

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 30th day of July, 2019

PRESENT: Hon. Marcy S. Friedman, Justice.

FILED

AUG 01 2019

COUNTY CLERK'S OFFICE
NEW YORK

Index No. 657387/2017

~~PROPOSED~~
**PARTIAL SEVERANCE
ORDER AND PARTIAL
FINAL JUDGMENT
(BSABS 2005-1 and BSABS
2006-2 TRUSTS)**

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.

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, all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition; 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;¹ 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 BSABS 2005-1 and BSABS 2006-2 trusts (the "Undisputed 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

¹ The term "loan pool" as used herein refers to any loan group, loan subgroup, loan pool, loan subpool, or any other applicable grouping, pooling, or other assemblage of loans. Additionally, the term "certificate" as used herein refers to certificates, notes, or other applicable securities.

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and the Institutional Investors² asserted an interest in the Undisputed Trusts;

WHEREAS, Olifant Fund, Ltd., FFI Fund Ltd. and FYI Ltd. (the "Olifant Funds") asserted an interest in each of the Undisputed Trusts, but withdrew their appearance as to each of the Undisputed Trusts on December 7, 2018 (Dkt. No. 773);

WHEREAS, Nover Ventures, LLC ("Nover") asserted an interest in BSABS 2005-1 through ownership interests in other structures, either CDO, re-REMIC, or NIM trusts, but not in direct certificates issued by BSABS 2005-1;

WHEREAS, on August 7, 2018, the Court granted a motion for summary judgment filed by the Institutional Investors, among other investors, thereby dismissing Nover as a respondent with respect to any Settlement Trust in which they do not hold certificates (Dkt. No. 471) (the "Standing Decision");

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 BSABS 2005-1;

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 Trusts in which it had asserted an interest (Dkt. No. 514) (the "Trustee Substitution Stipulation");

² All references to the "Institutional Investors" in this Partial Severance Order and Partial Final Judgment include each and every one of the sixteen institutions identified in the Institutional Investors' Notice of Appearance (Dkt. No. 135).

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, the Institutional Investors are the only parties with standing to appear with respect to the Undisputed Trusts;

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;

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

WHEREAS, the Institutional Investors agree and consent to this Partial Severance Order and Partial Final Judgment (the "Order"), which resolves the issues for which judicial instruction were sought concerning the administration and distribution of the Allocable Shares for the Undisputed Trusts (the "Subject Allocable Shares"); and

WHEREAS, The Bank of New York Mellon ("BNYM") and Wells Fargo Bank, National Association ("Wells Fargo") are the trustees, successor trustees, and/or indenture trustees for the Undisputed Trusts (in such capacities, the "Subject Trustees") and Wells Fargo is the securities administrator, paying agent, and/or calculation agent for the Undisputed Trusts (in such capacities, the "Subject Payment Administrator") (the Subject Payment Administrator and the Subject Trustees 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

* By the Court: Whereas the Standing Decision was affirmed, by decision dated June 27, 2019. (173 AD3d 626 [1st Dept 2019]); and Whereas Nover has received notice of the proposed judgment by e-filing and has not made any request for relief with respect to the proposed judgment from the Court. and

WHEREAS, for each Undisputed Trust, the term “Overcollateralization Amount Calculation” is used herein to refer to the terms in the applicable Governing Agreements prescribing that the “overcollateralization amount” is equal to the excess of the aggregate balances of the mortgage loans held by the Undisputed Trust over the aggregate certificate principal balances of certain designated classes of certificates, as more fully defined and described in the applicable Governing Agreements; and

WHEREAS, as used herein the term “Transfer Month” means the month after 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 (as that term is defined in the applicable Governing Agreements) for each of the Undisputed Trusts 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, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustees (each with respect to the Undisputed Trusts for which it acts as trustee) are to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Shares plus any investments earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the respective distribution accounts of the Undisputed Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Undisputed Trusts 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 (i) for Undisputed Trusts where the Subject Trustee and Subject Payment Administrator are the same party, be distributed on the Distribution Date for the month following the month such Trailing Interest is received by the Subject Trustee or (ii) for Undisputed Trusts where the Subject Trustee and Subject Payment Administrator are different parties, be distributed on the Distribution Date for the month following the month such Trailing Interest is transferred from the Subject Trustee to the Subject Payment Administrator (which transfer shall take place within five days after the Subject Trustee receives such Trailing Interest). Any Trailing Interest shall be deemed a Subject Allocable Share for the Undisputed Trust on whose Allocable Share such Trailing Interest was accrued, 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

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

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust, the Subject Payment Administrator (i) shall first distribute the Subject Allocable Shares to certificateholders based on certificate principal balances that have not been adjusted by the Settlement Payment Write-Up, and, after such distribution, (ii) shall then increase the applicable certificate principal balances in

the amount of the Settlement Payment Write-Up in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust, the Subject Payment Administrator shall account for both the distribution of the Subject Allocable Shares and accompanying Settlement Payment Write-Up when performing the Overcollateralization Amount Calculation; and it is further

ORDERED, ADJUDGED and DECREED that to effectuate the immediately preceding paragraph, the Subject Payment Administrator shall calculate the aggregate certificate principal balances used for the Overcollateralization Amount Calculation by (i) first increasing such certificate principal balances by the amount of the Settlement Payment Write-Up and (ii) then reducing such certificate principal balances by an amount equal to the applicable Subject Allocable Share, and this paragraph and the immediately preceding paragraph shall have no application to the calculation of certificate principal balances for any purposes other than performing the Overcollateralization Amount Calculation, and, further, for the avoidance of doubt, with respect to the Distribution Date on which the Subject Allocable Shares are distributed, the instructions in this paragraph and the immediately preceding paragraph are intended to and shall prevent the Undisputed Trusts from being overcollateralized as a result of the receipt, administration, and/or distribution of the Subject Allocable Shares (but shall not impact whether the Undisputed Trusts are overcollateralized on such Distribution Date as result of anything unrelated to the receipt, administration, and/or distribution of the Subject Allocable Shares); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for BSABS 2006-2, the applicable Subject Payment Administrator 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 provisions in the applicable Governing Agreements (the "Governing Agreement Write-Up Instructions"); *provided, however*, that the Governing Agreement Write-Up Instructions shall be applied in conjunction with the Settlement Agreement Write-Up Instruction in a manner that causes all classes of certificates with outstanding unpaid realized losses to be eligible to be increased by the amount of the Settlement Payment Write-Up under the same order and priority scheme provided for in the Governing Agreement Write-Up Instructions (without regard to any language in the Governing Agreement Write-Up Instructions that could be construed as rendering any classes of certificates ineligible to be increased by the Settlement Payment Write-Up); 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 Governing Agreements 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 where 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

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the Undisputed Trusts, 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 any of the Undisputed Trusts are barred from asserting claims against any Subject Petitioner with respect to any conduct taken to implement and comply with the terms of this Order and with respect to such Subject Petitioner's administration and distribution of the Settlement Payment with respect to such 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

July 30, 2019

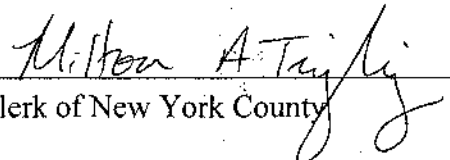

Hon. Marcy Friedman, J.S.C.

Judgment signed and entered this 1st day of August 2019.

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AT 11:00 AM
N.Y., CO. CLKS OFFICE