

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION,
U.S. BANK NATIONAL ASSOCIATION, THE BANK OF
NEW YORK MELLON, THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A., WILMINGTON
TRUST, NATIONAL ASSOCIATION, HSBC BANK USA,
N.A. and DEUTSCHE BANK NATIONAL TRUST
COMPANY (as Trustees, Indenture Trustees, Securities
Administrators, Paying Agents, and/or Calculation Agents of
Certain Residential Mortgage-Backed Securitization Trusts),

Petitioners,

For Judicial Instructions under CPLR Article 77 on the
Administration and Distribution of a Settlement Payment.

Index No. 657387/2017

IAS Part 60

Honorable Marcy S. Friedman

Motion Seq. 5

I, David I. Schiefelbein, an attorney admitted to practice before the courts of the State of New York, affirms the following to be true under penalty of perjury:

1. I am an attorney at the law firm McKool Smith, P.C., counsel to respondent Nover Ventures, LLC (“Nover”) in the above-captioned proceedings.

2. I submit this affirmation in support of Nover’s motion for an Order permitting Nover to file under seal: (a) an unredacted version of the Memorandum Of Law In Opposition To Consolidated Memorandum Of Law In Support Of Joint Motion To Limit Standing To Certificateholders In The Settlement Trust (the “Nover Brief”); and (b) an unredacted version of the affirmation of David I. Schiefelbein, together with exhibits, filed in support of the Nover Brief.

3. Pursuant to this Court’s scheduling Order dated February 13, 2018 (the “February 13 Order”) [Dkt. No. 194], the Court directed the parties to these proceedings to exchange

information “concerning the nature of interests held in the [Settlement Trusts],” and ordered that such information “shall be deemed to be Confidential Information for the purposes of any potential filings with the Court” February 13 Order at ¶ 2. The Court further directed that “[e]xternal counsel for such parties shall hold the information on an ‘outside attorneys’ eyes only’ basis for use in this action.” *Id.*

4. Nover complied with the February 13 Order and provided information concerning its interest in the Settlement Trusts. Subsequently, on March 12, 2018, certain parties objected to Nover’s standing to participate in the Article 77 proceeding on the basis that Nover’s interest in certain trusts is insufficient to convey “standing.” Consolidated Memorandum of Law in Support of Joint Motion to Limit Standing to Certificateholders in the Settlement Trusts [Dkt. No. 251] (the “Consolidated Standing Motion”); Memorandum of Law in Support of Motion of Tilden Park to Limit Standing with Respect to the [REDACTED] Trust [Dkt. No. 264]; Memorandum of Respondent D.E. Shaw Refraction Portfolios, L.L.C. with Respect to Standing [Dkt. No. 258].

5. In response to the Consolidated Standing Motion, Nover will provide additional confidential information regarding its substantial interests, and seeks to protect this confidential information with an Order in the form submitted herewith as Exhibit A.

6. Pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts, court records may be sealed “on a written finding of good cause.” 22 N.Y.C.R.R. § 216.1(a). “In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties.” *Coopersmith v. Gold*, 156 Misc. 2d 594, 604, 594 N.Y.S.2d 521, 528 (Sup. Ct. Rockland Cnty. 1992) (internal quotation marks omitted).

7. Good cause to seal records exists where the documents at issue will disclose proprietary or financial information which will cause some harm if it were to be publicly disclosed. *See Jetblue Airways Corp. v. Stephenson*, No. 650691/2010, 2010 WL 6781684, at *6 (Sup. Ct. N.Y. Cty. Nov. 22, 2010) (“[p]etitioners have established good cause to have the records in this proceeding sealed [as] [t]he exhibits [] contain sensitive proprietary and business information . . .”), *aff’d*, 88 A.D.3d 567, 931 N.Y.S.2d 284 (1st Dep’t 2011); *Banna v. Merrill Lynch*, No. 60311107, 2007 WL 4352724 (Sup. Ct. N.Y. Cty. Nov. 13, 2007) (“A finding of good cause to seal the record will be found where there is a risk of exposure of a parties’ proprietary information which is included in court documents.”) (internal citations omitted); *D’Amour v. Ohrenstein & Brown, LLP*, 2007 WL 4126386, at *21 (Sup. Ct. N.Y. Cty. Aug. 12, 2007) (“Sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest”) (citing *Feffer v. Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc. 2d 812, 815-16 (Sup Ct. N.Y. Cty. 1991)), *aff’d*, 183 A.D.2d 678 (1st Dep’t 1992).

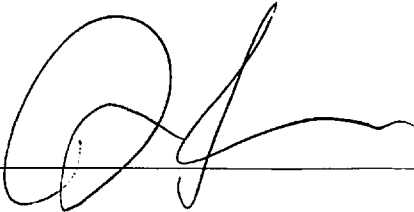
8. Good cause also exists to protect sensitive business information and trade secrets if it would “harm the private corporation’s competitive standing” and “give [] competitor[s] an unearned advantage.” *Mancheski v. Gabelli Grp. Capital Partners*, 39 A.D.3d 499, 502–03, 835 N.Y.S.2d 595, 598 (2d Dep’t 2007) (holding there is “a compelling interest in sealing the documents containing [the defendant’s] proprietary financial information because disclosure could harm the private corporation’s competitive standing”); *Crain Commc’ns, Inc. v. Hughes*, 135 A.D.2d 351, 351–52, 521 N.Y.S.2d 244, 244–45 (1st Dep’t 1987) (holding that “the . . . right to inspect and copy judicial records is not absolute . . . where such records are a source of business information which might harm a litigant’s competitive standing” and that in such case

the court may order exclusion of access) (citations omitted)), *aff'd*, 74 N.Y.2d 626, 539 N.E.2d 1099 (1989); *Coopersmith*, 156 Misc. 2d at 603, 594 N.Y.S.2d at 528 (collecting cases) (sealing orders are ordinarily granted to avoid “unwarranted disclosure of trade secrets and the like”) (citation omitted).

9. Information regarding Nover’s interests in the Settlement Trusts is of no public interest and the disclosure of the Nover Briefing Papers would reveal Nover’s confidential financial and proprietary information, including the scope of its holdings, thereby threatening its competitive standing in the marketplace. In light of these considerations, as noted in Paragraph 2, Your Honor has already held that the information set forth in Exhibit 1 to the Schiefelbein Affirmation is “Confidential.” Good cause therefore exists to permit Nover to file under seal the Nover Briefing Papers.

10. Accordingly, I respectfully request that the Court enter an Order permitting Nover to file the Nover Briefing Papers under seal so that Nover may file its Response to the motions challenging its standing.

Affirmed this 12th day of April, 2018.



David I. Schiefelbein