

EXHIBIT A

In The Matter Of:

v.

July 9, 2013

Laura L. Ludovico, Senior Court Reporter

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39

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11:29:34 IN THE MATTER OF THE APPLICATION OF THE
BANK OF NEW YORK MELLON, (as Trustee
under various Pooling and Servicing
Agreements and Indenture Trustee under
various Indentures),

Petitioner,

Index No.
651786/11

11:29:34 for an order, pursuant to CPLR Section
7701, seeking judicial instructions and
approval of a proposed settlement.

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July 9, 2013
60 Centre Street
New York, New York

11:29:34

B E F O R E: HONORABLE BARBARA R. KAPNICK, JSC

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11:29:34

1 J. Kravitt - by Respondent - Cross/Mr. Reilly
2 they would support it in the absence of something happening
3 afterwards. So I don't see why, since that is part of the
4 Final Judgment, that would not be appropriate to inquire
12:15:46 5 about.

6 MS. PATRICK: Your Honor, I completely understand
7 the propriety of inquiring about the further assurances
8 clause. My point, however, is if Mr. Reilly is asking
9 whether these events constitute an event that would allow
12:16:05 10 the trustee out from under the further assurances, he
11 should phrase the question within the ambit of that. What
12 he is really doing is linking two different periods of
13 time. You didn't consider this at the time you entered
14 into this settlement, and that is the improper nature of
12:16:20 15 the question.

16 THE COURT: Okay. Well, again, I'm not sure if I
17 heard it that way, but if you will make sure that you limit
18 your questions that you're asking now to -- I think you're
19 talking about this, further assurances.

12:16:32 20 MR. REILLY: I'm talking about this clause in the
21 implementation of it at this time.

22 THE COURT: All right. So ask another question.

23 Q You understood, Mr. Kravitt, when this settlement was
24 submitted to the Court that there was a five-year period of
12:16:49 25 time that the parties agreed to that it could take to get
26 approval, correct?

1 J. Kravitt - by Respondent - Cross/Mr. Reilly

2 A That is what we negotiated. I hope we don't reach
3 five years.

4 MR. REILLY: I will move to strike your "I hope."

12:17:06 5 Q And I take that as a "yes" answer, is that a fair
6 characterization of what you just said?

7 A Could you repeat the question?

8 Q As part of --

9 THE COURT: Just leave it. Just leave it and go
12:17:13 10 on.

11 MR. REILLY: All right.

12 THE COURT: I'm not striking it. Just go on.

13 Q All the parties knew that between June 29th of 2011,
14 and December 31st of 2015, that there was going to be a period
12:17:26 15 of time that the settlement might not yet be approved?

16 A Correct.

17 Q And, in fact, the parties agreed that it was -- that,
18 if, in fact, the Settlement Agreement didn't get approved in
19 some regard, the parties could renegotiate the Settlement
12:17:40 20 Agreement for a period of time?

21 A They could try to negotiate it.

22 Q And in that process, from the time of the filing to
23 the time of December 31st of 2015, the trustee didn't negotiate
24 any protection for the dollars that were going to be involved,
12:17:54 25 right, there's no interest building to the benefit of the
26 trusts, correct?

1 J. Kravitt - by Respondent - Cross/Mr. Reilly

2 A That is correct.

3 Q And was there any discussion about that?

4 A Yes.

12:18:01 5 Q And Bank of America refused to do it, right?

6 A Correct.

7 Q The trustee knew that, in fact, additional information
8 was going to develop post-June 29, 2011, correct?

9 A Correct.

12:18:20 10 Q And the trustee knew that when Bank of America asked
11 it to, in essence, agree that no matter what happens between
12 that timeframe and when the Court reviews it, to not use that
13 to work against the settlement, as you said, the trustee was
14 not very happy about that, correct?

12:18:41 15 MR. GONZALEZ: Objection, Your Honor. This
16 document speaks for itself and to mischaracterize it, I
17 believe is an inappropriate line of questioning for this
18 witness. It's not anything -- it's specific to this
19 Further Assurances Clause, so if he is asking about that,
12:18:55 20 fine, but if he is asking about something else, then that
21 is a different area.

