

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-

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 AS LIQUIDATING AGENT FOR U.S. CENTRAL FEDERAL CREDIT UNION, WESTERN CORPORATE FEDERAL CREDIT UNION, MEMBERS UNITED CORPORATE FEDERAL CREDIT UNION, SOUTHWEST CORPORATE FEDERAL CREDIT UNION, AND CONSTITUTION CORPORATE FEDERAL CREDIT UNION (intervenor), and AMBAC ASSURANCE CORPORATION, THE SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION (intervenor) AND W&L INVESTMENTS, LLC (intervenor),

Respondents,

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

Index No. 652382/2014

The Honorable Marcy S. Friedman,
J.S.C.

Motion Seq. No. ____

Oral Argument Requested

**MEMORANDUM OF LAW IN SUPPORT OF U.S. BANK’S MOTION TO COMPEL
QVT TO PRODUCE DOCUMENTS**

U.S. Bank National Association (the “Trustee” or “U.S. Bank”), as trustee for the JPMAC 2006-WMC1 residential mortgage-backed securitization trust (the “Trust”), hereby submits this memorandum of law in support of its motion to compel QVT Fund V LP, QVT Fund IV LP, Quintessence Fund L.P., and QVT Financial LP (“QVT”) to produce the documents it has agreed to produce in response to U.S. Bank’s First Request for the Production of Documents to QVT, dated May 12, 2015 (the “Request for Production”).

PRELIMINARY STATEMENT

On November 15, 2013, the group of twenty-one institutional investors who negotiated the Settlement¹ with JPMorgan presented the Settlement to U.S. Bank and seven other trustees (together with U.S. Bank, the “Trustees”). During the following eight and a half months, the Trustees, assisted by numerous financial and legal experts, engaged in a reasonable, good faith evaluation of the Settlement. The Trustees’ lead expert made specific settlement recommendations to the Trustees at the trust or, where applicable, loan group level. With respect to the Trust, the lead expert recommended that the Trustee accept the Settlement on behalf of the Trust based on an analysis of multiple factors, including its conclusion that the representation and warranty claims being released in the Settlement are likely barred by the applicable statute of limitations.

Following careful consideration of the reports of the Trustees’ retained experts and other relevant information, the Trustee followed the lead expert’s recommendation and accepted the Settlement on behalf of the Trust and certain other Accepting Trusts. The Trustees then filed the

¹ Capitalized terms not defined herein shall have the same meaning ascribed to them in the First Amended Petition, filed on October 2, 2014. “Ex.” with an Arabic numeral refers to the exhibits attached to the Affirmation of Nidhi Nina Yadava, in Support of U.S. BANK’S MOTION TO COMPEL QVT TO PRODUCE DOCUMENTS, submitted herewith.

Petition seeking judicial instruction and approval of their acceptance of the Settlement on behalf of the Accepting Trusts.

In October, 2014, QVT filed an objection to the Petition arguing that it had purportedly directed the Trustee to reject the Settlement on behalf of the Trust. While QVT initially claimed nothing more than that it had provided a direction, in the recent months, QVT has now asserted it offered to provide a reasonable indemnity as well. In an effort to develop the facts necessary to assess these claims, the Trustee served its Request for Production. QVT subsequently agreed to produce certain responsive documents.

Despite QVT's agreement, QVT has, to date, failed to produce anything other than a single document, refused to inform the Trustee when its production will be completed, and declined to engage in a meet and confer. For these reasons and those set forth below, QVT should be compelled to produce the documents it has agreed to produce.

STATEMENT OF FACTS

A. QVT'S OBJECTION

On October 31, 2014, QVT filed an objection to the Petition. QVT claimed that it "exercised [its] power[]" as a holder "of 25% or more of the securities issued by the Trust, to direct the trustee (U.S. Bank) to reject the proposed settlement." *See* QVT's Memorandum of Law in Support of [its] Motion to Intervene ("QVT Memo of Law") at 2 (Ex. 1). QVT made no mention of an indemnity in its objection, even though the Trustee has the right to refrain from acting at the direction of a certificateholder absent the receipt of a reasonable indemnity satisfactory to it. *See* JPMAC 2006-WMC3 Pooling and Servicing Agreement § 8.02(a)(iii), NYSCEF Doc. No. 304.

On March 6, 2015, in its pre-motion letter for summary judgment (a motion that QVT has not filed), QVT claimed for the first time that “the QVT Funds offered to provide a ‘reasonable indemnity’ to U.S. Bank for its costs and potential liabilities incurred in complying with the direction as provided by the PSA.” *See* QVT’s March 6, 2015 letter regarding summary judgment (“QVT Pre-Motion Letter”) at 2 (Ex. 2). QVT likewise alleged that “U.S. Bank, however, demanded onerous and unreasonable indemnity terms.” *Id.*

B. THE REQUEST FOR PRODUCTION

On May 12, 2015, the Trustee served its Request for Production on QVT. It contains four narrow document requests directly related to QVT’s assertions, the following three of which are the subject of this motion:

REQUEST FOR PRODUCTION NO. 1: All documents relating to any purported direction by QVT to U.S. Bank or any other person relating to the Settlement.

REQUEST FOR PRODUCTION NO. 2: All documents relating to any security or indemnity offered by QVT in connection with any purported direction by QVT to any person relating to the Settlement.

REQUEST FOR PRODUCTION NO. 4: Documents sufficient to identify QVT’s ownership interest in any certificates issued by the Trust as of August 1, 2014 and as of May 12, 2015.

See Request for Production at 5 (Ex. 3).

On June 4, 2015, QVT served its responses to the Trustee’s Request for Production. With regard to the first and second requests, QVT agreed to “produce non-privileged documents responsive to [the requests] relating to the Trust located after a reasonable search.” *See* Responses and Objections to U.S. Bank’s First Request for the Production of Documents and First Interrogatory to QVT at 5-6 (“QVT’s Document Request Responses”) (Ex. 4). QVT also agreed to produce documents responsive to the fourth request without any limitations. *Id.* at 7.

C. QVT FAILS TO PRODUCE DOCUMENTS

Despite having agreed to produce documents on June 4, 2015, as of the date of this motion, QVT has produced only one single document: a certificate of beneficial ownership, dated as of August 1, 2014

On June 22, 2015, the Objectors,² including QVT, proposed a schedule for the proceeding to the Trustees which included a July 7 deadline to file any motions to compel. *See* 6/22/15 Letter from the Objectors to the Trustees regarding proposed schedule (Ex. 5). On June 24, 2015, the Trustees provided a counterproposal, but agreed to the July 7 date. *See* 6/24/15 Letter from the Trustees to the Objectors regarding proposed schedule (Ex. 6). The Trustees further proposed that QVT complete its document production by June 30, so that U.S. Bank would have at least some time to review any produced documents, meet and confer with QVT about any outstanding issues, and file a motion to compel if necessary by the parties' agreed upon July 7 deadline. *Id.*

On June 29, 2015, the Objectors responded with concerns about the Trustees' proposed schedule, but made no mention of the proposed deadline for QVT to complete its document production and provided no counterproposal. *See* 6/29/15 Email from the Objectors to the Trustees regarding proposed schedule (Ex. 7). On June 30, 2015, the Trustees sent the Objectors a revised proposed schedule in which the Trustees suggested a July 2 deadline for QVT to complete its document production. *See* 6/30/15 Email from the Trustees to the Objectors regarding revised proposed schedule (Ex. 8). QVT responded later that day and refused to agree

² The Objectors are the National Credit Union Administration Board as Liquidating Agent for U.S. Central Federal Credit Union, Western Corporate Federal Credit Union, Members United Corporate Federal Credit Union, Southwest Corporate Federal Credit Union and Constitution Corporate Federal Credit Union; the QVT Fund V LP, QVT Fund IV LP and Quintessence Fund L.P.; Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation; DW Catalyst Master Fund, Ltd. and DW Value Master Fund, Ltd. (formerly Brevan Howard Credit Catalysts Master Fund Limited and Brevan Howard Credit Value Master Fund Limited); Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd.; and W&L Investments, LLC (collectively, the "Objectors").

to this deadline or suggest a different one. *See* 6/30/15 Email from QVT to Trustee regarding revised proposed schedule (Ex. 9). Instead, it stated: “This is the first we’ve heard of that proposed deadline, which is only two days away. I don’t think there is any dispute as to what the QVT Funds have produced and will be producing, but I’d be happy to discuss that with you as well after the schedule issues are resolved.” *Id.*

In the interest of time, the Trustee agreed to remove this deadline from the draft and the parties filed their joint proposed schedule later that night. The next morning, July 1, 2015, the Trustee contacted QVT via telephone and email and asked about the status of its document production, but received no response. *See* 7/1/15 Email from Trustee to QVT regarding document production (Ex. 10). The Trustee contacted QVT again on July 2, 2015, requested a meet and confer, and again received no response. *See* 7/2/15 Email from Trustee to QVT regarding document production (Ex. 11).

As of the filing of this motion, the Trustee has still received no response from QVT regarding when it intends to produce the additional documents it agreed to produce.

ARGUMENT

If a party fails to comply with a request for production, New York law provides that “the party seeking disclosure may move to compel compliance.” CPLR § 3124; *see, e.g., DG & A Mgmt. Servs., LLC v. Securities Indus. Ass’n Compliance & Legal Div.*, 78 A.D.3d 1316, 1318, 910 N.Y.S.2d 242, 244 (3d Dep’t 2010) (affirming order granting motion to compel). Here, more than a month ago, QVT agreed in writing to produce all documents concerning any purported directions and indemnities it offered in connection with the Trust and agreed to produce documents sufficient to identify QVT’s ownership interests in the Trust as of May 12, 2015 and as of August 1, 2014. *See* QVT’s Document Request Responses at 5-7. Despite these agreements, QVT has failed to produce any documents other than a certificate of beneficial

ownership, dated as of August 1, 2014. Moreover, QVT has failed to offer any indication to the Trustee as to when it will produce the additional documents despite QVT's understanding that document discovery disputes needed to be crystallized in advance of the July 7, 2015 deadline for motions to compel. Accordingly, the Trustee is forced to bring this motion to compel or risk having no recourse should QVT continue to withhold documents it has agreed to produce.

CONCLUSION

The Trustee's Motion to Compel should be granted and QVT should be ordered to produce the documents it has agreed to produce.

JONES DAY

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