

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY
PRESENT: MARCY S. FRIEDMAN PART 60

Justice

In the matter of the application of

INDEX NO. 652382-2014

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, LAW DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO BANK, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., AND DEUTSCHE BANK NATIONAL TRUST COMPANY (as trustees under various Pooling and Servicing Agreements and indenture trustees under various Indentures),

MOTION SEQ. NO.:

Petitioners,

For an order, pursuant to CPLR § 7701, seeking judicial instruction.

The following papers, number 1 to were read on Robert C. Brierley's opposition to the proposed settlement.

Notice of Motion/Order to Show Cause – Affidavits – Exhibits...

No(s). _____

Answering Affidavits – Exhibits _____

No(s). _____

Replying Affidavits _____

No(s). _____

CROSS-MOTION: [] YES [X] NO

By letter dated October 25, 2014 entitled Opposition to the Proposed Settlement, Robert C. Brierley (Brierley) interposed objections to the proposed settlement (Brierley Opposition). Brierley objects to the settlement and seeks, among other relief, reversal or modification of a restitution order entered against him and access to certain lender files.

By Omnibus Response dated November 17, 2014, petitioners 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, Law Debenture Trust Company of New York, Wells Fargo Bank, National Association, HSBC Bank U.S.A., N.A., and Deutsche Bank National Trust Company, solely in their respective capacities as trustees, indenture trustees, successor trustees, and/or separate trustees (collectively, the Trustees) of residential mortgage-securitization trusts (the Accepting Trusts), object to the Brierley Opposition. The Trustees assert that Brierley lacks standing to object to the settlement or appear in this matter because Brierley is not a certificateholder in any of the Accepting Trusts, and that Brierley fails to meet the requirements for intervention as of right under CPLR 1012(a)(2) and 1012(a)(3) or for permissive intervention under CPLR 1013.

The court takes notice that Brierley pleaded guilty to federal criminal charges of wire fraud in an action brought before the Southern Division of the United States District Court for

1 The Clerk is directed to e-file the Brierley Opp. as part of the court file in this proceeding.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASONS

the Eastern District of Michigan.² Brierley was sentenced to 33 months in prison and ordered to pay restitution to JP Morgan Chase (or its subsidiary).³

The court holds that Brierley is not eligible to intervene, object or appear in this matter because he does not claim to be a certificateholder, and does not otherwise make a showing that he is a potentially interested person in the Accepting Trusts or the subject matter of this proceeding. Brierley argues that he should not be required to pay restitution to JP Morgan as a result of its allegedly unlawful conduct. (Brierley Opp. at 1.) Brierley further appears to contend that he is entitled to discovery in order to obtain certain lender files at issue in his criminal case that he asserts may be at issue in the "bond pools" in this proceeding. (Id.) The court takes judicial notice that Brierley made similar arguments in the federal criminal action and such arguments were rejected by order dated September 21, 2014.⁴ This court plainly lacks jurisdiction to modify the orders of the federal court.

In light of this holding, Brierley's request for discovery is denied as moot. Moreover, this state court proceeding is not the proper forum to award such discovery.

This constitutes the decision and order of this court. The Clerk shall mail a copy to proposed objector.

Dated: 11-25-14


_____, J.S.C.
MARCY S. FRIEDMAN, J.S.C.

- 1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
- 2. Check as appropriate: Motion is: GRANTED DENIED GRANTED IN PART OTHER
- 3. Check if appropriate: SETTLE ORDER SUBMIT ORDER

² United States v Brierley, US Dist Ct, ED MI, Feb 15, 2013, Cook, Jr., J. (Case: 2:11-cr-20018-JAC-MKM, Doc #: 97).

³ Id.

⁴ United States v Brierley, Doc #: 113.