

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

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In the matter of the application of

INDEX NO. 657387/2017

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., DEUTSCHE BANK NATIONAL TRUST COMPANY. (as Trustees, Indenture Trustees, Securities Administrators, Paying Agents, and/or Calculation Agents of Certain Residential Mortgage-Backed Securitization Trusts),

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. n/a

**DECISION AND ORDER**

Petitioners,

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

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HON. MARCY S. FRIEDMAN:

The court is in receipt of the parties' letters dated March 25, 2020 and March 26, 2020 concerning the Proposed Severance Order and Partial Final Judgment filed on March 15, 2020 (Docket Nos. 857 and 858 [Proposed Judgment]).<sup>1</sup>

The court denies the request of Nover Ventures, LLC (Nover) that the court reject the Proposed Judgment or, in the alternative, hold the matter in abeyance until Nover may be heard on the matter. The court also declines Nover's related request for leave to amend its answer to the Petition and its Holdings Affirmation to include BSMF 2007-AR5.

Nover has failed over a protracted period of time to identify and disclose all of its

<sup>1</sup> Due to the suspension of the NYSCEF filing system related to the ongoing COVID-19 public health emergency, the parties' letters were submitted to the court by email. (See March 22, 2020 Administrative Order of Chief Administrative Judge Judge Lawrence Marks [AO/78/20].) The letters shall be filed by the parties on the electronic docket for this case within a reasonable time after the NYSCEF filing system is restored to its normal function. Nothing in this decision and order should be construed as providing that the parties cannot pursue essential applications to the Appellate Division in advance of the filing of the letter applications on NYSCEF.

holdings in the Settlement Trusts. Nover appeared in this proceeding in connection with various Trusts (Docket No. 164) on January 29, 2018, the deadline for interested parties to answer the Petition (Docket No. 30). Pursuant to the court's February 13, 2018 scheduling order (Docket No. 194), interested parties were required to disclose information concerning their holdings in the Settlement Trusts by February 21, 2018 (Docket No. 194). Nover does not dispute that it failed to appear and answer as an interested party or make holdings disclosures for BSMF 2007-AR5 by these deadlines. Nor has Nover sought to appear for BSMF 2007-AR5 at any time in the intervening two years during which the appearing parties have engaged in comprehensive briefing on standing and merits. Nover now submits a letter application alleging an oversight in failing to appear for BSMF 2007-AR5. Given the history of these proceedings and the extensive passage of time, Nover's delay is patently inexcusable and would cause prejudice to the other interested parties in this proceeding. The court also notes that it denied another investor's substantially earlier May 2018 motion for leave to amend based on grounds similar to those now asserted by Nover. (Docket No. 476.) The court held that the investor's "delay in asserting an interest in the Settlement Trusts based on its ownership of the certificates has caused significant prejudice to the other respondents." (Id. at 30.)

Nover also appears to object to the Proposed Judgment as inconsistent with this court's February 13, 2020 Decision and Order (Docket No. 843). That Decision and Order provides: "[A]s to any Settlement Trust in which all interested respondents are able, after the issuance of this decision 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." (Id., Ordering Clause ¶ 2). The Proposed Judgment was submitted in accordance with the court's

Decision and Order.

To the extent that Nover is requesting any relief from the court with regard to its CDO investments related to BALTA 2005-5, BALTA 2006-4, BSMF2006-1, this request is improper. The Appellate Division has affirmed a prior decision of this court rejecting Nover’s standing in this proceeding with respect to those Trusts. (See Docket No. 471, affirmed at 173 A.D.3d 626 [1st Dept 2019].)

It is hereby ORDERED that Nover’s application, as set forth in its March 25, 2020 letter, is denied in all respects.

Dated: New York, New York  
March 31, 2020

  
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MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE