

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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

Justice Melissa Anne Crane
Part 60

**MEMORANDUM OF LAW IN SUPPORT OF
EX PARTE ORDER SUBSTITUTING PARTY AND AMENDING CAPTION**

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Petitioner U.S. Bank National Association (“USBNA”), solely in its capacities as trustee, securities administrator, paying agent, and/or calculation agent for thirty-seven of the sixty residential mortgage-backed securitization trusts remaining at issue in this action (the “Remaining USB Trusts”) out of the original trusts as set forth on Exhibit A to the Petition at NYSCEF No. 1 (the “Settlement Trusts”), submits this memorandum of law in support of the issuance of an Ex Parte Order Substituting Party and Amending Caption (the “Proposed Order”) seeking to both (i) substitute U.S. Bank Trust Company, National Association (“USBTC”) as petitioner in this action in place of USBNA for twenty of the thirty-seven Remaining USB Trusts specified on Exhibit 1 to the Proposed Order (the “Transferred Remaining USB Trusts”) and (ii) amend the case caption consistent with the substitution.

I. STATEMENT OF FACTS

On December 15, 2017, USBNA, along with co-Petitioners Wells Fargo 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 U.S.A., N.A.; and Deutsche Bank National Trust Company (the “Petitioners”), filed a petition seeking judicial instruction pursuant to Article 77 of the CPLR for certain issues pertaining to the administration and distribution of proceeds realized from a legal settlement by and among JPMorgan Chase & Co. and its direct and indirect subsidiaries (collectively, “JPMorgan”) and a group of institutional investors, pursuant to the contracts governing the Settlement Trusts (the “Governing Agreements”). *See* NYSCEF No. 1.

Pursuant to the Order to Show Cause entered on December 19, 2017 (NYSCEF No. 30), numerous certificateholders¹ asserting interests in various of the Settlement Trusts (the “Appearing Certificateholders”)² filed responses to the Amended Petition. 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. The First Department, Appellate Division affirmed the Merits Ruling on August 19, 2021.

Both prior to and after the issuance of the Merits Ruling, the relevant Petitioners and Appearing Certificateholders for certain of the Settlement Trusts agreed separately to resolve their outstanding questions regarding these Settlement Trusts, thereby leading many of the Settlement Trusts to be severed from this action. Accordingly, although USBNA was trustee, securities administrator, paying agent, and/or calculation agent (as named in such role or as successor to the named party) for one-hundred and fifty-six of the Settlement Trusts as of the date on which this action was filed, only thirty-seven of these Settlement Trusts now remain at issue. *See* Exhibit A (Affidavit of Nicolas Valaperta), ¶¶ 3-4.

¹ The term “certificateholders” as used herein denotes parties holding certificates, notes, or any other applicable securities representing an interest in the Settlement Trusts.

² As of the date hereof, the Appearing Certificateholders are American General Life Insurance Company; American Home Assurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, Pa.; The United States Life Insurance Company in the City of New York; The Variable Annuity Life Insurance Company; D.E. Shaw Refraction Portfolios, L.L.C.; Ellington Management Group, LLC; AEGON USA Investment Management, LLC; BlackRock Financial Management, Inc.; Cascade Investment, LLC; Federal Home Loan Bank of Atlanta; Federal Home Loan Mortgage Corp.; Federal National Mortgage Association; Goldman Sachs Asset Management L.P.; Voya Investment Management LLC; Invesco Advisers, Inc.; Kore Advisors, L.P.; Metropolitan Life Ins. Co.; Pacific Investment Management Company LLC; Teachers Insurance and Annuity Association of America; TCW Group, Inc.; Thrivent Financial for Lutherans; Western Asset Management Co.; Axonic Capital LLC; Nover Ventures, LLC; Strategos Capital Management, LLC; ASO Atlantic Fund LLC; HBK Master Fund L.P.; Assured Guaranty Corp.; Poetic Holdings VI LLC; Poetic Holdings VII LLC and Affiliates; and Prophet Mortgage Opportunities L.P.

In 2022, USBNA transferred substantially all of its corporate trust business to USBTC, a wholly owned subsidiary of USBNA. *See* Exhibit A, ¶ 5. As a result of this transfer, USBTC has succeeded to all transaction roles (including but not limited to trustee, securities administrator, paying agent, and/or calculation agent) of USBNA for the Transferred Remaining USB Trusts, and USBNA no longer fulfills such roles for the Transferred Remaining USB Trusts.³ *Id.*

Contemporaneously herewith, USBNA filed the Proposed Order seeking to (i) substitute USBTC as petitioner for the Transferred Remaining USB Trusts to reflect the transfer, and (ii) amend the case caption to add USBTC as appropriate.

II. ARGUMENT

a. Substitution of USBTC as Petitioner for the Transferred Remaining USB Trusts is Appropriate

Pursuant to CPLR § 1018, “[u]pon any transfer of interest,” the Court may direct “the person to whom [an] interest is transferred to be substituted or joined in the action.” A motion for substitution may be made by any party to an action. CPLR § 1021. New York courts routinely grant motions pursuant to CPLR §§ 1018 and 1021 seeking the substitution of a party in actions where another party assigns its rights and interests during the course of a proceeding. *See, e.g., Medallion Auto v. Sanders*, 272 A.D.2d 85, 85-86 (1st Dep’t 2000). Indeed, the Court (Hon. Andrew S. Borrok) recently granted a similarly-situated Ex Parte Order substituting USBTC as petitioner in place of USBNA for certain residential mortgage-backed securitization trusts at issue

³ As of the date hereof, USBNA has retained its applicable transaction roles for the remaining seventeen Remaining USB Trusts at issue in this action and for which USBNA fulfills such roles (the “Non-Transferred Remaining USB Trusts”), but USBTC may eventually succeed USBNA for some or all the Non-Transferred Remaining USB Trusts. If and to the extent necessary, USBNA may seek to substitute USBTC as petitioner for any Non-Transferred Remaining USB Trusts that are subject to any future transfer.

in a separate Article 77 proceeding. *See In re U.S. Bank National Association*, No. 656028/2021, Order – Exparte (Sup. Ct. N.Y. Cnty. July 5, 2022) (Dkt. No. 134).

Here, USBNA commenced this action solely in its capacities as trustee, securities administrator, paying agent, and/or calculation agent under the Governing Agreements. As a result of the aforescribed transfer of USBNA’s corporate trust business, USBTC has succeeded to all transactional roles at issue in this action for the Transferred Remaining USB Trusts. Exhibit A, ¶ 5. USBTC should thus be substituted as petitioner for USBNA with respect to the Transferred Remaining USB Trusts.

The substitution of USBTC as petitioner for the Transferred Remaining USB Trusts will not impact any of the questions or issues addressed in the Petition or the Merits Ruling, or otherwise affect the proceeding. Additionally, the Appearing Certificateholders consent to the substitution, as reflected in the simultaneously filed Stipulation Concerning Ex Parte Order Substituting Party and Amending Caption, appearing as Exhibit A to the Affirmation of Nidhi Nina Yadava in Support of Ex Parte Order Substituting Party and Amending Caption.

b. Amended Case Caption

If the Court permits the requested substitution, it should also amend the case caption. New York courts routinely modify a case caption following substitution of a party pursuant to CPLR §§ 1018 and 1021. *See, e.g., New York State Workers’ Compensation Bd. v. Classic Ins. Agency*, 78 A.D.3d 561, 562 (1st Dep’t 2010) (“[W]ere we to sua sponte grant leave to appeal, we would affirm. Since[] the authority to administer the trust’s workers’ compensation claims and provide risk management services was transferred to the Workers’ Compensation Board subsequent to commencement of the instant action, the court properly substituted it as the appropriate plaintiff”); *Nat’l Credit Union Admin. Bd. v. Bouzaglou*, No. 651540/16, 2018 WL 4076374, at *2 (N.Y. Sup. Ct. Aug. 27, 2018) (granting plaintiff’s motion to amend case caption based on,

among other things, affidavit provided by vice president of plaintiff’s successor entity attesting to transfer of interests), *aff’d sub nom., Bethpage Fed. Credit Union v. Bouzaglou*, 183 A.D.3d 541 (1st Dep’t 2020). Petitioner respectfully requests that the case caption be modified as shown below:

<p>In the matter of the application of</p> <p>WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK NATIONAL ASSOCIATION, U.S. BANK TRUST COMPANY, 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),</p> <p style="text-align: center;">Petitioners,</p> <p>For Judicial Instructions under CPLR Article 77 on the Distribution of a Settlement Payment.</p>
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III. CONCLUSION

For the reasons set forth herein, Petitioner respectfully requests that the Court enter the Proposed Order.

Dated: August 5, 2022
New York, New York

Respectfully submitted,

/s/ Nina Yadava

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RULE 17 CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

I hereby certify that the foregoing document complies with the word count limit set forth in Rule 17 of the Rules of Practice for the Commercial Division of the Supreme Court because it contains 1,402 words, excluding the caption, table of contents, table of authorities, and signature block.

In making this calculation, I have relied on the word count of the word-processing system used to prepare the document.

Dated: August 5, 2022
New York, New York

Respectfully submitted,

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