

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 _____, 2021

P R E S E N T: Hon. Melissa A. Crane, 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**

(BSABS 2007-AQ1)

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, this Partial Severance Order and Partial Final Judgment (the “Order”) concerns BSABS 2007-AQ1 (the “Undisputed Trust” or “BSABS 2007-AQ1”), which is one of

the Settlement Trusts subject to the Settlement Agreement; and

WHEREAS, the Undisputed Trust is governed by a Pooling and Servicing Agreement (the “Subject PSA”), pursuant to which U.S. Bank National Association is the payment administrator and trustee (in all such capacities collectively, the “Subject Petitioner”); and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Petition or the Subject PSA, as applicable; 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 laws; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and only the following parties asserted an interest in the Undisputed Trust: (i) Tilden Park Investment Master Fund LP, Tilden Park Management I LLC, and Tilden Park Capital Management LP, each on behalf of itself and its advisory clients (the “Tilden Park Parties”); (ii) GMO Opportunistic Income Fund and GMO Global Real Return, each on behalf of itself and its advisory clients (the “GMO Funds”); and (iii) AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Teachers Insurance and Annuity Association of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”); and

WHEREAS, on February 13, 2020, the Court issued a Decision and Order (NYSCEF No. 843) (the “Merits Ruling”) concerning administration and distribution issues for certain Settlement Trusts, including the Undisputed Trust; and

WHEREAS, the Merits Ruling was affirmed by the First Department, Appellate Division on August 19, 2021 in an appeal involving various interested parties, including the Tilden Park Parties, the GMO Funds, and the Institutional Investors; and

WHEREAS, certain parties to the appeal, including the Tilden Park Parties, have filed motions seeking further review of the First Department’s ruling; and

WHEREAS, on October 21, 2021, the Tilden Park Parties partially withdrew their motion seeking further review solely with respect to the Undisputed Trust, and the GMO Funds withdrew their opposition to the Tilden Park Parties' motion, which related only to the Undisputed Trust; and

WHEREAS, the Merits Ruling provides that “as to any Settlement Trust in which all interested respondents are able, after the issuance of [the Merits Ruling] and in consultation with the Trustees, to resolve a dispute as to any issue that is the subject of this proceeding, they may do so independent of the court’s ultimate determination as to how such issue should be resolved among parties that continue to dispute the issue”; and

WHEREAS the Institutional Investors, the GMO Funds, and the Tilden Park Parties agree and consent to this Order, which resolves the issues for which judicial instruction was sought concerning the administration and distribution of the Allocable Share for the Undisputed Trust (the “Subject Allocable Share”); and

WHEREAS, as used herein, the term “Judgment Entry Date” means the first date on which counsel of record to the parties hereto receive a copy of this Order signed by the Court by email or NYSCEF service, 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 calendar 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 Distribution Date for the Undisputed Trust occurring in the Transfer Month; and

NOW, THEREFORE, on the motion of Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the Institutional Investors; Schindler Cohen & Hochman LLP, Kramer Levin Naftalis & Frankel LLP, and MoloLamken LLP, attorneys for the Tilden Park Parties; and Davis Polk & Wardwell LLP, attorneys for the GMO Funds, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Petitioner is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Share plus any investment earnings thereon, and (ii) cause the Subject Allocable Share and investment earnings thereon to be deposited in the Distribution Account of the Undisputed Trust. From the time of the aforementioned deposit, the amounts so deposited shall be deemed a Subject Allocable Share 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 Share not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall be distributed (x) on the Distribution Date for the month the Trailing Interest is received by the Subject Petitioner so long as the Trailing Interest is received on or before the fifteenth day of the month or (y) if the Trailing Interest is received after the fifteenth day of the month, on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed to be 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 Petitioner shall distribute the Subject Allocable Share 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 Share for the Undisputed Trust, the Subject Petitioner (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up or a portion thereof (such increased balances, the “Written-Up Certificate Principal Balances”), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Allocable Share 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 of this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Petitioner shall increase the certificate principal balances of the applicable classes of certificates in the amount of the Settlement Payment Write-Up in accordance with the subsequent recovery write-up instructions in Section 5.04(b) of the Subject PSA, in a manner consistent with the other terms of this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Petitioner shall treat the Retired Class Provision as being inapplicable with respect to the Subject Allocable Share such that the Subject Petitioner (i) shall distribute the Subject Allocable Share or a portion thereof to classes of certificates with aggregate certificate principal balances of zero dollars (\$0.00) on the date of the distribution of the Subject Allocable Share (“Zero Balance Classes”) that would otherwise

receive the distribution of the Subject Allocable Share or a portion thereof *but for* application of the Retired Class Provision in a manner that would prevent distributions to Zero Balance Classes and (ii) shall apply the Settlement Payment Write-Up or a portion thereof to Zero Balance Classes that would otherwise be written up in the amount of the Settlement Payment Write-Up or a portion thereof *but for* application of the Retired Class Provision in a manner that would prevent write-ups from being applied to Zero Balance Classes, in each of the cases of (i) and (ii) above (x) only to the extent that one or more Zero Balance Class exists on the AS Distribution Date that meets the criteria set forth in (i) and (ii) above and (y) in a manner consistent with the other terms of this Order; and it is further

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

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, 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 or 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 Share; 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 Petitioner with respect to any conduct taken to implement and comply with

the terms of this Order and with respect to the Subject Petitioner's administration and distribution of the Subject Allocable Share, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED, ADJUDGED and DECREED that upon the occurrence of the Judgment Entry Date, the Subject Petitioner shall promptly post a copy of this Order, bearing the Court's signature, on <http://rmbstrusteesettlement.com>, the website established by Petitioners; 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

_____, 2021

ENTER:

Hon. Melissa A Crane. J.S.C.

Judgment signed and entered this _____ day of _____ 2021.

Clerk of New York County