Rational Special Situations Income Fund v Bank of N.Y. Mellon
2024 NY Slip Op 32936(U)
August 19, 2024
Supreme Court, New York County
Docket Number: Index No. 656501/2022
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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RATIONAL SPECIAL SITUATIONS INCOME FUND,

Plaintiff,

- v -

THE BANK OF NEW YORK MELLON and SYNCORA GUARANTEE INC.,

Defendants.

INDEX NO. 656501/2022

MOTION DATE _____

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 64

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 45, 47, 48, 57, 61

were read on this motion to/for DISMISS.

Plaintiff Rational Special Situations Income Fund (Fund), a series of the Mutual Fund & Variable Interest Trust, brings this action against defendant Syncora Guarantee Inc. (SGI) and The Bank of New York Mellon (BNY Mellon), in its BNY Mellon's capacities as trustee of the Voyager CWABS 126685AT3 DEL TR 2009-1 Trust (the 5AT3 Trust) and the Voyager CNTYW 126685DS2 DEL TR 2009-1 Trust (the 5DS2 Trust) (together, the Voyager Trusts).

Background

"The Fund is an investor in the debt securities (or 'Certificates')" of the Voyager Trusts and "owns the entire outstanding amount of Class UCF Certificates issued by each Voyager Trust." (NYSCEF Doc. No. [NYSCEF] 2, Complaint ¶ 2.) SGI owns the

entire outstanding amount of Class ICF Certificates, the only other Certificates issued by the Voyager Trusts. (*Id.*)

"Prior to the global financial crisis beginning in 2007," nonparty Countrywide Financial Corporation and its subsidiaries "created various securitizations by aggregating thousands of HELOCs" and sold "them to issuing trusts." (*Id.* ¶ 17.) "The trusts issued notes backed by the HELOCs." (*Id.*) Relevant to this action are two issuing trusts - the CWHEQ Revolving Home Equity Loan Trust, Series 2005-K (2005-K Issuer) and the CWHEQ Revolving Home Equity Loan Trust, Series 2006-D (2006-D Issuer). (*Id.* ¶ 18.) There are two segregated pools of HELOCs held by the 2005-K Issuer – Loan Group 1 and Loan Group 2 . (*Id.* ¶ 19.) All 2005-K Issuer Loan Group 1 HELOCs conformed to Freddie Mac and Fannie Mae guidelines; 2005-K Issuer Loan Group 2 included HELOCs that did not. (*Id.*) In a December 2005 public offering, the 2005-K Issuer issued Class 1-A Notes, backed by the 2005-K Issuer Loan Group 1 HELOCs, and Class 2-A Notes backed by 2005-K Issuer Loan Group 2 HELOCs (together, 2005-K Notes). (*Id.* ¶ 20.) The 2005-K Issuer issued the 2005-K Notes pursuant to a December 29, 2005 indenture, which governed how the HELOCs' interest and principal payments would "flow" to the 2005-K noteholders (2005-K Indenture). (*Id.* ¶ 21.)

The 2006-D Issuer also held two segregated pools of HELOCs – Loan Group 1 and Loan Group 2. Like the 2005-K Issuer Loan Groups, 2006-D Issuer Loan Group 1 HELOCs conformed to Freddie Mac and Fannie Mae guidelines; 2006-D Issuer Loan Group 2 included HELOCs that did not. (*Id.* ¶ 22.) In a March 2006 public offering, the 2006-D Issuer issued Class 1-A Notes, backed by Loan 1 HELOCs, and Class 2-A

Notes backed by Loan 2 HELOCs (together, 2006-D Notes). (*Id.* ¶ 23.) The 2006-D Notes were issued pursuant to a March 30, 2006 indenture, which governed the "flow" of interest and principal payments to 2006-D noteholders (2006-D Indenture). (*Id.* ¶ 24.) Section 8.03 (a) of both Indentures provided that the trustee distribute interest payments by Loan Group. (*Id.* ¶ 26.)

Countrywide contracted with SGI to "act as an insurer" of the Notes. (*Id.* ¶ 28.) SGI "issued an insurance policy to each Underlying Issuer for the benefit of the 2005-K and 2006-D Noteholders" in exchange for "insurance premium payments each month, which … came out of the interest proceeds from the HELOCs before any interest payments on the 2005-K and 2006-D Notes were paid to noteholders." (*Id.* ¶ 29.) The monthly premiums for 2005-K Class 1-A Notes were paid from the interest proceeds of the 2005-K Issuer's Loan Group 1 and the monthly premiums for the 2005-K Class 2-A Notes were paid from the interest proceeds the 2005-K Issuer's Loan Group 2. (*Id.* ¶¶ 30-31.) Likewise, the monthly premiums for 2006-D Class 1-A Notes were paid from the interest proceeds of the 2006-D Issuer's Loan Group 1 and the monthly premiums for the 2006-D Class 2-A Notes were paid from the interest proceeds the 2006-D Issuer's Loan Group 2. (*Id.* ¶¶ 32-33.) The Issuers also granted SGI a reimbursement right, whereby SGI would be reimbursed for insurance claims it paid, plus interest, if there was sufficient excess from the Loan Groups' proceeds. (*Id.* ¶ 34.)

Due to the financial crisis in 2008, SGI restructured the 2005-K and 2006-D Notes in order to reissue the Notes as uninsured certificates. (Voyager Transactions) (*Id.* ¶ 43.) To do so, SGI "entered into a RMBS Transaction Agreement, pursuant to which a fund called the Distressed Opportunities Master Segregated Portfolio (the

'Depositor') acquired, among other assets, all of the Class 1-A Notes and many of the Class 2-A Notes on behalf of [SGI]." (*Id.* ¶ 41.) Upon acquisition of the Class 1-A Notes, BNY Mellon and SGI entered into agreements with the Depositor to create the Voyager Trusts and Certificates. (*Id.* ¶ 44.) The Depositor conveyed the outstanding Class 1-A Notes issued by the 2005-K Issuer to the 5AT3 Trust and the outstanding Class 1-A Notes issued by the 2006-D Issuer to the 5DS2 Trust. (*Id.* ¶ 45.) "In exchange, the Depositor received the Certificates." (*Id.*)

The Fund purchased the 5AT3 UCF Certificates and the 5DS2 UCF Certificates (together, UCF Certificates) and SGI purchased "the entire outstanding amount of the only other Certificates issued by each of the Voyager Trusts, which are the Class ICF Certificates" (ICF Certificates). (*Id.* ¶¶ 2, 46-47.) "[T[he ICF Certificates issued by the 5AT3 Trust [were to] repay the same amounts [SGI] paid pursuant to its policy covering the Class 1-A Notes issued by the 2005-K Issuer when the cash waterfall for those notes permit[ed] those payments, and the ICF Certificates issued by the 5SD2 Trust [were to] repay whatever [SGI] paid pursuant to its policy covering the Class 1-A Notes issued by the 2006-D Issuer when the cash waterfall for those notes permit[ed] those payments." (*Id.* ¶ 47.)

After completion of the Voyager Transactions, the parties to the Transactions realized that SGI would be entitled to unfair duplicative payments under the current structure, and thus, the parties entered into Assignment Agreements, which required BNY Mellon to "deposit the duplicative reimbursements into bank accounts called 'collection accounts.' Collection Account Agreements governed each of those collection accounts." (*Id.* ¶¶ 51-56.) Pursuant to the Collection Account Agreements, BNY Mellon

could allegedly only pay SGI for unreimbursed insurance payments that occurred prior to the Voyager Transactions. (*Id.* ¶ 57.) The Fund alleges that, pursuant to the Collection Account Agreements and the Standard Terms to Trust Agreement (Standard Terms), BNY Mellon was required "to return all other amounts deposited in the collection accounts from the cash flows generated by the Class 1-A Notes to the Voyager Trusts for distribution to the UCF Certificateholders (i.e., the Fund)." (*Id.* ¶ 58.) These amounts consist of the duplicative reimbursements for SGI's post-Voyager Transactions payments "which it was already reimbursed because of its ownership of ICF Certificates." (*Id.*) Instead, BNY Mellon paid the amounts deposited into the collection accounts to SGI, which allowed none of Loan Group 1's proceeds to flow back to the Voyager Trusts. (*Id.* ¶ 61.) The Fund alleges that, as a result, BNY Mellon improperly paid millions of dollars owed to the Fund to SGI. (*Id.* ¶¶ 7-8, 27.)

