

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

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

**AFFIRMATION OF NIDHI NINA YADAVA IN SUPPORT OF EX PARTE ORDER AND PARTIAL FINAL JUDGMENT**

I, Nidhi Nina Yadava, an attorney admitted to practice in the courts of the State of New York, affirm the following under penalty of perjury, pursuant to New York Civil Practice Law and Rule (“CPLR”) § 2106(a):

1. I am a partner with Jones Day, counsel to U.S. Bank National Association and U.S. Bank Trust Company, National Association, solely in their capacities as trustee, securities administrator, paying agent, and/or calculation agent (as named in such role as successor to the named party, the “Petitioners”), as applicable, for seventy-seven residential mortgage backed securities trusts (the “Subject Trusts”), in this matter.

2. I submit this affirmation in support of the Ex Parte Order and Partial Final Judgment filed contemporaneously herewith.

**PETITION**

3. Pursuant to CPLR Section 7701, Petitioners 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”).

4. The Amended Petition seeks judicial 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”).

5. 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”).

6. 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.

**ORDERS TO SHOW CAUSE**

7. 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”).

8. 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.

9. 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.

10. 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.

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

12. 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; (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”).

**JOINT STIPULATION AND EX PARTE ORDER AND PARTIAL FINAL JUDGMENT**

13. Attached as Exhibit 1 is a Joint Stipulation by Petitioners and the Appearing Certificateholders (the “Joint Stipulation”).

14. In the Joint Stipulation, Petitioners agree to withdraw all discovery requests they served on the Appearing Certificateholders and to serve no further discovery requests on the Appearing Certificateholders in this proceeding.

15. The Appearing Certificateholders agree to waive all claims for damages against Petitioners concerning Petitioners’ Current Deferred Principal Collections Practice, but reserve the right to seek the recalculation or restatement of certificate principal balances in connection with the matters raised in the Amended Petition.

16. Additionally, the Appearing Certificateholders agree that they will not oppose the Ex Parte Order and Partial Final Judgment.

17. The Ex Parte Order and Partial Final Judgment, in turn, bars the Appearing Certificateholders and 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 from asserting damages claims against Petitioners with respect to Petitioners’ Current Deferred Principal Collections Practice. It also contains certain additional relief consistent with the Joint Stipulation of the parties.

**THE EX PARTE ORDER AND PARTIAL FINAL JUDGMENT IS UNOPPOSED AND SHOULD BE ENTERED**

18. In light of the terms of the Joint Stipulation, none of the parties that have appeared in this proceeding oppose the Ex Parte Order and Partial Final Judgment.

19. Additionally, any other parties with a possible interest in this proceeding that have failed to appear are barred from appearing at this stage to take a position on any issues, as set forth in the Orders to Show Cause and First Case Management Order.

20. As a result of the above, the Ex Parte Order and Partial Final Judgment is unopposed. Petitioners respectfully requests that it be entered to further effectuate the agreement of the parties under the Joint Stipulation and to narrow the issues before the Court in this matter.

**NO PRIOR REQUEST**

21. No prior request or application for relief has been sought by Petitioners concerning the Ex Parte Order and Partial Final Judgment.

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WHEREFORE, Petitioners respectfully request that the Court enter the Ex Parte Order and Partial Final Judgment and grant Petitioners such other, further and different relief as the Court considers just and proper.

Dated: August 4, 2022  
New York, New York



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Nidhi Nina Yadava