

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

**NOTICE OF
[PROPOSED] PARTIAL
SEVERANCE ORDER
AND PARTIAL
FINAL JUDGMENT WITH
RESPECT TO SACO 2006-12**

Olifant Fund, Ltd., FFI Fund Ltd. and FYI Ltd. (the “Olifant Funds”) move for the entry of judgment issuing a judicial instruction to Petitioners concerning the administration and distribution of the Allocable Shares of the Settlement Payment for SACO 2006-12 (the “Subject Allocable Shares”) identified in the proposed judgment attached as Exhibit A. This trust has not been the subject of any previous proposed severance order presented to the Court in this proceeding. As fully set forth in the proposed judgment, after giving effect to the Court’s standing ruling and the withdrawal of the AIG parties (NYSCEF No. 793), the Olifant Funds are the only party claiming an interest in the above trust with standing to appear with respect to that trust, and respectfully urge the Court to enter the proposed judgment. As there is no triable issue of fact as to the above trust or the entry of this judgment, the Olifant Funds request that the judgment be entered without further delay so that the Subject Allocable Shares can promptly be

paid. The Olifant Funds have conferred with the Trustee and Payment Administrator, who have confirmed they can implement the proposed judgment and have no objection to it.

Dated: New York, New York
February 7, 2019

**PATTERSON BELKNAP WEBB &
TYLER LLP**

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*Attorneys for Olifant Fund, Ltd., FFI Fund
Ltd. and FYI Ltd.*

Exhibit A

At IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the ___day of __, 2019

P R E S E N T : Hon. Marcy S. Friedman, Justice.

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

**[PROPOSED]
PARTIAL SEVERANCE
ORDER AND PARTIAL
FINAL JUDGMENT
(SACO 2006-12)**

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (the “Petition”) seeking judicial instructions concerning the administration and distribution of a settlement payment (the “Settlement Payment”) for 270 residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the “Settlement Trusts”) under a settlement agreement dated as of November 15, 2013 and modified as of July 29, 2014 (the “Settlement Agreement”); and

WHEREAS, pursuant to the Settlement Agreement, the Settlement Payment is to be apportioned among the Settlement Trusts, including the individual loan groups therein and classes of principal only certificates therein, based on “Allocable Shares” calculated in an expert report filed with the Court at NYSCEF Nos. 178 and 179; and

WHEREAS, by Order to Show Cause dated December 19, 2017 and Interim Order dated December 20, 2017 (collectively, the “December Orders”), the Court authorized and directed the Petitioners to place the Allocable Shares for the Settlement Trusts in escrow; and

WHEREAS, the Court has been advised that the escrow provisions of the December Orders have been complied with and that the Allocable Shares for the Settlement Trusts, plus any investment earnings thereon, are currently invested as directed in the December Orders; and

WHEREAS, under the December Orders, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the December Orders (the “Notice Program”), and the Court found that the Notice Program was the best notice practicable, was reasonably calculated to put interested persons on notice of the proceeding, and constituted due and sufficient notice of the proceeding in satisfaction of federal and state due process requirements and other applicable law; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and only American General Life Insurance Company, American Home Assurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., The United States Life Insurance Company in the City of New York, and The Variable Annuity Life Insurance Company

(together, “AIG”), Olifant Fund, Ltd., FFI Fund Ltd., and FYI Ltd. (the “Olifant Funds”), and Nover Ventures, LLC (“Nover”) asserted an interest in SACO I Trust 2006-12 (the “Undisputed Trust”); and

WHEREAS, Nover asserted an interest in the Undisputed Trust through ownership interests in other structures, either CDO, re-REMIC, or NIM trusts, but not in certificates issued by the Undisputed Trust; and

WHEREAS, on August 7, 2018, the Court granted a motion for summary judgment which dismissed Nover as respondent with respect to any Settlement Trust in which it does not hold certificates (NYSCEF No. 471) (the “Standing Decision”); and

WHEREAS, in the Standing Decision, the Court afforded Nover an opportunity to substitute into the proceeding the trustees of the other CDO, re-REMIC, or NIM trust structures through which it asserted an interest in the Undisputed Trust; and

WHEREAS, on September 14, 2018, the Court so-ordered a Stipulation and Order Regarding Trustee Substitutions, under which Nover did not substitute into this case the trustees of the other CDO, re-REMIC, or NIM trust structures for the Undisputed Trust (NYSCEF No. 514) (the “Trustee Substitution Stipulation”); and

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, AIG and the Olifant Funds were the only parties with standing to appear with respect to the Undisputed Trust; and

WHEREAS, by Notice of Appeal dated September 6, 2018, Nover appealed the Standing Decision to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department; and

WHEREAS, Nover has not received a stay of the Standing Decision during the pendency of its appeal; and

WHEREAS, on February 7, 2019, AIG filed a notice withdrawing its appearance with respect to the Undisputed Trust (NYSCEF No. 793); and

WHEREAS the Olifant Funds (the “Subject Investor”) is the only party that continues to assert a direct interest in certificates issued by the Undisputed Trust; and

WHEREAS, the Undisputed Trust is governed by an Indenture (the “Subject Indenture”); and

WHEREAS, all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition or the Subject Indenture; and

WHEREAS, the Subject Investor agrees and consents to this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”), which resolves the issues for which judicial instruction was sought concerning the administration and distribution of the Allocable Shares for the Undisputed Trust (the “Subject Allocable Shares”); and

WHEREAS, Wilmington Trust, National Association is the indenture trustee for the Undisputed Trust (in such capacity, the “Subject Trustee”) and U.S. Bank National Association is the securities administrator for the Undisputed Trust (in such capacity, the “Subject Payment Administrator”) (the Subject Payment Administrator and the Subject Trustee collectively, the “Subject Petitioners”); and

WHEREAS, as used herein, the term “Judgment Entry Date” means the date on which the Clerk’s docketing of this Order 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 Order; 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 before the eighth calendar date of that month, and otherwise the month immediately following the month of the Judgment Entry Date; and

WHEREAS, as used herein, the term “Transfer Target Date” means the fifteenth day of the Transfer Month; and

WHEREAS, as used herein, the term “AS Distribution Date” means the Payment Date (as that term is defined in the Subject Indenture) for the Undisputed Trust occurring in the Transfer Month, and

NOW, THEREFORE, on the motion of Patterson Belknap Webb & Tyler, LLP, attorneys for the Subject Investor, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustee is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Shares plus any investment earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the distribution account of the Undisputed Trust. From the time of the aforementioned deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Undisputed Trust for all purposes under the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED and DECREED that sums representing investment earnings accrued on the Subject Allocable Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall be transferred from the Subject Trustee to the Subject Payment

Administrator promptly following the Subject Trustee's receipt of such Trailing Interest, and shall be distributed on the Distribution Date for the month the Trailing Interest is transferred so long as such transfer takes place on or before the fifteenth day of the month or, if the Trailing Interest is transferred after the fifteenth day of the month, shall be distributed on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed a Subject Allocable Share for the Undisputed Trust, and any Trailing Interest shall be administered and distributed as a Subject Allocable Share subject to the terms of the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall distribute the Subject Allocable Shares to certificateholders of the Undisputed Trust on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Payment Administrator (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up (the "Written-Up Certificate Principal Balances"), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Allocable Shares to certificateholders based on the Written-Up Certificate Principal Balances, in each of the cases of (i) and (ii) above in a manner consistent with the other terms in this Order; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Shares not expressly addressed in this Order shall be performed as provided for in the Subject Indenture and the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, and shall be without prejudice to and shall have no precedential effect on, (i) any argument of any party concerning the appropriate administration and distribution of the Settlement Payment for the Settlement Trusts for which there is a dispute among the parties regarding how the Settlement Payment should be administered and distributed; (ii) the Settlement Trusts for which no investors have appeared in this proceeding or any trust, indenture, or other securitization other than the Undisputed Trust, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in the Undisputed Trust are barred from asserting claims against the Subject Petitioners with respect to any conduct taken to implement and comply with the terms of this Order and with respect to the Subject Petitioners' administration and distribution of the Settlement Payment with respect to the Undisputed Trust, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED that the Clerk of New York County be, and he hereby is, directed to enter this Order forthwith and without delay.

Dated: New York, New York
_____, 2019

Hon. Marcy Friedman. J.S.C.

Judgment signed and entered this _____ day of _____ 2019.

Clerk of New York County