

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

2022 NY Slip Op 33738(U)

November 1, 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
NEW YORK COUNTY**

PRESENT: HON. ANDREA MASLEY PART 48

Justice

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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,

INDEX NO. 650291/2013

MOTION DATE N/A

MOTION SEQ. NO. 011

Plaintiff,

**DECISION + ORDER ON
MOTION**

- v -

MORGAN STANLEY ABS CAPITAL I INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 378, 379, 380, 381, 382, 383, 384, 385, 386, 387

were read on this motion to/for SEAL.

In motion sequence number 011, plaintiff Deutsche Bank National Trust Company, in its capacity as Trustee for the Morgan Stanley ABS Capital I Inc. Trusts Series 2007-NC1 and 2007-NC3 moves under Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause, to redact NYSCEF Doc. Nos. (NYSCEF) 348, 352, and 376¹ on the grounds that these documents contain confidential information of third-party borrowers. Plaintiff's motion is unopposed. There is no indication that the press or public have an interest in this action.

¹ Publicly redacted copies of these documents are filed at NYSCEF 382-384.

NYSCEF 348 is unredacted excerpts from the deposition of Richard W. Payne, III, dated March 25, 2022. NYSCEF 348 contains loan numbers of third-party borrowers. Plaintiff seeks to redact the loan numbers in full.

NYSCEF 352 is unredacted excerpts from the deposition of Steve Covington, dated January 15, 2021. NYSCEF 352 contains a third-party borrower's name which plaintiff seeks to redact.

NYSCEF 376 is the parties' supplemental joint statement of undisputed facts (the Supplemental Statement). The Supplemental Statement contains names, addresses, phone numbers, and loan numbers of third-party borrowers. Plaintiff seeks to redact the full names, addresses, phone numbers, and portions of the loan numbers.

"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 this court previously held on defendant’s motion to redact certain documents (NYSCEF 405, Decision & Order [mot. seq. no. 010]), good cause exists to redact the addresses of third-party borrowers. (See *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 NY Slip Op 30184[U], *10 [Sup Ct, NY County 2013].) The court finds good cause also exists to redact third-party borrowers’ names and phone numbers, as this information is confidential, and there is no showing of a legitimate public concern. (See *id.*, *8-9 [finding good cause to redact personal information including borrowers’ names and dates of birth]; *Dawson*, 184 AD2d at 247.)

As the court previously decided (NYSCEF 405, Decision & Order [mot. seq. no. 010]), good cause also exists to redact the loan numbers, but only to the extent that borrowers’ identities may be exposed. (See *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], *13 [Sup Ct, NY County 2012].) The loan numbers in NYSCEF 348 are fully redacted while the loan numbers in NYSCEF 376 are partially redacted. Plaintiff shall revise its redactions in NYSCEF 348 to truncate borrower loan numbers only to the extent that they reveal the identity of a borrower.

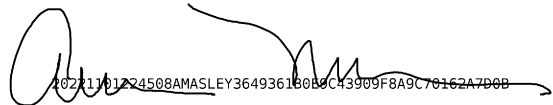
Accordingly, it is

ORDERED that motion sequence number 011 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 348, 352, and 376; 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 plaintiff shall file a new publicly redacted copy of NYSCEF 348 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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11/1/2022

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: