

**Deutsche Bank Natl. Trust Co. v Morgan Stanley
ABS Capital I Inc.**

2022 NY Slip Op 33971(U)

November 25, 2022

Supreme Court, New York County

Docket Number: Index No. 651959/2013

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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DEUTSCHE BANK NATIONAL TRUST COMPANY,
SOLELY IN ITS CAPACITY AS TRUSTEE FOR THE
MORGAN STANLEY ABS CAPITAL I INC. TRUST,
SERIES 2007-NC3

Plaintiff,

- v -

MORGAN STANLEY ABS CAPITAL I INC.,

Defendant.

INDEX NO. 651959/2013

MOTION DATE _____

MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 405, 406, 407, 408, 409, 410, 411, 412, 413

were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In motion sequence number 012, defendant moves, pursuant to Section 216.1(a) of the Uniform Rules for the Trial Courts, to seal and redact NYSCEF Doc. No. (NYSCEF) 307¹ on the grounds that NYSCEF 307 contains third-party borrowers' and other third parties' personal identifying information, identifying employment information, and loan numbers. Defendant previously moved in motion sequence number 009 to seal NYSCEF 307 in its entirety. The court denied sealing of the entire document and gave defendant until August 24, 2022 to renew its request. Motion sequence number 012 is unopposed. There is no indication that the press or public have an interest in this action.

¹ A redacted copy of NYSCEF 307 is publicly filed at NYSCEF 409.
651959/2013 DEUTSCHE BANK NATIONAL vs. MORGAN STANLEY ABS
Motion No. 012

NYSCEF 307 is a 200-page excerpted copy of the Suspicious Activity Investigations Database with redactions. According to defendant, NYSCEF 307 was produced in this action and the related action, *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), Deutsche Bank National Trust Company, as Trustee for the Morgan Stanley ABS Capital I Inc., Trust, Series 2007-NCI v. Morgan Stanley ABS Capital I Inc.* (Index No. 650291/2013, NYSCEF 300), with the present redactions “because the database contains information that cannot be disclosed under the Bank Secrecy Act.”² (NYSCEF 407, Cormack Aff ¶ 5, n 1.) Defendant seeks to further redact third-party borrowers’ and other third parties’ identifying information, including names, addresses, phone numbers, dates of birth, and social security numbers, as well as certain employment-related information, and portions of third party-borrowers’ loan numbers. (*Id.* ¶ 5.)

“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,

² The court does not make any determination on this motion as to whether any redactions made pursuant to the Bank Secrecy Act are necessary or proper.

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. (*Mosalem*, 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 an initial matter, defendant need not seek permission from the court to redact confidential person information as set forth in Rule 202.5(e)(1) of the Uniform Civil Rules for the Supreme Court & the County Court, to the extent permitted by that rule, including any social security numbers, birthdates, or bank account numbers. Defendant shall review this rule and determine whether it has properly redacted information in accordance with it. For example, Uniform Rule 202.5(e)(1)(ii) provides that confidential personal information includes “the date of an individual's birth, except the year thereof.” (Emphasis added.) Since birth years are redacted in NYSCEF 307, it must be revised.

Second, good cause exists to redact the other information that defendant seeks to redact in NYSCEF 307. As the court previously held on defendant's motion to redact certain documents (see NYSCEF 399, Decision and Order [mot. seq. no. 009]), 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].) Moreover, as the court previously held on plaintiff's motion to redact certain documents (NYSCEF 416, Decision and Order [mot. seq. no. 010]), good cause exists to redact third-party borrowers' names and phone numbers. (See *MBIA Ins. Corp.*, 2013 NY Slip Op 30184[U] at *8-9.) Good cause also exists to redact third-party borrowers' employers and occupations to the extent this information reveals the identity of those borrowers. (See *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], *13 [Sup Ct, NY County 2012].) Additionally, the court finds that good cause exists to redact such information as to other individuals. Finally, as the court previously decided (NYSCEF 399, Decision & Order [mot. seq. no. 009]), good cause also exists to redact the loan numbers to the extent that borrowers' identities may be exposed. (See *MBIA Ins. Corp.*, 2012 NY Slip Op 33147[U], *13.)

The court finds defendant has properly tailored its redactions of information pertaining to non-parties in NYSCEF 307, to protect the identities of those individuals with the exception of the confidential personal information as discussed above.

Accordingly, it is

ORDERED that motion sequence number 012 is granted; and it is further

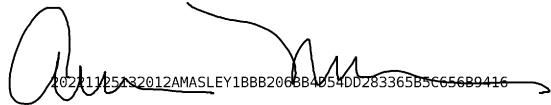
ORDERED, that the New York County Clerk, upon service to him of this order, shall permanently seal NYSCEF 307 and 410; and it is further

ORDERED that the New York County Clerk shall restrict access to the sealed documents (NYSCEF 307 and 410) 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 defendant shall refile the publicly redacted document (NYSCEF 409) in compliance with Uniform Rule 202.5(e); and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



11/25/2022
DATE

ANDREA MASLEY, 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