

At Commercial Division Part 39
Supreme Court of the State of New
York, held in and for the County of
New York, at the Courthouse located at
60 Centre Street, New York, New
York, on the ___ day of April, 2012

P R E S E N T:

HONORABLE BARBARA R. KAPNICK, J.S.C.

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, ET AL.,

Intervenor-Respondents,

Index No. 651786/2011

Assigned to: Kapnick, J.
(Part 39)

**ORDER TO SHOW
CAUSE WHY THE
COURT SHOULD NOT
COMPEL DISCOVERY**

UPON the annexed Affirmation of Michael A. Rollin, dated April 3, 2012, with exhibits attached thereto, the accompanying Memorandum of Law in Support of the Order to Show Cause Why the Court Should Not Compel Discovery, dated April 3, 2012, and all pleadings and proceedings previously had herein,

SUFFICIENT CAUSE THEREFOR BEING ALLEGED, IT IS HEREBY

ORDERED that petitioner The Bank of New York Mellon (“BNYM”) and the 22 intervenor-petitioners (“Institutional Investors”), show cause before this Court at Commercial Division Part 39, to be held at 60 Centre Street, New York, New York, on the 24th day of April,

2012 at 2:00 o'clock, or as soon as counsel may be heard, why an order should not be entered as follows:

- 1) Pursuant to CPLR § 3124, compelling BNYM and the Institutional Investors to produce all communications and documents exchanged between or among BNYM, the Institutional Investors, and the Bank of America/Countrywide entities during the negotiation, consummation, and Court submission of the proposed settlement (“Settlement Communications”);
- 2) Pursuant to CPLR § 3124, compelling BNYM to produce a sampling of loan files and compelling BNYM and the Institutional Investors to produce all other information relevant to the meaning, effect, and reasonableness of the settlement terms; and
- 3) Pursuant to CPLR § 3124, ruling that the fiduciary exception to the attorney-client privilege applies to compel communications between BNYM and its counsel, and the Institutional Investors and their counsel, when they were seeking legal advice about the proposed settlement (from approximately November 2010 to June 29, 2011); and
- 4) Awarding such other and further relief as the Court may deem just and proper.

SUFFICIENT REASON APPEARING THEREFOR, let service of a copy of this Order, together with the papers upon which it was granted, upon counsel for BNYM and counsel for the Institutional Investors, by electronic filing service, and a courtesy copy of the signed order by electronic mail on or before the __ day of April, 2012, be deemed good and sufficient service. In accordance with the briefing schedule previously submitted to this Court, any answering papers shall be filed and served upon all counsel of record on or before April 13,

2012, and reply papers shall be filed and served upon all counsel of record on or before April 19, 2012.

Oral argument is requested on this motion.

Counsel submitting this Order to Show Cause has affirmed that a good faith effort has been made to resolve the issues raised in this Order to Show Cause with counsel for BNYM and counsel for the Institutional Investors.

ENTER,

J.S.C.