

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 27 day of January, 2025

**PRESENT:** Hon. Andrew S. Borrok, Justice

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 under CPLR Article 77.

Index No. 656028/2021

Motion Sequence No. 017

**~~PROPOSED~~ PARTIAL SEVERANCE ORDER AND PARTIAL FINAL JUDGMENT (BSABS 2007-HE7)**

WHEREAS, Petitioners U.S. Bank National Association and U.S. Bank Trust Company, National Association (collectively, "Petitioner"), solely in their capacities as trustee, securities administrator, paying agent, and/or calculation agent for sixty-six residential mortgage-backed securities trusts identified in NYSCEF Doc. No. 291 (the "Subject Trusts"),<sup>1</sup> filed a petition on October 18, 2021 (NYSCEF Doc. No. 1), as subsequently amended by NYSCEF Doc. No. 33 and NYSCEF Doc. No. 290 (collectively, the "Petition"), seeking judicial instruction concerning the

<sup>1</sup> Following the Court's entry of the Partial Severance Order and Partial Final Judgment concerning the Subject Trust SACO I 2005-6 on January 9, 2024, NYSCEF Doc. No. 354, as well as the Partial Severance Order and Partial Final Judgment concerning the Subject Trust BSABS 2005-HE3 on June 5, 2024, NYSCEF Doc. No. 361, there remain sixty-four Subject Trusts for which judicial instruction is sought in this Action.

interpretation and application of certain provisions of the agreements governing the Subject Trusts;  
and

WHEREAS, this [~~PROPOSED~~] Partial Severance Order and Partial Final Judgment (the “Order”) concerns BSABS 2007-HE7 (the “Undisputed Trust”), for which Petitioner U.S. Bank Trust Company, National Association serves as trustee; and

WHEREAS, the Undisputed Trust is governed by a pooling and servicing agreement (the “Undisputed Trust PSA”); and

WHEREAS, all capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Undisputed Trust PSA or the Petition, as applicable; and

WHEREAS, the Undisputed Trust issued classes of Class A and M certificates (the “Primary Classes”) along with various other classes of certificates, entitling the holders thereof to certain distributions derived from mortgage loan collections as provided for under the Undisputed Trust PSA; and

WHEREAS, the Undisputed Trust PSA sets forth payment waterfalls governing the distribution of principal, interest, and Excess Cashflow to the Certificateholders; and

WHEREAS, Section 6.04(a) of the Undisputed Trust PSA contains a so-called “Retired Class Provision” that provides: “In addition, notwithstanding the foregoing, on any Distribution Date after the Distribution Date on which the Certificate Principal Balance of a Class of Class A Certificates or Class M Certificates has been reduced to zero, that Class of Certificates will be retired and will no longer be entitled to distributions, including distributions in respect of Prepayment Interest Shortfalls or Basis Risk Shortfall Carry Forward Amounts;” and

WHEREAS, as set forth in the Petition, master servicers and/or servicers periodically authorize loan modification agreements with borrowers under which borrowers may be permitted

to defer scheduled payments of principal, interest, or other amounts, and master servicers and/or servicers typically include all amounts that are deferred under modification agreements in a non-interest bearing component of the mortgage loans' principal balance ("Deferred Principal Amounts"); and

WHEREAS, as set forth in the Petition, master servicers and/or servicers generally report and treat Deferred Principal Amounts as losses on the mortgage loans; and

WHEREAS, in certain instances, borrowers pay back these Deferred Principal Amounts, and these amounts are remitted by master servicers and/or servicers to Petitioner for distribution pursuant to the terms of the Undisputed Trust PSA ("Deferred Principal Collections"); and

WHEREAS, the Undisputed Trust PSA provides that certain amounts remitted by master servicers and/or servicers to Petitioner constitute Subsequent Recoveries related to mortgage loans and may result in the application of write-ups, or increases, to the certificate principal balances of the Primary Classes, as provided for in the Undisputed Trust PSA; and

WHEREAS, as set forth in the Petition, beginning in November 2021, Petitioner's practice is to treat Deferred Principal Collections as Subsequent Recoveries for the Undisputed Trust (the "Undisputed Trust Write-Up Practice"); and

WHEREAS, as set forth in the Petition, Petitioner is seeking judicial guidance with respect to the Subject Trusts concerning the following: (1) the proper allocation and distribution under the waterfalls of any collections from mortgage loans following the reduction of the certificate principal balances of all Primary Classes to zero dollars (\$0.00) ("Post-Zero Balance Collections"); (2) the manner in which the Retired Class Provision should be applied with respect to any Primary Classes with certificate principal balances of zero dollars (\$0.00); and/or (3) with respect to certain

of the Subject Trusts (but not the Undisputed Trust), whether Petitioner should continue its current practice of not treating Deferred Principal Collections as Subsequent Recoveries; 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 Petitioner to conduct notice programs (the “Notice Programs”) to provide notice of the proceeding to Certificateholders 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 this proceeding 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 Petitioner 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; and

WHEREAS, the Orders to Show Cause provide that the Notice Programs were reasonable, adequate, and the best notice practicable; were reasonably calculated to put interested parties on notice of this action; and constituted 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 has failed to answer the Petition in the manner described therein shall be deemed to have waived the right to be heard on the questions presented by the 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) 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 asserting interests in the Undisputed Trust: Ellington Management Group L.L.C. (“Ellington”) and Pacific Investment Management Company L.L.C. (“PIMCO”); and

WHEREAS, the Orders to Show Cause directed Petitioner to cause any Post-Zero Balance Collections, net of any expenses and other fees payable under the applicable governing contracts, to be maintained on deposit, escrowed in a subaccount of the distribution account associated with each Subject Trust on an invested basis, until such time that the Court enters an order concerning the appropriate distribution of such funds and directing such distribution in accordance therewith; and

WHEREAS, the Orders to Show Cause directed that the investment earnings accrued on the escrow funds be treated as principal amount received on the Mortgage Loans; and

WHEREAS, pursuant to the Orders to Show Cause, funds are currently being held in escrow for certain of the Subject Trusts (but not for the Undisputed Trust); and

WHEREAS, Ellington, PIMCO, and Petitioner all agree and consent to this Order, which resolves the issues for which Petitioner sought judicial instruction in the Petition for the Undisputed Trust and provides instructions concerning the administration of the payment waterfalls for the Undisputed Trusts; and

WHEREAS, as used herein, the term “Judgment Entry Date” means the first date on which counsel of record to the parties hereto receive a copy of this Order signed by the Court by email or NYSCEF service, without regard to when the Court actually signs, or the Clerk actually enters, this Order; and

WHEREAS, as used herein, the term “Transfer Month” means the month after the Judgment Entry Date; and

WHEREAS, as used herein, the term “AS Distribution Date” means the Distribution Date (as that term is defined in the Undisputed Trust PSA) for the Undisputed Trust occurring in the Transfer Month; and

NOW, THEREFORE, on the motion of Perry, Johnson, Anderson, Miller, & Moskowitz LLP, attorneys for Ellington, and Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for PIMCO, it is hereby

ORDERED, ADJUDGED, and DECREED that Petitioner shall continue to apply the Undisputed Trust Write-Up Practice with respect to the Undisputed Trust on the AS Distribution Date and all future Distribution Dates; and it is further

ORDERED, ADJUDGED, and DECREED that, on or before the AS Distribution Date, Petitioner shall increase the certificate principal balances of the Undisputed Trust’s Primary Classes (for the avoidance of doubt, beginning with the Class M-2 Certificates) by the aggregate amount of nine-hundred forty-three thousand six-hundred thirty-three dollars and thirty cents (\$943,633.30) (the “True Up Amount”). Petitioner, Ellington, and PIMCO concur that the True Up Amount represents a reasonable approximation of the cumulative increase (net of any reductions required by the PSA) of certificate principal balances which would now exist if the Undisputed Trust Write-up Practice had been in place and applicable during the relevant period from the date in 2011 when U.S. Bank National Association succeeded Bank of America, National

Association as Trustee of the Undisputed Trust through the November 2021 date when Petitioner began the Undisputed Trust Write-Up Practice with respect to the Undisputed Trust (the “True Up Period”); *provided, however*, that, for the avoidance of doubt, this paragraph shall apply only to the increase of the certificate principal balances of the Undisputed Trust’s Primary Classes to reflect the foregoing Undisputed Trust Write-Up Practice as if it had been in place during the entirety of the True Up Period, and shall only require Petitioner to administer any distributions that result from such adjustment on and after the AS Distribution Date, and shall not require Petitioner to adjust or restate any distributions to Certificates predating the AS Distribution Date or any Undisputed Trust remittance reports predating the AS Distribution Date; and it is further

ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Undisputed Trust, Petitioner shall apply the Retired Class Provision in a manner that: (i) permits the application of increases, or write-ups, to the Certificate Principal Balance of any Primary Class, on an individual class basis, with an aggregate Certificate Principal Balance of zero dollars (\$0.00) at any time (“Zero Balance Primary Class”) *so long as* any portion of the Initial Certificate Principal Balance of such class remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class) or there is any interest due on such class that has not been paid in full (including, without limitation, as a result of any shortfalls), and (ii) permits distributions to any Zero Balance Primary Class *so long as* any portion of the Initial Certificate Principal Balance of such class remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class) or there is any interest due on such class that has not been paid in full (including, without limitation, as a result of any shortfalls); and it is further

ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Undisputed Trust, Petitioner shall (i) treat all Post-Zero Balance

Collections and Principal Distribution Amounts to be distributed in accordance with the applicable provisions of the Undisputed Trust PSA, and (ii) prior to such distribution, increase, or write up, the Certificate Principal Balances of the Primary Classes in the amount of any Post-Zero Balance Collections as though such amounts are Subsequent Recoveries in accordance with Section 6.04(b) of the Undisputed Trust PSA as well as any other provisions therein concerning the application of write-ups for Subsequent Recoveries; *provided, however*, that if no portion of the Initial Certificate Principal Balance of any of the Primary Classes remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class) and there is no interest due on any of the Primary Classes that has not been paid in full (including, without limitation, as a result of any shortfalls), then (x) any remaining Post-Zero Balance Collections shall be treated as though they were Excess Cashflow and distributed in accordance with the applicable provisions in the Undisputed Trust PSA, and (y) no increases, or write-ups, shall be applied to the certificate principal balances of the Primary Classes for any remaining Post-Zero Balance Collections; and it is further

ORDERED, ADJUDGED, and DECREED that any aspect of the administration and distribution of available funds not expressly addressed in this Order shall be performed as provided for in the Undisputed Trust PSA; and it is further

ORDERED, ADJUDGED, and DECREED that the provisions of this Order shall be implemented with respect to each of the Undisputed Trust's loan groups independently, and Petitioner shall make any necessary adjustments to the instructions in this Order (but in a manner otherwise consistent with the terms of this Order) to comply with the terms of this paragraph; and it is further



ORDERED, ADJUDGED, and DECREED that nothing herein shall rescind, annul, limit, modify, or alter the Ex Parte Order and Partial Final Judgment entered on August 22, 2022 (NYSCEF No. 151); and it is further

ORDERED, ADJUDGED, and DECREED that this Order shall not be applicable to, shall be without prejudice to, and shall have no precedential effect on (i) any trust, indenture, or other securitization other than the Undisputed Trust, including any argument of any party, in this proceeding or any other, concerning the appropriate administration and distribution of any proceeds for any trust other than the Undisputed Trust; and (ii) any argument of any party concerning any issue in this proceeding not explicitly provided for in this Order; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, note holders, and any other parties claiming rights or interests in the Undisputed Trust (whether past, present, or future, or known or unknown) are barred from asserting claims against the Petitioner with respect to any conduct taken by Petitioner to implement and comply with the terms of this Order, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED, ADJUDGED, and DECREED that on the AS Distribution Date and all distribution dates thereafter, Petitioner shall comply with the terms of this Order in administering and distributing any available funds to certificateholders for the Undisputed Trust; and it is further

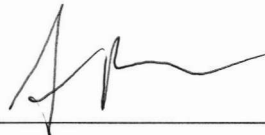
ORDERED, ADJUDGED, and DECREED that Petitioner's consent to this Order does not constitute an admission or agreement concerning the legally proper or valid meaning or implementation of any aspect of the Undisputed Trust PSA, and Petitioner does not waive or forfeit any arguments concerning the same with respect to Petitioner's historical application of the terms of the Undisputed Trust PSA; and it is further

ORDERED, ADJUDGED and DECREED that following the Judgment Entry Date, Petitioner shall promptly post a copy of this Order at <http://www.usbbearsacoarticle77.com>; and it is further

ORDERED that the Clerk of New York County be, and hereby is, directed to enter this Order forthwith and without delay.

Dated: New York, New York

January 27, 2025



Hon. Andrew Borrok. J.S.C.

Judgment signed and entered this 27 day of January 2025.

\_\_\_\_\_  
Clerk of New York County