

<b>Zittman v U.S. Bank, N.A.</b>
2022 NY Slip Op 30880(U)
March 14, 2022
Supreme Court, New York County
Docket Number: Index No. 656964/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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<p>MARK A. ZITTMAN, IRA FBO MARK ZITTMAN AND  MARK A. ZITTMAN AS BENEFICIARY OF IRA FBO  MARK ZITTMAN,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> <p>U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE  (AND ANY PREDECESSORS OR SUCCESSORS  THERE TO),</p> <p style="text-align: center;">Defendant.</p>	<p><b>INDEX NO.</b>            <u>656964/2021</u></p> <p><b>MOTION DATE</b>        <u>01/20/2022</u></p> <p><b>MOTION SEQ. NO.</b>    <u>001</u></p> <p style="text-align: center;"><b>DECISION + ORDER ON  MOTION</b></p>
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16  
were read on this motion to CONSOLIDATE.

Plaintiffs, with the consent of Defendant, move for an order pursuant to CPLR 602 [a],  
consolidating this action with the action under Index No. 655366/2021.

The unopposed motion is granted. “CPLR 602 (a) vests a trial court with discretion to  
order consolidation of actions involving a common question of law or fact,” and “[c]onsolidation  
of actions is appropriate where it will avoid unnecessary duplication of trials, save unnecessary  
costs and expense and prevent the injustice which would result from divergent decisions based  
on the same facts” (*Sokolow, Dunaud, Mercadier & Carreras LLP v Lacher*, 299 AD2d 64, 73-  
74 [1st Dept 2002], citing CPLR 602 [internal quotation marks and other citations omitted]).  
Here, consolidation is appropriate because both actions involve the same or related parties and  
assert the same claims against U.S. Bank for breach of its contractual duty as Trustee of the  
Trusts, as well as an additional claim for a declaratory judgment relating to U.S. Bank’s right to

indemnification from the Trusts. While the actions differ with respect to the individual Trusts at issue, arguments specific to any of the Trusts may be raised and determined in a consolidated action. Under the circumstances, therefore, consolidation will conserve judicial resources and avoid unnecessary costs and expense.

As such, it is

**ORDERED** that the motion is GRANTED and the above-captioned action is consolidated in this Court with *Zittman, et al v U.S. Bank, National Association, as Trustee (and any predecessors or successors thereto)*, Index No. 655366/2021, pending in this Court; and it is further

**ORDERED** that the consolidation shall take place under Index No. 656964/2021 and the consolidated action shall bear the following caption:

MARK A. ZITTMAN, IRA FBO MARK  
ZITTMAN, MARK A. ZITTMAN as  
Beneficiary of IRA FBO MARK ZITTMAN,  
MARK A. ZITTMAN as Trustee of the MARK A.  
ZITTMAN REVOCABLE TRUST, and  
MARK A. ZITTMAN REVOCABLE TRUST

Plaintiffs,

-against-

U.S. BANK, NATIONAL ASSOCIATION,  
as Trustee (and any predecessors or  
successors thereto),

Defendant.

And it is further

**ORDERED** that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

**ORDERED** that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

**ORDERED** that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

**ORDERED** that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

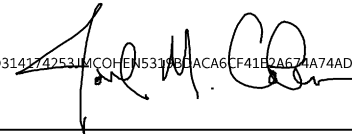
**ORDERED** that the parties appear for a preliminary conference on **May 24, 2022 at 11:00 a.m.**, with the parties circulating dial-in information to chambers at [SFC-Part3@nycourts.gov](mailto:SFC-Part3@nycourts.gov) in advance of the conference date.<sup>1</sup>

This constitutes the Decision and Order of the Court.

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<sup>1</sup> If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.

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JOEL M. COHEN, J.S.C.

3/14/2022

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE