

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION and
U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION (each as Trustee or Indenture Trustee
under certain governing agreements),

Petitioners,

for judicial instructions pursuant to CPLR Article 77.

Index No.

VERIFIED PETITION

Petitioners U.S. Bank National Association and U.S. Bank Trust Company, National Association, in their capacities as trustee or indenture trustee (solely in such capacities, and as named in such role or as successor to the named trustee or indenture trustee) with respect to the eight residential mortgage-backed securities (“**RMBS**”) transactions listed on Appendix A hereto (collectively, the “**Subject Trusts**”), file this verified petition (the “**Petition**”) pursuant to Article 77 of the New York Civil Practice Law and Rules (“**CPLR**”) seeking instruction concerning the interpretation and application of certain provisions of the contracts addressed in this Petition governing the Subject Trusts (collectively, the “**Governing Agreements**”), as set forth herein.¹

INTRODUCTION

1. Petitioners are significant providers of corporate trust services and serve as trustee or indenture trustee under contracts governing several thousand RMBS transactions. In these capacities, Petitioners have certain contractual rights and obligations concerning administration of these transactions as expressly set forth in the governing agreements with respect to each

¹ Petitioners are referred to collectively as “**Petitioners**.” Petitioner U.S. Bank National Association is referred to as “**USBNA**” and is trustee with respect to the following Subject Trusts: ABSHE 2006-HE7, CSMC 2007-NC1, FFML 2005-FF9, GPMF 2006-AR7, and HEAT 2006-8, and is indenture trustee with respect to RFMSI 2006-HI5. Petitioner U.S. Bank Trust Company, National Association is referred to as “**USBTCNA**” and is trustee with respect to BSABS 2007-AQ1 and BSABS 2005-AQ2. USBTCNA is a wholly owned subsidiary of USBNA.

transaction. A number of these transactions, including the Subject Trusts, closed prior to the financial crisis of 2007-09 and are considered “legacy” transactions.

2. This Petition concerns certain issues regarding the consensual termination of RMBS transactions such as the Subject Trusts through “clean-up calls.” In a clean-up call, a contractually-designated party, often a loan servicer or master servicer, or a specified investor, exercises an optional right to purchase all outstanding loans and any other assets, such as foreclosed properties, backing the transaction, thus terminating the deal prior to maturity of the loans. The money deposited by the party conducting the clean-up call is paid to investors in the form of a final distribution on their RMBS, which are surrendered and canceled.

3. This optional call right generally arises after the aggregate principal balance of the pool of securitized loans backing the transaction falls below a specified threshold percentage of the original securitized pool principal balance (the “**Termination Threshold**”). Upon information and belief, many legacy RMBS transactions, including the Subject Trusts, have either already, or will soon, hit their Termination Threshold.

4. During and after the financial crisis, a number of mortgage loan borrowers negotiated agreements with the servicers of their loans to modify their loan terms to make the monthly payment amounts more affordable. Some of these loan modifications were conducted pursuant to borrower relief programs developed by the federal government during this period in an effort to mitigate defaults and foreclosures. Loans were modified in numerous ways, including by extending their term, reducing the applicable interest rate, or forgiving a portion of the debt.

5. Another loan modification type involved agreements by servicers to defer payment of some amount of the principal balance until loan maturity, or the sale of the related property, with the deferred principal amount treated as a non-interest bearing balance. Upon information

and belief, at the time of these modifications, these deferred principal amounts (“**Deferred Principal Balances**”) generally were reported by loan servicers to the respective RMBS trusts as realized losses on the modified loans and accounted for as such.

6. Many of the governing agreements for legacy RMBS transactions, including the Subject Trusts, expressly authorize servicers to modify loan terms in some circumstances. They do not, however, appear to provide clear instruction concerning whether a party conducting a clean-up call is to include or exclude Deferred Principal Balances when calculating the amount it must pay to acquire the mortgage loans and other assets (the “**Termination Price**”) or in determining whether the Termination Threshold has been hit.

7. Petitioners have no direct financial interest in the amount of the Termination Price, because they neither pay any portion of the Termination Price nor receive any payment on the RMBS through the final distribution. Parties that do have financial interests concerning the amount of the Termination Price (i.e., the parties with the right to conduct a clean-up call on the one hand, and the investors to whom the Termination Price ultimately will be distributed on the other) have taken opposing positions concerning the appropriate treatment of Deferred Principal Balances in clean-up calls, and have sought to engage Petitioners on these issues.

8. Some RMBS investors have threatened to bring claims against Petitioners to the extent they do not somehow compel parties conducting clean-up calls to include Deferred Principal Balances in the Termination Price. On the other hand, Petitioners could face claims from parties seeking to conduct clean-up calls to the extent Petitioners sought to prevent these parties from exercising their clean-up call rights unless they were to deposit additional amounts related to Deferred Principal Balances. Other investors have requested that Petitioners seek judicial guidance with respect to these matters through an instruction proceeding like this one such that

these investors can appear and present their views to the Court. Petitioners expect that holders of clean-up call rights, too, may appear in this action.

9. Another corporate trustee is seeking judicial instruction in another venue concerning similar questions regarding the appropriate treatment of Deferred Principal Balances in Termination Price calculations by a loan servicer with respect to the RMBS transactions at issue in that proceeding. Petitioners understand that case remains at an early stage and that certain investors and the holder of the relevant clean-up call rights have appeared to express opposing views on the issues presented. That action is captioned *In the Matter of: Certain Residential Mortgage Backed Securities Trusts Subject to Optional Termination*, Case No. 30-2021-01233435-PR-TR-CJC (Superior Court of the State of California, County of Orange, Probate Division).

10. As set forth herein, Petitioners seek instruction from this Court concerning whether, with respect to the Subject Trusts, a party conducting a clean-up call should include or exclude Deferred Principal Balances, or otherwise account for these amounts, when calculating the Termination Price, and whether Deferred Principal Balances should be included or excluded in determining whether the Termination Threshold has been hit.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under CPLR Articles 4 and 77 to entertain a special proceeding to determine any matter relating to any express trust. The Subject Trusts are all express trusts within the meaning of CPLR Article 77.

12. The laws of the State of New York govern the rights and obligations of Petitioners and the investors under the Governing Agreements. Additionally, upon information and belief, many investors in the Subject Trusts are citizens of New York.

13. Venue is proper in this Court under CPLR § 503 because, upon information and belief, certain of investors in the Subject Trusts reside in New York County, or if no such investor resides in New York County, because Petitioners designate New York County as the place of trial.

NOTICE PROGRAM

14. Concurrent with the filing of this Petition, Petitioners are seeking an order from the Court approving a notice program that includes notice to all “**Potentially Interested Persons**,” as that term is defined in paragraph 4 of the Affirmation of Joseph B. Sconyers, dated July 1, 2022 (the “**Sconyers Affirmation**”), in support of this Petition and the contemporaneously filed proposed Order to Show Cause (the “**Order to Show Cause**”). This notice program is more fully described in paragraphs 4-5 of the Sconyers Affirmation. Petitioners expect that following receipt of the proposed notice, interested parties may seek to be heard in this proceeding with respect to the matters identified in the Petition.

BACKGROUND

The Subject Trusts

15. The Subject Trusts were created between 2005 and 2007. They are express trusts governed by New York law. The collateral underlying the Subject Trusts consists primarily of residential mortgage loans (collectively, the “**Mortgage Loans**”).

16. To effectuate a typical RMBS transaction, at closing, a depositor or other party conveys all of its right, title, and interest in the underlying mortgage loans to the trustee, to be held in trust for the benefit of investors in the RMBS known as “**certificateholders**.” *See, e.g.*, Exhibit A (BSABS 2005-AQ2 Pooling and Servicing Agreement) (“**PSA**”), §§ 2.01, 2.02.² The Subject

² The RMBS issued by one of the Subject Trusts, RFMSI 2006-HI5, are denominated as “notes” instead of “certificates.” As used herein, the terms “certificates” and “certificateholders” respectively include these notes and investors holding them.

Trusts, and RMBS transactions generally, employ a pass-through structure whereby mortgage loan borrowers' principal and interest payments are aggregated and ultimately remitted to certificateholders as monthly distributions on their certificates, net of various expenses and other amounts, pursuant to the "waterfall" provisions and other relevant terms of the transaction-specific agreements.³ *E.g., id.*, at §§ 5.04, 5.05.

17. The trustee generally is responsible for holding legal title to the mortgage loans for the benefit of certificateholders; providing certain notices to certificateholders, rating agencies, or other parties; and making monthly payment distributions to certificateholders, all in accordance with the relevant provisions of the applicable agreements, and other transaction parties may have roles in these activities as well. In their capacities as trustees, Petitioners are generally responsible for similar roles and duties with respect to the administration of the Subject Trusts, though the nature and scope of the parties' roles and duties vary by transaction.⁴ In the absence of a continuing event of default or similar occurrence defined therein, the trustee undertakes to perform only the duties expressly set forth in the Governing Agreements. *E.g.*, Exhibit A, § 9.01(a).

18. Loan servicers are responsible for administering borrower-facing activities, sometimes referred to as "primary servicing." The role of a primary servicer includes collecting payments from borrowers on the mortgage loans and remitting these funds to the trustee or another designed party, accompanied by loan-level financial reporting, on a monthly basis for distribution to certificateholders, all as provided in the respective agreements. *E.g.*, Exhibit B (ABSHE 2006-HE7 PSA), §§ 3.01, 3.07(a), 3.10, 3.11. The servicer is also generally responsible for conducting

³ The payment waterfall, broadly speaking, consists of contractual terms specifying the manner in which mortgage loan proceeds are distributed to, and losses are assessed against, the various classes of certificates. Generally speaking, losses are allocated in reverse order of payment priority. *E.g.*, Exhibit A, §§ 5.04, 5.05.

⁴ For example, another party administers the waterfall for RFMSI 2006-HI5.

loan modifications and taking enforcement action against delinquent borrowers as necessary. This may include foreclosing on a mortgaged property, which may become a real estate owned property, referred to as an “**REO Property**,” that may be titled to the trustee on behalf of the trust. *E.g., id.*, at §§ 3.01, 3.16(a), 3.23(a).

19. Where applicable, a master servicer may exercise a supervisory role over the primary servicer(s) and perform certain other functions. *See, e.g.*, Exhibit A, §§ 3.01, 3.03. In some transactions, the master servicer may itself engage in primary servicing and the functions described in the preceding paragraph, to the extent set forth in the transaction-specific agreements. *E.g., id.*, at § 3.01.

Termination of RMBS Transactions Through Clean-Up Calls

20. While an RMBS transaction could conceivably continue until all payments due on the underlying mortgage loans were either collected or determined to be uncollectible, many transactions, including each of the Subject Trusts, contain a contractual mechanism colloquially referred to as a “**clean-up call**” that permits for earlier termination of the transaction when certain criteria are met. *E.g.*, Exhibit A, § 10.01. Specifically, this mechanism provides a designated party (the “**Call Rights Party**”) the option to purchase the remaining mortgage loans and other assets, thereby terminating the transaction, after the aggregate loan balance falls below a defined threshold—often, ten percent of the original aggregate securitized balance—i.e., the Termination Threshold. *E.g., id.* Early terminations avoid the need to maintain a securitization structure, with the related administrative costs, as loan balances dwindle. The Call Rights Party is frequently, but not always, a specified certificateholder or the servicer or master servicer.⁵

⁵ Some legacy RMBS transactions contain an alternative procedure for terminating the transactions prior to maturity of the mortgage loans, whereby a designated transaction party may conduct an auction by soliciting bids from potentially interested buyers. The related provisions sometimes use concepts and terminology in describing the

21. Pursuant to the applicable provisions of the transaction-specific agreements, the Call Rights Party acquires the mortgage loans and other assets held by the trust in exchange for its payment of the Termination Price, as calculated by the Call Rights Party, which is distributed to investors and certain other parties as a final distribution according to the terms of the payment waterfall.

22. The Termination Price often includes as a primary element a component referencing the then-current principal balance of the Mortgage Loans. *E.g.*, Exhibit A, § 10.01 (referencing the “Stated Principal Balance of each Mortgage Loan”). The specific terminology used to describe this loan principal component varies across the transactions. As addressed in greater detail herein, some transactions use a contractually-defined term like “Stated Principal Balance” while others refer to the “unpaid principal balance” or similar terminology when describing this element of the Termination Price. *Compare, e.g., id. with* Exhibit C (FFML 2005-FF9 Trust Agreement), § 7.01(b) (referencing “100% of the unpaid principal balance of each Mortgage Loan”).⁶

Servicer Modifications of Mortgage Loans

23. Under the agreements governing many legacy RMBS transactions, servicers or master servicers, as applicable, are generally expressly permitted to modify the payment terms of underlying mortgage loans that are in default or where, in the reasonable judgment of the servicer,

minimum bid price that must be achieved through the auction to proceed with a sale of the loans to the winning bidder that are similar to those appearing in the Termination Price formulas described herein.

⁶ Typically there are additional components of the Termination Price not related to loan balances, for example, amounts related to the value of any REO Properties or other property associated with the transaction to be conveyed to the Call Rights Party through the clean-up call. *E.g.*, Exhibit A, § 10.01 (including, among other things, “the appraised value of any REO Property in the Trust Fund” and various unreimbursed expenses accrued by parties to the PSA within the Termination Price provision).

default is reasonably foreseeable, subject to transaction-specific qualifications and conditions. *E.g.*, Exhibit A, § 4.01(a).

24. In connection with the 2007-09 financial crisis, the federal government encouraged servicers to offer payment relief to financially distressed homeowners to mitigate risk of default and foreclosure. Many such modifications were based on government-developed relief programs, including U.S. Department of the Treasury's Home Affordable Modification Program ("HAMP"). In response, servicers shaped relief packages to reduce borrowers' payment burdens by, among other things, "deferring" loan principal amounts, thus creating Deferred Principal Balances.

25. Under this type of loan modification, typically, the borrower's obligation to pay the Deferred Principal Balance is extended until the loan matures or the related property is sold. Unlike modifications involving principal forgiveness, the Deferred Principal Balance is not discharged and the borrower remains obligated to pay it. Because a Deferred Principal Balance is excluded from interest calculations under the terms of these modifications, it is sometimes referred to as a non-interest bearing balance as distinguished from ordinary course interest-bearing principal amounts.

26. Specifically, in its HAMP Supplemental Directive 10-05, dated June 3, 2010, the U.S. Department of the Treasury provided that servicers are to report to the trustee any Deferred Principal Balance as a realized loss, the trustee must allocate any such reported Deferred Principal Balance as a realized loss to the trust, and the servicer must act consistent with the presumption that such allocation has occurred and may conclusively rely on it having occurred. *See* Exhibit I (Supplemental Directive 10-05, *Home Affordable Modification Program – Modification of Loans with Principal Reduction Alternative* (June 3, 2010)), at 10. This directive also provided that "[t]he reported forbore principal should be allocated as a realized loss such that, for purposes of

calculating distributions to securityholders, such forbore amount is no longer outstanding under the amortization schedule applicable to the related mortgage loan.” *See id.*, at 10 n.2.

27. Upon information and belief, while this guidance applies expressly to HAMP modifications, servicers generally have applied this same “loss” treatment to Deferred Principal Balances resulting from modifications more broadly, such that they may report all Deferred Principal Balances as realized losses that reduce the principal balances of the relevant loan pools. Upon information and belief, based on this reporting by servicers or master servicers, RMBS payment waterfalls, too, generally have been administered consistent with the guidance for over a decade.

28. Upon information and belief, because the housing market has recovered since the financial crisis, the likelihood of recovering some Deferred Principal Balances in the future, either at loan maturity or in connection with a sale of the property, may have increased.

29. With respect to the Subject Trusts, the aggregate principal balance of the Mortgage Loans at the inception of these transactions was nearly \$7 billion. As of June 2022, i.e., the most recent reporting period, according to data provided by the relevant loan servicers or master servicers, the aggregate interest-bearing principal amount of the remaining Mortgage Loans is approximately \$524 million. In addition, upon information and belief, based on monthly reporting received by Petitioners from servicers or master servicers, there may be more than \$78 million in aggregate Deferred Principal Balances associated with five of the Subject Trusts, plus additional Deferred Principal Balances associated with the remaining three Subject Trusts. The precise amounts, however, would need to be confirmed with the relevant servicer or master servicer.

Investor Inquiries and Parties' Positions

30. As the Subject Trusts, and legacy RMBS transactions generally, have aged and the aggregate balances of the Mortgage Loans hit or approach the applicable Termination Thresholds, the issue of whether and how Deferred Principal Balances should be accounted for in connection with clean-up calls has garnered increasing attention in the market.

31. Petitioners have received correspondence from certain certificateholders asserting that Deferred Principal Balances must be included in the Termination Price calculated by Call Rights Parties, lest these parties acquire a valuable asset “for free” at the expense of these certificateholders. Some certificateholders have threatened to bring claims with respect to these matters. One certificateholder, while reserving its right to seek its own remedies, has expressly requested that Petitioners seek judicial guidance on this issue including with respect to the Subject Trusts.

32. Certificateholders that have contacted Petitioners have generally taken the position that Call Rights Parties must include in the Termination Price the face amount of any Deferred Principal Balances associated with the loans they are acquiring. These certificateholders observe that while loan modifications result in a postponement of payment of these amounts, the deferred balance nonetheless remains part of the balance of these loans that the borrower is obligated to repay. Thus, these certificateholders have argued, based on the plain and ordinary meaning of the term “unpaid principal balance” (or similar terminology), Deferred Principal Balances qualify as “unpaid principal” for purposes of inclusion in the Termination Price because Deferred Principal Balances are, literally, “principal” owed by the borrower that is “unpaid.”

33. Where the relevant component of the Termination Price provision refers to a defined term like “Stated Principal Balance,” certificateholders have taken the position that in the

absence of express definitional language to the contrary, there is no basis for subtracting or otherwise disregarding Deferred Principal Balances in arriving at the “Stated Principal Balance” to be included in the Termination Price. And, where the Termination Price is determined through a formula with a component referring to the “fair market value” of the “property” or “assets” of the trust, or similar terminology, certificateholders have argued that Deferred Principal Balances must be included in this “fair market value” component, even if they are not deemed part of the “Stated Principal Balance” component.

34. Some Call Rights Parties, on the other hand, have asserted that Deferred Principal Balances should be entirely excluded from consideration in their calculation of a Termination Price. They have pointed to the U.S. Treasury’s guidance applicable to HAMP loan modifications and argued that Deferred Principal Balances already have been appropriately accounted for as realized losses and should be disregarded for the purpose of clean-up calls. They contend that the practice by servicers or master servicers of reporting and treating Deferred Principal Balances as realized losses has been widely adopted since the financial crisis.

35. Call Rights Parties also have argued that there would be an incongruity in including Deferred Principal Balances in the calculation of Termination Prices given that these balances are disregarded in other calculations not related to clean-up calls. They have pointed to the calculation of monthly servicing fees payable to servicers, for example, which may be based on the same definition of “Stated Principal Balance,” or a similar term, also appearing in the Termination Price provision, and assert that Deferred Principal Balances are generally disregarded in calculating servicing fees. They argue further that because a Deferred Principal Balance represents a borrower’s inability to repay their loan on the original terms, related losses are appropriately

absorbed by certificateholders, i.e., the parties that generally bear the risk of borrower nonpayment in RMBS transactions.

36. Because the formula for calculation of the Termination Threshold often uses the same, or conceptually similar, terminology as used in the calculation of the Termination Price, the parties' respective positions concerning the proper interpretation of such terms may also apply when determining whether a Termination Threshold has been hit such that a transaction is or is not eligible for a clean-up call.

ISSUES FOR JUDICIAL INSTRUCTION

37. Due to the lack of certainty and potentially-divergent calculations of the Termination Price and the Termination Threshold across the Governing Agreements based on the inclusion or exclusion of Deferred Principal Balances, as well as existing and potential competing claims from interested parties with respect to both issues, Petitioners seek instructions from the Court concerning whether, with respect to the Subject Trusts, a party conducting a clean-up call should include or exclude Deferred Principal Balances, or otherwise account for these amounts, when calculating the Termination Price, and whether Deferred Principal Balances should be included or excluded in determining whether the Termination Threshold has been hit. This Court's instructions in this proceeding with respect to the Subject Trusts may also inform clean-up calls, and perhaps also collateral auctions, with respect to other transactions that feature terminology or concepts similar to those presented with respect to the Subject Trusts.

38. To help inform the Court's analysis, Petitioners set forth herein a description of certain provisions from the Governing Agreements that may be relevant in adjudicating these issues. Interested parties, too, may point to other aspects of the Governing Agreements or rely on other arguments entirely in support of their positions with respect to these matters.

TERMINATION PRICE

CSMC 2007-NC1 and BSABS 2007-AQ1

39. The clean-up call provisions for some of the Subject Trusts use defined terms like “Stated Principal Balance” to describe the loan principal-based component of the Termination Price that themselves appear to contemplate the deduction of at least some amounts associated with loan modifications.

40. The Termination Price provision for each of CSMC 2007-NC1 and BSABS 2007-AQ1, for example, requires payment of “100% of the Stated Principal Balance of each Mortgage Loan.” Exhibit D2 (CSMC 2007-NC1 Amended and Restated Series Supplement Dated as of November 21, 2007 to Standard Terms of PSA), § 11.01(b); Exhibit E (BSABS 2007-AQ1 PSA), § 10.01(a). The formula used to calculate the “Stated Principal Balance” starts with the principal balance of the loan as of the “Cut-off Date,” i.e., the inception of the securitization, and then deducts certain amounts to arrive at the Stated Principal Balance. And, for both of these Subject Trusts, in calculating the Stated Principal Balance, Realized Loss amounts are among the components expressly deducted from the Cut-off Date principal balance. For CSMC 2007-NC1, for example, the definition of Stated Principal Balance is as follows:

With respect to any Mortgage Loan and date of determination, the principal balance of such Mortgage Loan as of the Cut-off Date, after application of the principal portion of all Scheduled Payments due on or before the Cut-off Date, whether or not received, increased by the portion of any Capitalization Reimbursement Amount allocable to such Mortgage Loan, minus the sum of (i) all amounts allocable to principal that have been distributed to Certificateholders with respect to such Mortgage Loan on or before that date of determination and (ii) any Realized Losses on such Mortgage Loan that have been allocated to one or more Classes of Certificates on or before that date of determination.

Exhibit D1 (CSMC 2007-NC1 Standard Terms of PSA), Art. I (definition of Stated Principal Balance) (emphasis added).

41. For both of these Subject Trusts, the defined term “Realized Loss” appears to expressly include amounts related to at least some loan modifications. For BSABS 2007-AQ1, the term “Realized Loss” is defined in relevant part as:

With respect to each Mortgage Loan which is the subject of a Servicing Modification, (a)(1) the amount by which the interest portion of a monthly payment or the principal balance of such Mortgage Loan was reduced or (2) the sum of any other amounts owing under the Mortgage Loan that were forgiven and that constitute Servicing Advances that are reimbursable to the Master Servicer, and (b) any such amount with respect to a monthly payment that was or would have been due in the month immediately following the month in which a Principal Prepayment or the Purchase Price of such Mortgage Loan is received or is deemed to have been received and not paid due to a Servicing Modification.

Exhibit E, Art. I (definition of Realized Loss) (emphasis added). For CSMC 2007-NC1, “Realized Losses shall include with respect to any modified mortgage loan, the amount, if any, by which the principal balance has been reduced as a result of such modification.” Exhibit D2, § 1.01 (definition of Realized Loss).⁷

BSABS 2005-AQ2 and ABSHE 2006-HE7

42. For BSABS 2005-AQ2 and ABSHE 2006-HE7, too, the loan principal component of the Termination Price is “100% of the Stated Principal Balance of each Mortgage Loan.” Exhibit A, § 10.01(a); Exhibit B, § 9.01(a).

⁷ In October 2021, USBNA, solely in its capacities as trustee, securities administrator, paying agent, and/or calculation agent for certain RMBS, filed another Article 77 petition concerning payment “waterfall” issues, captioned *In the Matter of the application of U.S. Bank National Association (as Trustee, Securities Administrator, Paying Agent, and/or Calculation Agent under various Pooling and Servicing Agreements)*, Index No.656028/2021 (Supreme Court of the State of New York, County of New York, Commercial Division). That matter is currently pending before Justice Borrok, and it concerns two of the Subject Trusts at issue here (BSABS 2005-AQ2 and BSABS 2007-AQ1), among a number of other trusts not at issue in this Petition. One of the issues addressed in that proceeding concerns the normal course distribution to certificateholders of collections of deferred principal (i.e., previously-deferred principal amounts later collected from borrowers), but that action does not involve instructions concerning the appropriate treatment of outstanding Deferred Principal Balances in connection with clean-up calls or otherwise.

43. For BSABS 2005-AQ2, as was the case with CSMC 2007-NC1 and BSABS 2007-AQ1, the definition of “Stated Principal Balance” expressly provides for the deduction of Realized Losses:

With respect to any Mortgage Loan or related REO Property and any Distribution Date, the Cut-off Date Principal Balance thereof minus the sum of . . . (iii) any Realized Losses on such Mortgage Loan incurred during the related Prepayment Period.

Exhibit A, Art. I (definition of Stated Principal Balance) (emphasis added). Unlike those other two Subject Trusts, though, the definition of Realized Loss does not expressly refer to amounts related to loan modifications. Otherwise, the BSABS 2005-AQ2 and BSABS 2007-AQ1 Realized Loss definitions are materially similar in relevant respects.

44. For ABSHE 2006-HE7, the definition of Stated Principal Balance provides for the deduction of certain types of Realized Losses:

With respect to any Mortgage Loan: (a) as of any date of determination up to but not including the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such Mortgage Loan would be distributed, the principal balance of such Mortgage Loan as of the Cut-off Date, as shown in the Mortgage Loan Schedule, minus the sum of . . . (iv) any Realized Loss incurred with respect thereto as a result of a Deficient Valuation or Debt Service Reduction made during or prior to the Prepayment Period for the most recent Distribution Date coinciding with or preceding such date of determination; and (b) as of any date of determination coinciding with or subsequent to the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such Mortgage Loan would be distributed, zero.

Exhibit B, § 1.01 (definition of Stated Principal Balance) (emphasis added). And, the definition of Realized Loss, similar to BSABS 2005-AQ2, does not expressly include amounts tied to loan modifications. As defined in ABSHE 2006-HE7, “Realized Loss” applies only to a Mortgage Loan (i) as to which a Final Recovery Determination has been made, (ii) that has become the subject of a Deficient Valuation, or that (iii) has become the subject of a Debt Service Reduction, none of which addresses loan modifications. *See* Exhibit B, § 1.01 (definition of Realized Loss).

HEAT 2006-8 and RFMSI 2006-HI5

45. The operative Termination Price component for HEAT 2006-8 is, once again, “100% of the Stated Principal Balance of each Mortgage Loan.” Exhibit F (HEAT 2006-8 PSA), § 9.01(a)(A). The definition of Stated Principal Balance for this transaction is distinct from those addressed above, though, in that it references the balance of each Mortgage Loan “as specified in the amortization schedule” following certain adjustments:

As to any Mortgage Loan and Due Date, the unpaid principal balance of such Mortgage Loan as of such Due Date as specified in the amortization schedule at the time relating thereto (before any adjustment to such amortization schedule by reason of any moratorium or similar waiver or grace period)

Id., at Art. I (definition of Stated Principal Balance).

46. For RFMSI 2006-HI5, the Termination Price is defined to include “an amount equal to 100% of the unpaid Loan Balance of each Home Loan so purchased” Exhibit G1 (RFMSI 2006-HI5 Indenture), Appendix A (definition of Termination Price). “Loan Balance,” in turn, is defined in relevant part as “the related Cut-off Date Loan Balance, minus all collections in respect of principal in accordance with the related Mortgage Note and applied in reduction of the Loan Balance thereof.” *Id.*, at Appendix A (definition of Loan Balance).

FFML 2005-FF9 and GPMF 2006-AR7

47. In contrast to the preceding transactions, the governing agreements with respect to FFML 2005-FF9 and GPMF 2006-AR7 do not incorporate a contractually defined term (e.g., “Stated Principal Balance”) to establish the principal component of the Termination Price.

48. For FFML 2005-FF9, the Termination Price is composed of “100% of the unpaid principal balance of each Mortgage Loan on the day of such purchase plus interest accrued thereon at the applicable Mortgage Rate with respect to any Mortgage Loan to the Due Date in the Collection Period immediately preceding the related Distribution Date to the date of such

repurchase,” “the fair market value of any REO Property and any other property held by any REMIC,” and certain other components unlikely to be impacted by the existence or absence of Deferred Principal Balances. Exhibit C, §7.01(b).

49. For GPMF 2006-AR7, the relevant Termination Price components are “100% of the unpaid principal balance of each Mortgage Loan on the day of such purchase plus interest accrued thereon at the Mortgage Rate with respect to such Mortgage Loan to the Due Date in the Collection Period immediately preceding the Distribution Date on which the proceeds of such sale will be distributed to the holders of the Certificates” and “the fair market value of any REO Property related to the Mortgage Loans and any other property related to the Mortgage Loans held by any REMIC.” Exhibit H (GPMF 2006-AR7 Trust Agreement), § 7.01(b).

TERMINATION THRESHOLD

50. Each of the Subject Trusts specifies one or more Termination Threshold(s) and the Call Rights Party that can conduct a clean-up call once the operative threshold is hit. For some of these transactions, there are multiple Call Rights Parties and their rights to conduct a clean-up call may arise at different Termination Thresholds.

51. In describing the Termination Threshold(s), the Governing Agreements with respect to five of the eight Subject Trusts, i.e., ABSHE 2006-HE7, BSABS 2005-AQ2, BSABS 2007-AQ1, HEAT 2006-8, and RFMSI 2006-HI5 incorporate the same operative defined term, e.g., “Stated Principal Balance,” present in the Termination Price provisions referenced above.⁸

⁸ The Termination Threshold for ABSHE 2006-HE7 references the defined term “Aggregate Principal Balance”; Exhibit B, § 9.01(b); which itself is based on the same defined term, “Stated Principal Balance,” included in this Subject Trust’s Termination Price. *See id.*, at §§ 1.01 (definition of Aggregate Principal Balance), 9.01 (Termination Price provision). Similarly, the Termination Threshold for RFMSI 2006-HI5 references the “Pool Balance”; Exhibit G2 (RFMSI 2006-HI5 Servicing Agreement), § 8.08; which is itself an aggregate of the underlying mortgages’ “Loan Balance,” i.e., the defined term used in that Subject Trust’s Termination Price. *See* Exhibit G1, Appendix A (definitions of Pool Balance and Termination Price).

BSABS 2007-AQ1 and BSABS 2005-AQ2, for example, are eligible for a clean-up call by the Majority Class CE Certificateholder when the “Stated Principal Balance of all of the Mortgage Loans” is not more than 10% “of the aggregate Cut-off Date Principal Balance of all of the Mortgage Loans.” Exhibit E, § 10.01(b); Exhibit A, § 10.01. Otherwise, the Master Servicer’s clean-up call right arises when “the Stated Principal Balance of all of the Mortgage Loans . . . aggregat[es] 5% or less of the aggregate Cut-off Date Principal Balance of all of the Mortgage Loans.” Exhibit E, § 10.01(b); Exhibit A, § 10.01.

52. For the remaining three Subject Trusts, while the Termination Threshold provision appears to incorporate similar concepts to the Termination Price provision, they do not use precisely the same terminology.

53. CSMC 2007-NC1 is eligible for a clean-up call by the Majority Class X Certificateholder “on or after the date on which the aggregate Principal Balance of the Mortgage Loans, at the time of the purchase is less than or equal to 10% of the Aggregate Loan Balance.” Exhibit D2, § 11.01(a). Otherwise, a designated loan servicer “may exercise such option on or after the date which the aggregate Principal Balance of the Mortgage Loans declines below 5% of the Aggregate Loan Balance as of the Cut-off Date.” *Id.* The capitalized term “Principal Balance” is not defined in the Governing Agreements for CSMC 2007-NC1. As addressed above, the Termination Price provision for this Subject Trust refers to the defined term “Stated Principal Balance.” *Id.*, at § 11.01(b)

54. For FFML 2005-FF9 and GPMF 2006-AR7, the Master Servicer may conduct a clean-up call “on or after the Initial Optional Purchase Date.” Exhibit C, § 7.01(b); *see* Exhibit H, § 7.01(b). And, the Initial Optional Purchase Date is “[t]he first Distribution Date following the date on which the Aggregate Pool Balance is less than 10.00% of the Cut-off Date Balance.”

Exhibit C, Art. I (definition of Initial Optional Purchase Date); *see also* Exhibit H, Art. I (definition of Initial Optional Termination Date) (“The Distribution Date occurring in the month following the month in which the Aggregate Loan Balance initially declines to less than 10.00% of the Cut-off Date Balance.”). The “Aggregate Pool Balance” and “Aggregate Loan Balance” are themselves ultimately a function of the “Scheduled Principal Balance” which, in relevant part, consists of a Mortgage Loan’s initial principal balance “less an amount equal to principal payments due after the Cut-off Date, and on or before the Due Date in the related Collection Period, whether or not received from the Mortgagor” Exhibit C, Art. I (definition of Scheduled Principal Balance); Exhibit H, Art. I (definition of Scheduled Principal Balance). As addressed above, the Termination Price provisions for these Subject Trusts refer to “100% of the unpaid principal balance of each Mortgage Loan,” not to the Scheduled Principal Balance. Exhibit C, §7.01(b); Exhibit H, §7.01(b).

* * *

55. Petitioners expect that interested parties will take opposing positions concerning the significance of some or all of the contractual provisions described in the preceding paragraphs and/or advance other arguments. Given their limited contractual roles with respect to the Subject Trusts, Petitioners are not in a position to resolve these disputes or to expose themselves to potential liability with respect to these matters in connection with claims by certificateholders or Call Rights Parties.

REQUEST FOR RELIEF

WHEREFORE, pursuant to the provisions of CPLR Article 77 and all other applicable law, Petitioners respectfully request that this Court:

56. Conclude that it has exclusive jurisdiction over the subject matter of this Article 77 proceeding, all parties to this proceeding, Petitioners, certificateholders, and any other parties with actual, asserted, or claimed rights or interests in the Subject Trusts (whether past, present, or future, or known or unknown), for all matters relating to the Petition and the subject matter of this proceeding, and, further, retain jurisdiction to enforce the terms of any judgment(s) or order(s) entered by the Court.

57. Instruct Petitioners as to whether the calculation of the Termination Price and the Termination Threshold for each of the Subject Trusts (i) should exclude Deferred Principal Balances, (ii) should include Deferred Principal Balances, or (iii) should otherwise account for Deferred Principal Balances.

58. Order (i) that Petitioners are fully authorized and protected by the Governing Agreements, any other related documents, and any applicable law with respect to any conduct, act, or omission to act by Petitioners in accordance with any order(s) and/or judgment(s) entered by the Court, and (ii) that all parties to the Governing Agreements and other related documents, all certificateholders, and any other parties with actual, asserted, or claimed rights or interests (whether past, present or future, or known or unknown) in the Subject Trusts are barred from asserting any claims against Petitioners with respect to any such conduct, act, or omission to act by Petitioners, so long as the same is consistent with any order(s) and/or judgment(s) entered by the Court.

59. Grant any other and/or additional relief that this Court deems just and proper.

Dated: July 1, 2022
Boston, Massachusetts

JONES DAY

/s/ Joseph B. Sconyers

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U.S. Bank National Association and
U.S. Bank Trust Company, National Association*

*pro hac vice forthcoming

VERIFICATION

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

NICOLAS A. VALAPERTA, being duly sworn, deposes and says:

1. I am a Vice President in Global Structured Finance (within Global Corporate Trust Services) for U.S. Bank Trust Company, National Association (acting solely in its capacity as trustee, "USBTCNA"). I am an officer of USBTCNA and of U.S. Bank National Association (acting solely in its capacity as trustee or indenture trustee, "USBNA").


2. The foregoing verified petition was prepared with the assistance of employees and representatives of USBTCNA and USBNA, and legal counsel upon which I have relied in making this verification, based on records and information in existence and/or presently recollected.

3. I have read the foregoing verified petition and know the contents thereof. Based on matters either presently recollected by me or made known to me for the purposes of making this verification, I am informed and believe, and on the basis of such information and belief hereby verify, that all statements of fact therein are true and correct to the best of my knowledge and belief, and as to those matters alleged on information and belief, I believe all such matters to be true to the best of my knowledge and belief.

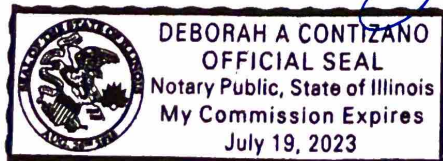


Nicolas A. Valaperta

Sworn to before me this
1st day of July, 2022




Notary Public



CERTIFICATE OF CONFORMITY

The undersigned, an attorney at law duly admitted to practice in the State of Illinois, hereby certifies that the foregoing acknowledgement of the affidavit of Nicolas A. Valaperta, taken on July 1, 2022 before Deborah A. Contizano, a notary public in the State of Illinois, was taken in the manner prescribed by the laws of the State of Illinois, being the State in which it was taken, and duly conforms with such laws and is valid and effective in such State as to the purpose for which it was submitted.

Dated: July 1, 2022
Chicago, Illinois



Luke H. Schubert
Illinois Bar No. 6330405

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION and
U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION (each as Trustee or Indenture Trustee
under certain governing agreements),

Petitioners,

for judicial instructions pursuant to CPLR Article 77.

Index No.

RULE 17 CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

I hereby certify that the foregoing verification complies with the word count limit set forth in Rule 17 of the Rules of Practice for the Commercial Division of the Supreme Court because it contains 195 words, excluding the caption, signature block, and Certificate of Conformity.

In making this calculation, I have relied on the word count of the word-processing system used to prepare the document.

Dated: July 1, 2022
Boston, Massachusetts

Respectfully submitted,

/s/ Joseph B. Sconyers

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APPENDIX A

Subject Trusts

1. ABSHE 2006-HE7
2. BSABS 2005-AQ2
3. BSABS 2007-AQ1
4. CSMC 2007-NC1
5. FFML 2005-FF9
6. GPMF 2006-AR7
7. HEAT 2006-8
8. RFMSI 2006-HI5