

Matter of Bank of N.Y. Mellon

2025 NY Slip Op 32891(U)

July 24, 2025

Supreme Court, New York County

Docket Number: Index No. 656266/2023

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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IN THE MATTER OF THE APPLICATION OF THE BANK
OF NEW YORK MELLON, IN ITS CAPACITY AS
INDENTURE TRUSTEE OF GSC CAPITAL CORP.
MORTGAGE TRUST 2006-1, PETITIONER, FOR
JUDICIAL INSTRUCTIONS UNDER CPLR 77,

Petitioner,

INDEX NO. 656266/2023
MOTION DATE --
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39
were read on this motion to/for REARGUMENT/RECONSIDERATION.

Petitioner The Bank of New York Mellon (Trustee), in its capacity as indenture trustee of the residential mortgage-backed securitization trust GSC Capital Corp. Mortgage Trust 2006-1 (Trust), moves pursuant to CPLR 2221(d)(2) to reargue this court’s May 19, 2025 decision and order (Decision).

Background

Trustee brought this CPLR Article 77 proceeding primarily seeking judicial instruction as to the proper method of allocation of certain recovered funds between holders of different classes of notes. The instruction was given in the Decision. Specifically, the court ordered and adjudged that “subsequent recoveries be distributed in accordance with plain language of section 3.29 of the Indenture.” (NYSCEF Doc. No. [NYSCEF] 32, Decision at 12; see CPLR 411 [“The court shall direct that a judgment be entered determining the rights of the parties to the special proceeding”]; Siegel, New

York Practice § 556 [6th ed, Dec. 2024 Update] [“The special proceeding culminates in a ‘judgment[]’ ...determining the rights of the parties”).]

The Trustee also requested that the court

- (i) “[d]eclare that it has exclusive jurisdiction over the subject matter of this Article 77 proceeding, all parties to this proceeding, the Petitioner, and all noteholders and other parties claiming rights with respect to the Trust, for the purposes of rendering such instructions as are necessary and/or appropriate in the administration of the Trust, and further, retain jurisdiction to enforce the terms of its judgment,”
- (ii) “[i]f the Court determines that the Indenture Trustee must alter its method for allocating write ups following subsequent allocations, instruct the Indenture Trustee as to whether such modification is to be implemented on a prospective basis only, or if the Indenture Trustee must remit catch-up payments to noteholders who have suffered a shortfall under the current method for allocating subsequent recoveries,”
- (iii) “[i]f the Court determines that the Indenture Trustee must remit such catch-up payments, instruct the Indenture Trustee regarding the means by which to recover funds from noteholders who received payments under the current method for allocating subsequent recovery write ups,”
- (iv) “[o]rder that any instructions from this Court pursuant to this Petition are expressly limited to the Trust, and that those instructions have no impact on any other trusts,”
- (v) “[o]rder that all parties – including noteholders and/or any other parties claiming rights in the Trust – are barred from asserting claims against the Indenture Trustee in respect of the Indenture Trustee’s method of allocating write ups following subsequent recoveries to this point,”
- (vi) “[o]rder that any actions taken or omissions made by the Indenture Trustee in accordance with this Court’s orders comply with all applicable duties under, and are fully authorized and protected by, the Indenture and any other documents governing the administration of the Trust, and that all parties – including noteholders and/or any other parties claiming rights in the Trust – are barred from asserting claims against the Indenture Trustee in respect of the Indenture Trustee’s administration of the Trust going forward, so long as such administration is consistent with the instructions and any other orders of this Court,” and
- (vii) “[d]irect the Trust and Indenture Trustee shall not be subject to the continuing supervision of the Court.” (NYSCEF 1, Petition at 17 ¶¶ A, D-I.)

As to the relief sought in these items (i) through (vii), the court stated:

“The court denies the Trustee’s request for the relief listed above. As to item (i), no basis for this court’s exclusive jurisdiction is proffered. Additionally, “[i]f the parties need additional instructions ... the parties may seek such relief as

necessary.” (*Matter of Bank of NY Mellon*, 56 Misc 3d at 226 [Sup Ct, NY County 2017] [denying request for “an order that the court shall retain exclusive jurisdiction over this matter for the purposes of rendering additional instructions as are necessary or appropriate in the administration of the covered trusts”].) Items (ii) through (vi) are about implementing the judicial instruction as to the method of allocation of subsequent recoveries and limiting the Trustee’s liability, i[f] any, which the court will not address at this time. Such relief is premature and not supported by the petition.^[1] As to item (vii), there appears to be no ground for the court’s supervision.” (NYSCEF 32, Decision at 11.)

As the relief sought in items (i) through (vii) was denied, the court dismissed the petition.

Discussion

Trustee moves to reargue, asserting that dismissal of the petition was unwarranted “given that the Court stated that it ‘will not address [items (ii) through (vi)] at this time’ and that they were ‘premature and not supported by the petition’.” (NYSCEF 37, MOL at 3, quoting Decision at 11.) Trustee acknowledges, however, that “[t]he parties did not brief the implementation” issue and that decision on this issue “would have been premature on the existing papers.” (*Id.*) Trustee contends that the implementation issue is now ripe.

As stated, the petition failed to adequately support Trustee’s request for instructions in items (ii) through (vi),ⁱ and thus, the court appropriately rejected relief sought in these items and dismissed the petition. Trustee acknowledges this much, stating that implementation issue was not briefed.

¹ “Moreover, the Trustee provides no argument or authority for the proposition that the relief sought in items (ii) through (vii) is appropriately sought under CPLR 7701. (See *e.g. BlackRock Fin. Mgt. Inc.*, 673 F3d at 177-78.) At this time, the court will not address whether such relief is appropriately sought under CPLR 7701.” (NYSCEF 32, Decision at 11 n 5.)

In effect, Trustee now seeks to restore the petition and address the relief that was rejected – either by agreement with Robert Dechert, a noteholder who appeared in this matter,² or through briefing. In the interest of judicial economy, the court will permit the request for relief in items (ii) through (vi) of the petition to be further addressed as part of this special proceeding. Trustee may move by order to show cause by August 25, 2025. The order to show cause shall include a notice program substantially similar to the notice program approved for motion sequence 001; the papers to be served shall include, among other things, the Decision and this decision and order. Any opposition shall be filed by December 1, 2025, and any reply shall be filed by December 22, 2025. A hearing shall be held in person at 10:00 am on January 12, 2026 at courtroom 242, 60 Centre St, New York, NY 10007.

Among other things, Trustee shall brief the following issues: whether the proper method of allocation of subsequent recoveries, as determined in Decision, shall be implemented retroactively, and if so, how far back retroactively, e.g. six years back or from the inception of the Trust; whether the Indenture includes a claw back provision addressing the return of any excessively allocated subsequent recoveries or distributions; and whether the Indenture provides for alternate sources to cover any allocations or distributions due to noteholders as a result of past improper allocations of subsequent recoveries.

Individuals may represent themselves while business entities, e.g. corporations, must appear by counsel. (See CPLR 321[a]; *Park v Song*, 61 Misc 3d 1047, 1050 [Sup

² It is unclear how the implementation instructions, which will affect multiple noteholders, can be resolved by agreement with one noteholder.

Ct, NY County 2018].) Noteholders who wish to be represented by counsel are referred to the New York City Bar Association, Legal Referral Service for assistance in engaging an attorney, 212-626-7373 if they are so inclined.

Accordingly, it is

ORDERED that motion 002 is granted; and it is further

ORDERED that upon reconsideration, the May 19, 2025 decision and order is vacated, in part, to the extent that the petition was dismissed; and it is further

ORDERED that the General Clerk’s Office is directed to restore this action to the court’s calendar; and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry in accordance with the procedures set forth in the Protocol on Courthouse County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website – www.nycourts.gov/suptctmanh) upon the Clerk of the General Clerk’s Office.

<u>7/24/2025</u> DATE			<u>ANDREA MASLEY, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

The petition addresses the relief sought in items (ii) through (vi) as follows:
 “46. As noted above, the Indenture Trustee believes that the method for allocating write ups following subsequent recoveries based on seniority of the classes of notes is supported by a reasonable reading of the Indenture governing the Trust and is further

supported by the course of conduct in which the Indenture Trustee has engaged for the entire life of the Trust.

47. However, if this Court determines that the Indenture Trustee must change its method for allocating write ups following subsequent recoveries, the Indenture Trustee submits that any such changes should be made on a prospective basis only.

Prospective application only would avoid an enormous administrative challenge of restating years of monthly distributions, identifying investors who historically held notes (as noted above, most notes are held by DTC and the beneficial holders are not known to the Indenture Trustee), and recovering and reallocating amounts previously paid to investors over 17 years. Prospective application only would avoid the inequitable result of penalizing investors who received distributions long ago and providing windfalls to investors who bought positions in the market that were priced to reflect BNYM's longstanding practice.

48. If this Court does instruct the Indenture Trustee to change the method for allocating subsequent recovery write ups going forward, the Indenture Trustee also asks this Court to expressly instruct that all payments made to this point were made in good faith and are deemed to be made in accordance with the Indenture governing the Trust, and that the parties – including noteholders and/or any other parties claiming rights in the Trust – are barred from asserting claims against the Indenture Trustee in respect of the Indenture Trustee's method of allocating subsequent recovery write ups to this point.

This finding is important because, whatever the Court decides regarding the proper interpretation of the Indenture, the Indenture Trustee's method for allocating write ups following subsequent recoveries was taken in good faith under the Indenture.

49. If this Court decides that any alteration to the method for allocating subsequent recoveries must also be made retrospective, the Indenture Trustee then seeks instruction from this Court as to the proper method to recover funds from noteholders who, in light of the Court's ruling, would previously have been overcompensated and to allocate payments to noteholders who would have suffered a shortfall as a result of the method used to this point. In the absence of any such instruction, it is likely that a follow-up Petition for this Court's instruction will be necessary, as various noteholders with conflicting interests may object to any redistribution efforts.

50. In the event that this Court does order a change to the method for allocating subsequent recoveries and provides accompanying instruction as to how catch-up payments should be made to noteholders that suffered a shortfall under the previous method, the Indenture Trustee further requests that this Court expressly instruct that any catch-up payments made in accordance with this Court's instruction are made in good faith and are deemed to be made in accordance with the Indenture governing the Trust, and that all parties – including noteholders and/or any other parties claiming rights in the Trusts – are barred from asserting claims against the Indenture Trustee in respect of such payments." (NYSCEF 1, Petition ¶¶ 46-50.)