos. 38-46 redacted as addressed above to be publicly accessible and shall file an unredacted version under seal; and it is further

ORDERED that the New York County Clerk, upon service to him of this order, is directed to permanently seal NYSCEF Doc. Nos. 38-46; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed document with access to be granted only to authorized court personnel and designees, the parties and counsel of record in this 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 any further publicly available filing in this action containing the sealed or redacted portions of NYSCEF Doc. Nos. 38-46 or describing the substance thereof, shall be filed in redacted form on the docket and with the unredacted form submitted under seal.



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4/29/2021  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: