

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

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3 In the Matter of the Application of WELLS FARGO
4 BANK, NATIONAL ASSOCIATION, U.S. BANK NATIONAL
5 ASSOCIATION, THE BANK OF NEW YORK MELLON, THE
6 BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
7 WILMINGTON TRUST NATIONAL ASSOCIATION, HSBC BANK
8 USA, N.A., and DEUTSCHE BANK NATIONAL TRUST
9 COMPANY (as Trustees, Indenture Trustees,
10 Securities Administrators, Paying Agents, and/or
11 Calculation Agents of Certain Residential
12 Mortgage-Backed Securitization Trusts),

Petitioners,

13 For Judicial Instructions under CPLR Article 77 on
14 the Distribution of a Settlement Payment.

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15 INDEX# 657387/2017 VIDEO CONFERENCE VIA SKYPE
16 MOTION MAY 13, 2020

17 B E F O R E :

HONORABLE MARCY S. FRIEDMAN,
JUSTICE OF THE SUPREME COURT

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CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

5

1 THE COURT: On the record.

2 Good afternoon again. The record will
3 reflect that we took appearances off the record, and
4 I will now hear from counsel on the issue reflected
5 in the letters that I have received this week
6 regarding the distribution of the settlement payment
7 to 27 trusts which have agreed on the distribution
8 methodology.

9 Who will be heard first? Have you reached an
10 agreement between yourselves on that?

11 MR. WARNER: No, your Honor. Whoever -- this
12 is Ken Warner. Whoever you'd like to hear first.
13 I'm sure either one of us would be happy to start.

14 THE COURT: I think -- I think we'll start
15 with Wells Fargo, since they are claiming that there
16 are reasons to not make the distribution at this
17 point, and then we'll hear your opposition,
18 Mr. Warner. And then if we need a reply, we can hear
19 a reply.

20 Ms. Landy.

21 MS. LANDY: Sure. Your Honor, before I
22 begin, did I understand that you're having trouble
23 hearing me, or are you able to hear me now?

24 THE COURT: I am able to hear you now.

25 MS. LANDY: Okay. I've been kicked off the

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Proceedings

6

1 system about two times since this has all begun. So
2 if I am kicked off, I will get back on as quickly as
3 I can. But that's what's happening, if I all of a
4 sudden stop speaking.

5 THE COURT: We'll work with you on that.

6 MS. LANDY: Thank you very much.

7 So, as your Honor knows, the key issue before
8 the Court today is the definition of the judgment
9 entry date, which is at page 5 of the order and
10 judgment that your Honor signed, and that date is
11 what triggers the kick off for when distributions are
12 to be made by the petitioners.

13 The language in that definition, in our
14 opinion, is quite clear, and it provides that the
15 trigger occurs on the date when the clerk's docketing
16 of the order first appears publicly on the
17 notification system, on the New York State
18 notification system.

19 Here that judgment entry date has not yet
20 occurred, and that's because the judgment was signed
21 by your Honor on March 31st; and as I understand it,
22 the clerk entered that order on March 31st, but the
23 order did not and to this day has not become publicly
24 available. And so if you go on the New York Court
25 online docketing system, it lists it as pending on

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Proceedings

7

1 that system. And if you click through, you get a
2 screen shot saying that the document is not viewing
3 at this time.

4 THE COURT: All right. We just lost the end
5 of that last sentence. Can you repeat that?

6 MS. LANDY: Yes, of course, your Honor.

7 I said, if you click through on the screen
8 shot online, on the New York State filing system,
9 what you get is a screen that states the document is
10 not yet available for public viewing at this time.

11 THE COURT: Ms. Landy, are you referring to
12 the screen shot that is part of the e-mail chain that
13 I received that was attached to Mr. Warner's letter?

14 MS. LANDY: So, I'm referring, your Honor, to
15 two different places. The first is the screen shot
16 that was included in the letter that we submitted
17 yesterday. And my understanding of exactly where you
18 go to get that screen shot is if you go on the New
19 York State electronic filing system, put in the
20 number for this case and look at the 866 docket
21 entry, which is the docket entry that we are
22 interested in, in discussing, you will get the screen
23 shot that we -- we inserted into our letter.

24 Separately, there is a separate place where
25 you can possibly go to try to look for this order

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

8

1 that came in an e-mail from the clerk's office dated
2 March 31st of this year.

3 In that e-mail, there was a link that you
4 could click on; and if you click on that link, that's
5 when you received the notification that I just read:
6 "The document is not available for public viewing at
7 this time."

8 So the existence of a public order is the
9 trigger event and is what is important for the
10 judgment entry date. And the purpose of the
11 definition of the judgment entry date and the
12 requirement of that public order is -- is really
13 critical for two reasons:

14 The first is it was meant to avoid any
15 confusion between the parties as to what the trigger
16 event would be. It would -- excuse me. It was meant
17 to be a clear and undisputable event, the public
18 notice of this order, the ability to view it
19 publicly, and that was the goal.

20 The second is that -- the second reason that
21 it's important that it be publicly available, is so
22 that all investors, including investors who may not
23 be active --

24 THE COURT: We lost you. Including investors
25 who may not be acting --

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Proceedings

9

1 Has everyone -- I can't be the only one who
2 has lost Ms. Landy, correct?

3 MR. MERTZ: This is Steven Mertz for
4 Wells Fargo as well. She may have gotten kicked off.

5 MS. LANDY: I am back on. I apologize, your
6 Honor.

7 THE COURT: You have nothing to apologize
8 for.

9 MS. LANDY: I don't know when I got cutoff,
10 in terms of your being able to hear me.

11 THE COURT: It was the "including investors
12 who may not be acting," that was the last thing I
13 heard.

14 MS. LANDY: Great. So I didn't miss that
15 much. All I was saying was that it's important from
16 the petitioner's perspective that the order be
17 publicly available, so that investors who are not
18 active in this proceeding have all of the information
19 and have knowledge of when that distribution date
20 would be. Without there being that public document
21 available to anybody, you have a situation where
22 investors who are active in this proceeding have
23 information that investors who are not active in this
24 proceeding don't have, and that's important.

25 THE COURT: Well --

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Proceedings

10

1 MS. LANDY: Wells Fargo --

2 THE COURT: Why is that important? What will
3 those investors, who are not active in this
4 proceeding, do with that information?

5 I have issued a judgment and the -- some of
6 the investors in the proceeding have filed notices of
7 appeal, but anyone who wasn't active in the
8 proceeding, it is my understanding, would not be able
9 to take an appeal. What is the significance to them
10 of the knowledge?

11 MS. LANDY: So, I agree, your Honor, and I
12 don't think the issue is one of appeal, that isn't
13 the concern. The concern is the ability to have
14 information about that distribution that could be
15 traded upon. So, you know, here you would have the
16 information about when the distribution would occur
17 for invest -- available to investors who are active
18 in these proceedings, but that information is not
19 available to investors who are not active in these
20 proceedings. And so the concern would be the trading
21 on information that is not publicly available.

22 THE COURT: What does that mean, "trading
23 upon the information"? Can you be more specific
24 about what that would mean?

25 MS. LANDY: Sure. My best understanding that

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Proceedings

11

1 I can explain to you, and how it's been explained to
2 me, is that the securities here can still be actively
3 traded.

4 So, there could be decisions made about
5 whether to buy or sell the securities based on any
6 variety of information. What wouldn't be, you know,
7 appropriate, in our perspective, would be, you know,
8 not having the same information available to anybody
9 who would be wanting to buy or sell these securities
10 at, you know, at this time.

11 So, Wells Fargo, as we said in the letter,
12 didn't have an understanding and didn't know that
13 there was any suggestion that these distributions
14 would need to be made in May. As we attached to our
15 letter, we put out in a notice in April -- to all
16 investors, including the Institutional Investors, on
17 the public website for the settlement trustees -- a
18 notice stating that it was -- that this -- this order
19 had not been publicly available. We didn't receive
20 any objection, any response from anybody in response
21 to that notice.

22 We also previously, with respect to all, you
23 know, prior orders, have used the -- the date that
24 the order is publicly available as the date to
25 kickoff the judgment entry date and to cause that

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

12

1 trigger that we've been discussing. We have never
2 received an objection to that prior action in the
3 past. And so, you know, Wells Fargo has repeatedly
4 been checking the docket over this period to see if
5 it's publicly available, but it has not been.

6 And so the actions that need to happen from a
7 perspective of, you know, the best offer, to get this
8 money distributed, we have not taken, you know, those
9 steps in this intervening period since the judgment
10 was signed by your Honor, because it wasn't publicly
11 available.

12 And, you know, we've confirmed with
13 Wells Fargo and with all the other petitioners that
14 if so ordered we could make these distributions in
15 May. But it's my understanding that making
16 distributions is a very -- it takes a lot of manual
17 labor, it's difficult, and the people who would be
18 required to do this at Wells Fargo -- and I assume
19 the other petitioners are involved in other COVID
20 related matters, so it would require a significant
21 change, in terms of resources. But if it is
22 something that is ordered by your Honor, it is
23 something that we could accomplish.

24 That's all I have, unless your Honor has
25 further questions.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

13

1 THE COURT: What do you make of the
2 definition of judgment entry date, that it means the
3 date on which the clerk's docketing of the order
4 first appears publicly, the docketing of the order,
5 and that is without regard to which the Court
6 actually signs, or the clerk actually enters this
7 order? Aren't you just ignoring that language in
8 taking this position, that it is the order itself
9 that has to appear publicly?

10 MS. LANDY: I don't think I am, your Honor,
11 and that's for two reasons. As I read this language,
12 I understand the "without regard language" to
13 describe two events that are kind of irrelevant for
14 our purposes.

15 So, for our purposes when the judgment entry
16 date occurs, I read this language to mean it doesn't
17 matter the exact date that your Honor signs the
18 judgment. It doesn't matter the exact date that the
19 clerk actually enters the order. What matters is the
20 date that the order, or as you say, "the docketing of
21 the order," which I'll get to in a second, appears
22 publicly.

23 And so then we look at what does it mean,
24 obviously, for it to appear publicly. And if we look
25 at the screen shot of what does appear publicly, I

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Proceedings

14

1 think there's no question in my mind that this does
2 not appear publicly yet.

3 On the screen shot that we include in our
4 letter, it's shown as pending. There's nothing there
5 that, in my opinion, shows the order as, you know,
6 being publicly available.

7 Beyond that, when you go to the underlying
8 purpose of the statement -- and what I was discussing
9 with you before about why the public aspect of the
10 actual order itself is important -- I think it's
11 clear that the language here is relating to the
12 actual public availability of the order, and that has
13 not occurred.

14 THE COURT: Thank you. Is there anything
15 further?

16 MS. LANDY: Not at this time, your Honor.

17 THE COURT: Mr. Russell, you indicated when
18 we were off the record that you would want to
19 indicate on the record that you are joining in
20 Wells Fargo's arguments?

21 MR. RUSSELL: Yes, your Honor, thank you.
22 This is Jarmon Russell, on behalf of the Bank of New
23 York Mellon. We do join in Wells Fargo. We share in
24 Wells Fargo's representation, in terms of the order,
25 and the Bank of New York served as a trustee and

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

15

1 payment administrator for certain of the trusts that
2 are subject to this order, and that's reflected, I
3 believe, in footnote 1 in the submission from
4 Wells Fargo.

5 Thank you, your Honor.

6 THE COURT: Thank you.

7 Is there anyone else who has decided that she
8 or he wishes to be heard, before I hear from
9 Mr. Warner on behalf of the Institutional Investors?
10 I'm not hearing anyone come forward. Mr. Warner?
11 Have we lost Mr. Warner?

12 MR. WARNER: I think I've lost myself, but
13 here I am. Thank you very much, your Honor, for
14 scheduling this hearing so expeditiously; we
15 appreciate it and we particularly appreciate -- we
16 appreciate having the hearing today, because it
17 probably has made it possible to have an
18 acknowledgment from the petitioners, that if your
19 Honor ordered distribution, notwithstanding the delay
20 in preparation, they will be able to make the
21 distribution. And I -- I think that if the hearing
22 had been delayed, perhaps they wouldn't have been
23 able to say that.

24 So thank you very much for hearing us very
25 quickly.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

16

1 THE COURT: Excuse me, the distribution dates
2 are -- can you remind me of what the letter said
3 about what the dates are?

4 MR. WARNER: Let me just -- I believe that --
5 actually, if -- Ms. Landing, do you have that
6 immediate --

7 MS. LANDY: Yes, your Honor.

8 THE COURT: One was the 25th but --

9 MS. LANDY: This is Julie Landy for
10 Wells Fargo. It's my understanding that at least for
11 one of the distribution dates it's next Tuesday,
12 which would be the 19th, and I believe, although I'm
13 not 100 percent certain, that the remaining
14 distributions would be on the 25th; but I could be
15 wrong on a day or two by that.

16 THE COURT: Thank you.

17 MR. WARNER: Okay. Thank you. I knew about
18 the 25th, I wasn't sure about the 19th.

19 Anyway, the -- there is nowhere in the
20 judgment at page 12 -- Ms. Landy, if you don't mind,
21 your video is taking my screen. I can't see the
22 judge.

23 THE COURT: I actually can't see Mr. Warner.

24 MR. WARNER: Okay, now I see the judge.

25 Thanks.

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Proceedings

17

1 At page 12 of the judgment, there is no
2 reference at all as you -- and I believe your Honor
3 correctly pointed this out from the beginning,
4 there's no reference at all to many of the words
5 descriptively used by Ms. Landy. And in order to
6 make the judgment entry date conform to their
7 definition, they have to put a number of words into
8 it that appear nowhere, such as "a public order
9 access to the judgment itself," et cetera. The order
10 says, court's docketing of this order first appears
11 publicly, and that indisputably took place on
12 March -- on March 31st.

13 Now, if I may get something. Ms. Lowe
14 actually sent copies of the Court's decision; that
15 was the decision denying Nover's objections, and the
16 order in judgment to all counsel. And she sent this
17 that same day, March 31st, along with an e-mail in
18 which she said, Counsel, please see attached decision
19 and order and judgment. The enclosed was submitted
20 for filing this morning. However, due to the limited
21 court resources at this time, they have not yet been
22 uploaded; and that was sent in the early afternoon of
23 March 31st.

24 And that's very important, your Honor,
25 because what that ensured is that if the docketing,

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

18

1 which means the assignment of the docket number,
2 occurred without a viewing of the judgment, all
3 counsel, including the paid administrators, would
4 still know exactly what it said. Now, in fact, I
5 believe they would know anyway, because your Honor
6 had denied the objections of Nover's, and there was a
7 proposed order that was in the docket entries. And
8 all someone would have to do is to see that you had
9 denied all objections to the judgment and see a
10 proposed judgment and they'd know immediately. But
11 even without requiring that step, Ms. Lowe sent the
12 documents to all counsel, including to the counsel
13 for paid administrators.

14 Now, your Honor, I don't believe there's any
15 validity at all to the public notice and trading
16 advantage references. But if there were, and there
17 aren't, but the fact is that by Ms. Lowe having sent
18 the copies of the judgment, if it was so important
19 for everyone to know about them, the paid
20 administrators, Wells Fargo, et cetera, they could
21 have put it up on their website and everybody would
22 have seen it. They all would have seen that your
23 Honor that day had signed the -- had signed the
24 judgment. They'd see exactly what it says.

25 And, you know, in normal times it's --

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Proceedings

1 usually it happens that the -- there's a notice. And
2 from time to time the notice of docketing appears --
3 is followed by the actual viewing.

4 In other words, you get a notification, just
5 as your Honor saw that we attached -- as I attached
6 to my letter, and it says -- Okay, here it is. "I'm
7 notifying you that this has been docketed."

8 When you go to look at it, it says, "not yet
9 available for public viewing."

10 And as I said, in normal times, half an hour
11 later, 15 minutes later, an hour later, it's
12 available for public viewing. Purely due to the
13 logistics within the judgment clerk's office, these
14 are not normal times, and I believe that your Honor
15 and Ms. Lowe know that, which is why Ms. Lowe took
16 the, I believe, took the extra precaution of sending
17 out to everyone a copy of the judgment, exactly as
18 your Honor signed it and exactly as was being sent
19 down to be entered.

20 So, you know, there is -- in addition, the
21 Wells Fargo, I believe the others as well, issued a
22 letter that they make reference to -- to all
23 investors on April 21st, and they could have also
24 mentioned it on that date. Because the language here
25 is crystal clear, clerk's docketing of this order

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

20

1 first appears publicly. Not a single word about
2 viewing of the judgment or anything of that kind.
3 And apart from the textual analysis, your Honor, I
4 think there's a very important point here, very
5 important, and that is your Honor was, I believe,
6 attempting to do something that was very important in
7 signing the judgment on the 31st and issuing it in
8 the way you did and signing a judgment also that
9 directed the clerk to move expeditiously and without
10 delay, and that is giving liquidity into the economy.
11 And no one knows what the stock market is doing, no
12 one ever knows, probably, but now they really don't
13 know.

14 And one of the most important aspects of
15 financial life is having the liquidity to either
16 invest or not invest or use -- have funds available.
17 And I believe that your Honor made clear in issuing
18 this judgment that that's what you wanted to happen.
19 You expected that this was the judgment entry date.
20 In fact, it's significant, the judgment entry date
21 says the judgment entry date doesn't require entry.

22 In other words, if the entry is delayed but
23 the docketing is there, it would still be an
24 effective date, so that your Honor was able to give a
25 clear control over it. Ms. Landy said the reason for

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Proceedings

21

1 choosing this date is that there'd be a clear trigger
2 that could be identified. Well, I agree with that.
3 And there is a clear trigger. The clear trigger is
4 the docketing of your Honor's judgment, which
5 happened, docketed as 866 in the docket of this case.

6 And honestly I don't understand why we are --
7 why the trustees and the paid administrators are
8 arguing over doing something that would be a great
9 benefit to the investors; namely, having the money
10 issue, especially in these days as I said when it's
11 so needed.

12 I mean, frankly we should all be looking for
13 ways in which that can be done. I don't mean that we
14 should misinterpret, but I don't think we should
15 twist interpretations in order to hold it back. In
16 fact, under the paid administrators and the trustees'
17 interpretation, even now we shouldn't; no money
18 should be issued, because under their interpretation
19 nobody has -- the judgment has not been published on
20 the e-filing and therefore the two-month period
21 doesn't start, and it doesn't get published. Even if
22 it gets published this month, then that would be
23 May -- yeah, we're in May, so June, July; and if it
24 gets published next month, it's even further on.
25 That's not -- that's not, I believe what your

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Proceedings

22

1 Honor's -- what your Honor intended, it's not
2 going -- it's not what the judgment points to having
3 happened.

4 So that to us, it's quite clear that as
5 written the definition of judgment entry date has
6 been complied with. And it's kind of interesting
7 that the decision your Honor rendered, denying
8 Nover's objections, was 865. That actually can be
9 viewed and can be -- it's -- if you go to the
10 e-filing, you can see that; and it's just a fluke of
11 COVID logistics and delay and all of the destruction
12 that's been caused that 865 got in, 866 things got
13 cutoff, and now we're just waiting for things to open
14 up.

15 THE COURT: Mr. Warner, what is your position
16 on whether the public, meaning for present purposes,
17 people who are not parties to or do not appear in
18 some capacity in this case, could have access to
19 document number 866?

20 MR. WARNER: Well, they would be able to have
21 document -- they would be able to have access to
22 document 866 if, for example, they would -- they
23 would be able to have that access if, for example, it
24 were published on the websites of the trustees and
25 there's no reason that it shouldn't have been

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

23

1 published, except they were reading it in a way that,
2 I believe, is incorrect; that's number one.

3 Number two, there was a letter dated
4 April 21st, I'll just turnaround a minute. I guess
5 you don't call it a letter, but it was an
6 informational notice that was sent out concerning
7 investments and so on. And in sending that out, that
8 could have contained information about -- about the
9 contents of this order. So that in addition, as I
10 said before, if you put together your Honor's denials
11 of objections to the proposed judgment, which is
12 completely available and viewable and together with
13 the proposed judgment itself. So they -- your
14 Honor's denials are completely available on the
15 e-filing system, and the proposed judgment is fully
16 available on the filing system.

17 And so if those two are put together, it's
18 clear that the proposed judgment is what your Honor
19 is signing when the reference is to the docketing of
20 the judgment. And I think it's reasonable to say
21 that any investor with the sophistication to be
22 following the e-filing of disputes concerning the
23 distribution dates would have no trouble in
24 understanding that the proposed judgment was
25 proceeding forward and being accepted; and, in fact,

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

24

1 your Honor did accept the language in the proposed --
2 in the proposed judgment.

3 To say nothing of the fact as well that
4 inquiries to -- of any kind, if they're being made by
5 an interested investor would yield the information
6 that your Honor had signed this. But we have to
7 think, when your Honor -- when Ms. Landing refers
8 to -- well, these would not -- the judgment actually,
9 as your Honor signed, would not be available to
10 investors who are not involved in this lawsuit?

11 Well, then, why do they think that they're
12 following the e-filing if they're not involved in
13 this lawsuit. Why are we --

14 THE COURT: Excuse me. Couldn't any
15 investor, whether they were involved in this lawsuit
16 or not, have looked at docket 866 and seen the entry
17 judgment-signed by the Court to the County Clerk?

18 MR. WARNER: 100 percent. And when you put
19 that together with the view-ability of the proposed
20 judgment, they know it's been signed.

21 THE COURT: So, in other words, if an
22 investor who was not involved in the case, or I
23 should probably say an investor that was not involved
24 in the case could look at 865; they could also look
25 at 866, just not the underlying judgment.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

25

1 MR. WARNER: I could even go further than
2 that; that an investor could look at 865 and see the
3 denial of Nover's objections. And I don't have at
4 ready-hand the number of the proposed judgment, but
5 that was e-filed.

6 So the proposed judgment that was being
7 submitted to you was e-filed and that can be viewed
8 as well.

9 So anybody looking at the e-filing system and
10 right away anyone who is doing that, they're at a
11 different level of sophistication than the average
12 Joe or Jane investor.

13 So they would see there was a proposed
14 judgment, then objections to that, and they'd see the
15 judgment fully, then they would see your Honor deny
16 the objections to that proposed judgment, and then
17 they would see that the judgment was docketed and
18 signed by the Court, and that's a very -- I wouldn't
19 even call that 1, 2, 3 math, I'd call it arithmetic,
20 because it's such a simple equation of what your
21 Honor signed and what is -- what is happening.

22 So clearly to the extent that notice of a
23 distribution taking place in May, notice coming in
24 March, would have been readily available to anyone
25 who would be looking at the e-filing system. And

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

26

1 Ms. Landy says e-filing system is enough notice to
2 the public. So there's no -- it's really a red
3 herring, your Honor, because it would be very, very
4 simple to see that your Honor signed the judgment and
5 to see what that judgment was. They just wouldn't
6 see your signature on it, but they would see the fact
7 that you had signed it.

8 So -- and by the way, that -- and that's why
9 the language clerk's docketing of this order is here,
10 I believe, the clerk's document, not docketing and
11 viewing. So -- and, in fact, when you -- looking at
12 the letter from the trustees, on page 2 they said --
13 they say at the bottom, the plain language of the
14 order -- by that they're referring to the judgment,
15 because it got defined that way since it's a partial
16 order and judgment. The plain language of the order
17 provides that the judgment entry date occurs when the
18 order appears publicly on the filing system.

19 No, that's wrong. That's clearly wrong. And
20 I think, frankly, I must say, if the concern was so
21 great that the yield issue was seeing the judgment --
22 I mean, itself, rather than knowing of its docketing,
23 that language could have easily been used, and it
24 wasn't. But as I said, there is no issue about
25 notice, because of the viewable existence of the

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

27

1 proposed judgment and denials to the proposed
2 judgment.

3 So I don't believe that is a -- that's an
4 issue at all that your Honor need be concerned about.

5 THE COURT: Have you concluded?

6 MR. WARNER: Yes, unless -- unless your Honor
7 has any questions for me.

8 THE COURT: Thank you. Ms. Landy, would you
9 like to reply?

10 MS. LANDY: Yes, just a couple quick things,
11 your Honor.

12 The first thing I wanted to respond to is
13 Mr. Warner's reference to the e-mail to counsel to --
14 to this matter with the attachment of the judgment on
15 March 31st. I think in our opinion that e-mail has
16 no moment, in terms of interpreting the definition of
17 the judgment entry date. The existence of an e-mail
18 to, you know, counsel, who have appeared within this
19 matter in no way would somehow trigger the start of
20 that judgment entry date.

21 The second thing I wanted to respond to --

22 THE COURT: You were copied on that letter,
23 were you not?

24 MS. LANDY: I personally was not. Counsel --
25 our New York counsel was copied.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

28

1 THE COURT: So you did have notice back in
2 March, that the -- that the investors, the
3 Institutional Investors would be seeking a
4 distribution.

5 MS. LANDY: We had notice back in March that
6 the judgment had been signed and that the -- it had
7 been entered by the clerk, but we did not believe
8 that it -- it met the definition of the judgment
9 entry date because of the publicly available that
10 we've previously been discussing.

11 THE COURT: Did you notify anyone back in
12 March that you did not believe that it met the
13 definition?

14 MS. LANDY: So what we did was that in the
15 April 21st notice that Mr. Warner cited to and that
16 was attached to our letter from yesterday, we
17 indicated that we did not believe that the judgment
18 was publicly available and we did not receive any
19 response or objection from Mr. Warner or from any of
20 the Institutional Investors to that -- to that
21 footnote or to that interpretation.

22 MR. WARNER: I didn't know about --

23 THE COURT: Just a moment. Just a moment. I
24 do not have back and forth on my arguments.

25 Please continue, Ms. Landy.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

29

1 MS. LANDY: And that was something that was
2 made available on the website, on the RBS settlement
3 website and was available to all investors. And we
4 didn't receive a response or an objection statement
5 from anybody in response to that interpretation. And
6 that interpretation, the trustees good faith
7 interpretation of what this language meant based on
8 our prior practice, our prior understanding.
9 Obviously, here we have a unique situation with, you
10 know, the COVID-19 situation with the clerk's office
11 being substantially delayed. So we are all in unique
12 territory, but we were acting in good faith, in terms
13 of how we understood this language.

14 Now, the second thing I just briefly wanted
15 to respond to was Mr. Warner had made the indication
16 that we could have made this available on that
17 website. We could have made the judgment available
18 on the website and that it would be publicly
19 available.

20 I think he's probably right, that that could
21 have been done. We took a different path, which was
22 to, as I just said, provide the notice with that note
23 saying that we didn't believe that it was publicly
24 available. And when we didn't get any response back,
25 didn't receive any objections, you know, that wasn't

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

30

1 something we've taken.

2 Again, we're in unique times. We were
3 following what had always been done, which was that
4 this was made publicly available by the clerk's
5 office, and there wasn't any concern, there wasn't
6 anything that arose similar to what we have here.

7 I just have two other brief points.

8 The first is that Mr. Warner says that
9 anybody who could go on the docket could make the
10 inference that this was the judgment that was signed
11 by looking at the proposed judgment then by looking
12 at the fact that Nover's objection was overruled, and
13 then by seeing that there was a docket 866 entry on
14 the filing system.

15 I think that's actually a pretty tall ask for
16 somebody, even an investor who might have some new
17 knowledge or sophistication it requires kind of going
18 through the docket in a way that I don't think was
19 contemplated by the judgment entry date definition,
20 and it certainly doesn't provide this sort of
21 bright-line rule, which was what, you know, all of
22 the petitioners were looking for in this language.

23 Beyond that, I think it's certainly possible,
24 it didn't happen here, that despite the fact that
25 objections were overruled, there could have been

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Proceedings

1 modifications by your Honor to the judgment before
2 it's entered, whether those are handwritten or
3 otherwise. So requiring this inference that the
4 proposed judgment is exactly the same as what the
5 entered judgment is, I think is a step too far.

6 The final point that --

7 THE COURT: Just a moment. Ms. Landy, would
8 you slow down a little, to make it a little easier
9 for the court reporter. Thanks.

10 MS. LANDY: Yes. My apologies.

11 The final point that I would make just
12 briefly is that Mr. Warner says that all that needs
13 to be done is to look on the docket and to see that
14 there is a docket entry 866, and that that, you know,
15 qualified as the judgment entry date. That -- that
16 date, however, if you look at what we posted and
17 provided in our -- in our letter yesterday. I don't
18 think that that docket entry in and of itself is
19 enough. When you look at the status there, it says
20 pending. And so to, you know, to determine, based on
21 a pending status online, that we qualified for all of
22 the -- or all of the triggering events have qualified
23 for that judgment entry date to occur, I, again,
24 think that that's just a step too far. And so beyond
25 that, those are the points I would like to make, but

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

32

1 I'm happy to answer any further questions from the
2 Court.

3 THE COURT: I have nothing further.

4 I am going to confer briefly with Ms. Lowe,
5 and I will let you know where we --

6 MR. WARNER: Your Honor, could I just have a
7 moment -- a minute?

8 THE COURT: I really --

9 MR. WARNER: I feel it would be helpful.

10 THE COURT: I don't think I need a sur-reply
11 on the point that you want to respond to. I think
12 I've heard very thorough arguments. So just bear
13 with me for a few minutes and I'm going to confer
14 with Ms. Lowe.

15 MR. WARNER: Thank you, your Honor.

16 (Brief pause in the proceedings.)

17 THE COURT: Thank you. Is everyone still
18 there?

19 MS. LANDY: Yes, your Honor.

20 MR. WARNER: I'm here.

21 THE COURT: Can you continue to hold for
22 another five or ten minutes? I would like to give
23 you a decision on the record.

24 MS. LANDY: Yes, your Honor.

25 MR. WARNER: No problem at all, your Honor.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

33

1 THE COURT: All right. Ms. Kitt, can you
2 stay with us?

3 (Reporter responds.)

4 (Brief pause in the proceedings.)

5 THE COURT: Counsel, I am back. Thank you.

6 MR. WARNER: Thank you, your Honor.

7 THE COURT: Ms. Lowe, are you back?

8 MS. LOWE: Yes, I made it.

9 THE COURT: Very good. Back on the record.

10 I will now rule on the parties' dispute. The
11 parties dispute whether a settlement payment to 27
12 trusts pursuant to a Partial Severance Order and
13 Judgment, submitted to this Court on consent, on
14 March 15, 2020, and signed by this Court on March 31,
15 requires distribution of the settlement payment in
16 May. The Court holds that it does. Resolution of
17 this dispute turns on the definition of the Judgment
18 Entry date in the Partial Severance Order and
19 Judgment.

20 That date is defined as the, quote, date on
21 which the clerk's docketing of this order first
22 appears publicly on the New York State electronic
23 filing system, without regard to when the Court
24 actually signs or the clerk actually enters this
25 order, period, closed quote.

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Proceedings

34

1 This definition unambiguously provides that
2 it is the docketing, underscore, docketing of the
3 order not, comma, contrary to Wells Fargo's,
4 contention, comma, the appearance of the order on the
5 publicly available electronic docket for this
6 proceeding, which is the trigger for the distribution
7 of the settlement payment.

8 The Court cannot read language into the
9 unambiguous definition of Judgment Entry Date, so as
10 to require that the order itself be publicly
11 available. The Court is also unpersuaded that there
12 is a risk of prejudice to sophisticated non-party
13 investors as a result of this holding.

14 In any event, Wells Fargo, if so advised, has
15 the opportunity, before any distribution is due, to
16 appeal this order. It is requested that Wells Fargo
17 obtain a copy of the transcript of this ruling on an
18 expedited basis and e-file it on the NYSCEF system.
19 The Court will so order the transcript on an
20 expedited basis.

21 The parties are advised that I reserve the
22 right to correct errors in the ruling; therefore, if
23 it is needed for an appeal or any other purpose, they
24 should be sure they have a copy as so ordered by me
25 and not merely signed by the court reporter.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 This concludes the ruling.

2 Is there anything further that any of the
3 counsel wishes to address on the record?

4 MR. WARNER: Nothing further from me, your
5 Honor.

6 MS. LANDY: Your Honor, this is Julie Landy
7 again, from Wells Fargo. I just wanted to put on the
8 record that Wells Fargo does not intend to appeal
9 your Honor's ruling today.

10 THE COURT: Okay. So noted. Ms. Kitt, can
11 you produce the transcript on an expedited basis?

12 (Court reporter responds.)

13 THE COURT: All right. If no one's going to
14 appeal, then it doesn't need to be obtained on an
15 expedited basis. But if anyone is, then it -- it
16 certainly should be obtained on an expedited basis.

17 So I think that's everything from my point of
18 view. I'm going to just thank counsel for very
19 informative oral argument, and I look forward to
20 having you appear before me again on other matters in
21 the future. Thank you.

22 (Continued on the next page.)

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Proceedings

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MS. LANDY: Thank you, your Honor.

MR. WARNER: Thank you.

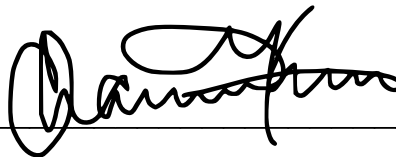
THE COURT: The record is closed. Thank you.

(Adjourned.)

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