On May 26, 2022, the Fund commenced this action, alleging causes of action for breach of contract against BNY Mellon and unjust enrichment against SGI.

In motion sequence number 001, BNY Mellon moves, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss the complaint. The Fund cross-moves, pursuant to CPLR 3212, for summary judgment against BNY Mellon on the issue of liability; however, the court denied the cross-motion as procedurally improper. (*See* NYSCEF 64, tr at 5:2-4.) In motion sequence number 002, SGI moves, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss complaint.

Discussion

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible

favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88[1994] [citation omitted].) However, "conclusory allegations--claims consisting of bare legal conclusions with no factual specificity--are insufficient to survive a motion to dismiss". (*Godfrey v. Spano*, 13 NY3d 358, 373 [2009] [internal citation omitted].)

To prevail on a CPLR 3211(a)(1) motion to dismiss, the movant has the "burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." (*Fortis Fin. Servs. v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002] [internal quotation marks and citation omitted].) "A cause of action may be dismissed under CPLR 3211 (a)(1) only where the documentary evidence utterly refutes [the] plaintiff's factual allegations, conclusively establishing a defense as a matter of law." (*Art and Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014] [internal quotation marks and citation omitted].) For evidence to be considered documentary, it "must be unambiguous and of undisputed authenticity." (*Fontanetta v John Doe 1*, 73 AD3d 78, 86 [2nd Dept 2010].)

BNY Mellon's Motion to Dismiss (Motion Sequence No. 001)

BNY Mellon moves to dismiss the Fund's first cause of action, in which the Fund alleges that BNY Mellon "breached Sections 3.01 (b) and 3.02 (c) of the Standard Terms to Trust Agreement by improperly calculating the amounts due to the Fund as a holder of UCF Certificates," and that "[b]y breaching these agreements, BNYM paid [SGI] millions of dollars that the Standard Terms to Trust Agreement and the Collection Account Agreements required BNYM to pay to the Fund." (NYSCEF 2, Complaint ¶ 68.)

"It is well settled that a written agreement which is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." (*Masters v 14-22 Leonard St. Assoc., LLC*, 11 AD3d 380, 381 [1st Dept 2004] [citations omitted].) "Construction of an unambiguous contract is a matter of law, and the intention of the parties may be gathered from the four corners of the instrument and should be enforced according to its terms." (*Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007] [citations omitted].) Accordingly, because "[t]he interpretation of an unambiguous contract is a question of law for the court ... the provisions of a contract addressing the rights of the parties will prevail over the allegations in a complaint." (*Taussig v Clipper Group, L.P.*, 13 AD3d 166, 167 [1st Dept 2004].)

Under New York law, the elements of a cause of action to recover damages for breach of contract are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010] [citation omitted].) A claim for breach of contract fails if the contract does not contain the promise defendant allegedly breached. (*See MBIA Ins. Corp. v Merrill Lynch*, 81 AD3d 419, 420 [1st Dept 2011] [holding that "the breach of contract cause of action fails to state a cause of action for breach of the promise to provide subordination protection since there is no such promise in the relevant agreements"].)

The plaintiff must also specifically allege the contractual provisions which were allegedly breached. (*Unobagha v Hilton Garden Inn Times Sq. N.*, 216 AD3d 524, 525 [1st Dept 2023] [citation omitted] [dismissing breach of contract claim where plaintiff failed "to allege, in nonconclusory language, as required, the essential terms of the

parties' purported contract, including the specific provisions of the contract upon which liability is predicated"]; *see also 34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] quoting *Barker v Time Warner Cable, Inc.*, 83 AD3d 750, 751 [2d Dept 2011] ["'In order to state a cause of action to recover damages for a breach of contract, the plaintiff's allegations must identify the provisions of the contract that were breached'"].) This gives "the court and [the] parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved as well as the material elements of each cause of action or defense." (*Atkinson v Mobil Oil Corp.*, 205 AD2d 719, 720 [2d Dept 1994] [internal quotation marks and citations omitted].)

Here, the Fund fails to state a claim for breach of the Voyager Standard Terms because the Fund's claim does not arise under the Standard Terms, the only contract that the Fund identifies as the basis for its claim against BNY Mellon. (*See* NYSCEF 2, Complaint ¶ 68.)

Article III of the Standard Terms governs the administration of the Voyages Trust; specifically, Section 3.01 governs the Certificate Distribution Account[1] and Section 3.02 governs Available Distributions.[2] (NYSCEF 15, Standard Terms at 19-21.) In its

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[1] The Certificate Distribution Account is defined as "[t]he account or accounts created and maintained for a Trust pursuant to Section 3.01 hereof." (NYSCEF 15, Standard Terms at 6.) Section 3.01 (a) of the Standard Terms provides, in part, that "[t]he Trustee shall establish and maintain one or more accounts (collectively, the 'Certificate Distribution Account') for each Trust to be held in trust for the benefit of the Certificateholders. … On or prior to each Distribution Date, the Trustee shall deposit into the Certificate Distribution Account the amounts received as distributions or payments on the Underlying RMBS." (*Id.* at 19.)

[2] Available Distribution is defined, in part, as the "available distribution for a Distribution Date" comprised of "Reimbursement Amounts paid by the Underlying RMBS Trustee to the Collection Account maintained by the Collection Agent who shall allocate such amounts, based on information provided to it by the Underlying RMBS Trustee, to the Trust for the benefit of the Class UCF Certificates." (*Id.* at 20.)

complaint, the Fund alleges that BNY Mellon breached Sections 3.01 (b) and 3.02 (c) of the Standard Terms. (*Id.*)

Section 3.01 (b) provides, in relevant part,

> "[o]n each Distribution Date, the Trustee shall to the extent it has received immediately available funds in a timely manner withdraw all monies in the Certificate Distribution Account to pay (i) first, the Trustees for any UCF Extraordinary Expenses and (ii) second, the Certificateholders the amount of the Available Distribution as provided herein. In addition, upon the termination of the Trust, the Trustee shall make a final withdrawal to clear and terminate the Certificate Distribution Account and distribute any amounts to the Certificateholders in accordance with Section 9.02."

(NYSCEF 15, Voyager Standard Terms at 19.)

Section 3.01 (b) directs BNY Mellon to do two things – (1) timely "withdraw all monies in the Certificate Distribution Account" on each Distribution Date to pay expenses and then the amount of the Available Distributions to the Certificateholders, and (2) when the Trust is terminated, to "make a final withdrawal to clear and terminate the Certificate Distribution Account and distribute any amounts to the Certificateholders in accordance with Section 9.02." (*Id.*) The complaint is devoid of allegations that BNY Mellon failed to comply with any of these two requirements. Rather, the breach alleged is that BNY Mellon improperly calculated the amounts due to the Fund as the holder of the UCF Certificates. (NYSCEF 2, Complaint ¶ 68.)

Despite that Section 3.01 (b) clearly governs withdrawals, the Fund argues that this provision requires BNY Mellon to deposit the Reimbursement Amounts held in the Collection Accounts into the Certificate Distribution Accounts to be then paid out to the UCF Certificateholders. The Fund focuses on the inclusion of the phrase "amount of the Available Distributions," asserting that BNY Mellon breached this provision by failing to withdraw the proper amount of Reimbursements from the Collection Accounts.

However, the court finds this interpretation to be a stretch of the plain language of this provision.

Pursuant to Section 3.01 (b), the action that the Trustee must take is to withdraw monies in the Certificate Distribution Account "to the extent it has received immediately available funds in a timely manner." This only obligates BNY Mellon to withdraw whatever funds are in the Certificate Distribution Account. While Section 3.01 (b) identifies the purpose of the withdrawal as to pay expenses and Available Distributions to the Certificateholders, this identified purpose does not create an additional obligation under this provision to withdraw the "proper amount" from a completely different account, i.e., the Collections Account, which is not even referenced. To create this additional obligation would be rewriting this provision. (*Flag Wharf, Inc. v Merrill Lynch Capital Corp.*, 40 AD3d 506, 507 [1st Dept 2007] [citation omitted] [holding that "[c]ourts will not rewrite contracts that have been negotiated between sophisticated, counseled commercial entities"].)

While Available Distributions are comprised, in part, of Reimbursement Amounts in the Collection Accounts, the inclusion of this defined term in this specific provision does not expand the method of calculation and allocation of such into the purview of Section 3.01 (b). Section 3.01 (b) does not govern the calculation and allocation of the Reimbursement Amounts, which is the basis of the Fund's claim. (*See* NYSCEF 2, Complaint ¶¶ 8, 10, 68 ["BNYM has improperly paid to Syncora millions of dollars rightfully owed to the Fund;" "BNYM has refused to correct its past misallocation of payments and has indicated that it will continue to follow its improper payment methodology;" "BNYM breached Sections 3.01(b) and 3.02(c) of the Standard Terms to

Trust Agreement by improperly calculating the amounts due to the Fund"].) Rather, the allocation of the Reimbursement Amounts is clearly governed by the Collection Account Agreement and not the Standard Terms. (See NYSCEF 18, Collection Account Agreement ¶ 3.) In fact, the Fund affirmatively alleges such. (*See* NYSCEF 2, Complaint, ¶¶ 57, 61, 63 ["According to the Collection Account Agreements, BNYM could only pay Syncora from a collection account for unreimbursed insurance payments that predated the Voyager Transactions, and only on a class-by-class basis;" "in violation of the Collection Account Agreements, BNYM paid virtually all of the amounts deposited into the collection accounts to Syncora, allowing none of the proceeds from Loan Group 1 of either Underlying Issuer to flow back to the Voyager Trusts;" the Collection Account Agreements "expressly require BNYM to use collection account funds to reimburse Syncora 'on a class by class basis' and allocate only 'such Class's' reimbursements to Syncora"].) Thus, even if the Reimbursement Amounts were improperly calculated, it would not be a breach of Section 3.01 (b).

Section 3.02 (c) also does not support the Fund's claim. Section 3.02 (c) provides, in part,

> "[o]n each Distribution Date, the Trustee (or the Paying Agent on behalf of the Trustee) shall withdraw from the Certificate Distribution Account the Available Distribution for that Distribution Date and shall distribute such withdrawn amounts in the following manner... ." (NYSCEF 15, Standard Terms at 20.)

Again, this provision, like section 3.01 (b), does not govern the calculation or allocution of the Reimbursement Amounts. Rather, it requires BNY Mellon to withdraw only what is in the Certificate Distribution Account and dictates how such must be distributed.

Section 3.02 (c) has three subparts which dictate the manner in which the Available Distribution should be distributed, describing the distribution priority order for whatever amounts are withdrawn from the Certificate Distribution Account. Specifically, section 3.02 (c) (iii) requires BNY Mellon to distribute such withdrawn amounts in the following manner ... to the Class UCF Certificateholders, pro rata in accordance with the relative Percentage Interests of the Class UCF Certificateholders, the Class UCF Distribution Amount." (NYSCEF 15, Standard Terms at 21.) The Class UCF Distribution Amount is defined as "an amount equal to the Uninsured Cash Flow Amount" (*see id.* at 6 [§1.01 definition of Class UCF Distribution Amount]); Uninsured Cash Flow Amount is defined as "all cash flows from the Underlying RMBS and Reimbursement Amounts received during the related Due Period remaining after allocation of the Insurance Cash Flow Amount and UCF Extraordinary Expenses." (*Id.* at 20 [§3.02 [b].) This requires BNY Mellon to pay the Fund residual amounts from cash flows that BNY Mellon actually received during the relevant period, after allocating its own expenses and the payments due to SGI pursuant to the waterfall priority of section 3.02 (c) (i) and (ii). Thus, the plain language of this provision dictates only how to pay out whatever amounts actually come into the Certificate Distribution Account. It does not govern what amounts ought to come into the trusts. As BNY Mellon correctly points out, the Fund does not allege that BNY Mellon failed to pay the Class UCF Distribution Amount as required by section 3.02 (c) (iii). Thus, the Fund fails to state a claim for breach of Section 3.02 (c).

