

At IAS Part 53 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 ___ day of _____, 2022

P R E S E N T: Hon. Andrew S. Borrok, Justice.

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 Art. 77.

Index No. 656028/2021

Justice Andrew S. Borrok
Part 53

**EX PARTE ORDER AND
PARTIAL FINAL JUDGMENT**

WHEREAS petitioners U.S. Bank National Association and U.S. Bank Trust Company, National Association (“Petitioners”), solely in their capacities as trustee, securities administrator, paying agent, and/or calculation agent, as applicable, for seventy-seven residential mortgage backed securities trusts (the “Subject Trusts”), filed a petition on October 18, 2021 (NYSCEF Doc. No. 1) and subsequently filed a first amended petition on December 28, 2021 (NYSCEF Doc. No. 33) (the “Amended Petition”); and

WHEREAS, the Amended Petition seeks instruction regarding the (i) manner in which distributions to holders of certificates (“certificateholders”) issued by the Subject Trusts are calculated and applied under waterfall provisions in the agreements governing the trusts (the “Governing Agreements”) after the principal balances of the Class A, Class M, and/or Class B classes of certificates (the “Primary Classes”) are reduced to zero and (ii) treatment of borrower payments of deferred or forborne principal, interest, and/or other amounts on mortgage loans that have been subject to servicer modifications in connection with a default or a reasonably foreseeable

default concerning seventy-three of the Subject Trusts identified on Exhibit G to the Amended Petition (NYSCEF Doc. No. 40) (the “Exhibit G Subject Trusts”); and

WHEREAS, the Amended Petition explains that for any collections of borrower payments of deferred or forborne principal, interest, and/or other amounts on mortgages that have been subject to servicer modifications, Petitioners’ current practice is to (i) treat deferred or forborne amounts as principal funds that do not constitute “Subsequent Recoveries” or a term of equivalent meaning, as defined in the applicable Governing Agreements, and (ii) not apply increases, or write-ups, to any certificate principal balances of any classes of certificates with respect to any such deferred or forborne amounts ((i) and (ii) together, “Petitioners’ Current Deferred Principal Collections Practice”); and

WHEREAS, the Amended Petition seeks judicial instruction as to whether Petitioners should continue Petitioners’ Current Deferred Principal Collections Practice, and requests that if the Court instructs Petitioners to apply an alternative approach with respect to Petitioners’ Current Deferred Principal Collections Practice, such alternative approach should apply only prospectively and Petitioners’ historical treatment with respect to deferred or forborne amounts should be deemed to constitute a good faith, reasonable application of the terms of the applicable Governing Agreements in full discharge of Petitioners’ contractual duties (the “Requested Historical Treatment Instruction”); and

WHEREAS, the court entered Orders to Show Cause on November 29, 2021 (NYSCEF Doc. No. 30) and on January 10, 2022 (NYSCEF Doc. No. 55) (collectively, the “Orders to Show Cause”) which required Petitioners to conduct notice programs (the “Notice Programs”) to provide notice of the proceeding to holders and any other persons claiming an interest in the Subject Trusts (“Potentially Interested Persons”); and

WHEREAS, the Orders to Show Cause required all Potentially Interested Persons to appear in the proceeding by January 18, 2022 with respect to the November 29, 2021 Order to Show Cause and by January 24, 2022 with respect to the January 10, 2022 Order to Show Cause, so that such Potentially Interested Persons could assert why an order and judgment should not be entered granting the relief sought in the Amended Petition; resolving the questions presented by the Amended Petition and directing Petitioners as the Court may so order; permanently barring litigation outside the context of this proceeding on any question, issue, objection, claim, or concern related to the matters in the Amended Petition; and for such other and further relief as this Court deems just and proper; and

WHEREAS, the Orders to Show Cause provide that the Notice Programs are reasonable, adequate, and are the best notice practicable, are reasonably calculated to put interested parties on notice of this action, constitute due and sufficient notice of this proceeding in satisfaction of federal and state due process requirements and other applicable law; and

WHEREAS, the Orders to Show Cause provide that any Potentially Interested Person who fails to answer the Amended Petition in the manner described therein shall be deemed to have waived the right to be heard on the questions presented by the Amended Petition and from appealing any order, resolution, or judgment issued in the proceeding and shall be forever and finally barred from raising the right to be heard on such questions in this or any other action or proceeding, unless ordered otherwise by the Court; and

WHEREAS, the Court issued a Case Management Order (NYSCEF Doc. No. 93) (the “First Case Management Order”) ordering that the deadline for Potentially Interested Persons to appear in this proceeding expired on January 24, 2022; and

WHEREAS, the following certificateholders collectively constitute all Potentially Interested Persons appearing in the proceeding: (a) ASO Atlantic Fund LLC; (b) Ellington Management Group L.L.C.; (c) FFI Fund Ltd., FYI Ltd., Olifant Fund, Ltd., Park Royal II LLC, Taconic Master Fund 1.5 LP, and Taconic Opportunity Master Fund LP; (d) HBK Master Fund L.P.; (e) 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.; (f) NAV LLC, Reliance Standard Life Insurance Co., Safety National Casualty Corporation, and Stephen Finkelstein; (g) Pacific Investment Management Company LLC, on behalf of certain investment vehicles for which it serves as investment manager, adviser, or sub-adviser; (h) Poetic Holdings 8 LP, Poetic Holdings IX LP, and Poetic Holdings VII LLC; (i) Poetic Holdings VI LLC; and (j) U.S. Bank National Association, solely in its capacity as trustee for the NIM Trusts BSSP 2005-32N, BSNIM 2004-HE10, and BSSP 2006-3, and solely at the direction of Poetic Holdings VI LLC (subparts (a) through (j) collectively, the “Appearing Certificateholders”); and

WHEREAS, various Appearing Certificateholders asserted in their initial submissions that the Court should not grant Petitioners’ Requested Historical Treatment Instruction; and

WHEREAS, Petitioners served discovery requests on the Appearing Certificateholders concerning their historical knowledge of Petitioners’ Current Deferred Principal Collections Practice, and these discovery requests are targeted to provide support for Petitioners’ Requested Historical Treatment Instruction and to facilitate Petitioners’ opposition to any claims parties may make concerning the propriety or appropriateness of Petitioners’ Current Deferred Principal

Collections Practice, including any claims or assertions that such practice is in violation of, or otherwise inconsistent with, the Governing Agreements or other applicable law; and

WHEREAS, in an effort to narrow the issues in this action, the Appearing Certificateholders have agreed to discharge, and forever waive, any alleged or actual damages claims related to Petitioners' Current Deferred Principal Collections Practice with respect to the Exhibit G Subject Trusts; and

WHEREAS, in an effort to narrow the issues in this action, Petitioners have agreed to withdraw all discovery requests they served on the Appearing Certificateholders and to serve no further discovery requests in the proceeding; and

WHEREAS, Petitioners have submitted an affirmation by Nidhi Nina Yadava in support of this Ex Parte Order and Partial Final Judgment (the "Yadava Affirmation"); and

WHEREAS, attached as Exhibit 1 to the Yadava Affidavit is a Joint Stipulation between Petitioners and the Appearing Certificateholders, in which the parties memorialize the aforementioned agreements concerning discovery and damages claims and the Appearing Certificateholders agree to not oppose this Ex Parte Order and Partial Final Judgment; and

WHEREAS, in light of the terms of the Joint Stipulation, no parties in this proceeding oppose this Ex Parte Order and Partial Final Judgment, and any other parties with a possible interest in this proceeding that have failed to appear are deemed to have waived the right to be heard on, and are forever and finally barred from raising the right to be heard on, the questions presented by the Amended Petition pursuant to the Orders to Show and First Case Management Order; and

WHEREAS, as a result of the foregoing, this Ex Parte Order and Partial Final Judgment is unopposed;

NOW, THEREFORE, on the motion of Petitioners, it is hereby

ORDERED, ADJUDGED, AND DECREED that the following claims shall be fully, finally, and completely released, waived, and discharged: any alleged or actual claims for damages against Petitioners arising from Petitioners' Current Deferred Principal Collections Practice in connection with the Exhibit G Subject Trusts (the "Discharged Damages Claims") of (i) the Appearing Certificateholders or (ii) any other certificateholders or other parties with rights or interests (whether past, present, or future, or known or unknown) in the Exhibit G Subject Trusts ((i) and (ii) together, the "Interested Parties"); and

ORDERED, ADJUDGED, AND DECREED that the Interested Parties shall be forever barred from asserting the Discharged Damages Claims against Petitioners in this or any other action; and

ORDER, ADJUDGED, and DECREED that all of Petitioners' outstanding discovery requests served on the Appearing Certificateholders shall be withdrawn, including without limitation any requests regarding the Appearing Investors' knowledge of Petitioners' historical practices concerning the matters raised in the Amended Petition; and

ORDER, ADJUDGED, and DECREED that Petitioners shall not be permitted to serve any additional discovery requests on the Appearing Certificateholders without leave of the Court; and

ORDER, ADJUDGED, and DECREED that nothing herein shall be deemed an admission or concession by the Appearing Certificateholders concerning the propriety or appropriateness of Petitioners' Current Deferred Principal Collections Practice, including without limitation whether Petitioners' Current Deferred Principal Collections Practice comports with, or does not comport with, the terms of the Governing Agreements, nor shall anything herein prevent the Appearing Certificateholders from seeking retrospective or prospective relief in this action concerning

adjustments, recalculations, restatements, modifications, write-ups, or other changes to the outstanding certificate principal balances of the certificates issued by the Exhibit G Subject Trusts in connection with issues related to Deferred Principal Collections.

Dated: New York, New York

_____, 2022

Hon. Andrew Borrok, J.S.C.

Judgment signed and entered this _____ day of _____ 2022.

Clerk of New York County