

Matter of Deutsche Bank Natl. Trust Co.
2021 NY Slip Op 31566(U)
May 7, 2021
Supreme Court, New York County
Docket Number: 654208/2018
Judge: Margaret A. Chan
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49

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IN THE MATTER OF THE APPLICATION OF DEUTSCHE BANK NATIONAL TRUST COMPANY, SOLELY IN ITS CAPACITY AS TRUSTEE OF THE HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2006-9, F,

INDEX NO. 654208/2018
MOTION DATE 12/24/2020, 12/24/2020, 01/21/2021

Petitioner,

MOTION SEQ. NO. 003 004 005

- v -

For Judicial Instructions under CPLR Article 77 Concerning Potential Approval of Proposed Settlement Agreement.

DECISION + ORDER ON MOTION

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HON. MARGARET PUI CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 161, 162, 163, 164 were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 004) 165, 166, 167, 177, 178 were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 005) 179, 180, 181 were read on this motion to/for SEAL

These motions (sequence nos. 003, 004, and 005) seeking to seal certain documents and portions of documents, which are unopposed, are consolidated for disposition.

Under New York law, there is a presumption that the public is entitled to access to judicial proceedings and court records (Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 501 [2d Dept 2007]; Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V., 28 AD3d 322, 324 [1st Dept 2006], lv denied 10 NY3d 705 [2008]). The public right to access, however, is not absolute (Danco Labs. v Chemical Works of Gedeon Richter, 274 AD2d 1, 8 [1st Dept 2000]), and a court is empowered to seal or redact court records pursuant to section 216.1 (a) of the Uniform Rules for Trial Courts (22 NYCRR 216.1 [a]).

1 The unredacted documents were filed temporarily under seal pending the determinations of the motions.

That rule provides that:

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 interest of the public as well as of the parties

(22 NYCRR 216.1 [a]).

“Confidentiality is clearly the exception, not the rule” (*Matter of Hoffman*, 284 AD2d 92, 93-94 [1st Dept 2001]), and the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access (*Mancheski*, 39 AD3d at 502). At the same time, however, sealing has been found to be appropriate to preserve the confidentiality of materials which involve internal finances of a party which are of minimal public interest (*see D’Amour v Ohrenstein & Brown, LLP*, 17 Misc3d 1130[A] [NY Sup Ct. NY County 2007]). An order sealing court documents on grounds of privacy is often appropriate where records to be sealed concern the identities of, or impinge on the privacy rights of, non-parties (*see, e.g., MBIA Ins Corp. v Countrywide Home Loans, Inc.*, 2013 WL 450030 [NY Sup Ct. NY County 2013]. citing *Mancheski*, 39 AD3d at 50).

In the business context, courts permit records to be sealed when trade secrets are involved or when disclosure of information contained in documents “could threaten a business’s competitive advantage” (*Mosallem v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010]). Moreover, sealing has been allowed in the absence of “any legitimate public concern, as opposed to mere curiosity, to counter-balance the interest [a business’s] partners and clients in keeping their financial arrangement private” (*Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992]).

In motion sequence no. 003, Ambac Assurance Company (“Ambac”) seeks to redact certain parts of Exhibits 13 and 14 (NYSCEF # 138, 139) attached to the Affirmation of Peter W. Tomlinson dated December 15, 2020 (NYSCEF #125) asserting that these Exhibits contain information from which the non-party borrowers may be identified. A review of these documents, however, reveals that the information sought to be redacted does not appear to contain any identifying information (*compare MBIA Ins Corp. v Countrywide Home Loans, Inc.*, 2013 WL at *9 [permitting redaction of personal identifying information of third-party borrowers including names, home addresses, social security numbers and dates of birth]). Accordingly, Ambac’s motion to seal is denied without prejudice to renewal on good cause shown, including specifying any information that should be redacted on the grounds that it would enable the identification of the borrowers.

In motion sequence no. 004, petitioner Deutsche Bank National Trust Company (“DBNTC”) moves to seal Exhibits 26, 27, 28, and 29 (NYSCEF ## 151-154) attached to Tomlinson’s Affirmation (NYSCEF #125), which were designated as Confidential pursuant to the Stipulation and Order for Production and Exchange of Confidential Information (“Confidentiality Stipulation”) entered on June 21, 2021 (NYSCEF # 71). DBNTC asserts that these Exhibits, which are comprised of expert memoranda prepared for this proceeding and deposition transcripts of the authors of the memorandum should be sealed as they “reflect the analyses of transaction documents in this case and the issues within those transaction documents [and that] [t]hose issues are potentially relevant in other pending litigation concerning other trusts for which DBNTC serves as trustee that have different transaction documents than the ones in this case. Due to the other pending litigation, DBNTC believes that if the memoranda and deposition transcripts in this case are disclosed, it could damage DBNTC’s business interests with respect to those other trusts and put DBNTC at a competitive disadvantage” (NYSCEF # 166, ¶ 6).

Similarly, in motion sequence no. 005, DBNTC seeks to seal portions of pages 10 and 12 of the Trustee’s Reply Memorandum (NYSCEF # 170), asserting that these pages contain information designated as confidential under the Confidentiality Stipulation, and refer to confidential documents which are the subject of motion sequence 004, that is Exhibits 26, 27, 28, 29.

DBNTC’s motions are denied without prejudice to renewal. As a preliminary matter, designation of information as confidential in a Confidentiality Stipulation is not a basis for finding good cause to seal (*Angiollio v Christie’s Inc.*, 64 Misc3d 500, 524 [Sup Ct. NY Co. 2019][noting that “the mere designation of information as confidential does not guarantee that such information will be kept sealed [and that][g]ood cause must still be shown”). And, with regard to Exhibits 26, 27, 28, and 29, while courts have permitted sealing when disclosure of confidential information may disadvantage a party’s competitive advantage (*see New Penn Fin., LLC v 360 Mortg. Grp., LLC*, 2019 WL 1405349, at *2 [NY Sup Ct NY Co. 2019], in this case such concerns do not warrant the wholesale sealing of the documents at issue (*Danco Labs*, 274 AD2d at 8 [when sealing is authorized a document need not be withheld from the public entirety as “redaction is a viable option, predicated upon the required level of need”]; *Landberg v. National Enterprises*, 2007 WL 2176343 [NY Sup Ct NY Co. 2007] [rejecting “wholesale sealing” of records]). As for the redactions on pages 10-12 of the Reply Memorandum, DBNTC has not specified a basis for sealing of this material, except that it is subject to the Confidentiality Stipulation and refers to Exhibits 26, 27, 28, and 29.

In view of the above, it is

ORDERED that the motions to seal are denied without prejudice to renewal by motion made within 30 days of efileing this order, which are supported by specific

proposed redactions consistent with this decision and order and further explanations of good cause shown; and it is further

ORDERED that the documents sought to be sealed shall remain under seal for 45 days after e-filing this order, and in the absence of motion(s) to renew the request(s) to seal, an order will be issued unsealing the subject documents.

5/07/21
DATE


MARGARET P. Y. CHAN, 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