

HSBC Bank USA, N.A. v PHH Mtge. Corp.

2023 NY Slip Op 30947(U)

March 26, 2023

Supreme Court, New York County

Docket Number: Index No. 655868/2020

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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HSBC BANK USA, N.A.,

Plaintiff,

- v -

PHH MORTGAGE CORPORATION,

Defendant.

INDEX NO. 655868/2020

MOTION DATE _____

MOTION SEQ. NO. 005 007 008

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 239, 240, 241, 242, 243, 247, 249

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 279, 280, 281, 282, 299, 304

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 295, 296, 297, 298, 300

were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 005, defendant moves, by order to show cause, to seal NYSCEF Doc. Nos. (NYSCEF) 216 and 217 and to redact NYSCEF 196-210, 236, and 237¹, pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. In motion sequence number 007, plaintiff moves, by order to show cause, to redact NYSCEF 274, 275, and 252.² In motion sequence number 008, defendant

¹ Publicly redacted copies of these documents are filed at NYSCEF 219-233, 235, and 238.

² Publicly redacted copies of these documents are filed at NYSCEF 276-278.

moves, by order to show cause, to seal NYSCEF 284 and redact NYSCEF 287, 291, and 294.³ The motions are unopposed. There is no indication that the press or public have an interest in these matters.

Motion Sequence Number 005

NYSCEF 205 is the Subservicing Agreement between plaintiff and defendant dated May 3, 2012 (Subservicing Agreement.) NYSCEF 208 is the Origination Assistance Agreement between plaintiff and defendant dated May 3, 2012 (Origination Assistance Agreement.) This court already held that these documents could be filed with the same redactions that plaintiff now seeks. (NYSCEF 62, Decision and Order dated April 29, 2021 [April 29 Order].)

NYSCEF 237 is defendant's memorandum of law in support of its motion for summary judgment. Defendant seeks to redact references to redacted information in NYSCEF 205, the Subservicing Agreement, as well as amounts of fees and rates paid or payable between plaintiff and defendant, and contractual provisions containing performance metrics.

NYSCEF 216 is an excerpt from a loan file and NYSCEF 217 is a comment log concerning the servicing of the same borrower's loan. Defendant seeks to file these documents entirely under seal.

NYSCEF 196-204 contain excerpts from depositions. Defendant seeks to redact addresses of individuals, the amounts of fees and rates paid or payable between plaintiff and defendant, and contractual provisions containing performance metrics cited in these excerpts.

³ Publicly redacted copies of these documents are filed at NYSCEF 286, 292, and 293.
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Motion No. 005 007 008

NYSCEF 206 is Exhibit C to the Subservicing Agreement. NYSCEF 207 is Attachment C-2 to the Subservicing Agreement. NYSCEF 209 and 210 are letter agreements between plaintiff and defendant dated September 17, 2015 and January 26, 2017 respectively. Defendant seeks to redact amounts of fees and rates paid or payable between plaintiff and defendant as well as contractual provisions containing performance metrics from these documents. Plaintiff also seeks to redact the names of experts in NYSCEF 209.

NYSCEF 236 is defendant's statement of material facts. Defendant seeks to redact amounts of fees and rates paid or payable between plaintiff and defendant as well as contractual provisions containing performance metrics.

Motion Sequence Number 007

NYSCEF 275 is plaintiff's memorandum of law in opposition to defendant's motion for partial summary judgment. Plaintiff seeks to redact references to provisions that have been redacted in NYSCEF 205, the Subservicing Agreement, as well as amounts of fees and rates paid or payable between plaintiff and defendant, and contractual provisions containing performance metrics. Additionally, while plaintiff does not specifically point to these documents in its papers, plaintiff proposed redactions of references to provisions in NYSCEF 16, Exhibit D to the Subservicing Agreement, and an amount of fees paid by HSBC to PHH, which this court already permitted redaction of in NYSCEF 12, the Complaint. (NYSCEF 62, April 29 Order.)

NYSCEF 274 is plaintiff's statement of material facts and counterstatement to defendant's statement of material facts. Plaintiff seeks to redact amounts of fees and

rates paid or payable between plaintiff and defendant, and contractual provisions containing performance metrics from this document.

NYSCEF 252 is a deposition transcript. Plaintiff seeks to redact the home address of a witness from this document.

Motion Sequence Number 008

NYSCEF 291 is defendant's reply memorandum of law in further support of its motion for partial summary judgment. Defendant seeks to redact references to redacted information in NYSCEF 205, the Subservicing Agreement, as well as amounts of fees and rates paid or payable between plaintiff and defendant.

NYSCEF 294 is defendant's reply to plaintiff's counterstatement to defendant's statement of material facts and response to plaintiff's statement of material facts. Defendant seeks to redact references to provisions redacted in NYSCEF 205, the Subservicing Agreement, as well as amounts of fees and rates paid or payable between plaintiff and defendant, and contractual provisions containing performance metrics from this document.

NYSCEF 284 is an excerpt from a loan file. Defendant seeks to file NYSCEF 284 under seal.

NYSCEF 287 is a deposition transcript. Defendant seeks to redact the home address of a witness from this document.

