

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT 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,

-against-

WALNUT PLACE LLC *et al.*,

Intervenor-Respondents.

2011-cv-5988(WHP)

DECLARATION OF EXIGENCY

Pursuant to 28 U.S.C. § 1746, Matthew D. Ingber hereby declares:

1. I am a partner of the law firm of Mayer Brown LLP, attorneys for Petitioner The Bank of New York Mellon (“BNYM” or the “Trustee”) in the above-captioned action. I submit this Declaration in support of BNYM’s Order to Show Cause seeking expedited briefing on its Motion to Remand.

2. On June 29, 2011, the Trustee filed a Verified Petition and thereby commenced a special proceeding pursuant to CPLR § 7701, seeking judicial approval of a settlement (the “Settlement”) between The Bank of New York Mellon, in its capacity as trustee of 530 mortgage-securitization trusts (the “Trusts”), and certain Countrywide and Bank of America entities (the “Article 77 Proceeding”). The purpose of a proceeding under Article 77 is to allow for expeditious resolution of issues relating to express trusts.¹

¹ See Vincent C. Alexander, Practice Commentaries C401:1 (2010) (“The purpose of [Article 77] is to provide for a special proceeding, as an alternative to the procedure by action, in trust accountings in the interests of

3. To that end, on June 29, 2011, The Honorable Barbara R. Kapnick issued an order (the "Preliminary Order") directing (i) that the Trustee implement a notice program, to be completed by August 12, 2011, to provide notice to Potentially Interested Persons, as defined therein; (ii) that all objections to the Settlement and Proposed Final Order and Judgment be filed and served by no later than August 30, 2011; (iii) that all responses to such objections be filed and served by no later than October 31, 2011; and (iv) that a final hearing shall occur on November 17, 2011 to hear objections and decide the issues raised in BNYM's Verified Petition.

4. The Trustee, in accordance with the Preliminary Order, implemented a massive notice program to provide Potentially Interested Persons with notice of the Settlement and the August 30, October 31, and November 17 dates. That notice included, among other things, publication in seventeen U.S. and international publications, the creation of a website, banner advertisements and notice through the Depository Trust Company.

5. In an order dated August 5, 2011, Justice Kapnick ordered the parties to meet and confer during the week of September 5, 2011 regarding a discovery schedule, and to appear before her on September 16, 2011 to resolve any outstanding discovery scheduling issues. (That order was issued following a lengthy conference with the court at which the same parties who have sought to remove the Article 77 Proceeding to this Court argued for a delay in the schedule previously set by Justice Kapnick; that request was rejected in the August 5 order.)

6. The Trustee seeks expedited briefing on its Motion to Remand because the Notice of Removal filed by various Walnut Place LLC entities ("Walnut"), if not resolved expeditiously, threatens to disrupt and delay the Article 77 Proceeding and the schedule ordered by Justice Kapnick. It is also likely to cause confusion among the various investors who have

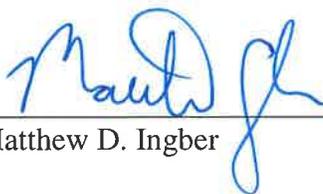
expedition and economy. In other words, the purpose is to simplify the practice in relation to express trusts and eliminate cumbersome and expensive procedures.") (footnote omitted).

intervened, or sought to intervene, in the Article 77 Proceeding about whether the case will proceed in federal or state court, and how, if at all, the discovery schedule and hearing date will be affected by removal.

7. Finally, the Trustee has entered into the Settlement because, in its judgment, the Settlement is in the best interests of the Trusts. The Settlement, if approved, will require, among other things, the payment of \$8.5 billion for distribution to the Trusts and the implementation of improvements in servicing procedures. Any delay in approval presents real and substantial risk of harm to the beneficiaries of the Settlement.

8. No previous application for similar relief has been made.

Dated: New York, New York
August 31, 2011



Matthew D. Ingber