

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 Distribution of a Settlement Payment.

Index No. 657387/2017

**AFFIRMATION OF
JULIE R. LANDY IN
SUPPORT OF
[PROPOSED] PARTIAL
SEVERANCE ORDER
AND PARTIAL FINAL
JUDGMENT
(BSABS 2007-AC1)**

JULIE R. LANDY, an attorney duly admitted to practice in the Courts of the State of Minnesota and duly admitted *pro hac vice* to practice law in the Court of the State of New York, affirms the following under penalties of perjury, pursuant to CPLR 2106:¹

1. I am a partner at the law firm Faegre Drinker Biddle & Reath LLP, counsel for Wells Fargo Bank, National Association (“Wells Fargo”), solely in its capacity as payment administrator for Bear Stearns Asset Backed Securities I Trust 2007-AC1 (“BSABS 2007-AC1”).²

2. In accordance with the August 5, 2020 Decision and Order (NYSCEF No. 879)

¹ Due to the COVID-19 epidemic, I am unable to physically sign or obtain a notary signature. I respectfully request that the Court accept this affirmation in lieu of an affidavit pursuant to CPLR 2106.

² All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition (NYSCEF No.1), Proposed Order, or the Governing Agreement, as applicable.

(the “August 5 Order”), I submit this affirmation in support of the contemporaneously filed [Proposed] Partial Severance Order and Partial Final Judgment (BSABS 2007-AC1) (the “Proposed Order” or “PO”). The Proposed Order covers the BSABS 2007-AC1 no appearance trust. This affirmation sets forth the basis for the settlement distributions in the Proposed Order as dictated by the Merits Ruling as well as the provisions of the Settlement Agreement and the Governing Agreement.

EXHIBITS

3. Attached hereto are true and correct copies of the following documents: the BSABS 2007-AC1 Pooling and Servicing Agreement (the “Governing Agreement”) (Exhibit A) and the Settlement Agreement dated as of November 15, 2013, and modified as of July 29, 2014, previously filed as Exhibit B to the Petition (NYSCEF No. 3) (Exhibit B).

OVERVIEW OF ISSUES

4. The Petition presented the issue of whether to use the Pay First Method or the Write-Up First Method for BSABS 2007-AC1. *See* Petition Ex. D. Under the Merits Ruling, the Pay First Method applies for trusts like BSABS 2007-AC1 and overcollateralization will not occur during the distribution of Allocable Shares for trusts like BSABS 2007-AC1. The Proposed Order (§ 4) thus provides for application of the Pay First Method for BSABS 2007-AC1 and that overcollateralization will not occur during the distribution of the Allocable Share for BSABS 2007-AC1 (the “Subject Allocable Share”) (§ 6).

5. The Petition also presented the issue of how to apply the Settlement Payment Write-Up for BSABS 2007-AC1. *See* Petition Ex. F. For BSABS 2007-AC1, the Merits Ruling requires the Settlement Payment Write-Up to be applied in reverse order of previously allocated losses, and the Proposed Order (§ 7) provides for the same.

6. Finally, the Petition presented the issue of whether and how to apply the Retired Class Provision for BSABS 2007-AC1. *See* Petition Ex. G. Consistent with the Merits Ruling for trusts like BSABS 2007-AC1, the Proposed Order (§ 5) would treat any Zero Balance Classes for BSABS 2007-AC1 as: (1) eligible to be increased or written up by the Settlement Payment Write-Up and (2) eligible to receive distributions of the applicable Subject Allocable Share to the extent any portion of the Settlement Payment Write-Up is actually applied to such Zero Balance Classes prior to the distributions of such Subject Allocable Share.

ANALYSIS

I. Settlement Trusts That Do Not Clearly Specify Whether the Pay First Method Or The Write-Up First Method Should Be Used (Petition Exhibit D)

7. In the Merits Ruling, this Court held that “the Governing Agreements control where they specify the order of operations, and the Settlement Agreement controls only where the Governing Agreements do not specify such order.” (Merits Ruling at p. 9.) The Court further held that the “fourth group” of trusts requiring Pay First Method involve “Trusts with Governing Agreements which . . . ‘require a Pay First method by omitting any explicit method for writing up certificate balances for subsequent recoveries.’” (*Id.* at p. 18.) The Merits Ruling explained that:

The PSA for [SAMI 2006-AR8] has a definition of Certificate Principal Balance which is substantially similar to that for the BSABS 2005-AQ2 Trust in that it requires ‘any Subsequent Recoveries’ to be added to the balance pursuant to a specified provision in the PSA, section 6.02, and requires that the balance be reduced by previously distributed principal and Applied Realized Loss Amounts. The heading of section 6.02 is “Allocation of Losses and Subsequent Recoveries on Certificates.” The body of the provision does not, however, mention Subsequent Recoveries or otherwise address increases in the certificate balance. . . . The Court holds, in the absence of a controlling provision in the Governing Agreements, that the group four Trusts are governed by the Settlement Agreement, which requires application of the Pay First Method.

(*Id.*)

8. In the Merits Ruling, the Court held that “overcollateralization would not occur” in Trusts with both definitions of Overcollateralization Amount and Certificate Principal Balance and waterfall provisions that are similar to BSABS 2005-SD2. (*Id.* at p. 25.) The Court explained that the definition of Certificate Principal Balance in the Governing Agreement for BSABS 2005-SD2 requires that such balance be “increased by . . . any Subsequent Recoveries allocated [to the specified classes—there, classes of subordinated certificates] on previous Distribution Dates pursuant to Section 5.04A.” (*Id.* at p. 23.) As such, the definition “limits any write-up, for the purpose of calculating the Certificate Principal Balance, to subsequent recoveries that were distributed on prior dates.” (*Id.*)

9. Next, the Court turned to the write-up provision in the governing agreement for BSABS 2005-SD2, which “does not include such limiting language.” (*Id.*) Rather, the write-up provision in Section 5.04A states:

If a Servicer or the Master Servicer receives a Subsequent Recovery in a Prepayment Period, it will be distributed on the following Distribution Date in accordance with the priorities described under Section 5.04(a). Additionally, the Certificate Principal Balance of each Class of Subordinated Certificates that had been reduced by the allocation of a Realized Loss will be increased, in order of seniority, by the amount of such Subsequent Recovery.

(*Id.*)

10. Finally, the Court held that the phrases in the definition for Overcollateralization Amount, “taking into account payment of principal” or “giving effect to the distributions” to be made, “encompass both a reduction of the balance in the amount of principal to be paid out, and an increase of the balance in the amount of the Subsequent Recovery to be distributed.” (*Id.* at p. 24.) Therefore, the Court held that, because “Overcollateralization Amount must be calculated based on Certificate Principal Balances

that have not only been reduced by the Settlement Payment but have also been written up, overcollateralization will not occur.” (*Id.* at p. 24-25.)

11. Pursuant to the Governing Agreement for BSABS 2007-AC1, the Certificate Principal Balance definition states:

As to any Certificate (other than the Class C Certificates or Class R Certificates) and as of any Distribution Date, the Initial Certificate Principal Balance of such Certificate plus any Subsequent Recoveries added to the Certificate Principal Balance of such Certificate pursuant to Section 5.04(b), less the sum of (i) all amounts distributed with respect to such Certificate in reduction of the Certificate Principal Balance thereof on previous Distribution Dates pursuant to Section 5.04, and (ii) any Applied Realized Loss Amounts allocated to such Certificate on previous Distribution Dates. As to the Class C Certificates and as of any Distribution Date, an amount equal to the Uncertified Principal Balance of the Class C Interest.

Governing Agreement § 1 (*defining “Certificate Principal Balance”*)

12. With respect to the question of whether to use the Pay First Method or Write-Up First Method for the purposes of administration and distribution of the Subject Allocable Share, the Merits Ruling requires the use of the Pay First Method. In the Merits Ruling, the court held that the Pay First Method is required for trusts such as SAMI 2006-AR8, whose governing agreement contains a definition of “Certificate Principal Balance” that omits any explicit method for writing up the certificate balances. (*Id.*) Here, the definition of Certificate Principal Balance for BSABS 2007-AC1 likewise omits any explicit method for writing up certificate balances for subsequent recoveries. Governing Agreement § 1 (*defining “Certificate Principal Balance”*). Instead, that definition refers to Section 5.04(b) of the Governing Agreement for adding any Subsequent Recoveries. *Id.* Section 5.04, in turn, is entitled “Collection of Taxes; Assessments and Similar Items; Escrow Accounts.” As the title suggests, Section 5.04 contains no provisions dealing with Subsequent Recoveries, making it similar to the definition of “Certificate Principal Balance” in the SAMI 2006-AR8 governing

agreement which refers to a section that “does not . . . mention Subsequent Recoveries or otherwise address increases in the certificate balance.” (Merits Ruling at p. 18.) The lack of any explicit method for writing up the certificate balance in the Governing Agreement makes BSABS 2007-AC1 like SAMI 2006-AR8 and the “fourth group” of Trusts in the Merits Ruling. And, the Court held that “in the absence of a controlling provision in the Governing Agreements, . . . the group four Trusts are governed by the Settlement Agreement, which requires application of the Pay First Method.” (*Id.*) As a result, the Merits Ruling instructs the Securities Administrator to use the Pay-First Method when distributing the Subject Allocable Share.

13. The Merits Ruling provides that overcollateralization will not occur in the administration and distribution of the Subject Allocable Share. The definition of Certificate Principal Balance in the Governing Agreement requires the write up of Subsequent Recoveries to be applied to the Certificates and contains the phrases “taking into account the payment of principal” and “giving effect to scheduled payments of principal.” Governing Agreement § 1 (*defining “Certificate Principal Balance”*). Pursuant to the Merits Ruling, “taking into account payment of principal” includes “a reduction of the balance in the amount of principal to be paid out, and an increase of the balance in the amount of the Subsequent Recovery to be distributed.” (Merits Ruling at p. 24.) Accordingly, the Merits Ruling instructs the Securities Administrator to take into account both the Settlement Payment and the Settlement Payment Write-Up when calculating the Overcollateralization Amount. Accordingly, the Securities Administrator must ignore any temporary overcollateralization when distributing the Subject Allocable Share.

14. In light of the foregoing, the Merits Ruling (a) requires the use of the Pay First Method for the purposes of administration and distribution of the Subject Allocable Share and (b) instructs that overcollateralization will not occur in the administration and distribution of the Subject Allocable Share, and the Proposed Order (§ 4, 6) states the same.

II. Settlement Trusts with Realized Loss Allocation Methods That Differ From Subsequent Recovery Write-Up Methods (Petition Exhibit F)

15. Pursuant to the Merits Ruling, this Court held that Section 3.06 of the Settlement Agreement acts as a “gap filler” that applies when the “Governing Agreement is silent as to the write-up mechanics.” (Merits Ruling at p. 28.) The Settlement Agreement provides for the “write up in the reverse order of previously allocated losses.” (*Id.* at p. 26.)

16. The Governing Agreement for BSABS 2007-AC1 neither provides that the write-up shall be applied by “payment priority” nor does it contain any other clear write-up instructions.

17. Since the Governing Agreement is “silent as to the write-up mechanics,” the Merits Ruling instructs that the Settlement Agreement’s write-up instruction applies and that the write-up accompanying the distribution of the Subject Allocable Share will be performed in the reverse order of previously allocated losses, and the Proposed Order (§ 7) provides the same.

III. Settlement Trusts With (1) Retired Class Provisions And/Or (2) Class A Redirection Provisions (Petition Exhibit G)

18. Pursuant to the Merits Ruling, this Court held that Section 3.06(b) of the Settlement Agreement “authorizes the write-up of zero balance classes,” but only applies “where a Governing Agreement lacks a write-up provision applicable to subsequent recoveries.” (Merits Ruling at pp. 37-38.) Pursuant to the Merits Ruling, the Court held that

the Retired Class provisions “expressly prohibit distributions to zero balance classes but do not address write-ups of certificate balances in connection with subsequent recoveries.” (*Id.* at p. 38.) The Court further stated that “if the Pay First Method is required . . . the zero balance certificates may be entitled to receive future principal and interest distributions.” (*Id.* at p. 39.)

19. The Governing Agreement for BSABS 2007-AC1 contains a Retired Class provision, but, as set forth above, the Governing Agreement lacks a write-up provision applicable to Subsequent Recoveries. Because the Governing Agreement does not address the write-up of Subsequent Recoveries, Section 3.06(b) of the Settlement Agreement applies, which instructs Wells Fargo, as securities administrator for BSABS 2007-AC1, to write-up zero balance classes. The Proposed Order (§ 5) provides the same.

Dated: January 21, 2021
Minneapolis, MN

By: s/ Julie R. Landy
Julie R. Landy