

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
IAS Part 60
Justice Friedman

Mot. Seq. 11

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true and correct copy of a Decision/Order entered on August 7, 2018.

Dated: New York, New York
August 8, 2018

WARNER PARTNERS, P.C.

GIBBS & BRUNS, LLP

/s/ Kenneth E. Warner
KENNETH E. WARNER
950 Third Avenue, 32nd Floor
New York, NY 10022
Tel.: (212) 593-8000
Fax: (212) 593 9058
Email: kwarner@warnerpc.com

/s/ David M. Sheeren
Kathy D. Patrick (*pro hac vice*)
David M. Sheeren (*pro hac vice*)
1100 Louisiana, Suite 5300
Tel.: (713) 650-8805
Fax: 713.750.0903
Email: kpatrick@gibbsbruns.com
dsheeren@gibbsbruns.com

Co-Counsel for the Institutional Investors

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

PRESENT: MARCY S. FRIEDMAN
Justice

PART 60

In the matter of the application of

INDEX NO. 657387/2017

WELLS FARGO BANK, NATIONAL ASSOCIATION, et al.

Petitioners,

DECISION/ORDER

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

MOTION SEQ. 011

The following papers, numbered 1 to _____ were read on this motion for leave to reargue

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

No (s). _____

Answering Affidavits — Exhibits _____

No (s). _____

Replying Affidavits _____

No (s). _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Nover Ventures, LLC (Nover) moves for leave to reargue a prior letter application for discovery as to whether any respondent’s holdings are subject to repurchase agreements (repo holdings). Leave to reargue is granted and, upon reargument, the court adheres to its prior decision and order dated May 22, 2018 (prior decision), denying such discovery.

In a decision on a motion to amend by respondent HBK Master Fund L.P., issued on the record on June 19, 2018 and so-ordered on August 6, the court explained that this Article 77 proceeding has been scheduled on an expedited basis at the request of all parties, given the potentially substantial economic impact of delays in resolving the proceeding. Nover’s delays in seeking the repo discovery were detailed in the prior decision. The court adheres to its holding in the prior decision that Nover’s request for such discovery was untimely.

In the prior decision, the court held, in the alternative, that Nover represented that it would not in fact challenge the standing of any party on the basis that it holds interests subject to repo agreements. Nover’s position was that the Challenged Respondents’ interests, like those of repo holders, were in fact sufficient to confer standing.¹ At most, Nover contended that if the court were to hold that the Challenged Respondents have indirect interests, any repo holders should be treated on an equal footing. (See Nover Memo. In Opp. to Standing Motion, at 18; May 10, 2018 Oral Argument on Repo Discovery, at 8.)

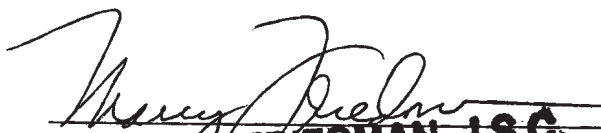
Moreover, in its application for repo discovery and in its opposition to the Challenging Respondents’ standing motion, Nover’s discussion of the nature of a repo holder’s interest was cursory. Nover did not show that a repo holder’s interest is akin to that of a holder of interests in CDOs (as is Nover) or to that of holders of interests in re-REMICs or NIMs (as are the other Challenged Respondents). Nor did Nover show that the determination as to the nature of a repo holder’s interest would not turn on the terms of the particular repurchase agreements.

¹ The terms “Challenging Respondents” and “Challenged Respondents” have the meaning set forth in the court’s determination on this date of the Challenging Respondents’ motion for summary judgment on standing.

Having failed to timely seek repo discovery and to assert any challenge to repo holders' standing at the time of the coordinated briefing on the standing issue, Nover cannot be permitted to do so now. To allow Nover to seek repo discovery at this juncture would occasion another round of standing briefing, delay the merits briefing which has now been reached, and prevent the expedited resolution of this proceeding.

This constitutes the decision and order of this court.

Dated: 8/7/18
J.S.C.


MARCY S. FRIEDMAN, J.S.C.

- 1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
- 2. Check as appropriate:.....Motion is: GRANTED DENIED GRANTED IN PART OTHER
- 3. Check if appropriate:..... SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE