SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPARTMENT

WELLS FARGO BANK, N.A., AS TRUSTEE FOR ABFC 2006-OPT3 TRUST, ABFC ASSET-BACKED CERTIFICATES, SERIES 2006-OPT3,

Plaintiff–Appellant,

– against –

ROTIMI EROBOBO, et al.

Defendants–Respondent.

Appellate Department Case No. 2013-6986

BRIEF OF AMICI CURIAE ROBERT GARRASI AND JAMES HUNTER IN SUPPORT OF DEFENDANT–RESPONDENT ROTIMI EROBOBO

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INTEREST OF AMICI CURIAE

Robert Garrasi and James Hunter request permission to appear as amici curiae in this matter. Amici's input in this matter will be very valuable to this Court because of amici's experience as co-litigants and non-debtor co-defendants in similar cases. Your amici's brief will shed new light upon Appellant's heretofore undisclosed motivations and business practices, as well as those of its affiliates, co-venturers, undisclosed third parties and other signatories to their Pooling and Servicing Agreement ("PSA"). The information provided herein applies not only to the present Appellant, but also to other plaintiffs similarly situated that appear before New York courts in securitized mortgage foreclosure actions. As such, our brief is designed to assist the Court in its public policy considerations regarding these matters.

Our brief focuses on four areas that are the subject matter of this appeal: (1) demonstration that mortgagors in Residential Mortgage Backed Securities ("RMBS') foreclosure actions are indeed third-party beneficiaries of the PSA's, and thus have standing to object to a trustee's *ultra vires* acts; (2) that EPTL §7-2.4 applies to RMBS trusts in New York making *ultra vires* transfers void, not voidable; (3) a showing that the subject mortgage notes are never transferred to the trusts; and (4) proving that the investor beneficiaries cannot legally ratify a

trustee's *ultra vires* acts, thus making the acts void, not voidable. We also explain why the foreclosing deal principals claim that they have transferred the notes and mortgages to the trusts long after the closing date, and why the alleged transfers are not subject to the Internal Revenue Code's 100% prohibited contributions tax. Our brief suggests that the New York judiciary has been "had" by the RMBS foreclosing deal principals and their lawyers for at least the last six years.

PRELIMINARY STATEMENT AND STATEMENT OF FACTS

Amici adopt the facts stated in Defendant-Respondent Rotimi Erobobo's brief, subject to the following qualifications:

I. The subject note and mortgage were never transferred to the Plaintiff-Appellant's trust, late or otherwise.

II. Because there was no transfer of the note and mortgage to the trust in contravention of the Pooling and Servicing Agreement, the Appellant trustee never violated EPTL §7–2.4.

III. The Plaintiff-Appellant and its Servicer feigned the mortgage and note transfer solely for the purpose of being able to obtain the protections afforded them under general contract law, i.e., that since Respondent Erobobo was not a signatory to the PSA, nor a third-party beneficiary, he

lacked standing to object to the purported late transfer of the mortgage and note in the pending mortgage foreclosure action.

IV. Because there was no real transfer of the note and mortgage to the trust, there could be no imposition of the Internal Revenue Code's 100% Prohibited Contribution Tax for late contributions.

I. THE RESPONDENT-DEFENDANT'S STANDING TO CHALLENGE THE ASSIGNMENT AS A THIRD-PARTY BENEFICIARY

Wells Fargo bases its case chiefly on the fact that the Respondent-Defendant was not a party to the PSA nor was he a third–party beneficiary. And while it is true that the Respondent was not a signatory to the PSA, neither were the Certificateholder investors. Nevertheless, both of these parties' participations were indispensable to the creation of the trust; the sale of the certificates; the funding of mortgage loans; the earning of interest income; and the generation of fees for the PSA signatories, a/k/a deal principals. Moreover, the deal principals could only earn their fees if the mortgagors and investors participated in the enterprise. And the mortgagors benefited directly from the creation of the trust because it was the trust, allegedly, that was the source of funding for their mortgage loans.

The following two examples show how RMBS mortgagors are both incidental beneficiaries to the PSA, and also third-party beneficiaries to the PSA.

Example No. 1

MORTGAGOR IS *NOT* A THIRD PARTY BENEFICIARY BUT MERELY AN INCIDENTAL BENEFICIARY

Section 3.01 of the PSA, states that the mortgage Servicer has the following authority:

> The Servicer may waive, modify or vary any term of any Mortgage Loan or consent to the postponement of strict compliance with any such term or in any manner grant indulgence to any Mortgagor if in the Servicer's reasonable and prudent determination such waiver, modification, postponement or indulgence is not materially adverse to the Certificateholders; provided, however, that the Servicer shall not make future advances and, except as set forth in the following sentence or Section 3.03,[1] * * *. In the event that the Mortgagor is in default with respect to the Mortgage Loan or such default is, in the judgment of the Servicer, reasonably foreseeable, the Servicer may permit a modification of such Mortgage Loan to reduce the Principal Balance thereof and/or extend the term, but not beyond the latest maturity date of any other Mortgage Loan. [R-250]

Thus, the Bank's own PSA clearly states that the Servicer has the authority to confer a number of *significant benefits* upon the mortgagors, benefits that are not materially adverse to the interests of the Certificateholder investors.

[1] Section 3.03 Realization Upon Defaulted Mortgage Loans. With respect to any defaulted Mortgage Loan, the Servicer shall have the right to review the status of the related forbearance plan and, subject to the second paragraph of Section 3.01, may modify such forbearance plan; including extending the Mortgage Loan repayment date for a period of one year or reducing the Mortgage Interest Rate up to 50 basis points.

Yet the benefits specifically conferred upon the mortgagors as described in the PSA do not render the mortgagors third-party beneficiaries. That's because those benefits are *incidental* and not sufficiently immediate. When the mortgagors take out their loan, they are unaware of the benefits that Sect. 3.01 or 3.03 confers upon them. And even absent these Sections, the RMBS trust can still be created, certificates sold and mortgages funded.

EXAMPLE NO. 2

MORTGAGOR *IS* A THIRD PARTY BENEFICIARY

Controlling legal authority establishing that mortgagors are third-party beneficiaries of PSAs is found in the Restatement Contracts (Second), as well as New York and Federal case law.

> A nonparty to a contract is a third-party beneficiary where that party's right to performance is appropriate to effectuate the intention of the parties to the contract, and either the performance will satisfy a money debt obligation of the promise to the beneficiary, or the circumstance indicates that the promise intends to give the beneficiary the benefit of the promised performance.

Clearly, mortgage originators and sponsors spent millions advertising the availability of mortgage loan funds in an attempt to get prospective mortgagors such as the Defendant to obtain their mortgage loans through the originator and its mortgage brokers. Anyone responding to such solicitations, who applied for one

of the originator's mortgages and who obtained a firm loan commitment from the originator, was entitled to rely upon the originator's promise to fund the loan. So even though the borrower was not aware of the trust's existence nor a party to the PSA, the promises made therein by the PSA parties regarding their commitments to fund and acquire mortgage loans, were made for his benefit. The court in Septembertide Publ'g, B.V. v. Stein and Day, Inc., 884 F.2d 675, 679 (2d Cir.1989) held that in addition to the agreement itself, the court would look to the surrounding circumstances in making its determination, as third party beneficiaries need not be named in the agreement at issue.

New York State law holds that in order for a third party to be a contract beneficiary, the party must establish (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for his benefit [although not necessarily exclusively for his benefit], and (3) that the benefit to him is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate him if the benefit is lost. Burns Jackson v. Lindner, 59 NY2d 314 (1983). All three of these conditions apply to Defendant.

As an example, consider the individual who wanted to purchase another home and needed a mortgage loan to do so. After hearing several marketing pitches from various loan brokers and the PSA's Sponsor originator, the Defendant chose to go with the PSA Sponsor or one of its affiliates. The individual applied

for the Sponsor's loan, met all the underwriting requirements, and was given a firm loan commitment from the Sponsor. On that basis, the individual put his existing home on the market, and put a purchase offer in on a new home. He quickly had a sales contract on his existing home, and had his offer accepted on the new home. Further assume that markets for MBS securities got a case of the jitters, or that one of the deal principals filed for bankruptcy or was indicted, and the trust certificate underwriting was delayed, resulting in a cancellation of the Sponsor's firm loan commitment. The homeowner now finds himself having to perform on the contract to sell his existing home, while being unable to perform on the new home purchase contract. In entering into these purchase and sale agreements, the individual justifiably relied upon the promises that the PSA principals had made to each to sell the certificates and use the proceeds to fund mortgage loans. The failure of the parties to the PSA to sell the MBS securities as scheduled has now caused the individual damages for which he is entitled to be compensated. This makes him a third-party beneficiary to the PSA contract.

In Blessing v. Freestone, 520 U.S. 329, 349 (1997), the U.S. Supreme Court gave a simple example of a third-party beneficiary: "In contract law, when **A** promises to pay **B** money, in exchange for which **B** promises to provide services to **C**, the person who receives the benefit of the exchange of promises between the two others, **C**, is called a third-party beneficiary."

In the case at bar we have the following:

A. The Sponsor promised to fund and acquire the required mortgage loans for the Seller to purchase.

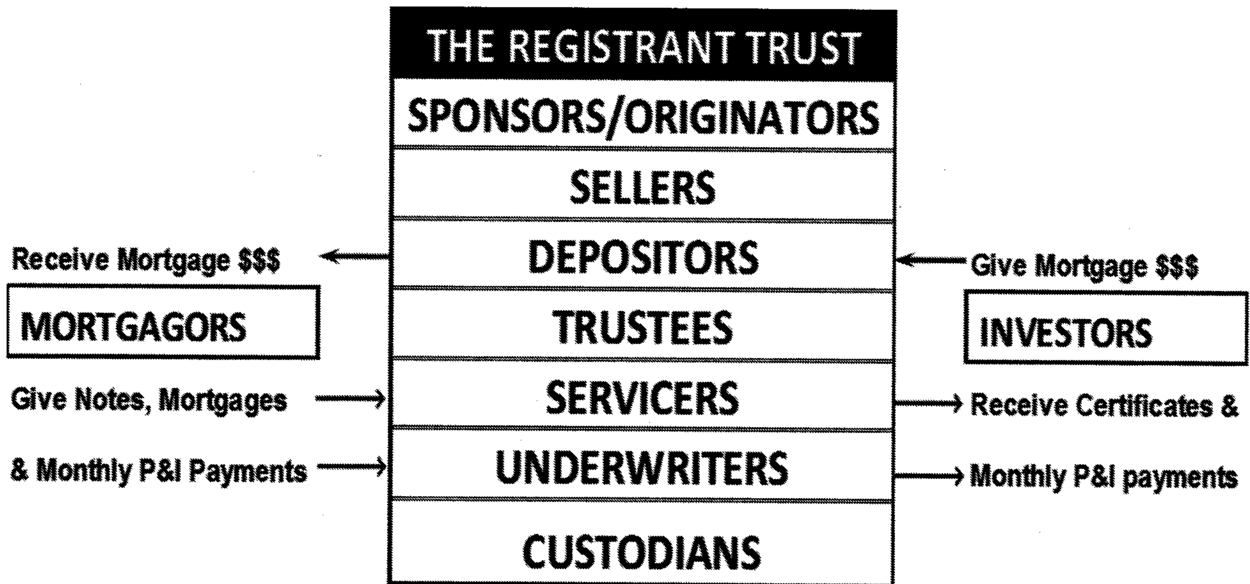
B. The Seller promised to purchase the mortgage loans from the Sponsor.

C. The Depositor promised to purchase the mortgage loans from the Seller.

D. The Trust promised to register and issue its certificates to the Depositor for the conveyance of the mortgage loans.

E. And the Depositor promised to sell the certificates to the public and, purchase the mortgage loans from the Seller, and then convey the mortgage loans to the Trust.

Because of the inability of some of the PSA principals to perform, they ended up failing to deliver upon their promises to each other. As a consequence, our homeowner had to sell his existing home but didn't have enough money to pay for his new home. He was thereby damaged and entitled to be compensated. Thus, by this test the Defendant mortgagor qualifies as a third–party beneficiary of the subject PSA. Another way of looking at this is by a simple diagram, as found on the following page.



The Fee Generation Machine
& Its Internal Deal Principals

Note that the Trust is really designed principally for the purpose of generating fees from the Investors and the Mortgagors for the benefit of the deal principals. Without the Trust, the Investors and the Mortgagors can get along just fine. Indeed, a local bank that does not securitize its mortgage loans has no need for such a trust: it lends its own money to the mortgagors, eliminating the Wall Street middlemen. This is how mortgage lending used to be done.

From the diagram on the previous page it can be seen that only the Mortgagors and the Investors are necessary to consummate a mortgage loan transaction. These two parties are the essential and indispensable parties to the transaction, not the internal PSA deal principals. Without the Investors, there is no mortgage loan funding, and without the Mortgagors, there are neither notes nor mortgages to collateralize the Investors' certificates and to pay monthly principal and interest for the benefit of the Investors. Remove either or both of these parties, and the MBS Trust never gets created. And that means the internal deal principals never get to earn any fees. Essentially, the *real* deal principals are the Investors and the Mortgagors. The named PSA deal principals are in reality nothing more than agents of and for the Investors and the Mortgagors.

