

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, et al.,

Intervenor-Respondents.

Index No. 651786/2011

Assigned to: Kapnick, J.

**AFFIRMATION OF OWEN L.
CYRULNIK IN SUPPORT OF
ORDER TO SHOW CAUSE**

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

1. I am a member of the Bar of the State of New York and of Grais & Ellsworth LLP, attorneys for several intervenor-respondents. I offer this affirmation in support of the order to show cause filed April 3, 2012.

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. On a March 19, 2012, telephone conference, the Court gave the intervenor-respondents permission to seek an order to show cause why the Court should not convert this Article 77 proceeding to a plenary action.

4. The intervenor-respondents believe that the trusts at issue here are expressly excluded from the ambit of Article 77 as “trusts for the benefit of creditors.” Moreover, the intervenor-respondents believe that Article 77 was intended to and has been interpreted to have a limited scope of application, relating to matters of trust administration, accounting, and construction. They believe that the relief BNYM seeks is different in nature and much broader than that intended by Article 77, that Article 77 does not contemplate the adjudication of the rights of so many trusts and differently situated beneficiaries in one proceeding, that the existence of multiple conflicts of interest on BNYM’s part makes Article 77 a particularly inappropriate vehicle for the relief sought here, and that BNYM’s use of Article 77 is unprecedented in its nature and size.

5. The order to show cause seeks an order from the Court, converting this special proceeding under CPLR § 7701 into a plenary action pursuant to the Court’s authority under CPLR § 103(c).

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

Executed this 3rd day of April 2012, in New York, New York.

A handwritten signature in black ink, appearing to read "Owen L. Cyrulnik". The signature is fluid and cursive, with a large initial 'O' and 'C'.

Owen L. Cyrulnik