

**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  
under various Pooling and Servicing Agreements),

Petitioners,

for judicial instructions pursuant to CPLR Art. 77.

Index No. 656028/2021

**Hon. Andrew S. Borrok  
(IAS Part 53)**

**AFFIRMATION OF ERIN R. EMORY IN SUPPORT OF ORDER TO SHOW  
CAUSE FOR PARTIAL SEVERANCE ORDER AND PARTIAL FINAL JUDGMENT**

Erin R. Emory, an attorney duly licensed to practice law before the courts of the State of Minnesota, hereby affirms under penalties of perjury, pursuant to CPLR § 2106, as follows:

1. I am an attorney at the law firm of Greene Espel PLLP, and I serve as counsel for respondents Poetic Holdings 8 LP, Poetic Holdings IX LP, and Poetic Holdings VII LLC (together, “Poetic 7–9”) in the above-captioned matter. I submit this affirmation in support of the Order to Show Cause for Partial Severance Order and Partial Final Judgment filed contemporaneously herewith, which seeks entry of the [Proposed] Partial Severance Order and Partial Final Judgment for BSABS 2005-HE3 attached hereto as Exhibit 1 (the “Partial Severance Order and Partial Final Judgment”).

2. I am familiar with the proceedings in this case and make this affirmation based on my personal knowledge of the facts set forth herein.

3. On December 28, 2021, U.S. Bank National Association filed an Amended Petition under CPLR Article 77 (NYSCEF Doc. No. 33) (the “Petition”), seeking judicial instruction

concerning the interpretation and application of certain provisions of the contracts governing 77 residential mortgage-backed securitization trusts identified in Exhibit A to the Petition (NYSCEF Doc. No. 34) (the “Subject Trusts”). On July 27, 2023, U.S. Bank National Association, together with U.S. Bank Trust Company, National Association (collectively, “Petitioners”) filed a Second Amended Petition (NYSCEF Doc. No. 290) that, inter alia, reduced the number of trusts involved in this proceeding to 66 as a result of the entry of two partial severance orders. Those remaining trusts are identified in Exhibit A to the Second Amended Petition (NYSCEF Doc. No. 291) and include BSABS 2005-HE3.

4. This 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 to provide notice of the proceeding to holders and any other persons claiming an interest in the Subject Trusts (“Potentially Interested Persons”).

5. The Orders to Show Cause required all Potentially Interested Persons to appear in the proceeding, respectively, by January 18, 2022 and January 24, 2022, so that any Potentially Interested Persons could assert why an order and judgment should not be entered granting the relief sought in the Petition; resolving the questions presented by the 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 Petition; and for such other and further relief as this Court deems just and proper.

6. Following the entry of the Orders to Show Cause, various Potentially Interested Persons appeared in this proceeding (“Appearing Parties”).

7. The Appearing Parties include Poetic 7–9 and Pacific Investment Management Company LLC (“PIMCO”).

8. Counsel for Poetic 7–9 and PIMCO (collectively, the “Parties”) discussed a possible consensual resolution of the issues raised in this proceeding with respect to BSABS 2005-HE3, in which Poetic Holdings VII LLC and PIMCO assert interests.

9. As a result of the foregoing, the Parties reached agreement on the terms of the proposed Partial Severance Order and Partial Final Judgment, and the Parties informed Petitioners of such agreement. Petitioners consent to the proposed Partial Severance Order and Partial Final Judgment.

10. Prior to this filing, counsel for Poetic 7–9 provided notice of the Order to Show Cause for Partial Severance Order and Partial Final Judgment to all counsel of record in this case, and no additional Appearing Parties asserted interests in BSABS 2005-HE3. Therefore, to my knowledge, Poetic Holdings VII LLC and PIMCO are the only Appearing Parties with asserted interests in BSABS 2005-HE3.

11. If entered by the Court, the proposed Partial Severance Order and Partial Final Judgment would resolve the issues related to BSABS 2005-HE3 and sever it from this proceeding.

12. For the reasons set forth herein and subject to my understanding that the proposed Partial Severance Order and Partial Final Judgment is consented to by all Appearing Parties with asserted interests in BSABS 2005-HE3, the Parties respectfully request that the Court enter the Order to Show Cause for Partial Severance Order and Partial Final Judgment filed contemporaneously herewith, and, following the time for the filing of any oppositions and the consideration thereof by this Court, enter the Partial Severance Order and Partial Final Judgment.

13. No prior application for the relief herein requested has been made to this Court or to any other Court.

Dated: March 8, 2023

**GREENE ESPEL PLLP**

s/ Erin Emory  
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**WORD COUNT CERTIFICATION**

Pursuant to the Rules of the Commercial Division of the Supreme Court, Rule 17, this is to certify that the Affirmation of Erin R. Emory in Support of Order to Show Cause for Partial Severance Order and Partial Final Judgment contains 778 words, exclusive of the caption, signature blocks, and this certification. This therefore certifies that this document complies with the word-count limit.

Dated: March 8, 2024  
Minneapolis, Minnesota

*s/ Erin Emory*

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Erin R. Emory