22 MR. REILLY: I have the document up. It doesn't
23 speak for itself, because documents don't speak for
24 themselves. If this witness thinks I'm mischaracterizing
12:19:08 25 it, he not only saw it, he agreed with it, so I'm not
26 mischaracterizing it.

In The Matter Of:

v.

July 12, 2013

Laura L. Ludovico, Senior Court Reporter

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39

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IN THE MATTER OF THE APPLICATION OF THE
BANK OF NEW YORK MELLON, (as Trustee
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July 12, 2013
60 Centre Street
New York, New York

B E F O R E: HONORABLE BARBARA R. KAPNICK, JSC

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1 Kravitt - Petitioner - Cross/Mr. Pozner

2 four.

3 A Yes, sir.

4 Q What this does is it says: If there is a covered
10:10:24 5 trust in which there is a third party financial guarantee to
6 any tranche in the trust, and that financial guarantee --
7 what did you understand the financial guarantor would have
8 to do to satisfy Bank of America?

9 A Well, I don't know what they'd have to do to
10:10:59 10 satisfy Bank of America, but I surmised that they would have
11 to reach some sort of agreement with Bank of America with
12 regard to the rights they had with regard to breach of
13 warrantee.

14 Q And -- well, tell the Court if that does not
10:11:17 15 happen, what is excluded under this section of the
16 settlement agreement is not the money that would go to that
17 tranche, it is all the money that would be payable to that
18 trust?

19 A That's right.

10:11:52 20 Q So that Bank of America would be able to exclude
21 all tranches of a trust even if only one were the subject of
22 this provision?

23 A That's right.

24 Q Did you ask for a list from Bank of America of how
10:12:14 25 many tranches this might apply to and how many trusts might
26 be excluded?

1 Kravitt - Petitioner - Cross/Mr. Pozner

2 A I did ask them how many trusts might be excluded.

3 Q And the number?

4 A I don't remember the number. I think that if they

10:12:32 5 were all excluded and the trusts that were excluded were

6 proportionately similar to the trusts that stayed in it we

7 reduced the settlement about a billion dollars.

8 Q How much, sir?

9 A About a billion dollars.

10:12:52 10 Q A billion dollars?

11 A Right. But it wouldn't reduce the settlement a
12 penny for any trust who stayed in the settlement as to what
13 they would have received if all those other trusts had
14 stayed in the settlement.

10:13:08 15 Q I understand that. But as to any trust or even a
16 single tranche were covered by this third party an agreement
17 was not reached that entire trust, all of the certificate
18 holders lost all rights to any money from --

19 MS. PATRICK: Objection.

10:13:24 20 MR. GONZALEZ: Objection, your Honor.

21 MS. PATRICK: They retained their claims if
22 they are out of the settlement, that's just misleading.

23 THE COURT: He's asking him the question so
24 I'll let the witness answer.

10:13:35 25 THE WITNESS: Could you repeat the question?

26 Q Sure. If even a single tranche in the trust was

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

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IN THE MATTER OF THE APPLICATION OF
THE BANK OF NEW YORK MELLON, (as Trustee
under various Pooling and Servicing
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various Indentures),

Petitioner,

INDEX NO.
651786/11

for an order, purusant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

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60 Centre Street
New York, New York 10007
SEPTEMBER 17, 2013

BEFORE:
HONORABLE BARBARA R. KAPNICK,
Justice

APPEARANCES:

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JAMES M. McGUIRE, ESQ.

1 Dr. F. Sabry - By Respondent - Direct/Rollin

2 Q Now, you were told to stop working on your project;
3 correct?

4 A That's correct.

12:18:04 5 Q And it still hasn't been done?

6 A Still has not been done.

7 Q And the person who told you to stop working on your
8 project was Jason Kravitt; right?

9 A That's correct.

12:18:12 10 Q And that happened in July or August of 2011; right?

11 A That's right.

12 Q And that's because what he told you was that things
13 were not moving as fast as they had hoped for; right?

14 MR. HOUP: Objection. Hearsay.

12:18:32 15 A I don't recall --

16 THE COURT: If you know.

17 THE WITNESS: Right.

18 A I don't recall exactly what he said, but we were
19 definitely asked to stop working at the time.

12:18:42 20 Q Right. And your recollection was, although not
21 specific, that he mentioned something about things not moving
22 along as fast as they had hoped?

23 MR. HOUP: Objection. Asked and answered.
24 Hearsay.

12:18:52 25 A That's correct.

26 THE COURT: I'll allow it. He testified.

1 Dr. F. Sabry - By Respondent - Direct/Rollin

2 Q Now, the whole project -- the whole task that you
3 were given would've taken six to eight weeks to complete;
4 correct?

12:19:10 5 A I think so. I'm not quite sure. But, yes, around
6 that time. It sounds right.

7 Q And you understand that the amount of money that
8 each trust is going to get, if the settlement is approved, is
9 based on the work that was given to you but which you were
10 told to stop doing; right?
12:19:47

11 MR. HOUPT: Objection. Mischaracterizes the
12 agreement.

13 The settlement agreement said the loss of the
14 calculation would be done after the settlement approval
15 date. She was not asked to not do the work after the
12:19:57 16 settlement approval date. She was asked not to do it two
17 years ago.

18 MR. ROLLIN: That sounds an awful lot like
19 testimony. I didn't ask a question that would've
12:20:08 20 elicited that testimony.

21 MR. HOUPT: Yes. The question is "the
22 work -- the amount of money that each trust is going to
23 get is based on the work that was given to you but which
24 you were told to stop doing." There's no foundation that
12:20:20 25 she was told not to do that calculation.

26 THE COURT: Well, she just testified that she

1 Dr. F. Sabry - By Respondent - Direct/Rollin
2 was told to stop doing her work, so I think that's what
3 he means. The project was stopped.

4 I'll let you answer the question, if you can
12:20:32 5 remember it. If not, I'll ask one of the reporters to
6 read it back.

7 A I was asked to stop work around July or August,
8 before the work was completed.

9 Q Right. But my question was that you understand that
12:20:47 10 the work that you were doing was a predicate for any
11 certificate holders to know how much money each trust is
12 going to get if the settlement is approved?

13 A No, I --

14 THE COURT: If you understand. Did you
12:21:04 15 understand that?

16 A What do you mean by that? What do you mean?

17 Q If you don't understand, I'm certainly --

18 THE COURT: Would you rephrase it please?

19 MR. ROLLIN: I'll be happy to.

12:21:22 20 Q You understand that each trust allocable share of
21 the settlement proceeds, if approved, will not be determined
22 until you complete the work that you were given to do;
23 correct?

24 A Yes. The allocation will happen after the
12:21:40 25 settlement would be approved.

26 Q Not only the allocation, but also the determination

1 Dr. F. Sabry - By Respondent - Direct/Rollin

2 of the allocable share, right? How much each trust will get
3 as a percentage of eight-and-a-half-billion dollars can only
4 be determined after you complete your work; right?

12:22:00 5 A That's correct. After the settlement would be
6 approved, then each trust would know its allocable share,
7 yes.

8 Q And until that happens, no trust or certificate
9 holders will know how much money any trust will get; right?

12:22:19 10 MR. HOUPT: Objection. Calls for speculation.

11 THE COURT: If you know, you can answer.

12 A They would not know what the NERA allocation would
13 be, if that's what you mean.

14 Q That's what I mean.

12:22:34 15 A Yes.

16 MR. ROLLIN: One moment, your Honor.

17 Q You testified a little while ago that without some
18 additional information from loan re-underwriting, you
19 wouldn't be able to conduct a study that established the
12:23:26 20 marginal contributions of losses occasioned by breaches of
21 representation and warranties; do you remember that
22 testimony?

23 A Yeah.

24 Q And is that the sort of thing you've done before,
12:23:35 25 where loan re-underwriting has assisted in the process?

26 A I've consulted on issues similar to that, yes.