

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
Administration and Distribution of a Settlement Payment.

Index No. 657387/2017

IAS Part 60

Honorable Marcy S. Friedman

**[PROPOSED] SEVERANCE
ORDER AND PARTIAL FINAL
JUDGMENT (BSABS 2007-AC2)**

WHEREAS Wells Fargo Bank, National Association (“Wells Fargo”); 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 U.S.A., N.A.; and Deutsche Bank National Trust Company, solely in their respective and various capacities as trustees, indenture trustees, successor trustees, securities administrators, paying agents, and/or calculation agents (collectively, the “Trustees”) commenced this proceeding under CPLR Article 77 to obtain judicial instructions on the distribution of a settlement payment of up to \$4.5 billion (the “Settlement Payment”) to which they had become entitled in their capacities as trustees, indenture trustees, and successor trustees of the residential mortgage-backed securities trusts (the “Settlement Trusts”) specified in Exhibit A to the Petition herein under a settlement agreement

dated as of November 15, 2013 and modified as of July 29, 2014 (the “Settlement Agreement”); and,

WHEREAS, under the Settlement Agreement, each Settlement Trust is entitled to an “Allocable Share” of the overall Settlement Payment; and,

WHEREAS, by Order to Show Cause dated December 19, 2017 (the “December 19 Order”), the Court directed the Trustees to serve the Petition and certain other materials on investors (“Certificateholders”) in the Settlement Trusts and certain other persons, and directed that interested persons answer the Petition by January 29, 2018; and

WHEREAS, the December 19 Order authorized and directed the Trustees to place the Settlement Payment in escrow; and,

WHEREAS, the Court’s Scheduling Order dated February 13, 2018 ordered the parties to submit to the Court an agreed proposed judgment and severance order concerning the manner of distribution of the Settlement Payment to any trust as to which there is no disagreement among the parties that have appeared to take a position on such trust; and,

WHEREAS, Tilden Park Investment Master Fund LP, Tilden Park Management I LLC and Tilden Park Capital Management LP, on behalf of themselves and their advisory clients (collectively, “Tilden Park”) are the only interested persons to appear in the proceeding and to claim an interest in the BSABS 2007-AC2 Trust, for which Wells Fargo is the trustee (the “Trustee”); and,

WHEREAS, as used herein, the term “Judgment Entry Date” means the date on which the Clerk’s docketing of this [~~Proposed~~] Severance Order and Partial Final Judgment first appears publicly on the New York State Court Electronic Filing System, without regard to when

the Court actually signs or the Clerk actually enters this ~~[Proposed]~~ Severance Order and Partial Final Judgment; and,

WHEREAS, as used herein the term “Transfer Month” means the month of the Judgment Entry Date if the Judgment Entry Date is on or below the fifteenth calendar date of that month, and otherwise the month immediately following; and,

WHEREAS, as used herein, the term “Transfer Target Date” means the twenty-second day of the Transfer Month, provided that if the twenty-second day of the Transfer Month is earlier than April 10, 2018, then the term “Transfer Target Date” means April 10, 2018; and,

WHEREAS, as used herein, the term “AS Distribution Date” means the next distribution date for the BSABS 2007-AC2 Trust following the Transfer Target Date,

WHEREAS, as used herein, the ~~terms-term~~ “~~Overcollateralization Amount~~PSA” and “~~Overcollateralization Target~~” ~~have the meanings given to such terms in~~ refers to the Pooling and Servicing Agreement for the BSABS 2007-AC2 Trust, dated as of February 1, 2007 ~~(the “PSA”)~~.

NOW, THEREFORE, on the joint motion of Schindler Cohen & Hochman LLP and Kramer Levin Naftalis & Frankel LLP, attorneys for Tilden Park, and on the papers, pleadings, and motions filed herein, it is hereby

ORDERED, pursuant to CPLR 407 and 5012, that all issues concerning the BSABS 2007-AC2 Trust are severed for full and final resolution hereby, with proceedings concerning the remaining Settlement Trusts to continue according to law; and it is further

ORDERED, that this ~~[Proposed]~~ Severance Order and Partial Final Judgment is rendered without prejudice to and shall have no precedential effect on: (i) any argument of any party concerning: ~~(i)~~ the appropriate administration and distribution of the Settlement Payment where

there is a dispute among the parties regarding how the ~~payment~~ Settlement Payment should be administered and distributed; ~~or~~ (ii) the ~~distribution methodology on trusts~~ Settlement Trusts for which no ~~investor has appeared in this action~~ investors have appeared in this proceeding, or any trust, indenture, or other securitization other than the BSABS 2007-AC2 Trust, or (iii) any applications to certificate balances (e.g., write-ups) or distributions of payments or funds other than with respect to the write-up and distribution of the Settlement Payment to the BSABS 2007-AC2 Trust; and it is further

ORDERED, ADJUDGED and DECREED that, no later than the Transfer Target Date, the Trustee is to reduce to cash escrow assets with a value equal to the Allocable Share of the BSABS 2007-AC2 Trust plus the earnings thereon and to deposit that amount in that trust's distribution account or payment account, as applicable. From the time of that deposit, the amount so deposited will be treated as the Allocable Share of the BSABS 2007-AC2 Trust for all purposes under the Settlement Agreement; and it is further

ORDERED, ADJUDGED, and DECREED that sums representing interest on the Allocable Share of the BSABS 2007-AC2 Trust not received by the Trustee at the time of the deposit directed by the immediately preceding paragraph ("Trailing Interest") shall be distributed to Certificateholders in that trust in the month it is received unless such receipt takes place after that month's determination date, in which event distribution will be effected in the month after the month in which the Trailing Interest is received. Trailing Interest shall be distributed within the BSABS 2007-AC2 Trust in the manner this ~~Proposed~~ Final Judgment provides for distribution of the Allocable Share; and it is further

ORDERED, ADJUDGED and DECREED that the Trustee shall distribute the Allocable Share of the BSABS 2007-AC2 Trust on that trust's AS Distribution Date; and it is further

~~ORDERED, ADJUDGED and DECREED that in distributing the Allocable Share of the BSABS 2007-AC2 Trust to Certificateholders in that Trust, the Trustee shall adhere to Section 3.06(a) of the Settlement Agreement and shall use the “pay first” order of operations on the AS Distribution Date, distributing the Allocable Share to Certificateholders prior to any application of the Allocable Share to write up certificate balances. To the extent receipt of the Allocable Share by the trust causes the Overcollateralization Amount to exceed the Overcollateralization Target, the resulting excess cashflow shall be distributed to compensate unpaid realized loss amounts in the class A certificates, pro rata according to their respective unpaid realized losses incurred on prior distribution dates, with such distributions treated as principal distributions and reducing the certificate balances of the classes to which they are paid; and it is further~~

~~ORDERED, ADJUDGED and DECREED that after ORDERED, ADJUDGED and DECREED that in distributing the Allocable Share of the BSABS 2007-AC2 Trust to Certificateholders in that Trust, and on the AS Distribution Date the Trustee shall: (1) use the “write up first” order of operations, distributing the Allocable Share to Certificateholders after any application of the Allocable Share to write up certificate balances; (2) prior to the distribution of funds to trust Certificateholders on the AS Distribution Date, the Trustee shall apply the write-up instruction in Section 3.06(b) of the Settlement Agreement, which is to “apply . . . the amount of the Allocable Share . . . in the reverse order of previously allocated losses, to increase the balance of each class of securities (other than any class of REMIC residual interests) to which such losses have been previously allocated, but in each case by not more than the amount of such losses previously allocated to that class of securities pursuant to the Governing Agreement[.]”~~ For the avoidance of doubt, the write-up will not occur using a simple proration rule but will instead be done by recursing back through the individual application of realized-

~~loss waterfall steps by which losses have been applied month by month, starting with the month of the AS Distribution Date and continuing backward until classes of certificates have been written up, in aggregate, by the amount of the Allocable Share; ; and (3) in connection with each of the foregoing, ignore the Retired Class Provision (as defined in the Petition) to the extent it precludes writing up classes that have zero Certificate Principal Balance and any subsequent distributions to such written-up classes, but adhere to the Retired Class Provision inasmuch as it merely precludes distributions to classes that maintain a zero Certificate Principal Balance; and it~~
is further

ORDERED, ADJUDGED and DECREED that all persons claiming rights in the BSABS 2007-AC2 Trust are forever barred from asserting any claims against the Trustee with respect to the Trustee's implementation of the instructions contained in this ~~[Proposed]~~ Severance Order and Partial Final Judgment, so long as such implementation is in accordance with this ~~[Proposed]~~ Severance Order and Partial Final Judgment and, to the extent not expressly addressed by this ~~[Proposed]~~ Severance Order and Partial Final Judgment, the requirements of the Settlement Agreement and the PSA; and it is further

ORDERED, ADJUDGED and DECREED that the Court shall retain exclusive jurisdiction to render such additional instructions as may be necessary or appropriate in the administration of the BSABS 2007-AC2 Trust; and it is further

ORDERED, ADJUDGED and DECREED that no party may have costs or disbursements of this proceeding insofar as it concerned the BSABS 2007-AC2 Trust; and it is further

ORDERED that the Clerk of New York County be, and he hereby is, directed to enter

this [~~Proposed~~]-Severance Order and Partial Final Judgment forthwith and without delay.

Dated: New York, New York

_____, 2018

Hon. Marcy Friedman J.S.C.

Judgment signed and entered this _____ day of _____ 2018.

Clerk of New York County

SCHINDLER COHEN & HOCHMAN LLP

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/Jonathan L. Hochman

s/ Philip Bentley

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