

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

In the matter of the application of

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), AEGON USA Investment Management, LLC (intervenor), Bayerische Landesbank (intervenor), BlackRock Financial Management, Inc. (intervenor), Cascade Investment, LLC (intervenor), the Federal Home Loan Bank of Atlanta (intervenor), the Federal Home Loan Mortgage Corporation (Freddie Mac) (intervenor), the Federal National Mortgage Association (Fannie Mae) (intervenor), Goldman Sachs Asset Management L.P. (intervenor), Voya Investment Management LLC (f/k/a ING Investment LLC) (intervenor), Invesco Advisers, Inc. (intervenor), Kore Advisors, L.P. (intervenor), Landesbank Baden-Wuerttemberg (intervenor), Metropolitan Life Insurance Company (intervenor), Pacific Investment Management Company LLC (intervenor), Sealink Funding Limited (intervenor), Teachers Insurance and Annuity Association of America (intervenor), The Prudential Insurance Company of America (intervenor), the TCW Group, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

-against-

FEDERAL HOME LOAN BANK OF BOSTON (intervenor), TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD., TRIAXX PRIME CDO 2007-1, LTD. (intervenor), QVT FUND V LP, QVT FUND IV LP, QUINTESSENCE FUND L.P., QVT FINANCIAL LP (intervenor), BREVAN HOWARD CREDIT CATALYSTS MASTER FUND LIMITED AND BREVAN HOWARD CREDIT VALUE MASTER FUND LIMITED (intervenor), THE NATIONAL CREDIT UNION ADMINISTRATION BOARD,

Respondents,

for an order, pursuant to CPLR § 7701, seeking judicial instruction, and approval of a proposed settlement.

Index No. 652382/2014

**MEMORANDUM OF LAW IN
SUPPORT OF ORDER TO SHOW
CAUSE WHY W&L
INVESTMENTS, LLC SHOULD
NOT BE PERMITTED TO
INTERVENE**

Proposed-intervenor W&L Investments, LLC (“W&L”) submits this Memorandum of Law in Support of Its Proposed Order to Show Cause Why W&L Investments, LLC Should Not Be Permitted to Intervene pursuant to CPLR §§ 401, 1012, 1013, and 7701.

INTRODUCTION

As a holder of Certificates in certain of the Accepting Trusts,¹ W&L has an interest in the outcome of the Article 77 Proceeding initiated by the Trustees. On November 3, 2014, W&L timely filed a statement of its intention to appear and object to certain aspects of the proposed Settlement. (Doc. 148.) W&L seeks to intervene so that it may fully and fairly participate in this proceeding; obtain such information as may be necessary for such purpose; exercise its right to examine the Trustees and other witnesses on matters that bear on the reasonableness of the proposed Settlement, the process by which it was reached, and the Trustees’ decision to accept it; and assist in the Court’s evaluation of the factual and legal issues concerning the proposed Settlement.

STANDARD OF REVIEW

“As a general matter, intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.” *Bernstein v. Feiner*, 43 A.D.3d 1161, 1162 556 (2d Dep’t 2007); *see also Yuppie Puppy Pet Prods., Inc. v. Street Smart Realty, LLC*, 77 A.D.3d 197, 201 (1st Dep’t 2010) (“Intervention is liberally allowed by the courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action.”). CPLR § 1012(a) permits a party to intervene in an action as of right if (1) “the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment” or if (2) “the representation of the person’s interest by the

¹ Unless otherwise stated, capitalized terms shall have the meanings set forth in the Petition. (Doc. 1.)

parties is or may be inadequate and the person is or may be bound by the judgment.” CPLR § 1013 permits a party to intervene with the permission of the Court if “the person’s claim or defense and the main action have a common question of law or fact...[and] the intervention will [not] unduly delay the determination of the action or prejudice the substantial rights of any party.” CPLR § 1013 is to be liberally construed in favor of intervention, *United Servs. Auro Ass’n v. Graham*, 21 A.D.2d 657, 657 (1st Dep’t 1964), and [d]istinctions between intervention as of right and discretionary intervention are no longer sharply applied,” *Yuppie Puppy Pet Prods., Inc. v. Street Smart Realty, LLC*, 77 A.D.3d at 201.

ARGUMENT

I. The Court should permit W&L to intervene as a matter of right because it has a real and substantial interest in the outcome of the proceedings and because its interests may not be adequately represented by any other party to the proceeding.

W&L owns securities in certain of the Accepted Trusts. If approved, the proposed Settlement will release all claims those Trusts have against JPMorgan, and may extinguish or limit any claims W&L may hold against the Trustees and other third parties. Further, the proposed Settlement allocates the Settlement Payment and distributes the Accepting Trusts’ Allocable Shares in a manner that affects the rights of W&L. Consequently, approval (or disapproval) of the proposed Settlement will have a material impact on W&L and the value of W&L’s securities. *See* Doc. 7 at ¶ 4 (“[A]s a holder[] of certificates or notes evidencing various categories of ownership interests in the Accepting Trusts or obligations issued by the Trusts, [W&L is an] entit[y] that may have an interest in the subject matter of the Petition.”). Thus, W&L should be permitted to intervene as a matter of right.

In addition to the material impact the approval or rejection of the proposed Settlement will have on W&L, it is entirely unclear whether the Trustees are able or willing to adequately represent W&L's interests in the Accepting Trusts or this proceeding. In particular, the Trustees' decision-making with respect to matters affecting W&L is not clear from the information provided to date. Furthermore, pursuant to Section 2.03(d) of the Settlement Agreement, the Trustees are required to advocate for approval of the proposed Settlement even if they subsequently discover that the proposed Settlement is not in the best interests of the Trusts or Certificateholders. Thus, the Trustees may be contractually disabled from adequately representing W&L's interests.

Moreover, and as set forth in W&L's letter to the Court expressing its intent to appear and object, W&L has raised an issue (related to the distribution of the Accepting Trusts' Allocable Shares) that no other intervening party has raised. Accordingly, W&L's interests will not be adequately represented by other parties to this matter, and W&L should be permitted to intervene in order to fully and adequately represent its own interests, and assist the Court in its evaluation of the proposed Settlement and the Trustees' petition for approval of the same.

II. The Court should permit W&L to intervene because W&L's rights and claims embrace common issues of law and fact with the Trustees' Petition.

W&L also qualifies for intervention under the discretionary standard of CPLR § 1013 because its rights and claims in connection with the Accepting Trusts will be affected by adjudication of the rights and claims at issue in the Trustees' Petition. As a Certificateholder in certain of the Accepting Trusts, W&L has an interest in the Court's acceptance or rejection of the proposed Settlement and the Court's decision will be binding on W&L. W&L's intervention will not unduly delay the proceedings or prejudice the

rights of any other party. To the contrary, the Court will benefit from W&L's experience in mortgage finance and servicing, the secondary mortgage market, and mortgage securitization. The Court will also benefit from W&L's unique presentation concerning the fairness of the proposed distribution method—a key aspect of the proposed Settlement that requires close scrutiny. “[I]ntervention is encouraged if the proposed intervenors’ claims will add to the Court’s understanding of the facts.” *Rodriguez v. Debuono*, No. 97 Civ. 0700(SAS), 1998 WL 542323, at *3 (S.D.N.Y. Aug. 24, 1998) (applying Fed. R. Civ. P. 24(b)); *see also Commack Self-Service Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 106 (E.D.N.Y. 1996) (intervenors “will bring a different perspective to the case and will contribute relevant factual variations that may assist the court in addressing the ... issue raised.”).

CONCLUSION

For the foregoing reasons, and because intervention of parties including W&L is unopposed by the Trustees, W&L respectfully requests that the Court allow W&L to appear as an intervenor.

Respectfully submitted this 8th day of December, 2014.

s/ Michael A. Rollin
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