

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 60

-----X
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),

Index No.
657387/2017

Petitioners,

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

Respondents.

MOTION

-----X
60 Centre Street
New York, New York
January 10, 2018

B E F O R E:

HONORABLE MARCY FRIEDMAN, JUSTICE

A P P E A R A N C E S:

MAYER BROWN, LLP
Attorneys for the Petitioner
1221 Avenue of the Americas
New York, New York 10020-1001
BY: JAMES ANCONE, ESQ.

FAEGRE BAKER DANIELS, LLP
Attorneys for Respondent Wells Fargo
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, Min 55402-3901
BY: ROBERT SCHNELL, ESQ.

(Appearances continue.....)

Denise M. Paternoster, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A P P E A R A N C E S:

----- AND -----

HAHN & HESSEN, LLP
Co-Counsel for Respondent Wells Fargo
488 Madison Avenue
New York, New York 10022
BY: ZACHERY G. NEWMAN, ESQ.

JONES DAY, LLP
Attorneys for Respondent U.S. Bank
22 East 41st Street
New York, New York 10017-6702
BY: NINA YADAVA, ESQ.,
AND: KEITH M. KOLLMEYER, ESQ.
100 High Street
Boston, Mass. 02110-1781

MAYER BROWN, LLP
Attorneys for Respondent BNY Mellon & BNYM Trust Co.
1221 East 41st Street
New York, New York 10020-1001
BY: Christopher Houpt, ESQ.

ALSTON & BIRD
Attorneys for Respondent Wilmington Trust
90 Park Avenue
New York, New York 10016
BY: ALEXANDER S. LORENZO, ESQ.

MORGAN, LEWIS & BOCKIUS
Attorneys for Respondent Deutsch Bank & National Trust
1701 Market Place
Philadelphia, PA 19103-2921
BY: KURT RADEMACHER, ESQ.

Denise M. Paternoster
Senior Court Reporter

Denise M. Paternoster, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

THE COURT: Good morning.

May I have counsels' appearance, please?

MR. ANCONE: Good morning, your Honor. James Ancone from Mayer Brown for the petitioner, HSBC Bank USA.

MR. SCHNELL: Good morning, your Honor. Robert Schnell of Faegre, Baker, Daniels for Wells Fargo.

MR. NEWMAN: Good morning, your Honor. Zachary Newman from Hahn & Hessen for Wells Fargo.

MS YADAVA: Good morning, your Honor. Nina Yadava of Jones Day on behalf of U.S. Bank. I'm joined by my colleague Keith Kollmeyer, also from Jones Day, who will be submitting pro hoc vice papers shortly.

MR. LORENZO: Good morning, your Honor. Alexander Lorenzo from Alston & Bird for Wilmington Trust.

MR. HOUPT: Christopher Houpt from Mayer Brown on behalf of Bank of New York Mellon and Bank of New York Mellon Trust Company. Good morning, your Honor.

MR. RADEMACHER: Good morning, your Honor. Kurt Rademacher from Morgan Lewis on behalf of Deutsch Bank & National Trust Company.

THE COURT: Thank you.

The record will reflect that this matter was scheduled for 10:00 a.m. today to afford certificate holders an opportunity to object to the relief provisionally awarded in paragraphs three through six of this Court's December 20,

Denise M. Paternoster, RPR

1 **Proceedings**

2 2017 order with respect to investment of settlement proceeds
3 pending resolution of the issues in this proceeding.

4 I understand -- withdrawn. It is now 10:20 a.m.; I
5 understand that no objector is present. But if that is
6 incorrect, any objector should come forward at this time.

7 (No response.)

8 THE COURT: The record will reflect that there is
9 no objector.

10 I further understand that counsel have been unable
11 to file an affidavit of service of notice of today's court
12 appearance on potentially interested persons, but that
13 counsel are prepared to submit an affidavit from the vendor
14 who made service on an expedited basis, and are prepared to
15 address today on the record what service was made.

16 So I will hear from you, counsel, on that issue at
17 this time.

18 Excuse me one minute.

19 (Short pause taken.)

20 MS. YADAVA: Good morning, your Honor. Nina Yadava
21 from Jones Day on behalf of U.S. Bank National Association.

22 Your Honor, I spoke with Jose Fraga, who is the
23 senior director of operations at the Garden City Group, LLC.
24 Garden City Group is the notice agent for the trustees. I
25 will refer to Garden City Group as GCG throughout the points
26 that I make.

Denise M. Paternoster, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

Your Honor, according to Mr. Fraga, on December 21, 2017, GG provided notices of today's court conference to DTC LENS. As we've discussed in the past, your Honor, DTC LENS is the legal notification system for the depository trust company.

On December 22, 2017, GCG received confirmation from DTC LENS that the notice had, in fact, been posted. Would your Honor like further details about what happens once the notice is posted to DTC LENS?

THE COURT: Yes.

MS. YADAVA: Okay.

Your Honor, DTC LENS is monitored regularly. And according to Mr. Fraja, likely daily, by DTC participants. DTC participants are essentially large financial institutions dealers brokers in securities. They're all also the entities in which the beneficial holders place their trades.

So, for example, if an investor wants to purchase certificates in these securitizations, they would contact one of the DTC participants or large financial institution in order to do so.

These entities generally receive fees in connection with placing these security trades for investors, and they are also the custodians of the securities for the beneficial owners.

Denise M. Paternoster, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

There's a client relationship there where the DTC participants essentially treat the beneficial holders as their clients, because they're placing trades with the DTC participants according to Mr. Fraja.

DTC participants, as I understand it, generally have both a legal obligation and a relationship present that I've just described, to forward notices to the beneficial owners, and to do so expeditiously. It's Mr. Fraja's understanding that DTC participants usually forward these legal notices electronically to their investors.

In sum, the beneficial owners may have received notice of today's hearing on December 22, 2017, itself, the day it was posted to DTC LENS, but because we don't have insight into exactly when each DTC participants saw the notice and how long it took each participants to pass on the notice to the beneficial owners, we can't give the Court a specific timeline as to when each holder received notice of today's proceeding.

Additionally however, coupled with that DTC LENS notice, we've also provided a direct mailing which was also completed by Garden City Group, GCG. On December 22, 2017, GCG mailed the notices to all registered certificate holders in the certificate registry which was provided by each trustee to GCG.

One of the registered certificate holders for many

Denise M. Paternoster, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

of the certificates is Cede & Co., which is actually an entity related to the DTC. And once Cede & Co. received notice, it in turn passes on that notice to the DTC participants.

So as we've just described, most of the DTC participants have already received notice directly through the DTC LENS site. But if some reason the DTC participants were not monitoring the LENS website, they would receive another notice from the Cede & Co. So they forwarded on the same information to beneficial owners.

Additionally, coupled with both the direct mailings and the DTC LENS notice program, we've also provided a notice on the trustees settlement website and, your Honor, I know you are familiar with the settlement website, it's not new, we established it in 2013. Certificate holders have been referred to the website dozens of times over the years, and they have been informed consistently that it will contain updates regarding the settlement.

Mr. Fraja has actually informed us that there have been over 500 unique visitors to our website since December 15th, when in proceeding was filed. So that, your Honor, is at least one point of reference that certificate holders are aware of our website and are access ng it.

THE COURT: When was the notice posted on the website?

Denise M. Paternoster, RPR

1 **Proceedings**

2 MS. YADAVA: The notice was posted on
3 December 21st, I believe; the same day, your Honor, that we
4 began the mailing program. December 21, 2017, it was posted
5 on the website. So, initially, we posted the opening first
6 day papers on December 15, 2017. And then -- and every time
7 this Court enters an order, your Honor, every time something
8 is filed on the docket, it is posted to the settlement
9 website so the public has access without having to go
10 through the New York court's website.

11 THE COURT: Who will do the affidavit of service
12 for the posting on the website?

13 MS YADAVA: Mr. Fraja at Garden City Group, your
14 Honor, is the one who handles all of our notice postings,
15 whether through the website, or direct mailings, or the DTC
16 LENS notice program. So he is happy to provide an affidavit
17 summarizing all of these aspects.

18 Your Honor, in sum, between these three types of
19 notice -- I should just clarify, your Honor, that the
20 property agreement itself, the PSA's here, only requires
21 notice through DTC. So anybody who's actually interested in
22 these securities, or investors who hold, know that if they
23 want information about their investments, they're monitoring
24 DTC.

25 So with the combination of the DTC LENS posting,
26 the direct mailing, and the website -- and of speaking with

Denise M. Paternoster, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

Mr. Fraja, your Honor, the trustees are confident that most certificate holders are aware of the pertinent dates in the proceeding, including today's appearance, and have chosen not to contest the interim order.

THE COURT: Have any of the counsel for any of the parties to this proceeding received notice from any interested person that such person intends to object either to the -- let's confine this to the investment protocol reflected in paragraphs three through six of the December 20th order?

MS. YADAVA: Your Honor, I can tell you that U.S. Bank has not heard from any investors. That want to contest the interim relief. We have, however, heard from investors about the proceeding generally -- a number of investors. But we have not heard from anybody intending to contest the relief sought in paragraphs three through six.

However, I will let the other counsel answer if they heard from any such investors.

MR ANCONE: Your Honor, James Ancone on behalf of HSBC. HSBC has not heard from any such investors.

MR. SCHNELL: Robert Schnell on behalf of Wells Fargo. We have not heard from any such investors, either.

MR. RADEMACHER: Your Honor, Kurt Rademacher from Morgan Lewis. Deutsch Bank has not heard from any investor regarding the interim relief.

Denise M. Paternoster, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

MR. HOUPT: Christopher Houpt from Mayer Brown.
We have not heard either from any investors regarding the
interim relief.

MR. LORENZO: Alexander Lorenzo from Alston & Bird.
My understanding is that we have not heard either from any
investors.

THE COURT: That is everything from my point of
view for today. Does any of the counsel have any issues to
be addressed before the next court date on January 31st?

MS. YADAVA: No, your Honor.

THE COURT: We are going to request that you obtain
a copy of the transcript of today's proceedings, e-file it
with an errata sheet, and file two hardcopies with the
errata sheet with the clerk of Part 60.

The transcript will not be so ordered until the
hardcopies with the errata sheet are filed. We will close
the record for today's proceedings.

Thank you.

* * * * *

Certified to be a true and accurate transcription of the minutes
taken in the above-captioned matter.



Denise M. Paternoster, RPR

Denise M. Paternoster, RPR