

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

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), *et al.*,

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786-2011

Kapnick, J.

**SUPPLEMENTAL BRIEF REGARDING NON-JURIDICAL STATUS OF THE
COVERED TRUSTS**

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It is a widely recognized principle that “[a] trust is not a legal entity. A trust is not an entity distinct from its trustees and capable of legal action on its own behalf” Am. Jur. 2d Trusts § 3 (2013); *see also* Amy Morris Hess, George Gleason Bogert & George Taylor Bogert, Bogert's Trusts and Trustees § 712 (2012) (“A trust is not a legal person, nor is the trust property.”). Consistent with this general principle, C.P.L.R. 1004 permits a trustee to sue or be sued in its own name, and New York courts have held that trusts may only take legal action through their trustees. *See Kirschbaum v. Elizabeth Ortman Trust of 1977*, 3 Misc. 3d 1110(A), 2004 WL 1372542, at *2 (Sup. Ct. Suffolk Cnty. Mar. 10, 2004) (“The trustees as legal owners of the trust estate generally sue and are sued in their own capacity. The trust itself does not have the capacity to sell the estate.”) (internal citation omitted); *Haag v. Turney*, 240 A.D. 149, 151 (1st Dep’t 1934) (holding that predecessor statute to C.P.L.R. 1004 was “uniformly construed by the courts to mean that the trustee shall sue in his own name and not in his representative capacity”).

Other state and federal jurisdictions similarly recognize that the trust itself — in contrast to the trustee — is incapable of legal action. *See, e.g., Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 521 (Cal. Ct. App. 2010) (“because ‘[a] trust is not a legal entity,’ it ‘cannot sue or be sued, but rather legal proceedings are properly directed at the trustee.’”) (internal citation omitted); *Sec. Life of Denver Ins. Co. v. Shah*, 2011 WL 2181485, at *1 (S.D. Ga. June 2, 2011) (“The trustee *is* the real party in interest in such a claim, not the trust itself. In fact, if the trust itself were joined to the action and attempted to assert such claims against SBN and Howie, the Court would be required to dismiss them.”) (citation omitted) (emphasis in original).

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July 17, 2013

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