In summation then, without both the Mortgagors notes, mortgages and promises to pay monthly principal and interest to the Investors, the Investors wouldn't have invested a dime. And without the trust principals' mortgage funding

commitments and mortgage funding, the prospective Mortgagors would not have signed any notes or mortgages. And without the homeowner mortgagors paying principal and interest into the trust monthly, the originators, sponsors, depositors, underwriters, custodians, servicers, trustees and investors could not have benefited and profited from the arrangement. Thus and to the extent that homeowners got their mortgages funded through the Bank's trust, they are indeed third–party beneficiaries of the trust, whether disclaimed or not, as well as trust obligors and benefactors. As for the general principle that one not a party to a contract or trust agreement has no standing to challenge the terms of the trust agreement, the U.S. Supreme Court settled that matter over a hundred years ago when it held that the Standard Oil Trust was in violation of the antitrust laws, declared that the trust agreement was no longer legally valid and enforceable as against public policy, and broke up the trust (U.S. v Standard Oil, 221 U.S. 1 [1911]). Subsequently many parties that were harmed by unlawful restraint of trade practices have successfully challenged the contracts that gave rise to the harm, even though they were not parties to the contract, nor third-party beneficiaries. Thus, the real issue giving rise to one's right to challenge a contract to which he is not a party, is not solely whether he is a party or third-party beneficiary, but rather whether he will be unjustly harmed by the contracting parties' unlawful actions. In the instant litigation, Respondent will be harmed by the unlawful acts of the Appellant not by breach of contract but in tort, because if Appellant is not the lawful owner and holder of the note, then Respondent risks losing his property to not entitled to enforce the terms of the note.

II. Application Of New York's EPTL §7–2.4 & Choice Of Law

Appellant Wells Fargo, in opposition to the Defendant-Respondent's argument, claims as stated above that the Defendant lacks standing to invoke EPTL §7–2.4 to enforce the terms of the PSA, and thus only New York mortgage foreclosure law controls the outcome of this action. Ordinarily, this would be the case except for the natty problem that the PSA parties agreed that New York law would govern. And unfortunately for the Plaintiff, New York's EPTL §7–2.4 has erected an impenetrable legal barrier that prevents the Bank's trust from acquiring the Defendant's purported note and mortgage after the Trust's closing date regardless of whether the transfer is being challenged by a nonparty or non-third-party beneficiary.

EPTL 7–2.4. states:

> If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void.

There are no other provisions of EPTL Article 7 that would authorize a trustee to act in contravention of a trust. Nor are there any other provisions of New York law that would so authorize an *ultra vires* act by a trustee. Moreover, the Internal Revenue Code ("IRC") specifically prohibits any trustee act that would disqualify the subject trust's tax–exempt REMIC status. And the Bank's PSA was

designed to be in complete compliance with the IRC REMIC statute and applicable REMIC Treasury regulations.

This Court and the Fourth Department Appellate Court[2] are the only New York appellate courts to specifically address the literal application of EPTL §7–2.4. This Court did so in 2000 when it decided the Matter of Pepi, 268 AD2d 477 (2000), and held as follows:

> It was the duty of the appellants [banks] to inquire as to whether the proceeds obtained through the use of a trust asset were to be used for the ultimate benefit of the trust (*see, Dye v Lewis,* 40 AD2d 582, *affd sub nom. Dye v Lincoln Rochester Trust Co.,* 31 NY2d 1012). Since the appellants had reason to know that the conveyance was made in contravention of the trust, the transaction is void (*see,* EPTL 7-2.4; *see also, National Sur. Co. v Manhattan Mtge. Co.,* 185 App. Div. 733, 736-737, *affd* 230 N.Y. 545; *Boskowitz v Held,* 15 App. Div. 306, 310-311, *affd* 153 N.Y. 666).

It would be incredible as a matter of law for appellant Wells Fargo to claim that it did not know that the late transfer of the note and mortgage to the trust was made in contravention to the trust agreement. And this Court has held that such knowledge alone would make the transfer void, not voidable.

The next and latest reported application of EPTL §7–2.4 came in the Erobobo case (Wells Fargo Bank, N.A. v. Erobobo, 39 Misc.3d 1220(A) [N.Y.Sup.Ct. 2013]). The Erobobo court held that the terms of the PSA govern,

[2] Dye v. Lewis, 67 Misc.2d 426; affd as modified, 39 AD2d 828 (4th Dept., 1972).

and that any act by the trustee in contravention of the PSA (such as a late note transfer) would render that act void pursuant to EPTL §7–2.4. Both the Glaski [3] and Saldivar [4] courts correctly adhered to the Erobobo court's reasoning and holding.

The Erobobo decision, the subject of this appeal, was profound and unique, because it is the *only* case in all of New York common law history that applied EPTL §7–2.4 to an RMBS indenture trust, as opposed to a lifetime trust. This is particularly important due to the Bassman holding based upon prior New York case law. (See Bank of America N.A. v. Bassman FBT, LLC, 981 N.E.2d 1 [2012]).

Appellant correctly points out that in 767 Third Avenue LLC v. Orix Capital Markets, LLC, 26 AD3d 216 (1st Dept., 2006), the plaintiffs were not entitled to a mortgage assignment (as opposed to a satisfaction piece), when they refinanced their property. The court observed and held

> * * * no such right was granted by the terms of the mortgage and loan documents, nor is it provided by statute. * * * (And) Plaintiffs lack standing to enforce the pooling and servicing agreement between defendant and the mortgagee as third-party beneficiaries. The best evidence of the intent to bestow a benefit upon a third party is the language of the contract itself (*see 243-249 Holding Co. v. Infante,* 4 AD3d 184 [2004]), and

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[3] Glaski v Bank of America, N.A., 160 Cal. Rptr. 3d 449 (2013).

[4] In re Saldivar v. JPMorgan Chase Bank, N.A. (Bankr.S.D.Tex., June 5, 2013, No. 11-10689)

> here, a provision of the agreement expressly negates enforcement by third parties (*see Mendel v. Henry Phipps Plaza W., Inc.*, 16 AD3d 112 [2005], *lv granted* 5 NY3d 703 [2005]).

The application of 767 Third Avenue to the appeal presently before this Court is indeed appropriate, but not for the reasons advanced by appellant. The court in 767 Third Avenue looked to the contracts before it, and found no language or right in the contracts that mandated an assignment rather than a satisfaction piece. Likewise, in the case being appealed, there is no language in the PSA that authorizes the late transfer of a note or mortgage to the trust. More importantly the PSA mandates that notes and mortgages must be transferred to the trust no later than the trust's closing date. And EPTL §7–2.4 specifically prohibits such as transfer as being an *ultra vires* act that is void *ab initio*.

The appellant and its trust co-principals specifically chose New York's laws as the governing laws for their trust. They did this with eyes wide open and with the advice and counsel of the nation's ablest New York trust attorneys to guide them. They wanted all the benefits that New York trust law afforded them, with all the protections afforded to New York trusts. They also wanted to be able to enforce their New York mortgages and notes in New York courts. Thus they chose New York trust law as the law governing their trust: except when there is a provision in New York trust law, such as EPTL §7–2.4, that they don't like, then they say "We

were only kidding about New York trust law governing…we didn't mean ALL of New York trust law…just the parts we like."

But there is more to it than this. The deal principals in RMBS trusts choose New York trust law because EPTL §7–2.4 specifically insulates them from committing *ultra vires* acts that might jeopardize their Federal tax exemptions and impose the prohibited transactions and contributions taxes on them. If the IRS questions the alleged late mortgage transfers, the trustee can point to EPTL §7–2.4 and argue that any such act was void *ab initio*. In support they can point to a lack of proper allonges transferring the notes and mortgages to the trust; a lack of wire transfer payments for the notes; and a lack of transfer instructions and delivery receipts. And there are never any proper allonges negotiating the notes directly to the trustee (all indorsements are in blank), nor is there ever any evidence of wire transfers or delivery instructions and receipts for the notes. In fact, the deal principals have successfully used EPTL §7–2.4 as a two-edged sword, invoking it when they need to and convincing courts that even if a mortgagor defendant has standing to challenge a foreclosure action, EPTL §7–2.4 only applies to acts of the trustees, and there is no proof that the trustee acted in contravention to EPTL §7–2.4. As a specific example, the court in Deutsche Bank National Trust Co. v. Stafiej et al., Case No. 10 C 50317. (United States District Court, N.D. Illinois. March 15, 2013.) stated as follows:

> Assuming defendants' reading of the PSA is correct and that they have standing to raise the challenge concerning the validity of the assignment, this court would still not find that assignment void. EPTL §7–2.4 only purports to void an act "of the trustee" that violates the terms of the trust. The assignment, which was not accompanied by proof that it

> followed the correct chain of assignment to get to the trust, was not filled out by the trustee; it was signed by an agent of Accredited Home Lenders, Inc., the original lender, with a blank endorsement. Because defendants have not pointed to an act "of the trustee" in contravention of the PSA's terms, this court would find their attempt to void the assignment unpersuasive.[5]

Appellant wants this Court to disregard the plain language of the EPTL §7–2.4 statute, because it hasn't been literally applied consistently by New York trial courts. The statute has, however, been literally applied by New York appellate courts.

With choice of law comes its consequences. In Roberts v. Tishman Speyer, 13 NY3d 270 (2009), the Court of Appeals addressed the issue of statutory interpretation. In that case, nine plaintiff-tenants contended that defendant Tishman Speyer Properties et al., were not entitled to take advantage of the luxury decontrol provisions of the Rent Stabilization Law, while simultaneously receiving tax benefits under the City of New York's J-51 program. The court stated that a pure issue of statutory reading and analysis was involved; and if the Legislature had intended the statutory provision to mean something other than the words used in the statute, it would have done so. The Roberts court was unable to find language anywhere in the statute delineating two supposedly distinct benefit categories, and saw no indication that the Legislature ever intended such a distinction. Nor was

[5] How the note actually got into the trust without delivery to and acceptance by the trustee, allowing the trustee to initiate the foreclosure action, was never explained by the court.

the court concerned about the New York City real estate industry's predictions of dire financial consequences from its ruling. The predictions were deemed to be speculative. The court stated that if the statute imposed unacceptable burdens, defendant' remedy was to seek legislative relief. And that precisely is appellant Wells Fargo's remedy herein.

In the hundreds of cases that your amici have examined, the one question that never gets asked by the courts nor explained by the trustees, is why the notes and mortgages were never *timely* transferred to the trusts in conformance with the PSA. If the notes and mortgages existed at the trust's inception, there was no credible reason why they couldn't have been transferred to the trust at that time. And it was the deal principals' obligation to do so, not the mortgagors. Had the notes and mortgages been transferred properly, this litigation–as well as thousands of similar cases–would not even exist.

III. SO WHY WOULD A TRUSTEE ACQUIRE A DEFAULTED MORTGAGE NOTE AND CONVEY IT TO THE TRUST YEARS AFTER THE TRUST'S CLOSING DATE ?

For some time now courts have wondered why a trustee would acquire a defaulted mortgage loan in the middle of a national financial meltdown, caused by defaulted subprime mortgage loans, do so years after the trust closed, and in the process jeopardize the REMIC's tax–exempt status. Moreover, the entire value of

the defaulted mortgage loan would be a prohibited contribution, subject to the 100% prohibited contribution tax as provided in the Internal Revenue Code. Further, in order to make such an acquisition, the trustee would need an opinion letter from tax counsel that the proposed acquisition would not jeopardize the trust's tax-exempt status nor would it trigger the 100% prohibited contribution tax. No such tax opinion letters are ever produced.

So why then do the trustees make such acquisitions? The answer is simple. The trustee *does not* acquire such loans in the manner that it appears to acquire and convey them to the trust.

We refer the Court to the Complaint found in the following case: John Hancock et al. v. JPMorgan Chase et al, Supreme Court State of New York, New York County, Index No. 650195/2012. This case is a RMBS case. Plaintiff John Hancock Life Insurance alleges that JPMorgan Chase and its affiliates and officers defrauded the Plaintiff of many millions of dollars by selling the Plaintiff mortgage backed securities of dubious value due to the fraud alleged in the Complaint.

What is relevant to the discussion herein is found on pages 212–216 of the Complaint, a summary of which is reproduced here. The John Hancock entities purchased RMBS in a number of the JPMorgan trusts. The following paragraphs of

the Complaint show what percentage of par that the MBS were trading at, at the time that John Hancock filed its Complaint:

545. BSABS 2006-HE6 – 65.23% of par.
546. LBMLT 2004-3 – 14.75% of par.
547. LBMLT 2004-1 – 46.95% of par.
548. BSABS 2004-HE1 – Certificates have since been downgraded and are currently rated Ca.
549. BSABS 2004-HE3 – 72.75% of par.
550. BSABS 2004-AC3 – 55.51% of par.
551. BSABS 2004-AC5 – 33.54% of par.
552. BSABS 2006-IM1 – 39.13% of par.
553. BSABS 2004-SD4 – 76.27% of par.
554. JPMAC 2006-FRE2 – 81.51% of par.
555. BSARM 2006-1 – 82.41% of par.
556. CFLX 2006-1 – 1.02% of par.
557. WAMU 2003-AR3 – 43.9% of par.
558. WAMU 2003-AR1 – 47.57% of par.
559. JPALT 2006-S3 – 51.85% of par.
560. WMALT 2007-OA3 – 42.68% of par.
561. WMALT 2006-9 – 56.55% of par.
562. BSMF 2006-AR4 – Currently rated Caa.
563. BSMF 2006-AR4 – Currently rated Caa3.
564. JPALT 2006-A7, Tranche 1A3 – 62.43% of par.
565. BSMF 2006-AR5 – Currently rated Caa2.
566. BSABS 2007-HE2, Tranche II-M3 – 0.38% of par.

The Servicers and the Trustees know which trusts or tranches therein are most likely to suffer high rates of default, ratings agency downgrades, and resulting dramatic decreases in the prices of the certificateholders' RMBS. With their own funds, the Servicers and Trustees and/or their affiliates purchased credit default swap insurance on the subprime tranches of the trusts. (Because they used their own funds, these purchases and payoffs never show up on the official

Servicer and Trust books that are subject to investor inspection and audit.) When the inevitable defaults occur, these players received huge windfalls. These huge windfalls have created massive financial problems and bankruptcies for monoline insurers and other counterparties. Essentially, the deal principals were purchasing put options on these junk tranches and portfolios. And the put options were sold without the sellers obtaining subrogation rights.

These players, principally the Servicers, the NIMS insurer or the Servicers' "designee," then focus on acquiring the mortgages and notes in the high-default tranches. From the appellant's PSA Section 3.32, Optional Purchase of Mortgage Loans, are found the following provisions:

> (a) The NIMS Insurer * * * may, subject to paragraph (b) below, at its option, purchase Mortgage Loan or REO Property which becomes 90 or more days Delinquent * * *. [R-270]
>
> * * *. The Purchasing Party shall purchase such Delinquent Mortgage Loan or REO Property at a price equal to the Purchase Price. * * *. The Trustee shall immediately effectuate the conveyance of such delinquent Mortgage Loan or REO Property to the Purchasing Party * * *. [R-270]
>
> (b) The Servicer shall have the right to purchase Mortgage Loans that are 90 or more days Delinquent pursuant to Section 3.22(a) only if the Servicer Optional Purchase Delinquency Trigger has occurred; * * *. [R-271]
>
> "Purchase Price": With respect to any Mortgage Loan or REO Property to be purchased pursuant to or as contemplated by

> Section 2.03, 3.32 or 10.01, is an amount equal to the sum of (i) 100% of the Principal Balance thereof as of the date of purchase (or such other price as provided in Section 10.01), (ii) in the case of a Mortgage Loan, accrued interest on such Principal Balance * * *. [R-206]

Assume therefore that the Servicer wants to acquire a busted tranche's mortgage loans cheaply so as to get access to the mortgages, their foreclosure rights and the underlying real property collateral. The above provisions, however, make it relatively expensive, time consuming and difficult to achieve this by way of purchasing the mortgage loans directly, because the Servicer would have to pay par for them, and do so under certain conditions. However, it the Servicer buys up the busted certificates, the Servicer can acquire the notes, the mortgages and the foreclosure rights at a fraction of what it would cost to buy the notes at par. And this can all be done external to the PSA and its reporting and disclosure requirements.

The deal principals and/or their designees buy up 100% of the RMBS associated with the busted tranches. Having accomplished that, they then "put" the certificates to the Trustee, retiring the tranche and CUSIPS, and receiving in exchange all the mortgages and mortgage loans in the tranche. The next two pages show monthly distribution reports for the subject trust: one at the trust's inception, and the other as of November, 2013. Note that all the subprime tranches are fully populated at inception, but are presently empty: all the certificates, notes and mortgages are gone. Yet all the prime mortgage tranches at the top of the report

are fully populated, because they are not in default, and are paying the investors like clockwork.

What happens next is that the tranche's mortgages that are in default are stripped out for foreclosure processing. The ones that aren't in default can be resecuritized and resold to another trust. In this way the servicers and their friends get another windfall in the form of a capital gain when those mortgages are repackaged and resold. And if those mortgage loans had higher interest rates than present market interest rates, the servicers et al. can make millions more on the resecuritization and resale. [6] For example, assume that there are 200 good mortgages left in the tranche, with 24 years to run, at a 7% interest rate, with total unamortized principal of $60,000,000. Repackaging/resecuritizing those notes to yield 5% means that they can be resold for $72,000,000, a $12,000,000 gain.

The diagram on the page following the distribution reports shows how the tranches are actually populated.

[6] This also explains the multiple notices that homeowners receive during the life of their loan, telling them that their loan has been transferred to a new servicer.

Asset Backed Funding Corporation
Asset-Backed Certificates
Distribution Date: 27-Nov-06

06-Dec-2006 9:05:35AM

Asset Backed Funding Corporation
Asset Backed Certificates
Series 2006-OPT3

Contact: Customer Service-CTSLink
Wells Fargo Bank, N.A.
Securities Administration Service
Frederick, MD 21701-4746
7485 New Horizon Way
www.ctslink.com
Telephone: (301) 815-6600
Fax: (301) 815-6660

Certificateholder Distribution Summary

Class	CUSIP	Certificate Pass-Through Rate	Beginning Certificate Balance	Interest Distribution	Principal Distribution	Current Realized Loss	Ending Certificate Balance	Total Distribution	Cumulative Realized Losses
R	ABF060P3R	0.000%	-	-	-	-	-	-	-
A-1	00075VAA9	5.460%	114,273,000	225,308	1,372,792	-	112,900,208	1,598,100	-
A-2	00075VAB7	5.460%	114,343,000	225,446	250,062	-	114,092,938	475,508	-
A-3-A	00075VAC5	5.380%	236,422,000	459,315	4,999,475	-	231,422,525	5,458,790	-
A-3-B	00075VAD3	5.480%	165,145,000	326,804	-	-	165,145,000	326,804	-
A-3-C	00075VAE1	5.570%	5,469,000	11,000	-	-	5,469,000	11,000	-
M-1	00075VAF8	5.580%	35,032,000	70,589	-	-	35,032,000	70,589	-
M-2	00075VAG6	5.650%	32,078,000	65,448	-	-	32,078,000	65,448	-
M-3	00075VAH4	5.680%	18,572,000	38,093	-	-	18,572,000	38,093	-
M-4	00075VAJO	5.740%	16,039,000	33,245	-	-	16,039,000	33,245	-
M-5	00075VAK7	6.050%	15,617,000	34,119	-	-	15,617,000	34,119	-
M-6	00075VAL5	6.300%	13,928,000	31,686	-	-	13,928,000	31,686	-
M-7	00075VAM3	6.820%	13,507,000	33,265	-	-	13,507,000	33,265	-
M-8	00075VAN1	7.820%	12,240,000	34,564	-	-	12,240,000	34,564	-
M-9	00075VAP6	7.820%	10,552,000	29,798	-	-	10,552,000	29,798	-
B	00075VAQ4	7.820%	10,130,000	28,606	-	-	10,130,000	28,606	-
CE	00075VAR2	0.000%	30,812,461	4,632,444	-	-	30,812,461	4,632,444	-
p	00075VASO	0.000%	-	58,954	-	-	-	58,954	-
R-X	ABF60P3RX	0.000%	-	-	-	-	-	-	-
Totals			844,159,461	6,338,686	6,622,329	-	837,537,132	12,961,015	-

This report has been compiled from information provided to Wells Fargo Bank, N.A. by various third parties, which may include the Servicer, Master Servicer, Special Servicer and others. Wells Fargo Bank, N.A. has not independently confirmed the accuracy of information received from these third parties and assumes no duty to do so. Wells Fargo Bank, N.A. expressly disclaims any responsibility for the accuracy or completeness of information furnished by third parties.

Asset Backed Funding Corporation
Asset-Backed Certificates
Distribution Date: 26-Dec-13

Contact: Customer Service-CTSLink
Wells Fargo Bank, N.A.
Securities Administration Service
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

Asset Backed Funding Corporation
Asset Backed Certificates
Series 2006-OPT3

23-Dec-13 2:42:01PM

Certificateholder Distribution Summary

Class	CUSIP	Record Date	Certificate Pass-Through Rate	Beginning Certificate Balance	Interest Distribution	Principal Distribution	Current Realized Loss	Ending Certificate Balance	Total Distribution	Cumulative Realized Losses
R	ABF060P3R	11/29/2013	0.000%	-	-	-	-	-	-	-
A-1	00075VAA9	11/29/2013	0.306%	35,697,336	9,406	185,204	-	35,512,132	194,610	-
A-2	00075VAB7	11/29/2013	0.306%	40,987,962	10,800	111,994	-	40,875,968	122,794	-
A-3-A	00075VAC5	11/29/2013	0.226%	-	-	-	-	-	-	-
A-3-B	00075VAD3	11/29/2013	0.326%	120,457,180	33,815	397,504	-	120,059,676	431,319	-
A-3-C	00075VAE1	11/29/2013	0.416%	5,270,675	1,888	17,393	-	5,253,282	19,281	-
M-1	00075VAF8	11/29/2013	0.426%	-	-	-	-	-	-	35,032,000
M-2	00075VAG6	11/29/2013	0.496%	-	-	-	-	-	-	32,078,000
M-3	00075VAH4	11/29/2013	0.526%	-	-	-	-	-	-	18,572,000
M-4	00075VAJO	11/29/2013	0.586%	-	-	-	-	-	-	16,039,000
M-5	00075VAK7	11/29/2013	0.896%	-	-	-	-	-	-	15,617,000
M-6	00075VAL5	11/29/2013	1.146%	-	-	-	-	-	-	13,928,000
M-7	00075VAM3	11/29/2013	1.666%	-	-	-	-	-	-	13,507,000
M-8	00075VAN1	11/29/2013	2.666%	-	-	-	-	-	-	12,240,000
M-9	00075VAP6	11/29/2013	2.666%	-	-	-	-	-	-	10,552,000
B	00075VAQ4	11/29/2013	2.666%	-	-	-	-	-	-	10,130,000
CE	00075VAR2	11/29/2013	0.000%	-	-	-	-	-	-	-
p	00075VASO	11/29/2013	0.000%	-	-	-	-	-	-	-
R-X	ABF60P3RX	11/29/2013	0.000%	-	-	-	-	-	-	-
Totals				202,413,153	55,909	712,095	-	201,701,058	768,004	177,695,000

This report is compiled by Wells Fargo Bank, N.A., from information provided by third parties. Wells Fargo Bank, N.A. has not independently confirmed the accuracy of the information.
All Record Dates are based upon the governing documents and logic set forth as of closing.

A TRANCHE'S SIDE VIEW
SHOWING ITS POPULATED LAYERS

INVESTOR CERTIFICATES
MORTGAGE NOTES
MORTGAGES
COLLATERAL

Note also that in the 2013 report, all the subprime tranches are not only empty, but their cumulative losses are also equal to their beginning balances at the trust's inception date, to the penny. Further note that the trustee's disclaimer at the bottom of the pages pretty much says "Hey, we got these numbers from some other guys. We don't know if this information is right or not, and we're not going to try and confirm it, either. So there."

So even though the MBS certificates and the defaulted notes weren't worth much, the real property underlying them was. That's why the deal principals moved swiftly on the tranche purchases, and why the foreclosure plaintiffs can walk from the litigation if the going gets tough, or can offer "generous" loan mods should it be necessary.

Although the notes were never transferred to the trust as required, they then had to be so transferred, at least on paper. And the reason for this was two-fold. First, for appearances sake the transfers had to look like they occurred because the deal principals had warranted and represented to the investors that the transfers took place. But the note transfers couldn't be back dated, because MERS would have back dated the mortgage assignments and recorded them with county clerks retroactively. This is something that could not be accomplished, for obvious reasons.

So the late assignments and transfers of the mortgages and notes were fabricated. This left one problem, however: that was that such transfers would have triggered the 100% prohibited contribution tax on late contributions of the non-qualified mortgage loans to the trust; further, such conveyances would have required an opinion of tax counsel that such conveyances would not trigger the 100% prohibited contribution tax. Yet in all these proceedings, one never sees such a tax opinion letter, nor the IRS revoking the REMIC status of the trusts or applying the 100% prohibited contributions tax. *And that is because there never was a prohibited late contribution to the trust.*

Further, the Trustee is responsible for preparing and signing the Trust's tax return. The trustee, however, is not going to take in $20 million+ per year in prohibited contributions and not disclose that fact to the IRS; nor is the trustee going to take in such late contributions and not disclose that fact to the IRS. In the first instance, the $20 million+ gets taxed away and the REMIC loses its tax exempt status; in the second instance the trustee would face a felony tax fraud charge. The trustee is not going to do either. And the trustee doesn't need to do either, *because there never are any actual late contributions to the trust...it is all a fiction to con the courts.*

So what really happened?

What really happened is that the documents were fabricated for the court, purporting a late transfer of the mortgage and note to the Trust, a transfer that

never really occurred. This phantom transfer avoided any potential breach of fiduciary duty charge by investors pursuant to EPTL §11–2.3, alleging that the loan was never brought into the trust; but since the transfer never really occurred, there was no triggering of the 100% prohibited contribution tax nor any revoking of the trust's REMIC tax exemption.[7]

The notes were alleged to have been transferred to the Trust, because this allowed the Servicers and Trustee plaintiffs in foreclosure actions to succeed in their foreclosures simply by telling the courts that the homeowner defendants lacked standing to challenge the late note transfers, because those defendants were not parties to the PSA nor third party beneficiaries. And it is this non-beneficiary argument that up until now has successfully provided the insulating cover for the Servicers' and Trustees' actions. And that is why it was absolutely essential to convince the judiciary and the parties that the notes and mortgages were transferred to the trusts, late or not. In effect, for at least the last six years, New York courts have been "had" by the Trustees, the Servicers and their lawyers.

[7] There are thousands of RMBS trusts, and there have been hundreds of thousands of late note transfers to these trusts; yet there is not a single instance of the IRS applying the 100% Prohibited Contributions Tax against any trust, or revoking the REMIC tax exempt status of any trust for prohibited transactions or contributions. Does that not seem passing strange to this Court?

IV. Bassman & The Void vs. Voidable Controversy

The court in Bank of America N.A. v. Bassman FBT, LLC 981 N.E.2d 1 (2012), cited a number of New York cases in its holding that the ability of beneficiaries to ratify a trustee's *ultra vires* act makes the *ultra vires* act voidable as opposed to void. The problem with the Bassman decision is that all cases cited against Bassman's position involved "closed–circuit" lifetime trusts, not investment indenture trusts. The lifetime trusts involved in those cases were family trusts, where only the family members were beneficiaries and actually had a say in the affairs and management of the trusts and could direct trustee actions or terminate the trust if they wished.[8, 9]

But indenture trusts are different. All PSA indentures specifically state that the Certificateholders/Investors are precluded from the management or operations of the trust. In the case on appeal, this preclusion is found in Section 11.03 of the PSA, Limitation on Rights of Certificateholders.

> Except as expressly provided for herein, no Certificateholder shall have any right to vote or in any manner otherwise control the operation and management of the Trust, or the obligations of the parties hereto, nor shall anything herein set forth or contained in the terms of the Certificates be construed so as to constitute the Certificateholders from time to time as partners or members of an association. [R-312]

---

[8] Whether the provisions of lifetime trusts can override EPTL §7-2.4 is debatable, but is not an issue presently before the Court.

[9] The Bassman decision pre-dated the Erobobo decision.

These indenture Trustees generally receive annual fees of about .0075% of the trust fund's corpus. So for the subject trust's current balance, Wells Fargo only gets about $15,000 for the year. It is highly unlikely that Wells Fargo, as indenture trustee, is even going to get out of bed for $15,000 a year, let alone do any trust work or assume any liability for trust matters.

With respect to trust matters, the typical RMBS Trustee sees nothing, hears nothing, and knows nothing...and likes it like that.

SUMMARY

- ❖ Respondent was a third-party beneficiary of the PSA.
- ❖ New York EPTL §7–2.4, Choice of Law and the terms of the PSA prevented anyone from transferring or assigning anything to the subject trust after the trust's closing date.
- ❖ EPTL §7–2.4 notwithstanding, the Note and Mortgage were never transferred to the trust by any signatory to the trust.
- ❖ Absent a valid assignment/transfer of the mortgage/note to the trust, the Appellant-Plaintiff lacked both standing and capacity to bring this action.
- ❖ Pursuant to the terms of the PSA, the investor beneficiaries are precluded from ratifying any ultra vires acts of the trustee, and thus all such acts are void not voidable.
- ❖ Like the *Tishman Speyer* defendants, Wells Fargo's remedy is legislative, not judicial.

CONCLUSION & FINAL THOUGHT

The Erobobo note was never transferred to the subject trust, legally or otherwise. It is therefore irrelevant whether the Respondent-Defendant had standing to enforce the terms of the PSA or not. Thus, Appellant Wells Fargo lacked standing and/or capacity to commence a foreclosure action against the Respondent under New York law. Accordingly, this Court should affirm the lower court and remand for further proceedings.

Finally (and as a way to clear the Second Department trial court dockets of fraudulent RMBS foreclosure actions), this Court should require foreclosing trustees to produce a certified and unredacted copy of their trust's Federal REMIC annual tax return, Form 1066, along with the opinion of tax counsel that no actions by the trustee for the subject tax year were in violation of the REMIC tax statutes and regs. Form 1066 Schedule J, Part III (See following pages) will show the trust's taxable mortgage loan contributions after the startup or closing date, for each taxable year. (Note that such late contributions are subject to the 100% late contribution tax.) Form 1066, along with all supporting schedules and worksheets identifying the defendant homeowner's mortgage and note as a contribution after the startup date, will conclusively establish that the defendant's mortgage loan was actually transferred to the RMBS trust prior to the initiation of the foreclosure action. If the loan is identified as a late contribution, the IRS will tax 100% of the value of the loan. If the tax return shows no late contribution for the subject loan for the subject tax year, then the mortgage note never made it into the trust and the trustee has no title to the loan and was thus not entitled to bring the foreclosure action against the homeowner.

Heretofore, the homeowner has been pointing to EPTL 7-2.4, claiming that the late note transfer is void because it was done in contravention of the terms of the trust agreement. The plaintiff's argument has always been that the homeowner defendant was not a party to the PSA nor a third-party beneficiary, and therefore the homeowner could not challenge the late note transfer or enforce the terms of the PSA. Focusing on Form 1066 eliminates the need for both arguments: either the loan was placed in the trust or it was not. The production of Form 1066 establishes the truth, one way or the other.

Thus the PSA's Certificateholder/Investor beneficiaries are precluded from ratifying or setting aside any of the trustee's acts. All they can do if they don't like the way the trust is being run is to band together and vote to sue the trustee and/or servicer. And then it will be up to a court either to ratify or set aside the acts of the trustee or servicer, not the beneficiaries. Simply put, by the terms of the PSA, the investor beneficiaries could not legally ratify an *ultra vires* act of the trustee even if they wanted to.

V. THE TRUSTEE'S ROLE...IN A NUTSHELL

The Trustee in a RMBS trust is clueless, has chosen to be so, and has every intention of remaining so. As an indenture trustee, his only duties are ministerial until there is a default by one of the signatories to the PSA. Then and only then is he obligated to act as a fiduciary. This provides the trustee with perfect cover: he can disclaim any knowledge of mortgage defaults, servicer abuses, initiation of foreclosure actions, forged documents, fabricated evidence, etc., etc. He doesn't know if the servicer's numbers are correct or where the money is going. He never: initiates foreclosure actions (the servicer does), nor receives notes specifically indorsed to the trustee, nor accepts late contributions of mortgages/notes to the trust, nor issues transfer instructions or delivery receipts for any mortgages/notes, nor wires funds to anybody as consideration for the notes or mortgages alleged to be transferred to him as trustee, nor fails to report late contributions to the IRS (there aren't any); and he never falsifies tax returns.

