

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 Under CPLR Article 77

Index No. 656028/2021

Justice Andrew Borrok

IAS Part 53

Mot. Seq. No. 015

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the attached is a true and correct copy of the Decision and Order on Motion for Motion Sequence No. 015 in this matter dated November 27, 2023, and duly filed and entered on November 28, 2023.

Dated: November 29, 2023
New York, New York

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Michael Chen

Uri A. Itkin
Richard J. D'Amato
Michael Chen
Andrew A. McWhorter
Jennifer Hap

One Bryant Park
New York, NY 10036
Tel: (212) 872-8003

Attorneys for HBK Master Fund L.P.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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U.S. BANK NATIONAL ASSOCIATION (AS TRUSTEE,
SECURITIES ADMINISTRATOR, PAYING AGENT, AND/
OR CALCULATION AGENT UNDER VARIOUS POOLING
AND SERVICING AGREEMENTS), U.S. BANK TRUST
COMPANY, NATIONAL ASSOCIATION (AS TRUSTEE,
SECURITIES ADMINISTRATOR, PAYING AGENT, AND/
OR CALCULATION AGENT UNDER VARIOUS POOLING
AND SERVICING AGREEMENTS),

Plaintiff,

- v -

N/A,

Defendant.

INDEX NO. 656028/2021
MOTION DATE N/A
MOTION SEQ. NO. 015

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 340, 341, 342, 343,
344, 345, 346, 347, 348, 349

were read on this motion to/for STAY.

Pacific Investment Management Company LLC and HBK Master Fund L.P.'s (hereinafter,
collectively, the **Moving Respondents**) motion to stay this proceeding or, alternatively, to
adjourn the final hearing in this matter is granted to the extent of adjourning the final hearing
from December 11-December 15, 2023, to November 4-November 8, 2025.

In the Second Amended Complaint (the **SAP**; NYSCEF Doc. No. 290), the Petitioners seek
instruction as to (i) the manner in which distributions are calculated and applied after the
outstanding principal balances of the primary classes of certificates are reduced to zero and (ii)
whether deferred principal collections should be treated as subsequent recoveries under the
Pooling and Service Agreements (**PSAs**) for the relevant trusts. In a related case, the court

(Friedman, J.) and the Appellate Division reviewed the language of certain PSAs and held that deferred principal payments should be treated as subsequent recoveries under the PSAs (*In re Wells Fargo Bank*, 2020 WL 735683 [Sup Ct, NY County 2023, Friedman, J.], *affd Wells Fargo Bank v Aegon USA Investment Management, LLC*, 198 AD3d 156 [1st Dept 2021]) (the **JPM Order**). In another related case, this Court held that the JPM Order resolved the issue of whether deferred principal payments should be treated as subsequent recoveries under the PSAs (*In the Matter of Wells Fargo Bank, N.A.*, 154984/2021, NYSCEF Doc. No. 823) (the **Wells Fargo Decision**). The JPM Order and the Wells Fargo Decision are both still subject to final appeal and the Court has been advised that appeals of both decisions are being taken.

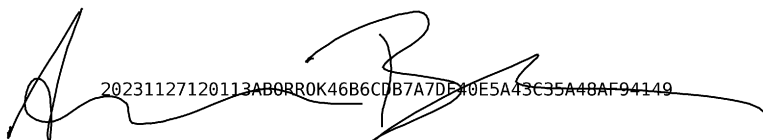
Trial courts are given broad discretion to control their own calendar, including adjournments of motions or hearings (*174 Second Equities, Corp. v Hee Nam Bae*, 57 AD3d 319, 321 [1st Dept 2008]). A stay is appropriate to avoid a duplication of effort, waste of judicial resources, and possibility of inconsistent rulings (*OneBeacon America Ins. Co. v Colgate-Palmolive Co.*, 86 AD3d 541, 541 [1st Dept 2012]). An adjournment of the final hearing in this case is appropriate here pending a final resolution of the appeals of the JPM Order and the Wells Fargo decision in order to avoid the risk of inconsistent verdicts and to preserve court resources by ensuring the final resolution of the issues raised in both decisions prior to the final hearing in this case.

Certain respondents have objected to the adjournment, arguing that (i) the JPM Order is the operative order and the Petitioner should be ordered to comply with it and (ii) the issue of post-zero balance collections is not sufficiently connected to the issue of deferred principal collections being treated as subsequent recoveries, such that the hearing should proceed. These arguments are unavailing because (i) court resources are persevered by adjourning the hearing pending

resolution of appeal of the JPM Order and the Wells Fargo Decision and (ii) all issues raised in the petition should be heard together, such that the alleged lack of connection between the post-zero balance collections and the deferred principal collections is not a sufficient basis to proceed. The hearing is therefore adjourned to November 4-November 8, 2025.

The Court has considered the parties' remaining arguments and finds them unavailing.

It is hereby ORDERED that the motion is granted to the extent of adjourning the final hearing in this case to November 4-November 8, 2025.



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11/27/2023
DATE

ANDREW BORROK, J.S.C.

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

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AFFIRMATION OF SERVICE

I, Michael Chen, an attorney duly admitted to practice law before the courts in the State of New York, herby affirm the following:

1. I am not a party to this action and I am over eighteen years of age;
2. I am an associate with the law firm of Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, counsel for HBK Master Fund L.P.; and
3. On November 29, 2023, I caused to be served on the parties to this action a true and correct copy of the foregoing Decision and Order on Motion with Notice of Entry via NYSCEF.

Dated: November 29, 2023
New York, New York

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Michael Chen
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