

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),

Petitioner,

-against-

WALNUT PLACE LLC; WALNUT PLACE II LLC; WALNUT PLACE III LLC; WALNUT PLACE IV LLC; WALNUT PLACE V LLC; WALNUT PLACE VI LLC; WALNUT PLACE VII LLC; WALNUT PLACE VIII LLC; WALNUT PLACE IX LLC; WALNUT PLACE X LLC; and WALNUT PLACE XI LLC (proposed intervenors),

Respondents,

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

Index No. 651786/2011

Assigned to: Kapnick, J.

**AFFIRMATION OF
OWEN L. CYRULNIK
IN SUPPORT OF
PETITION TO
INTERVENE**

I, Owen L. Cyrulnik, hereby affirm under the penalty of perjury that the following is true and correct:

1. I am a member of the bar of this Court and of Grais & Ellsworth LLP, attorneys for proposed intervenors Walnut Place LLC, Walnut Place II LLC, Walnut Place III LLC, Walnut Place IV LLC, Walnut Place V LLC, Walnut Place VI LLC, Walnut Place VII LLC, Walnut Place VIII LLC, Walnut Place IX LLC, Walnut Place X LLC, and Walnut Place XI LLC.

I offer this affirmation in support of the proposed intervenors' petition to intervene.

2. The Bank of New York Mellon commenced this proceeding by filing a petition under CPLR 7701 on June 29, 2011. BNYM is seeking judicial approval of a proposed settlement that it entered into on behalf of 530 trusts for which it serves as trustee.

3. Countrywide Home Loans, Inc. and its affiliates sold millions of mortgage loans to these 530 trusts, and the trusts in turn sold securities called certificates backed by those mortgage loans to investors. Countrywide made numerous representations and warranties about

those loans. Countrywide agreed to repurchase from the trusts loans that did not comply with the representations and warranties.

4. The Walnut Place entities own certificates that were issued by three of those 530 trusts.

5. On February 23, 2011, Walnut Place filed an action in this Court, derivatively on behalf of one of the trusts, Alternative Loan Trust 2006-OA3. On April 12, 2011, Walnut Place amended its complaint to add Alternative Loan Trust 2006-OA3. A copy of the amended complaint is attached as Exhibit A to Walnut Place's petition. Walnut Place has begun to prepare a lawsuit on a third trust, Alternative Loan Trust 2006-OA21.

6. Walnut Place asserts claims against Countrywide and its corporate successor, Bank of America Corporation, for breaches of Countrywide's representations and warranties about the quality of the mortgage loans that it sold to the trusts.

7. The proposed settlement that the trustee is asking this Court to approve would release Walnut Place's claims.

8. Under CPLR 401, 1012, and 1013, Walnut Place should be permitted to intervene in this proceeding because (a) this proceeding involves the disposition or distribution of, or the title or a claim for damages for injury to, property and Walnut Place may be affected by the judgment; (b) Walnut Place's interests may not be adequately represented by BNYM; and (c) Walnut Place's claims have questions of law and fact in common with this proceeding.

9. The intervention of Walnut Place will not prejudice the rights of any of the parties in this proceeding, and, in fact, will assist the Court by adding to its understanding of the facts surrounding the settlement.

10. No previous application has been made for this relief.

Executed this 5th day of July 2011, in New York, New York.

A handwritten signature in black ink, appearing to read "Owen L. Cyrulnik". The signature is written in a cursive style with a large initial "O".

Owen L. Cyrulnik