SGI's Motion to Dismiss (Motion Sequence No. 002)

To state a claim for unjust enrichment, plaintiff must allege "'that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered.'" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [citation omitted].) "Although privity is not required for an unjust enrichment claim, a claim will not be supported if the connection between the parties is too attenuated." (*Id.* at 182 [citations omitted] [finding that the complaint lacked "allegations that would indicate a relationship between the parties that could have caused reliance or inducement"].)

It is clear from the complaint that the dispute at issue is governed by a set of agreements. (*See* NYSCEF 2, Complaint, ¶¶ 21, 24-26, 34-35, 45-47, 50, 55-58, 67 [allegations involving Underlying Indentures, the Voyager Trust Agreements, the Standard Terms, and the Collection Account Agreements].) A plaintiff "cannot recover for unjust enrichment while simultaneously alleging the existence of an express contract covering the same subject matter." (*MJM Adv., Inc. v Panasonic Indus. Co.*, 294 AD2d 265, 266 [1st Dept 2002] [citations omitted]; *Cox v NAP Constr. Co., Inc.*, 10 NY3d 592, 607 [2008] [holding that "a party may not recover in quantum meruit or unjust enrichment where the parties have entered into a contract that governs the subject matter"].) Since SGI is not a party to the agreement at issue, whether it is in contractual privity is irrelevant. "[T]here can be no quasi-contract claim against a third-party non-signatory to a contract that covers the subject matter of the claim." (*Randall's Is. Aquatic Leisure, LLC v City of NY*, 92 AD3d 463, 464 [1st Dept 2012] [citation omitted]; *see also FM Cost Containment, LLC v +42 W. 35th Prop. LLC*, 203 AD3d 426, 427 [1st

Dept 2022] ["plaintiff cannot maintain a quasi contract claim against a third-party nonsignatory to a contract that covers the subject matter of the claim"].) There is no dispute that the agreements cited in the complaint address the issue of whether certain monies were overpaid to SGI and are actually owed to the Fund. Thus, the Fund cannot recover on a quasi-contract theory against SGI.

The Fund has also not alleged the existence of "a relationship or connection between the parties that is not 'too attenuated.'" (*Georgia Malone & Co. v Rieder*, 19 NY3d 511, 516 [2012] [citation omitted].) The complaint is devoid of allegations that the Fund and SGI had any dealings with each other. There are only allegations that both are Certificateholders of difference classes of certificates. Their only connection is via their relationship with trustee BNY Mellon, but this indirect connection is not enough. (*Schroeder v Pinterest Inc.,*133 AD3d 12, 27 [1st Dept 2015] [finding that the "complaint alleges only a relationship between plaintiffs and Cohen, and a separate relationship between Cohen and Pinterest, which is "too attenuated"].)

Accordingly, the second cause of action for unjust enrichment is also dismissed.

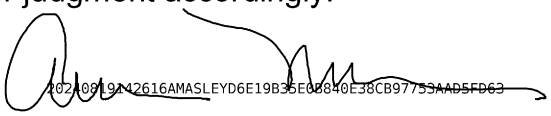
The court has considered the remaining arguments and finds them to be either moot, irrelevant, or without merit.

Accordingly, it is

ORDERED that the motion of defendant Bank of New York Mellon to dismiss the complaint is granted, and the complaint is dismissed in its entirety against this defendant, with costs and disbursements to this defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the motion of defendant Syncora Guarantee Inc. to dismiss the complaint is granted, and the complaint is dismissed in its entirety against this defendant, with costs and disbursements to this defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



8/19/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE