

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

In the Matter of the Application of

THE BANK OF NEW YORK MELLON, in its
Capacity as Trustee or Indenture Trustee of 530
Countrywide Residential Mortgage-Backed
Securitization Trusts,

Petitioner,

For Judicial Instructions under CPLR Article 77
on the Distribution of a Settlement Payment.

Index No. 150973/2016

IAS Part 39

Hon. Saliann Scarpulla

AFFIDAVIT OF JAMES H. ARONOFF

I, James H. Aronoff, affirm as follows pursuant to CPLR 3021:

I. Summary

1. I have been retained by MoloLamken LLP, counsel for Respondents Tilden Park Capital Management LP (“Tilden Park”) and Prosirir Capital Management LP (“Prosirir”). I have been asked to provide my expert opinion on the commercial reasonableness of the “waterfall” payments for Settlement funds of the 14 trusts owned by Prosirir and Tilden Park and to offer an expert opinion on prevailing industry standards and investor expectations regarding the payment priorities of residential mortgage-backed securities (“RMBS”) waterfall provisions.

2. A summary of my opinion is as follows. First, parties bargain carefully for deal waterfall provisions and investors rely on them. Second, Intex is not an authority on the interpretation of the documents governing payment priorities in RMBS deals but is rather a modelling tool used by market participants to observe, project, or forecast deal cash flows based on their understanding of those terms. Finally, while mechanisms such as overcollateralization

and subordination that help create payment priorities are general features to many RMBS deals, they do not of themselves supplant the specific payment priorities that the parties implemented. Rewriting carefully crafted deal terms would do violence to the governing documents' essential purpose of ensuring predictable cash flows.

II. My Qualifications and Experience

3. I have a degree in Economics and Political Science from Yale College and am a 1983 graduate of Cornell Law School. I have over 30 years' experience analyzing and designing payment priorities in RMBS transactions and, in some cases, investing on that basis. I was an attorney with Thacher Proffitt & Wood, where I drafted and negotiated RMBS governing documents, including payment priority and waterfall provisions, on behalf of issuers and broker-dealers. I also drafted disclosure materials such as Prospectuses that describe payment distribution provisions for investors. At Kidder Peabody and Nomura Securities, where I was an investment banker and trader, I negotiated RMBS cash flow provisions. At Nomura, I was the supervisory principal (FINRA Series 24) responsible for approving the disclosure relating to newly-issued RMBS, including descriptions of payment priorities, distributions and waterfall provisions. As a Managing Director of FSA, a financial guaranty insurer, I reviewed, analyzed and negotiated payment priority and cash flow provisions of RMBS governing documents to determine how payments flowed to the specific classes of certificates that FSA insured. I was chief executive officer and chairman of FC Capital Corp., a residential mortgage company that issued RMBS. There, I negotiated and signed all governing documents and, as the issuer, negotiated and approved all disclosure to investors related to such securities, including descriptions and summaries of distribution, payment priority, and waterfall provisions of the related RMBS. I was also an investor in RMBS at FC Capital Corp. Since then, I have acted as

a consultant to issuers, insurers, investors and other stakeholders regarding valuation and operational aspects of RMBS, including distributions, payment priorities, and waterfall provisions.

III. Payment of Settlement Funds

A. The Importance of Waterfall Provisions

4. Residential mortgage-backed securities (“RMBS”) are typically issued as certificates backed by mortgages held as collateral in a trust. Investors receive payments on the RMBS from principal and interest payments made by homeowners on their mortgages. Contracts governing RMBS, or “Pooling and Servicing Agreements” (“PSAs”), typically contain a set of detailed payment terms that dictate how payments coming into the trust are to be distributed among the different classes, or “tranches,” of RMBS for a given trust. These payment terms are colloquially referred to as “waterfalls” and control the priority of payments to different tranches as well as the amount that each tranche is entitled to receive in any given distribution period.

5. In my experience, each “waterfall” for an RMBS trust is carefully negotiated among the parties to the PSA. The “waterfall” provision is one of the most important terms in the PSA because it governs the cash flows that different tranches expect to receive. Unlike an investor who buys stock in a corporation, a purchaser of RMBS has no residual claim on the trust’s assets; rather, certificateholders are entitled only to whatever cash flows the waterfall entitles them to receive. As a result, prudent investors in RMBS carefully analyze the provisions of that security’s waterfall (as memorialized in the PSA) when choosing whether to invest.

6. Investors who buy RMBS rely on the fact that the waterfalls will be applied as written. Investors in RMBS agree to take certain types of risk, such as “prepayment risk” (the risk that mortgages will prepay) or “credit risk” (the risk that borrowers will not or cannot repay

their mortgages). But investors do not voluntarily take on the risk that waterfalls will be rewritten after the deal is closed. Rather, the certainty and predictability of cash flows according to the waterfalls are essential to the proper functioning of the RBMS market.

7. I am familiar with the modelling software for RMBS published by Intex Solutions, Inc. (“Intex”). In my experience as a longstanding participant in the RMBS market, Intex does not hold itself out as an expert that interprets the payment priorities or waterfalls in PSAs on behalf of investors. Instead, Intex provides simulated cash flow scenarios for investors based on the investors’ input of the PSA payment provisions. Intex is a useful and flexible tool intended to model investors’ understanding of specific deal terms. But it is not a substitute for investor analysis. It is my understanding that Intex in fact disclaims that its models represent the actual payment terms to be used by trustees, securities administrators or other transaction parties with respect to any given transaction.

8. In my experience as an investment banker negotiating RMBS cash flow provisions, I often designed or reviewed RMBS deals that were structured to meet the cash flow needs of a specific investor. In such cases, the banker would satisfy that investor’s tastes and demand by crafting the waterfall provision to create a class of certificates with, for example, a shorter duration or exposure to greater credit risk. The banker then structured the payment priorities for the other certificate classes. It would not be unusual to reimburse junior classes of certificates for actual realized losses incurred before making additional payments to senior classes that had already been paid the principal and interest required for such period.

9. I reviewed the waterfall provisions at issue in these deals. In my experience, a payment priority that limits certain cash flow distributions to senior bonds, as is the case in the trusts at issue, is not at all unusual or unique. Such a waterfall, which distributes excess funds in

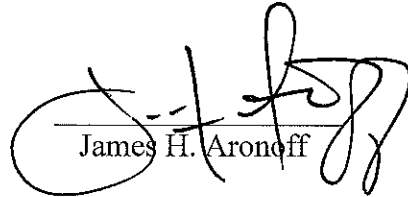
any given month to the senior-most junior bonds with realized losses, may make those junior bonds more attractive to certain investors.

10. Overcollateralization and subordination are important features in most RMBS transactions. However, simply because a particular transaction may contain specific structural protections for more senior certificate holders does not preclude some types of payments from being directed to more junior holders prior to senior holders being paid in full. In my opinion, the structural protections provided by subordination or overcollateralization are not necessarily impaired simply because the waterfall provides, for example, that junior holders are reimbursed for realized losses before seniors are paid in full.

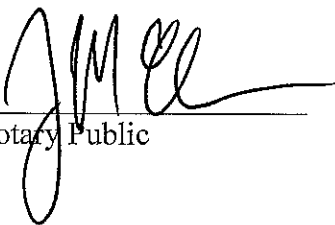
11. Rewriting waterfall terms after the fact would do violence to the certainty and predictability that is essential to the RMBS market. Investors and underwriters cannot bargain for the risk profiles and cash flows they desire if those waterfalls can be undone or rewritten. If investors do not know what cash flows they will receive in the future, they will be unwilling purchase these complex securities. The best way to ensure certainty and predictability in the market is to adhere to the contract terms as written.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


James H. Aronoff

Sworn to before me this 26th day of August 2016, in New York, New York.


Notary Public

My commission expires: 1/07/2017

JUSTIN M. ELLIS
NOTARY PUBLIC-STATE OF NEW YORK
No. 02EL6274440
Qualified In New York County
My Commission Expires January 07, 2017