

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

- - - - - X

In the Matter of the Application of

U.S. BANK NATIONAL ASSOCIATION, WELLS FARGO BANK,
NATIONAL ASSOCIATION, WILMINGTON TRUST, NATIONAL
ASSOCIATION, WILMINGTON TRUST COMPANY AND
CITIBANK, N. A. (AS TRUSTEES, INDENTURE TRUSTEES,
SECURITIES ADMINISTRATORS, PAYING AGENTS, AND/OR
CALCULATION AGENTS OF CERTAIN RESIDENTIAL
MORTGAGE-BACKED SECURITIZATION TRUSTS,

INDEX NUMBER:
651625/18

Petitioners,

(Telephone
Conference)

For Judicial Instructions under CPLR Article 77,
On the Distribution of a Settlement Payment.

- - - - - X

60 Centre Street
New York, New York
August 14, 2018

BEFORE:

HONORABLE MARCY S. FREIDMAN, Justice

APPEARANCES:

GIBBS & BRUNS, LLP
Attorney for the Institutional Investors
1100 Louisiana Street - Suite 5300
Houston, Texas 77002
BY: KATHY PATRICK, ESQ.,

APPEARANCES CONTINUED:

Monica S. Horvath - Senior Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

McKOOL SMITH, PC
Attorneys for Nover Ventures, LLC
One Bryant Park - 47th Floor
New York, New York 10036
BY: GAYLE KLEIN, ESQ.,

MONICA HORVATH
SENIOR COURT REPORTER

THE COURT: Good morning, counsel.

MONICA S. HORVATH - SENIOR COURT REPORTER

1 Proceedings

2 This is Judge Friedman. I am here with a court
3 reporter.

4 May I ask that you say your name, and the first
5 time you speak, say your client's name without full
6 appearances. And that you send us a list of everyone
7 who is on the call.

8 We set up this call today because we would like
9 to know how you wish to proceed on the standing motion
10 in this Article 77 proceeding in light of the recent
11 standing decision in the Wells Fargo Article 77
12 proceeding.

13 Is it possible that counsel can stipulate that
14 the claims of Nover are barred or that participation by
15 Nover is barred for the reasons stated in the
16 Wells Fargo decision, and, of course, without prejudice
17 Nover's rights to take an appeal?

18 Can someone address that; have you discussed
19 this perhaps?

20 (Whereupon, there is no response.)

21 I'm not usually greeted with complete silence.

22 Do we have counsel on the phone.

23 MS. KLEIN: We can't hear you.

24 THE COURT: Did you hear anything that I just
25 said?

26 MS. KLEIN: No.

MONICA S. HORVATH - SENIOR COURT REPORTER

1 Proceedings

2 THE COURT: Okay.

3 I'm not usually greeted with complete silence.

4 The reason we set up this call is that we
5 wanted to see how counsel wished to proceed in light of
6 the standing decision in Wells Fargo.

7 We've had a look at the standing briefs in the
8 Lehman case and it seems that the arguments are the
9 same, and I was wondering whether the parties might
10 stipulate that Nover's participation in the Lehman
11 Article 77 proceeding is barred for the reasons stated
12 in the Wells Fargo decision, but without prejudice
13 of course to Nover's right to appeal.

14 Have the parties conferred about this?

15 And, let me just ask you before you speak to
16 please state your name and to send us a list of everyone
17 on the call as has been the practice in the past.

18 MS. KLEIN: Your Honor, this is Gayle Klein, on
19 behalf of Nover Ventures LLC. I am with the firm of
20 McKool Smith, for purposes of the record.

21 I do believe that Nover has some direct
22 holdings as well as holdings through CDO's, so I don't
23 think its participation would be barred completely
24 should Your Honor decide the standing motion similarly
25 to that in the Wells Fargo case.

26 We do believe that it would be meritorious to

MONICA S. HORVATH - SENIOR COURT REPORTER

1 Proceedings

2 have a very short oral argument to create a full record
3 and perhaps to address some issues or arguments that
4 were not addressed more fully in the Wells Fargo
5 proceeding. But, of course, we will defer to
6 Your Honor's wishes in that regard.

7 MS. PATRICK: Your Honor, Kathy Patrick, for the
8 Institutional Investors.

9 At least speaking for our clients and I think
10 in general in the name of efficiency, certainly as it
11 pertains to Nover's CDO holdings, the ruling in
12 Wells Fargo is and should be dispositive. There is no
13 need for oral argument. In fact, the briefs are
14 identical and so the order would of course need to be
15 drafted carefully to ensure that it doesn't seep in
16 Nover's direct certificate holdings of which there are
17 several, but as to the CDO holdings that ruling is
18 dispositive and we think that ought to be the end of it.
19 There is no need to belabor it with a oral hearing. The
20 Court has ruled.

21 MS. KLEIN: This is Gayle Klein again.

22 There are some affirmations in this proceeding
23 that relate to certificate holdings that are subject to
24 the Purchase Agreements and that has been briefed in our
25 affirmations that prove that some holders do have those
26 types of holdings. So that is one of the areas where

1 Proceedings

2 there is disagreement between the two cases. And there
3 are a couple of other points that we would make should
4 we be entitled to again a very brief oral argument.

5 THE COURT: I can't see my way in a case of this
6 magnitude to deny oral argument, but I think what we can
7 do is hold the oral argument over the phone, confine it
8 to 10 to 15 minutes per side.

9 And I think the way we can do this oral
10 argument is to have Nover speak first and then the
11 movant, the challenging respondents to have what
12 essentially would be the reply.

13 So, let's do that that way. And we will give
14 you an expedited date.

15 As it turns out, we will be here next week, so
16 if counsel are available, we can find a time to do it
17 next week. If not, it will have to wait until after
18 Labor Day. And, Miss Ling will discuss that with you in
19 just a moment.

20 I have one other question. And, that is, my
21 understanding is that a trust was added to this
22 proceeding; will there be any standing issues with
23 respect to that trust?

24 MS. PATRICK: Your Honor, Kathy Patrick, for the
25 Institutional Investors.

26 Our clients are the only parties who are

MONICA S. HORVATH - SENIOR COURT REPORTER

1 Proceedings

2 interested in that. And there is no standing challenge
3 expected. The trustees evidently overlooked that trust,
4 and, so, we have consented to add it belatedly to the
5 proceedings subject for the Court's okay, and, you
6 should have a pleading to that effect somewhere.

7 THE COURT: That was what we thought, but I had
8 wanted to confirm that.

9 I think also that the parties should confer and
10 submit a briefing schedule for briefing on the merits of
11 this proceeding.

12 I don't see any reason to defer briefing on the
13 merits pending the hearing of the standing motion
14 because I think that will be decided very quickly given
15 the substantial if not complete overlap of the issues
16 with the issues in the Wells Fargo standing motion.

17 That's everything from my point of view for
18 today.

19 Does any of the counsel have anything that he
20 or she wishes to address?

21 (Whereupon, there is no response.)

22 I'm not hearing anything.

23 I will leave the call.

24 Let me request as usual that you obtain a copy
25 of the transcript, e-file it and file two hardcopies
26 with the clerk of Part 60.

MONICA S. HORVATH - SENIOR COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

As you know, I reserve the right to correct errors in the transcript. Therefore, if it is needed for any further purpose, you should have a copy as so ordered by me and not only as signed by the court reporter.

Thank you.

MS. PATRICK: Thank you.

MS. COHEN: Thank you.

* * *

THE ABOVE IS CERTIFIED TO BE
A TRUE AND ACCURATE TRANSCRIPT
OF THE PROCEEDING RECORDED BY ME

MONICA HORVATH
SENIOR COURT REPORTER