Form **1066**

Department of the Treasury
Internal Revenue Service

U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return

▶ Information about Form 1066 and its separate instructions is at *www.irs.gov/form1066.*

OMB No. 1545-1014

2013

For calendar year 2013 or short tax year beginning , 20 , ending , 20

Please Type or Print	Name	A Employer identification number
	Number, street, and room or suite no. (If a P.O. box, see instructions.)	B Date REMIC started
	City or town, state or province, country, ZIP or foreign postal code	C Enter total assets at end of tax year $

D Check applicable boxes: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change

Section I—Computation of Taxable Income or Net Loss

Income (excluding amounts from prohibited transactions)

1	Taxable interest	1	
2	Accrued market discount under section 860C(b)(1)(B)	2	
3	Reserved	3	
4	Ordinary gain or (loss) (attach Form 4797)	4	
5	Other income (attach statement—see instructions)	5	
6	**Total** income (loss). Add lines 1 through 5	6	

Deductions (excluding amounts allocable to prohibited transactions)

7	Salaries and wages	7	
8	Rent	8	
9	Amount accrued to regular interest holders in the REMIC that is deductible as interest	9	
10	Other interest	10	
11	Taxes	11	
12	Depreciation (see instructions)	12	
13	Other deductions (attach statement)	13	
14	**Total deductions.** Add lines 7 through 13	14	
15	Taxable income (or net loss). Subtract line 14 from line 6. Enter here and on Schedule M, column (c)	15	

Section II—Tax and Payments

1	**Total tax** (Schedule J, line 12)	1	
2	Tax paid with Form 7004	2	
3	**Tax due.** Enter excess of line 1 over line 2. (See **Payment of Tax Due** in instructions.)	3	
4	**Overpayment.** Enter excess of line 2 over line 1	4	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature ▶ Date

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶			Firm's EIN ▶	
Firm's address ▶			Phone no.	

For Paperwork Reduction Act Notice, see instructions. Cat. No. 64383U Form **1066** (2013)

Schedule J Tax Computation

Part I—Tax on Net Income From Prohibited Transactions

1	Income—See instructions.		
a	Gain from certain dispositions of qualified mortgages	1a	
b	Income from nonpermitted assets	1b	
c	Compensation for services	1c	
d	Gain from the disposition of cash flow investments (except from a qualified liquidation)	1d	
2	**Total** income. Add lines 1a through 1d	2	
3	Deductions directly connected with the production of income shown on line 2 (excluding deductions attributable to prohibited transactions resulting in a loss)	3	
4	Tax on net income from prohibited transactions. Subtract line 3 from line 2	4	

Part II—Tax on Net Income From Foreclosure Property (as defined in section 860G(a)(8)) (Caution: *See instructions before completing this part.*)

5	Net gain or (loss) from the sale or other disposition of foreclosure property described in section 1221(a)(1) (attach statement)	5	
6	Gross income from foreclosure property (attach statement)	6	
7	Total income from foreclosure property. Add lines 5 and 6	7	
8	Deductions directly connected with the production of income shown on line 7 (attach statement)	8	
9	Net income from foreclosure property. Subtract line 8 from line 7	9	
10	Tax on net income from foreclosure property. Enter 35% of line 9	10	

Part III—Tax on Contributions After the Startup Day (**Do not** complete this part if the startup day was before July 1, 1987. See instructions.)

11	Tax. Enter amount of taxable contributions received during the calendar year after the startup day. See instructions (attach statement)	11	

Part IV—Total Tax

12	**Total tax.** Add lines 4, 10, and 11. Enter here and on page 1, Section II, line 1	12	

Designation of Tax Matters Person

Enter below the residual interest holder designated as the tax matters person (TMP) for the calendar year of this return.

Name of designated TMP ▶ Identifying number of TMP ▶

Address of designated TMP ▶

Additional Information (see instructions)

		Yes	No
E	What type of entity is this REMIC? Check box ▶ ☐ Corporation ☐ Partnership ☐ Trust ☐ Segregated Pool of Assets If you checked "Segregated Pool of Assets," enter the name and type of entity that owns the assets: Name ______ Type ______		
F	Number of residual interest holders in this REMIC ▶ ______		
G	Check this box if this REMIC is subject to the consolidated entity-level audit procedures of sections 6221 through 6231 . . . ▶ ☐		
H	At any time during calendar year 2013, did the REMIC have a financial interest in or signature or other authority over any foreign financial account, including bank, securities, or other types of financial accounts in a foreign country? . . .		
	If "Yes," the REMIC may have to file FinCEN Form 114 (formerly TD F 90-22.1). See instructions. If "Yes," enter name of foreign country ▶ ______		
I	During the tax year, did the REMIC receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," see instructions for other forms the REMIC may have to file . . .		
J	Enter the amount of tax-exempt interest accrued during the year ▶ ______		
K	Check this box if the REMIC had more than one class of regular interests . . . ▶ ☐ If so, attach a statement identifying the classes and principal amounts outstanding for each at the end of the year.		
L	Enter the sum of the daily accruals determined under section 860E(c) for the calendar year ▶		

Schedule L Balance Sheets per Books

		(a) Beginning of year		(b) End of year	
	Assets				
1	Permitted investments (see instructions):				
a	Cash flow investments . . .				
b	Qualified reserve assets . . .				
c	Foreclosure property . . .				
2	Qualified mortgages . . .				
3	Other assets (attach statement) . . .				
4	**Total** assets . . .				
	Liabilities and Capital				
5	Current liabilities (attach statement) . . .				
6	Other liabilities (attach statement) . . .				
7	Regular interests in REMIC . . .				
8	Residual interest holders' capital accounts . . .				
9	**Total** liabilities and capital . . .				

Schedule M Reconciliation of Residual Interest Holders' Capital Accounts (Show reconciliation of each residual interest holder's capital account quarterly on Schedule Q (Form 1066), Item F.)

(a) Residual interest holders' capital accounts at beginning of year	(b) Capital contributed during year	(c) Taxable income (or net loss) from Section I, line 15	(d) Nontaxable income	(e) Unallowable deductions	(f) Withdrawals and distributions	(g) Residual interest holders' capital accounts at end of year (combine cols. (a) through (f))
				( )	( )	

Dated: January 16, 2014

....

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