

BlackRock Core Bond Portfolio, et al. v. Wells Fargo Bank, National Association

COURT: New York Supreme Court, New York County
CASE NUMBER: Index No. 656587/2016

This was a class action on behalf of certificateholders in 271 residential mortgage-backed securities (“RMBS”) trusts for which Wells Fargo Bank, National Association (“Wells Fargo”) serves as trustee (the “Trusts”). Plaintiffs generally alleged that Wells Fargo, as trustee for the Trusts, breached its contractual and common law duties by not causing the substitution or repurchase of mortgage loans that allegedly breached representations and warranties from the entities (or their successors) that sold the mortgage loans to the Trusts and by not providing notices to cure servicing violations to the servicers responsible for servicing the mortgage loans in the Trusts. Wells Fargo denied Plaintiffs’ allegations, denied that it has any liability, and asserted various affirmative defenses to Plaintiffs’ claims.

Plaintiffs’ claims largely proceeded in federal court—an action that was litigated extensively. *See BlackRock Allocation Target Shares: Series S Portfolio, et al. v. Wells Fargo Bank, Nat’l Ass’n*, Case No. 14-cv-9371-RMB (S.D.N.Y.). In the parallel federal case, the Parties conducted more than three years of discovery related to the claims and underlying events and transactions. The Parties served, collectively, more than 550 requests for production, exchanged nearly 5.5 million documents, and deposed at least 75 party witnesses. The Parties also received and analyzed over 700,000 documents from third parties following the issuance of more than 160 third party subpoenas. Relatedly, certain Plaintiffs filed an action in New York State court captioned *PIMCO Absolute Return Strategy 3D Offshore Fund Ltd., et al. v. Wells Fargo Bank, National Association*, Index No. 654743/2017 (N.Y. Sup. Ct.) seeking declaratory relief to address Wells Fargo’s indemnification by the Trusts in connection with the trustee litigation (the “Declaratory Relief Action”).

The Class Action Settlement

The Parties have reached a settlement of this action for \$43 million in cash and release of \$70 million of the Reserve Funds held by Wells Fargo in connection with 20 Bank of America Trusts that resolves all claims in the Actions. The Settlement Class consists of:

All persons or entities who purchased or otherwise acquired a beneficial interest in a security issued from one the 271 RMBS Trusts listed in Exhibit 2 to the Stipulation and (i) hold on the date on which the Court enters an order finally approving the Settlement or (ii) held at any time on or after June 18, 2014, but no longer hold as of the date on which the Court enters an order finally approving the Settlement.

On November 9, 2018, Plaintiffs filed a motion with the New York Supreme Court seeking an Order directing notice to the Settlement Class of the proposed Settlement and Fairness Hearing, and setting a date for Fairness Hearing. On January 30, 2019, Judge Borrok issued an Order directing notice to the Settlement Class and setting the Fairness Hearing for May 6, 2019 at 10:00 a.m.

On May 6, 2019, after the hearing, the Court entered an Order and Final Judgment approving the Settlement and entered orders approving the Plan of Allocation for the proceeds of the Settlement and Lead Counsel’s motion for attorneys’ fees and expenses.

Please read the **Notice** to fully understand your rights. On May 21, 2020, Plaintiffs filed a motion with the Court requesting permission to conduct the initial distribution of net settlement funds to eligible claimants, which was approved on May 22, 2020. The Claims Administrator conducted an initial distribution of the settlement funds to eligible claimants in August 2020, a second distribution in September 2021, and a third distribution in October 2022.

The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Background

Original State Court Action

Plaintiffs commenced this action in New York State Supreme Court against Wells Fargo in June 2014 on behalf of themselves and a putative class of investors in Certificates issued by more than 250 RMBS trusts for which Wells Fargo serves as trustee. See *Blackrock Allocation Target Shares: Series S Portfolio, et al. v. Wells Fargo Bank, Nat'l Ass'n*, Index No. 651867/2014 (the "Initial State Court Action"). In November 2014, Plaintiffs filed a motion for voluntary dismissal of that action without prejudice that the Court granted on December 23, 2014.

The Federal Action and Third-Party Actions

On November 24, 2014, Plaintiffs filed a complaint in the Southern District of New York captioned *BlackRock Allocation Target Shares: Series S Portfolio, et al. v. Wells Fargo Bank, National Association*, Case No. 14-cv-9371-RMB (S.D.N.Y.) (the "Federal Action"). On April 30, 2015, Defendant filed a motion to dismiss the complaint, which Plaintiffs opposed. Defendant's motion was fully briefed on June 29, 2015, and oral argument was heard on December 22, 2015. On January 19, 2016, the Honorable Richard M. Berman issued a decision and order declining to exercise supplemental jurisdiction over Plaintiffs' state law claims relating to certain Trusts and granting Plaintiffs leave to file an amended complaint in the Federal Action on indenture trust claims.

