

**Matter of HSBC Bank USA, N.A.**

2025 NY Slip Op 33827(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 654006/2025

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ANDREW BORROK PART 53**

*Justice*

-----X

HSBC BANK USA, N.A., AS TRUSTEE OF FIRST  
FRANKLIN MORTGAGE TRUST, SERIES 2004-FFC,

Plaintiff,

- v -

N/A,

Defendant.

-----X

INDEX NO. 654006/2025

MOTION DATE 07/02/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17  
were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, it is hereby ORDERED and ADJUDGED that HSBC Bank  
USA, N.A. (**HSBC**)’s Petition (hereinafter defined) is GRANTED.

**THE RELEVANT FACTS AND CIRCUMSTANCES**

Reference is made to a certain Pooling and Servicing Agreement (the **PSA**; NYCSEF Doc. No. 4), dated as of December 1, 2004, by and among HSBC, as Trustee, Merrill Lynch Mortgage Investors, Inc., as Depositor, Wells Fargo Bank, N.A., as Master Servicer and Securities Administrator, and Wilshire Credit Corporation, as Servicer, which governs the rights and responsibilities of certain residential mortgage-backed securities held by the First Franklin Mortgage Trust, Series 2004-FFC (**Trust**) (*id.*). Subsequent to the execution of the PSA, Nationstar Mortgage LLC d/b/a Mr. Cooper (**Mr. Cooper**) succeeded Wilshire Credit Corporation as Servicer (NYSCEF Doc. Nos. 1 ¶ 2, 7 at 1).

In February of 2024, a dispute arose between the Trust's Class C Certificateholder, ACTT Properties LLC, and the Trust's Servicer as to the appropriate distribution of the proceeds of particular charged-off Mortgage Loans per the terms of Section 3.12 of the PSA (NYSCEF Doc. No. 7). To wit, Mr. Cooper caused the distribution of the proceeds of these particular charged-off loans to the Class B Certificateholders (*id.* ¶ 3) and not the Class C Certificateholder.

According to the Class C Certificateholder, this was an error resulting in the overpayment of the Class B Certificateholders (*id.* ¶ 26). More specifically, the Class C Certificateholder - was of the view that it was entitled to the entirety of the proceeds based on the express terms of the PSA and the past practices of Mr. Cooper's predecessor (*id.* ¶ 22-23). For his part, Mr. Cooper was of the view that the Class C Certificateholder is only entitled to these proceeds if it were to have purchased those Mortgage Loans at their fair market value (*id.* ¶ 3) per the terms of Section 3.12 of the PSA.

To avoid the cost of litigation, and in consideration of the Trust's current financial situation, the parties agreed to resolve their dispute pursuant to the terms of a certain Settlement Agreement, dated June 30, 2025, (the **Settlement Agreement**; NYSCEF Doc. Nos. 9, 1 ¶ 33-34) which provides for the Class C Certificateholder to receive approximately half of what the Class C Certificateholder alleges that it was owed (NYSCEF Doc. No. 1 ¶ 38) in exchange for a release from all future claims pertaining to the particular charged-off loans (NYSCEF Doc. Nos. 1 ¶ 34 and 9 ¶ 1-2).

Subsequently, HSBC commenced this CPLR Article 77 proceeding by filing a Verified Petition (**Petition**) (NYSCEF Doc. No. 1), dated July 2, 2025, seeking certain judicial instruction pursuant to CPLR 7701. To wit, HSBC seeks

- A. [a] Declar[ation] that [the Court] has exclusive jurisdiction over the subject matter of this Article 77 proceeding, all parties to this proceeding, the Petitioner, the parties to the PSA, and all Certificateholders 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;
- B. [an Order] designating the time and place when the respective parties-in-interest may be heard upon the matters set forth in this Petition, and that notice of the hearing be served in the manner specified in such Order to Show Cause;
- C. [the Court to] [i]nstruct the Trustee, the Securities Administrator, and the Servicer to implement the Settlement Agreement in accordance with its terms;
- D. [a] [d]eclar[ation] that the Trustee, the Securities Administrator, the Master Servicer, and the Servicer's evaluation and acceptance of the Settlement Agreement comports with all applicable duties under the PSA and any other applicable law, and they shall not be subject to any liability for its or their evaluation, negotiation, or acceptance of the Settlement Agreement or the subject matter of the released claims; and

- E. [a] declar[ation] that the terms of the Settlement Agreement supersede any contrary provisions of the PSA with respect to the distribution of Trust proceeds, including, without limitation, the priority of distributions set forth in Article IV of the PSA, and where there is conflict between the terms of the Settlement Agreement and the terms of the PSA, the terms of the Settlement Agreement shall prevail;
- F. an Order enjoining all Certificateholders or any other potentially interested party from asserting claims against the Trust, the Trustee, the Securities Administrator, the Master Servicer, or the Servicer for any action taken in implementing the Settlement Agreement or that is otherwise consistent with any order of this Court.

(*id.* at 12-13).

Following the filing of the Petition, by Order to Show Cause (NYSCEF Doc. No. 15), dated July 8, 2025, the Trustee moved to have the Court grant judgment in favor of HSBC, to approve the Petition, and to require any Interested Person who opposed the relief sought by the Petition to file an answer to the Petition no later than August 18, 2025. To date, no answer or other opposition to the Petition has been filed.

### **DISCUSSION**

Pursuant to CPLR 7701, “[a] special proceeding may be brought to determine a matter relating to any express trust.” Special proceedings are governed by CPLR Article 4, which instructs a court in such a proceeding to “make a summary determination upon the pleadings, papers and

admissions to the extent that no triable issues of fact are raised” and to “direct that a judgment be entered determining the rights of the parties to the special proceeding.” (CPLR 409 [b], 411). On the record before the Court, HSBC has met its burden that there are no triable issues of fact and that adequate notice of the settlement has been provided without objection. Accordingly, motion is granted and the Petition is GRANTED in its entirety.

Accordingly, it is hereby ORDERED and ADJUDGED that the Petition is granted in its entirety; and it is further

ORDERED and ADJUDGED that the Court it has exclusive jurisdiction over the subject matter of this Article 77 proceeding, all parties to this proceeding, the Petitioner, the parties to the PSA, and all Certificateholders 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; and it is further

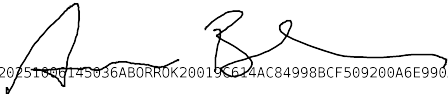
ORDERED and ADJUDGED that the Trustee, the Securities Administrator, and the Servicer are instructed to implement the Settlement Agreement in accordance with its terms; and it is further

ORDERED and ADJUDGED that the Trustee, the Securities Administrator, the Master Servicer, and the Servicer’s evaluation and acceptance of the Settlement Agreement comports with all applicable duties under the PSA and any other applicable law, and they shall not be subject to

any liability for its or their evaluation, negotiation, or acceptance of the Settlement Agreement or the subject matter of the released claims; and it is further

ORDERED and ADJUDGED that the terms of the Settlement Agreement supersede any contrary provisions of the PSA with respect to the distribution of Trust proceeds, including, without limitation, the priority of distributions set forth in Article IV of the PSA, and where there is conflict between the terms of the Settlement Agreement and the terms of the PSA, the terms of the Settlement Agreement shall prevail; and it is further

ORDERED and ADJUDGED that all Certificateholders or any other potentially interested party are enjoined from asserting claims against the Trust, the Trustee, the Securities Administrator, the Master Servicer, or the Servicer for any action taken in implementing the Settlement Agreement or that is otherwise consistent with any order of this Court.

  
20251006145036ABORROK20019614AC84998BCF509200A6E990A

10/6/2025  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: