

Cascade Funding, LP-Series 6 v Bancorp Bank
2022 NY Slip Op 31105(U)
April 5, 2022
Supreme Court, New York County
Docket Number: Index No. 651841/2020
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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CASCADE FUNDING, LP - SERIES 6	INDEX NO.	<u>651841/2020</u>
Plaintiff,	MOTION DATE	<u>N/A, N/A</u>
- v -	MOTION SEQ. NO.	<u>001 002</u>
THE BANCORP BANK,		
Defendant.		

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 151, 152, 154, 155, 156, 157, 249, 250 were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 245 were read on this motion to SEAL.

Defendant The Bancorp Bank (“Bancorp”) moves for an order sealing and/or redacting of portions of certain Exhibits filed by Plaintiff Cascade Funding, LP—Series 6 (“Cascade”) in connection with its summary judgment motion. Defendant’s motion is **granted**.

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing “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” (22 NYCRR § 216.1[a]; *see also MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 WL 450030 at *9 [Sup Ct NY County Jan. 3, 2013] [Bransten, J.]).

The Appellate Division has emphasized that “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]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). Furthermore, “[s]ince confidentiality is the exception, the court must make an independent determination of whether to seal court records in whole or in part for ‘good cause’” (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]). “[T]he party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

In Motion Sequence Number 001, Defendant seeks to redact portions of the following documents: (1) the Deposition Transcript of Damian Kozlowski (“Kozlowski Transcript,” NYSCEF 46); (2) the Deposition Transcript of Paul Frenkiel (“Frenkiel Transcript,” NYSCEF 96); (3) the Expert Report of Jeffrey Lavine on behalf of Bancorp (the “Lavine Report,” NYSCEF 59); (4) Cascade’s memorandum of law in support of its summary judgment motion (the “SJ Brief,” NYSCEF 32); and (5) Cascade’s Rule 19-a statement of facts (“Statement of Facts,” NYSCEF 33) on the basis that the parties designated transcripts containing testimony of its witnesses as “Confidential” or “Highly Confidential” and that there is confidential and proprietary information in the Deposition Transcripts concerning Bancorp’s business strategies and investment decisions. As such, Bancorp seeks to seal the confidential portions of the

Deposition Transcripts that have been quoted and/or summarized in the Lavine Report, the SJ Brief, and the Statement of Facts. Further, Defendant argues that the redacted information is proprietary, as it involves the reasoning and strategy about Bancorp's development of its securitization products, its investment decisions, and decisions concerning the structure of its business lines, the disclosure of which would harm Bancorp's competitive standing.

In Motion Sequence Number 002,¹ Defendant seeks to redact identical or nearly identical documents and/or information as referenced above, which was filed in Defendant's opposition to Plaintiff's summary judgment motion. In connection with this motion, Defendant seeks to redact the following: (1) the Deposition Transcript of Damian Kozlowski ("Kozlowski Transcript," NYSCEF 179); (2) the Deposition Transcript of Paul Frenkiel ("Frenkiel Transcript," NYSCEF 172); (3) the Expert Report of Jeffrey Lavine on behalf of Bancorp (the "Lavine Report," NYSCEF 165); and (4) Bancorp's Rule 19-a Counter-Statement of Material Facts (the "Counter-Statement of Facts," NYSCEF 159).

Plaintiff opposes this motion, arguing that Bancorp's unsubstantiated assertion of competitive harm is insufficient to overcome the presumption of public access to court records, particularly where although Bancorp's business historically included securitizing certain mortgage loans it originated, Bancorp discontinued this line of business in the third quarter of 2020. As set forth in the reply brief requested by this Court, Defendant argues that this information remains relevant to Bancorp's current and future business strategies.

¹ The Court notes that although the Order to Show Cause in Mot. Seq. 002 was not entered, Mot. Seq. 001 and 002 are nearly identical, and the Court considered Plaintiff's opposition to Mot. Seq. 001 in rendering its decision on both motions.

This Court has reviewed the proposed redactions and finds that they comport with the applicable sealing standards as laid out in *MBIA* and its progeny in that they contain information which is proprietary, as it involves the reasoning and strategy about Bancorp's development of its securitization products, its investment decisions, and decisions concerning the structure of its business lines, the disclosure of which would harm Bancorp's competitive standing (*see Mosallem v Berenson*, 76 AD3d 345, 350-51 [1st Dept 2010] ["In the business context, we have allowed for sealing where trade secrets are involved, or where the release of documents could threaten a business's competitive advantage"]).

Finally, Defendant has proposed and justified targeted redactions that satisfy the requirements of 22 NYCRR § 216.1 (a).

Accordingly, it is:

ORDERED that Motion Seq. No. 001 and Motion Seq. No. 002 are **granted**; it is further

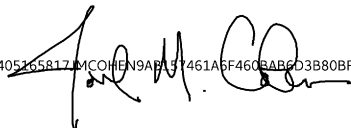
ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 112, 114, 116, 118, 120, 159, 165, 172, 179, 221, 223, 225, and 227 in their current, redacted form; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers NYSCEF 32, 33, 46, 59, 96, 111, 113, 115, 117, 119, 220, 222, 224, and 226 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel.

ORDERED as it related to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be

filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redaction of any documents or evidence to be offered at trial.

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JOEL M. COHEN, J.S.C.

4/5/2022
DATE

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