Discussion

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) 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 interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

“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 A.D.3d 345, 348 [1st Dept 2010] [citations omitted].) The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

In the business context, courts have sealed records where the disclosure of documents “could threaten a business's competitive advantage.” (*Mosallem*, 76 AD3d at 350 [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.” (*D'Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

Plaintiff and defendant seek to redact the same categories of information in these motions: (1) information of individual nonparties; (2) amounts of fees and rates paid or payable between HSBC and PHH; (3) contractual provisions showing contractual

performance metrics; and (4) information from documents which this court previously permitted redaction of. Plaintiff references defendants' papers in motion sequence number 005 in support of its own motion to seal.

First, the court addresses the redaction of nonparty information. The parties have demonstrated good cause to redact home addresses of deponents in NYSCEF 196, 197, and 199-204, 252, and 287, as this information could infringe on individuals' privacy and is of minimal public interest. (*Mancheski v Gabelli Grp. Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007].) However, defendant has not demonstrated good cause to redact the names of "subject matter experts appointed by the parties" in NYSCEF 209. Defendant fails to provide any explanation as to why the names of experts are confidential, other than the fact that they are nonparties. The court gives defendant a final opportunity to make such a showing by submitting an affidavit supplementing its motion.

The court also finds that defendant has demonstrated good cause to seal NYSCEF 216, 217, and 284. While these documents contain information that is not confidential, they contain a significant amount of sensitive information about individual nonparty borrowers, including comments on the borrower's loan and status, and identifying information and are of minimal public interest. Therefore, the court finds sealing of these documents proper.

Second, the parties have demonstrated good cause to redact the amounts of fees and rates paid or payable between HSBC and PHH, and contractual provisions

showing performance metrics in NYSCEF 206, 207, 209,⁴ and 210, and references thereto in NYSCEF 198, 201, 202, 236, 237, 274, 275, 291, and 294⁵. In support of its motion 005, defendant provides the affidavit of Curtis Schares, Vice President of Ocwen Financial Corporation, which acquired defendant in 2018. (NYSCEF 243, Schares aff ¶¶ 1-2.) Schares explains in his affidavit that these “terms . . . are often vigorously negotiated when forming a servicing agreement” (*id.* ¶ 8) and “[p]ublic disclosure of these contractual provisions could allow other market participants and competitors to gain an understanding as to what terms the parties were previously willing to agree and insist on the same or more onerous obligations in future negotiations with the parties.” (*id.* ¶ 9.) Thus, defendant has demonstrated that these terms and numbers, if revealed, could put defendant at a competitive disadvantage. (*Mosallem*, 76 AD3d at 350 [citations omitted].) Moreover, there has been no showing of legitimate public concern in the terms of these business dealings (*see Dawson*, 184 AD2d at 247 [1st Dept 1992]), and the redactions requested by both parties on all three motions are narrowly tailored to protect the business terms and payment information. (*See Danco Lab, Ltd.*, 274 AD2d at 6.)

Finally, plaintiff may file copies of the Subservicing Agreement (NYSCEF 205) and Origination Assistance Agreement (NYSCEF 208) with the same redactions this

⁴ Defendant does not redact a number on page 6 of its publicly redacted copy of NYSCEF 209, that it does highlight in the sealed NYSCEF 209. To the extent defendant seeks to maintain this number under seal, it must refile NYSCEF 232 with this redaction.

⁵ The court notes that NYSCEF 202 contains proposed redactions of amounts of fees and rates, although defendant does not address this in its chart or papers on this motion. However, because the redacted figures in NYSCEF 202 appear to be from the redacted portions of NYSCEF 206, 207, 209, and 210, the court permits them.

court previously permitted. (NYSCEF 62, April 29 Order.) Additionally, the parties may redact quotations and references to information that is redacted in NYSCEF 205 in NYSCEF 237, 275, 291, and 294. Plaintiff may also redact from NYSCEF 275 information from redactions in NYSCEF 12 and 16. However, plaintiff includes on page 6 a redaction of a definition that is contained in Exhibit A to the Subservicing Agreement, which is not filed under seal or with redaction. (NYSCEF 14 at 13.) Thus, plaintiff must re-file NYSCEF 275 without this redaction

Accordingly, it is

ORDERED that motion sequence numbers 005 and 007 are granted in part; and it is further

ORDERED that motion sequence number 008 is granted; and it is further

ORDERED that the New York County Clerk, upon service to him of his order, shall permanently seal NYSCEF 196-208, 210, 216, 217, 236, 237, 252, 274, 275, 284, 287, 291, and 294; and it is further

ORDERED that within 10 days of this order, defendant must either file a copy of NYSCEF 232 without redaction of experts' names or file an affirmation explaining the basis for such redactions in accordance with this decision; and it is further

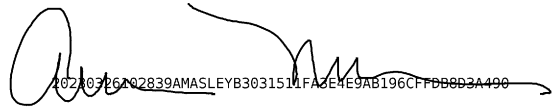
ORDERED that to the extent defendant seeks to conform its redactions on page 6 of NYSCEF 232 to the proposed highlights on NYSCEF 209, it must do so within 10 days of this order; and it is further

ORDERED that plaintiff must, within 7 days of this order, file a revised copy of NYSCEF 275 in accordance with this decision; 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 if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

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



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3/26/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE