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

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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),

Petitioners,

Index Number:
651625/2018

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

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60 Centre Street
New York, New York 10007
April 11, 2018

Before:

Honorable Marcy S. Friedman, JSC

Appearances:

Morgan Lewis
Counselors at Law
Attorneys for U.S. Bank National Association
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By: Kurt W. Rademacher, Esq.

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2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, Minnesota, 55402-3901
By: Robert L. Schnell, Esq.

Delores Hilliard
Official Court Reporter

- OFFICIAL COURT REPORTER

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Appearances Continued

Alston & Bird
Attorneys at Law
Attorneys for Wilmington Trust NA,
Wilmington Trust Company
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By: Alexander S. Lorenzo, Esq.

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By: Jonathan L. Hochman, Esq.

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299 Park Avenue
New York, New York 10171
By: Chester B. Salomon, Esq.
Of Counsel to Warner Partners, P.C.

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COURT CLERK: Index Number 651625/2018 in the matter of the application of U. S. B A N K N A T I O N A L A S S O C I A T I O N, et al for Judicial Instructions under CPLR Article 77 on the Administration and Distribution of a Settlement Payment.

THE COURT: On the record.

Good morning. May I have counsels' appearances, please.

MR. HOUPT: Good morning, your Honor. Christopher Houpt for Citibank.

MR. LORENZO: Alex Lorenzo for Wilmington Trust NA and Wilmington Trust Company.

MR. RADEMACHER: Kurt Rademacher for U.S. Bank National Association.

MR. SCHNELL: Good morning, your Honor. Robert Schnell for Wells Fargo.

MR. WARNER: Your Honor, Ken Warner for the Institutional Investors. Also with me of counsel is bankruptcy counsel Chester Salomon. And also from Gibbs and Bruns counsel for the Institutional Investors, David Sheeren whose pro hac application will be submitted.

MR. HOCHMAN: Good morning, your Honor. Jonathan Hochman. I represent Tilden Park.

THE COURT: I see that we have some of our counsel and/or observers in the courtroom. If anyone wishes to be

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heard you can let us know. And at that time you can tell us who you are.

We also sent around a sign in sheet. The reporter has requested that before counsel speaks they say their names.

We understand that there were proceedings before the Bankruptcy Court yesterday. We received a series of letters from the parties in advance of this first court date in this Article 77 proceeding. The letters alerted us to the proceedings before the Bankruptcy Court. Before coming out today we attempted to find the transcript which was being e-mailed to my law clerk, but it had not yet arrived. So, I have not yet had a chance to look at it. I certainly can do that before we conclude the proceedings here today. But, why don't we begin with counsels' positions on what occurred before the Bankruptcy Court.

MR. SCHNELL: Robert Schnell, your Honor, thank you, for Wells Fargo.

Yesterday's proceeding in the Bankruptcy Court the Institutional Investors sought an order preventing us from proceeding with this hearing today. They wanted the matter to simply be stayed until the Bankruptcy Court could determine whether it had exclusive jurisdiction. We opposed that order. And there was maybe an hour's worth of discussion at the end of which Judge Chapman said, look, I

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2 haven't had a chance to read these papers. The one thing
3 I'm going to do is order you not to do anything with the
4 money. Keep the money where it is. Don't do anything with
5 the money. Otherwise, she declined to order us not to
6 proceed today.

7 In fact, as she was quoted in the press as saying,
8 I see no problem with the State Court matter commencing at
9 this stage. She did not suggest that we did not send out
10 notice. She did not suggest that we not show up today. She
11 simply said, look, don't move the money and we will have
12 another hearing, which she set for the 19th at 10 AM.
13 Please do the 17th at which point she will have a chance to
14 consider the issue and hopefully rule, hopefully, properly
15 one way or the other whether this is a matter that she
16 thinks she needs to take up or not.

17 It seems that I'm putting gloss on what happened.
18 It seemed pretty clear that her view was that this involved
19 an interpretation of her orders and it belongs in front of
20 her. If it is an interpretation of the underlying
21 government agreements, New York State Trust Law matters, it
22 belongs here.

23 Obviously the sides differ on what was really at
24 issue. I think that is what she wanted to figure out.

25 THE COURT: Who else would like to be heard?

26 MR. SALOMON: Chester Salomon for the Institutional

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1 Proceedings

2 Investors. I think Mr. Schnell has a lot of it correct in
3 the way he described it. But, the way Judge Chapman finally
4 ruled was to say that she would conduct a proceeding on the
5 merits depending upon the issues raised by the Trustees
6 would involve an interpretation of the Trust Indentures or
7 the settlement agreement that was approved by the Bankruptcy
8 Court and was the subject of the hearing after many, many
9 months perhaps years of litigation. And she will address
10 that issue at a hearing on the 19th of this month.

11 And as Mr. Schnell mentioned, she directed that
12 there be a brief. But, she suggested throughout this that
13 she wants to maintain the status quo as it was before her
14 yesterday.

15 But, she did say that it was appropriate to come
16 here. I think it is partially out of respect of this Court
17 that this proceeding can go forward. And she seemed to say
18 this on the record, your Honor, but we don't have the
19 transcript either. And so, it all happened pretty quickly.

20 But, she said that the Article 77 proceeding can
21 commence. And as from her perspective and if the Court
22 wants to provide notice to parties in interest concerning
23 the Article 77 proceeding that also is acceptable to Judge
24 Chapman. That was the extent of it, your Honor.

25 She made one very important point which was the
26 money cannot be moved and she wants to maintain the status

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quo.

And there was some discussion about putting that money interest into the Bankruptcy Court could decide this issue after the hearing on the 19th.

THE COURT: Where is the money?

MR. SCHNELL: I believe the money is being held in escrow accounts of various Trustees.

THE COURT: How much was the settlement amount?

MR. SCHNELL: I believe the amount the Trustees are holding is \$873 million. There is, approximately, another \$70 million that was part of the settlement that is being paid to Trusts that are not at issue in this case. So, that is my understanding of the amounts, your Honor.

THE COURT: Mr. Salomon, I don't think I heard any disagreement between you and Mr. Schnell as to what occurred yesterday before Judge Chapman; is that correct?

MR. SALOMON: Well, Judge, I would say that the only disagreement that may come and refinements as to what occurred can be resolved in the expedited transcript. We will know, hopefully, by the end of today what was actually said and ruled is in haec verba.

And while it does appear to be correct, your Honor, I think the nuances, for you to understand the nuances of it I would recommend that you await, that we all await the transcript of the hearing which should be forthcoming.

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THE COURT: Would you like to respond to that?

MR. SCHNELL: Certainly. It's appropriate for you to review the transcript of the hearing, your Honor. I think we all agree as to what the Judge ordered. There was a lot of colloquy back and forth, of course. The order she entered, and it will be clear from the transcript, is don't do anything with the money. And she asked me, I think, what will you do if I order that. And I said, we won't do anything with the money, your Honor, and we are not.

But, I don't think it would be prudent for us to simply adjourn this hearing and await the transcript. We have more business to be done. And there are folks here because of the notice of this proceeding and we would like to get going. We would like to send notice out to the various interested parties as we did in JP Morgan. We would like to get an order from the Court that says we can invest this money once Judge Chapman has ruled. If she says it is not her case we have matters before the Court which we think ought to be addressed so that the case can move forward expeditiously.

MR. WARNER: Your Honor, we disagree with that, because we are talking about 8 days at that point. And in 8 days there is going to be the hearing before Judge Chapman and presumably a ruling on it. We think that it is just confusing to send out a notice which it might even, it is

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going to take awhile to send out the notice. The notice, if Judge Chapman rules that she has exclusive jurisdiction and from a July 2017 exclusive jurisdiction order, if she rules that way then within days of the notice going out then a correction goes out saying ignore the notice. So, we feel especially in light of the proximity of the hearing before Judge Chapman that your Honor should await that.

And Mr. Salomon said that in the Judge's rulings that this Court could, you know, proceed to some extent was based upon respect for your Honor. There is no question about that. But, it wasn't an encouragement that your Honor have the notice go out. It was really saying, look, I'm going to decide this, but I'm not going to tell Judge Friedman that she cannot have the notices going out. But, that doesn't mean your Honor should send them out. And we think they should not be sent out because they might be contradicted and corrected within days.

THE COURT: Does anyone else at the table or in the room want to be heard on this issue of the bankruptcy proceeding?

Just say your name.

MR. RADEMACHER: Kurt Rademacher. Thank you.

I think the one source that we found to avoid a loss on what the Court said or didn't say on that point is something that we shared with your law clerk earlier. The

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quote is, I don't see any prejudicial ruling from allowing the State Court proceeding to at least begin. I think it is our view that it begins and we can start approaching notice.

THE COURT: What State News are you pulling up?

MR. RADEMACHER: The View of Americas, the Bankruptcy Reporter.

Thank you.

MR. HOCHMAN: Your Honor, John Hochman for Tilden Park.

Our concern is not so much with which forum this winds up in, but we are interested in if your Honor were going to enter an order having an opportunity to have some input into what that order should say, particularly, because we are also parties to the JP Morgan Article 77. And I think there is some wording there that would be beneficially folded into an initial order in this case if there is going to be one.

So, I don't know if I should address that now, probably not. But, I wanted to put in that marker.

THE COURT: Well, I have some issues with the order also. And maybe we will spend a little time here and address those issues.

I think what we can do is put off the notice to interested or potentially interested parties that interim relief with respect to the investment of the funds is being

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2 requested until after Judge Chapman has had a reasonable
3 opportunity to rule. And if there are delays in the ruling
4 we can reconsider whether the notice should be sent out.

5 But, I am obligated, in any event, quite apart from
6 any issues of whether the Bankruptcy Court or this Court
7 should exercise jurisdiction to give notice to potentially
8 interested parties before granting interim relief. We had
9 an issue with that on the JP Morgan Article 77. But, in any
10 event, Rule 202.7 of the Supreme Court Rules require notice,
11 as does Rule 20 of the Commercial Division Rules. So, I
12 would have needed and wanted to give notice in any event.
13 And we can just put it out a bit. And then we can also
14 discuss the other provisions that will go into the Order to
15 Show Cause if it is going to proceed. And we can set dates
16 subject to adjustment if we need to because of the
17 proceedings before the Bankruptcy Court.

18 My initial question about this order -- Well, the
19 first question was why cannot we get this Order to Show
20 Cause rewritten so that it provides on its face and not by
21 reference to an exhibit in Mr. Schnell's affidavit or
22 affirmation what funds are going to be invested in. I think
23 it is a recipe for confusion to have that interim order with
24 respect to the investment in an exhibit that is merely
25 referenced in an Order to Show Cause.

26 We also don't have the provisions 3 through 6 from

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our supplemental order dated December 20, 2017. They for some reason are not in the Order to Show Cause that has been presented in this case. So, I want to see if there is a reason for this or any issues with respect to the language in paragraphs 3 through 6 of that order.

So, I am happy to have counsel address that at this time. And then if there are other issues about the provisions in the order that we wish to address, particularly in light of the J P. Morgan Article 77.

MR. SCHNELL: Thank you, your Honor. Robert Schnell, again.

I don't have committed memory of the JP Morgan order. But, as I recall, there is no reason why they should not be in this case.

THE COURT: You can hand up a copy.

MR. SCHNELL: In terms of the listing of the Trusts I think that was simply a matter of convenience. And I agree it could be confusing. We could put that in the bottom.

And in terms of the other provisions, obviously, we agree with you, notice ought to go out. We can modify the notice so it doesn't speak to the investment piece at this point. But, notifying people of the pendency of the proceeding we would like to get ahead and start doing that.

THE COURT: Has there been any feed-back on the

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2 notice that we ordered in the Article 77 proceeding? I
3 tried to take particular care to issue an order that would
4 successfully give notice to potentially interested parties.
5 Have there been any problems that you are aware of with the
6 notice that we ordered?

7 MR. SCHNELL: I'm looking around the room. I'm not
8 seeing any-- I'm not aware of any, your Honor.

9 In our brief review of paragraphs 3 through 6
10 counsel tells me that those are fine. But, the thing if
11 we're going to re-work the notice that we ought to think
12 about is the point made by counsel for Tilden Park. This
13 notice does set up a program that mirrors what we set up in
14 JP Morgan. It is not exactly what happened in JP Morgan.
15 You know, we contemplated a lengthy sort of answer in the JP
16 Morgan case and then as things rolled out this actually
17 turned out that wasn't the best way to proceed. We haven't
18 all had a chance to chat about it, but I think as a general
19 matter we ought to refine this notice now that we are
20 working on it so that it actually tracks what happened in JP
21 Morgan more than what this notice currently says.

22 THE COURT: When you say the notice, you mean the
23 notice attached to the Order to Show Cause?

24 MR. SCHNELL: I actually mean the Order to Show
25 Cause, your Honor. The process whereby people would appear
26 and answer and sort of a lengthy document. It turned out

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2 that what we all really had is I'm showing here's my
3 investment and then further proceedings that we actually got
4 a chance to talk about standing. That will come up in a
5 couple of weeks. And as I said, we talked to counsel for
6 Tilden Park who was suggesting such a modification in the
7 Order to Show Cause. And I think it is probably prudent.

8 THE COURT: What are you suggesting, counsel?

9 MR. HOCHMAN: The idea, your Honor, was just to
10 fold in some of the learning from the JP Morgan case.
11 Specifically, what we would like to do is have the Order to
12 Show Cause provide as the ticket broke admission, just the
13 bare bones pleading by way of an answer that just states
14 which Trusts each party is interested in. And just state
15 what their position is on the issues raised in the petition
16 without argument. That would be step one.

17 Step two could then be either an elaborated
18 schedule for determining standing next as happened in JP
19 Morgan and then a briefing schedule. Or simply as step two
20 just be a status conference in which case once everybody has
21 appeared and we know what Trust everyone is interested in we
22 then come back to your Honor and set the schedule and
23 procedure for standing and then a schedule for merits
24 briefing.

25 THE COURT: Are the Trustees in agreement with that
26 method of proceeding?

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2 MR. SCHNELL: I know a couple are. I don't know
3 that all of them have had a chance to actually consider it
4 since it just came up this morning. So, I cannot speak for
5 everyone. But, my personal view is I think it is sensible.
6 But, others may disagree.

7 THE COURT: I believe we had a counsel in the jury
8 box. Do you still want to be heard?

9 COUNSEL: No.

10 (Short pause)

11 THE COURT: I would like to discuss scheduling off
12 the record for a moment.

13 (Off the record discussion)

14 THE COURT: Okay, back on the record.

15 The record will reflect that I have conferred with
16 counsel and we will have a conference call on Monday the
17 23rd of April at 4 P.M.. At which time counsel will give us
18 an update on the proceedings before Judge Chapman in
19 Bankruptcy Court. If she has ruled prior to the 23rd
20 counsel can move up the conference call if they wish.

21 In addition, we have conferred about the
22 presentation of a revised Order to Show Cause. And Mr.
23 Schnell has informed me that that can be presented by the
24 16th of April. If any more time is needed you can simply
25 send me a letter or you can call chambers and give us a
26 revised date. He should have enough time to confer with the

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Trustees and any investors who have already contacted you and indicated that they wish to be heard on those provisions.

The Order to Show Cause that is going to be represented should also state that interim relief with respect to the investment of the settlement fund in a specified Money Market fund will be requested. And the Order to Show Cause should contain a provision for any objectors to have the opportunity to be heard on the investment.

In addition, the notice of the opportunity for the objectors to be heard should be the same notice as that provided in the December 20, 2017 order in the JP Morgan case.

I think that concludes everything from my point of view for today. Does any of the counsel have anything else before we conclude? I am not hearing anything.

I ask that the Trustees obtain a copy of the transcript of today's proceeding, e-file it and file two hard copies with the clerk of Part 60.

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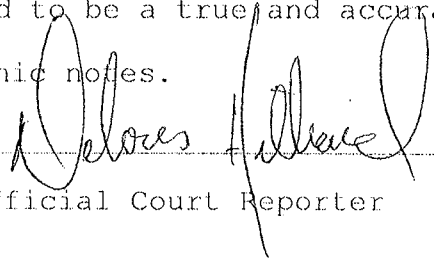
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Counsel are advised that I reserve the right to correct errors in the transcript. Therefore, if it is needed for any further purpose they should be sure they have a copy as so ordered by me and not merely as signed by the court reporter.

Thank you. The record is closed.

Certified to be a true and accurate transcription of said stenographic notes.



Official Court Reporter

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ERRATA SHEET

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