On February 24, 2016, Plaintiffs filed an amended complaint pursuant to the January 19, 2016 order. The amended complaint did not include derivative claims brought on behalf of the Trusts and instead brought claims directly on behalf of Trust investors. Thereafter, on June 17, 2016, the case was re-assigned to the Honorable Katherine Polk Failla.

On July 8, 2016, Wells Fargo filed a motion to dismiss the amended Federal Action complaint, which Plaintiffs opposed. Defendant's motion to dismiss was fully briefed on September 6, 2016. On March 30, 2017, Judge Failla issued an opinion and order granting in part and denying in part Wells Fargo's motion, dismissing Plaintiffs' breach of fiduciary duty claims and sustaining Plaintiffs' claims for breach of contract, violations of the Trust Indenture Act, and breach of the duty to avoid conflicts of interest. On May 12, 2017, Wells Fargo filed its answer to the amended complaint.

On May 26, 2017, Wells Fargo filed complaints for contribution against Plaintiffs' investment advisors in the Third-Party Actions. On October 13, 2017, the third-party defendants filed motions to dismiss Wells Fargo's third-party complaints. The third-party defendants' motions to dismiss were fully briefed on December 14, 2017. The motions remain pending.

On January 31, 2018, Plaintiffs filed a motion for class certification in the Federal Action, supported by an expert report and other evidence. On February 26, 2018, Wells Fargo filed an opposition to the class certification motion.

and a motion to preclude Plaintiffs' expert report. Plaintiffs filed their reply in support of class certification and in opposition to Defendant's motion to preclude Plaintiffs' expert report on March 26, 2018. Wells Fargo filed its reply in support of its motion to preclude Plaintiffs' expert report on April 9, 2018, and, on April 23, 2018, filed a surreply in further opposition to Plaintiffs' class certification motion.

On November 19, 2018, Judge Failla issued an Order Of Discontinuance directing the Clerk of the Court to terminate all pending motions, adjourn all remaining dates, and close the case.

State Court Proceedings

On March 28, 2016, Plaintiffs re-filed the dismissed claims relating to the non-indenture Trusts previously asserted against Wells Fargo in the Initial State Court Action and the Federal Action in California State Court in San Francisco County. *Blackrock Balanced Capital Portfolio (FI), et al. v. Wells Fargo Bank, Nat'l Ass'n*, Case No. CGC-16-551176. On September 27, 2016, the California State Court granted Wells Fargo's motion to dismiss based on the ground of inconvenient forum pursuant to Cal. Civ. Proc. Code §§ 410.30 and 418.10, subd. (a)(2).

Thereafter, on December 16, 2016, Plaintiffs filed a complaint in New York State Court captioned *Blackrock Core Bond Portfolio, et al. v. Wells Fargo Bank, National Association*, Index No. 656587/2016 (Sup. Ct. N.Y. Cty.) the "NY State Court Action"). The complaint in the NY State Court Action asserts claims for breach of contract, breach of fiduciary duty, breach of the duty to avoid conflicts of interest, and negligence. The complaint was brought directly on behalf of a putative class of current Trust certificateholders.

On June 21, 2017, Wells Fargo filed a motion to dismiss, which Plaintiffs opposed on August 7, 2017. Wells Fargo filed a reply on August 28, 2017, and oral argument was heard on September 20, 2017. That motion remained pending until September 25, 2018, when the Court marked the motion off the calendar without prejudice due to the Parties' proposed Settlement.

Declaratory Relief Action

On July 11, 2017, certain Plaintiffs filed the Declaratory Relief Action arising from Wells Fargo's reimbursement of litigation expenses from Trust funds. The Declaratory Relief Action sought a declaration that, in connection with Wells Fargo's defense of the Federal Action and the NY State Court Action, Wells Fargo was not entitled to indemnity from the Trusts, was not entitled to draw against the Trusts' funds for purposes of advancing its attorneys' fees and expenses, and was not entitled to withhold or reserve Trust funds for future legal expenses.

On September 15, 2017, Wells Fargo filed its motion to dismiss Plaintiffs' complaint or, in the alternative, for a declaration in its favor, in the Declaratory Relief Action. On September 26, 2017, the PIMCO Plaintiffs filed their opposition to Wells Fargo's motion to dismiss. Wells Fargo filed its reply on October 4, 2017.

On November 13, 2017, following oral argument, the Court granted Wells Fargo's motion to dismiss the Declaratory Relief Action. On January 5, 2018, the PIMCO Plaintiffs filed a notice of appeal. The appeal is pending.

Mediation and Settlement

On June 7, 2018, Plaintiffs, on behalf of themselves and others similarly situated, provided draft terms of a potential settlement to Defendant through Phillips ADR. On June 11, 2018, the Parties agreed to engage in a confidential mediation to negotiate terms of a potential settlement. The Parties jointly selected a neutral, the Honorable Layn R. Phillips (Ret.) of Phillips ADR, to conduct the mediation. On August 3, 2018, the Parties convened a full day, in-

person meeting to discuss the proposed settlement terms under the supervision and with the participation of Judge Phillips' associate. On August 4, 2018, Judge Phillips conducted a full day, in-person mediation session; however, the Parties were unable to reach an agreement to settle the Actions.

The Parties continued to negotiate confidentially throughout the next two weeks with the assistance of Judge Phillips, and subsequently reached an agreement in principle to settle the Actions that was memorialized in a term sheet (the "Term Sheet") executed on August 15, 2018. The Term Sheet sets forth the Parties' agreement to settle the Actions and release all claims amongst the Parties related to the Actions in return for, among other things, a cash payment of \$43 million to be paid by Wells Fargo for the benefit of the Settlement Class and release of \$70 million of the Reserve Funds held by Wells Fargo in connection with 20 Bank of America Trusts, subject to the execution of a formal stipulation and agreement of settlement and related papers. The settlement agreement also proposes to dismiss with prejudice all Actions.

On November 9, 2018, Plaintiffs filed a motion with the Court seeking an Order directing notice to the proposed Settlement Class of the proposed Settlement and Fairness Hearing, and setting a date for Fairness Hearing. On January 30, 2019, Judge Borrok issued an Order directing notice to the proposed Settlement Class and setting the Fairness Hearing for May 6, 2019 at 10:00 a.m.

On May 6, 2019, after the hearing, the Court entered an Order and Final Judgment approving the Settlement and entered orders approving the Plan of Allocation for the proceeds of the Settlement and Lead Counsel's motion for attorneys' fees and expenses.

Case Documents

- Notice Of Pendency Of Class Action, Proposed Settlement And Fairness Hearing And Right To Appear
- May 22, 2020 - Order Approving Plaintiffs' Unopposed Distribution Motion approving the Distribution of the Net Settlement Fund
- May 21, 2020 - Plaintiffs' Notice of Unopposed Motion for Approval of Distribution Plan
- May 6, 2019 - Order and Final Judgement
- May 6, 2019 - Order Approving Plan of Allocation of Net Settlement Fund
- May 6, 2019 - Order Approving Award of Attorney's Fees and Reimbursement of Litigation Expenses
- April 29, 2019 - Reply Memorandum of Law in Further Support of Plaintiffs' Motion for (1) Final Approval of Settlement and Proposed Plan of Allocation; (2) Certification of the Action as a Class Action for Settlement Purposes Pursuant to CPLR 901, et seq., and (3) Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- April 29, 2019 - Supplemental Affidavit of Timothy A. DeLange
- April 1, 2019 - Plaintiffs' Notice of Motion for (1) Final Approval of Settlement and Proposed Plan of Allocation; (2) Certification of the Action as a Class Action for Settlement Purposes Pursuant to CPLR 901, et seq.; and (3) Award of Attorneys' Fees and Reimbursement of Expenses

- April 1, 2019 – Memorandum of Law in Support of Plaintiffs’ Motion for (1) Final Approval of Settlement and Proposed Plan of Allocation; (2) Certification of the Action as a Class Action for Settlement Purposes Pursuant to CPLR 901, et seq.; and (3) Award of Attorneys’ Fees and Reimbursement of Expenses
- April 1, 2019 – Affidavit of Timothy A. DeLange in Support of Plaintiffs’ Motion for (1) Final Approval of Settlement and Proposed Plan of Allocation; (2) Certification of the Action as a Class Action for Settlement Purposes Pursuant to CPLR 901, et seq.; and (3) Award of Attorneys’ Fees and Reimbursement of Expenses
- January 31, 2019 – Order (1) Directing Notice to the Proposed Settlement Class of the Proposed Settlement and Fairness Hearing and (2) Setting Date for Fairness Hearing
- November 9, 2018 – Plaintiffs’ Notice of Unopposed Motion for Order (1) Directing Notice to the Proposed Settlement Class of the Proposed Settlement and Fairness Hearing, and (2) Setting Date for Fairness Hearing
- November 9, 2018 – Plaintiffs’ Memorandum of Law in Support of Unopposed Motion for Order (1) Directing Notice to the Proposed Settlement Class of the Proposed Settlement and Fairness Hearing, and (2) Setting Date for Fairness Hearing
- November 9, 2018 – Affidavit of Timothy A. DeLange in Support of Unopposed Motion for Order (1) Directing Notice to the Proposed Settlement Class of the Proposed Settlement and Fairness Hearing, and (2) Setting Date for Fairness Hearing
- November 9, 2018 – Stipulation and Agreement of Settlement
- November 9, 2018 – Amended Class Action Complaint