

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----X
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), BlackRock Financial Management Inc. (proposed intervenor), Kore Advisors, L.P. (proposed intervenor), Maiden Lane, LLC (proposed intervenor), Maiden Lane II, LLC (proposed intervenor), Maiden Lane III, LLC (proposed intervenor), Metropolitan Life Insurance Company (proposed intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (proposed intervenor), Neuberger Berman Europe Limited (proposed intervenor), Pacific Investment Management Company LLC (proposed intervenor), Goldman Sachs Asset Management, L.P. (proposed intervenor), Teachers Insurance and Annuity Association of America (proposed intervenor), Invesco Advisers, Inc. (proposed intervenor), Thrivent Financial for Lutherans (proposed intervenor), Landesbank Baden-Wuerttemberg (proposed intervenor), LBBW Asset Management (Ireland) plc, Dublin (proposed intervenor), ING Bank fsb (proposed intervenor), ING Capital LLC (proposed intervenor), ING Investment Management LLC (proposed intervenor), New York Life Investment Management LLC (proposed intervenor), Nationwide Mutual Insurance Company and its affiliated companies (proposed intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life insurance Company, and Western Reserve Life Assurance Co. of Ohio, Federal Home Loan Bank of Atlanta (proposed intervenor), Bayerische Landesbank (proposed intervenor), Prudential Investment Management, Inc. (proposed intervenor), Western Asset Management Company (proposed intervenor)

Index No. 651786/11

Assigned to:
Kapnick, J.

Petitioner,

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

-----X
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE

Proposed intervenors BlackRock Financial Management Inc., Kore Advisors, L.P., Maiden Lane, LLC, Maiden Lane II, LLC, Maiden Lane III, LLC, Metropolitan Life Insurance Company, Trust Company of the West and affiliated companies controlled by The TCW Group, Inc., Neuberger Berman Europe Limited, Pacific Investment Management Company LLC,

Goldman Sachs Asset Management, L.P., Teachers Insurance and Annuity Association of America, Invesco Advisers, Inc., Thrivent Financial for Lutherans, Landesbank Baden-Wuerttemberg, LBBW Asset Management (Ireland) plc, Dublin, ING Bank fsb, ING Capital LLC, ING Investment Management LLC, New York Life Investment Management LLC, Nationwide Mutual Insurance Company and its affiliated companies, AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio, Federal Home Loan Bank of Atlanta, Bayerische Landesbank, Prudential Investment Management, Inc., and Western Asset Management Company (each for themselves and, to the extent applicable, as investment manager of funds and accounts, and collectively, the “Institutional Investors”), by their attorneys Warner Partners, P.C. and Gibbs & Bruns LLP, submit this memorandum of law in support of their motion to intervene under CPLR 401, 1012, 1013 and 7701 in the above-captioned proceeding.

INTRODUCTION

On June 29, 2011, The Bank of New York Mellon (“BNY Mellon” or “Trustee”), solely in its capacity as trustee of 530 mortgage-securitization trusts (the “Covered Trusts”), petitioned this Court pursuant to CPLR 7701 for judicial instructions and approval of a proposed settlement (the “Settlement”) related to the Covered Trusts. The Covered Trusts are identified as Exhibit A to the Trustee’s verified petition. The Settlement would require a lump-sum payment of \$8.5 billion into the Covered Trusts and would require the Master Servicer for the

Covered Trusts to implement, among other things, a series of servicing procedures and improvements designed to more effectively service all performing and non-performing loans.

The Institutional Investors are holders in their own right and/or investment managers for holders of certain securities issued by the Covered Trusts. They have participated, through their counsel, in arms-length negotiations for the Settlement. Having carefully considered the Settlement and concluded that it is fair, reasonable and in the clear interests of the Covered Trusts, the Institutional Investors now petition to intervene in support of the Settlement.

PROCEDURAL BACKGROUND

The Covered Trusts each resulted from residential mortgage-backed securitizations issued by affiliates of Countrywide between 2004 and 2008. BNY Mellon is the Trustee for each of the Trusts. The Sellers in each of the Covered Trusts are any or all of Countrywide Home Loans, Inc. (“CHL”), Park Granada LLC, Park Monaco, Inc., Park Sienna LLC, and Countrywide LFT LLC. The Master Servicer is BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP (“BAC HLS”). For purposes of this Petition, CHL and its parent, Countrywide Financial Corporation (“CFC”) will be referred to collectively as “Countrywide.” BAC HLS and its parent, Bank of America Corporation (“BAC”), will be referred to collectively as “Bank of America.”

All but seventeen of the Covered Trusts are evidenced by separate contracts known as Pooling and Servicing Agreements (“PSAs”). The remainder are evidenced by Indentures and related Sale and Servicing Agreements (“SSAs”). The PSAs, Indentures, and SSAs are collectively referred to herein and in the Settlement Agreement as the “Governing Agreements.”

The Institutional Investors have alleged breaches of representations and warranties in the Governing Agreements and breaches of the Master Servicer's prudent servicing obligations under the Governing Agreements.

