

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

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION (as Trustee,  
Securities Administrator, Paying Agent, and/or  
Calculation Agent under various Pooling and Servicing  
Agreements),

Petitioner,

for judicial instructions pursuant to CPLR Article 77.

Index No. 656028/2021

Justice Andrew S. Borrok  
Part 53

**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 the seventy-seven residential mortgage-backed securitization trusts listed on Exhibit A (the “Subject Trusts”) to the First Amended Petition at NYSCEF No. 33, submits this memorandum of law in support of 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 the forty-six Subject Trusts specified on Exhibit 1 to the Proposed Order (the “Transferred Subject Trusts”) and (ii) amend the case caption consistent with the substitution.

## I. STATEMENT OF FACTS

On October 18, 2021, USBNA filed a petition seeking judicial instruction pursuant to Article 77 of the CPLR for certain issues pertaining to the interpretation and application of the contracts governing the Subject Trusts (the “Governing Agreements”), and USBNA filed the Amended Petition thereafter on December 28, 2021. *See* NYSCEF Nos. 1, 33.

Pursuant to the Order to Show Cause entered on November 29, 2021 (NYSCEF No. 30) and Order to Show Cause entered on January 10, 2021 (NYSCEF No. 55), numerous certificateholders asserting interests in various of the Subject Trusts (the “Appearing Certificateholders”)<sup>1</sup> filed responses to the Amended Petition. USBNA and the Appearing

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<sup>1</sup> As of the date hereof, the Appearing Certificateholders are ASO Atlantic Fund LLC; Ellington Management Group LLC; HBK Master Fund L.P.; U.S. Bank National Association, solely in its capacity as trustee of NIM trusts BSABS NIM 2003-HE1, BSABS NIM 2004-FR3N, BSABS NIM 2004-HE11, BSABS NIM 2004-HE6N, BSABS NIM 2004-HE9N, BSABS NIM 2005-AQ2N, and BSABS NIM 2005-FR1 and solely at the direction of HBK Master Fund L.P.; Olifant Fund, Ltd.; FFI Fund Ltd.; FYI Ltd.; Taconic Master Fund 1.5 LP; Taconic Opportunity Master Fund LP; and Park Royal II LLC; Pacific Investment Management Company, LLC; Poetic Holdings 8 LP; Poetic Holdings IX LP; Poetic Holdings VII LLC; Poetic Holdings VI LLC; and U.S. Bank National Association, solely in its capacity as trustee for the NIM Trusts BSSP 2005-

Certificateholders are currently engaged in discovery, and briefing in the matter is presently scheduled to occur in the fall of 2022. *See* NYSCEF No. 128.

After the Amended Petition was filed, USBNA transferred substantially all of its corporate trust business to USBTC, a wholly owned subsidiary of USBNA. *See* Exhibit A (Affidavit of Nicolas Valaperta), ¶ 4. 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 Subject Trusts, and USBNA no longer fulfills such roles for the Transferred Subject Trusts.<sup>2</sup> *Id.*

Contemporaneously herewith, USBNA filed the Proposed Order seeking to (i) substitute USBTC as petitioner for the Transferred Subject 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 Subject 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

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32N, BSNIM 2004-HE10, and BSSP 2006-3, and solely at the direction of Poetic Holdings VI LLC.

<sup>2</sup> As of the date hereof, USBNA has retained its applicable transaction roles for the remaining thirty-one Subject Trusts (the “Non-Transferred Subject Trusts”), but USBTC may eventually succeed USBNA for some or all the Non-Transferred Subject Trusts. If and to the extent necessary, USBNA may seek to substitute USBTC as petitioner for any Non-Transferred Subject Trusts that are subject to any future transfer.

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).

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 Subject Trusts. Exhibit A, ¶ 4. USBTC should thus be substituted as petitioner for USBNA with respect to the Transferred Subject Trusts.

The substitution of USBTC as petitioner for the Transferred Subject Trusts will not impact any of the questions or issues raised in the Amended Petition 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:

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION (each separately as Trustee, Securities Administrator, Paying Agent, and/or Calculation Agent, as applicable, under various Pooling and Servicing Agreements),

Petitioners,

for judicial instructions pursuant to CPLR Article 77.

**III. CONCLUSION**

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

Dated: June 17, 2022  
New York, New York

Respectfully submitted,

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SUPREME COURT OF THE STATE OF NEW YORK  
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In the matter of the application of

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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 1,065 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: June 17, 2022  
New York, New York

Respectfully submitted,

*/s/ Nina Yadava*

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