Since November 2010, Bank of America, Countrywide, the Trustee and the Institutional Investors, through their counsel, have engaged in extensive, arms-length negotiations in an attempt to reach a Settlement to address these allegations. Those negotiations have culminated in the proposed Settlement on behalf of the Covered Trusts. The Settlement is memorialized in a Settlement Agreement dated June 28, 2011. The Settlement Agreement is attached as Exhibit B to the Trustee's CPLR 7701 petition.

The Settlement would require Bank of America to pay \$8.5 billion into the Covered Trusts, allocated pursuant to an agreed-upon methodology that accounts for past and future losses associated with the Mortgage Loans in each Trust. It also would require BAC HLS to implement, among other things, a series of servicing protocols and improvements designed to more effectively service all performing and non-performing loans.

The Institutional Investors, after careful consideration of the proposed Settlement, concluded that it is fair, reasonable and in the clear interests of the Covered Trusts. Accordingly, the Institutional Investors entered with Bank of America, Countrywide and the Trustee into a separate Institutional Investor Agreement, dated June 28, 2011, that memorializes the Institutional Investors' support of the Settlement.

Following the filing of the Trustee's petition, the Trustee has obtained an Order to Show Cause directing the Trustee to send a Notice to all Potentially Interested Persons of the proposed settlement. The Institutional Investors qualify as Potentially Interested Persons as defined in that Notice.

Pursuant to that Notice, and under the intervention provisions of CPLR 401, 1012 and 1013, the Institutional Investors now move to intervene in support of the Settlement.

BASES FOR INTERVENTION

Intervention as of right is permitted under CPLR 1012(a) when “the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected by the judgment.” Intervention by permission is allowed under CPLR 1013 where “the person’s claim or defense and the main action have a common question of law or fact . . . [and] the intervention will [not] unduly delay the determination of the action or prejudice the substantial rights of any party.” Under either standard, “[i]ntervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action.” *Yuppie Puppy Pet Prods., Inc. v. Street Smart Realty, LLC*, 906 N.Y.S.2d 231, 235 (1st Dep’t 2010).

The Institutional Investors, as holders in their own right and/or investment managers for holders of certain securities issued by the Covered Trusts, have a bona fide interest in this action. The Institutional Investors or their clients stand to be affected by the Settlement. Their proposed intervention in the petition for Settlement approval takes a position aligned with that urged by the Trustee. Therefore, the Institutional Investors’ proposed intervention is appropriate under both CPLR 1012 and 1013.

Indeed, the Institutional Investors’ intervention is not only appropriate but strongly desirable. Under Federal Rule of Civil Procedure 24(b), on which CLPR 1013 is patterned, “intervention is appropriate where the intervenor seeks virtually the same relief as the named plaintiff and . . . is encouraged if the proposed intervenors’ claims will add to the Court’s understanding of the facts.” *Rodriguez v. Debuouno*, 1998 WL 542323, at **2-3 (S.D.N.Y.

1998); see also *Commack Self-Service Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 106 (E.D.N.Y. 1996) (granting motion to intervene because “[t]he intervenors in this case have questions of law and fact in common with the parties . . . [and] will bring a different perspective to the case and will contribute relevant factual variations that may assist the court in addressing the constitutional issue raised”); *Ellender v. Schweiker*, 550 F. Supp. 1348, 1360 (S.D.N.Y. 1982) (noting that intervention is particularly desirable where “the proposed intervening plaintiffs present questions of fact and law virtually identical to those of the original plaintiffs,” and their intervention “will add to the Court’s understanding of the facts”).

The Institutional Investors, through their counsel, participated at every step in arms-length negotiations with Bank of America, Countrywide and the Trustee, and now seek to advocate for the Settlement the Trustee urges. They, and their clients, will benefit immediately and concretely if the Settlement is approved. If the Settlement is not approved they, and their clients, face the prospect of years of expensive, hotly contested litigation to enforce the Trusts’ contract rights. They will also lose tangible, valuable servicing improvements that might not be obtained even if the litigation were wildly successful. The Institutional Investors therefore have extensive knowledge of the circumstances that precipitated the Settlement, and are uniquely positioned to assist the Court in evaluating its benefits to the Covered Trusts.

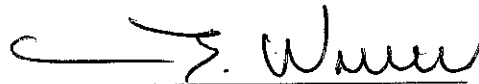
The Institutional Investors’ petition to intervene, timely filed within the time period prescribed by the Notice to all Potentially Interested Persons, will not unduly delay the determination of the action or prejudice the substantial rights of any party.

RELIEF REQUESTED

WHEREFORE, the Institutional Investors respectfully request that this Court issue an order permitting the Institutional Investors to intervene in the above-captioned proceeding.

Dated: New York, New York
June 29, 2011

WARNER PARTNERS, P.C.

By: 
Kenneth E. Warner
Lewis S. Fischbein

950 Third Avenue, 32nd Floor
New York, New York 10022
Phone: (212) 593-8000

Attorneys for Proposed Intervenors

Of Counsel:

GIBBS & BRUNS LLP (admission *pro hac*
vice pending)
Kathy D. Patrick
Robert J. Madden
Scott A. Humphries
Kate Kaufmann Shih (admitted to New
York bar)
1100 Louisiana, Suite 5300
Houston, Texas 77002
Phone: (713) 650-8805