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September 11, 2017

Hon. Saliann Scarpulla
Supreme Court of the State of New York
New York County
Commercial Division
60 Centre Street
New York, NY 10007

VIA NYSCEF

Re: *In re Bank of N.Y. Mellon*, No. 150973/2016: Settlement of Judgment

Dear Justice Scarpulla:

We represent Tilden Park Capital Management LP and Prosiris Capital Management, L.P. ("Tilden Park" and "Prosiris"). We write concerning the Court's question at the September 8, 2017 telephonic conference regarding what opportunities Center Court, LLC has had to respond to the proposed judgment filed on September 7. *See* Dkt. 266 (judgment).

Other than removing the one trust for which Center Court has actually disclosed holdings – CWALT 2005-61 – the September 7 judgment is ***identical*** to the judgment Prosiris and Tilden Park proposed to the Court on May 24. *See* Dkt. 255 (May 24 judgment); Dkt. 267 (redline of September 7 judgment against May 24 judgment). Contrary to counsel's claims, Center Court has had ***over three months*** to consider the judgment proposed now.

Moreover, Center Court has ***already taken a position*** on that judgment. It signed a "counter-proposed judgment" on May 30 in opposition to the May 24 judgment. *See* Dkt. 256 (notice of settlement signed by Center Court); Dkt. 257 (counter-proposed judgment). But, as Prosiris and Tilden Park pointed out at the time, that "judgment" does not even pretend to faithfully implement the Court's decision in this case: In fact, it is not a judgment at all, but an improper request for a stay. *See* Dkt. 259 (letter from Prosiris and Tilden Park). The "counter-proposed judgment" asks the Court not to implement its April 4 decision, but to hold settlement funds "in escrow until the [institutional investors'] pending Motion for Leave to Reargue and appeals are fully resolved." Dkt. 256 at 2-3.

Center Court's "judgment" contrary to the Court's order is not proper. A judgment offered for signature implementing a court's decision must "reflect[] the decision properly." *Funk v. Barry*, 89 N.Y.2d 364, 367 (1996). It is "improper" to offer a draft judgment that is "not in conformity with the court's opinion." *Lowenkron v. Berkeley Coop. Towers Sec. 11 Corp.*, 25 A.D.2d 656, 656 (2d Dep't 1966). A judgment that does not conform to a court's opinion should be stricken. *See, e.g.*, *Lowenkron*, 25 A.D.2d at 656-57. In any event, it is improper for Center Court to use a "judgment" to grant relief – a stay pending appeal – for which it has never moved. *Lowenkron*, 25 A.D.2d at 656-57; *Registered Country Homebuilders, Inc. v. Stebbins*, 16 A.D.2d

835, 835 (2d Dep't 1962) (using settlement of an order as an "indirect manner of attempting to obtain other relief is disapproved"). Center Court already had its chance to object to this judgment, and it wasted that chance by filing an improper stay motion.

In any event, Center Court ***has no standing*** to complain now because it has never disclosed holdings in, or even made arguments about, any of the trusts the judgment covers. "Standing requires that a party demonstrate, ***at the outset of any suit***, a stake in its resolution." *Green Chimneys Children's Servs., Inc. v. Perales*, 192 A.D.2d 850, 851 (3d Dep't 1993) (emphasis added). The only trust Center Court disclosed at the outset in its answer that has not already been settled is CWALT 2005-61. Dkt. 46 (answer) at 1. Moreover, when Center Court briefed arguments about the fourteen trusts, the only one it discussed at any length was CWALT 2005-61. *See* Dkt. 65 at 6-8 (discussing "the language of CWALT 2005-61"). And when Center Court's counsel argued at the August 30 hearing, she made her client's position perfectly clear: "[T]he CWALT 2005-61 Trust . . . ***is the trust that we have alleged we own in***." 8/31/2016 Tr. at 69:2-3 (emphasis added). Because Center Court did not plead, at the outset, holdings in any trust at issue now, it is not an "interested person" with standing to participate in this branch of the Trustee's Article 77 petition.[1]

Center Court simply has no legitimate basis to oppose the proposed judgment, and the Court should not tolerate its attempts to drag this case out any longer. That is especially so when Center Court's request for a one-week delay to "consider" the judgment could prevent the Trustee from distributing funds according to the judgment this month. Unless the judgment is signed and entered by September 15, the Trustee will not be able to distribute the Allocable Shares until October. *See* Dkt. 266 at 4 (defining the "Transfer Month" on which funds are distributed). As Prosiris and Tilden Park have repeatedly noted, each month of further delay costs certificateholders in the "senior support" classes millions of dollars in losses. *See* Dkt. 131 (Ellis Decl. Ex. F) at 15:4-14; Dkt. 124 (Smith Aff.) ¶49. A prompt distribution is critical to the parties' settlement and will prevent further losses to the senior-support classes. We therefore respectfully request that the Court sign and enter the settling parties' judgment immediately and make clear that any further stay motions will be denied.

Respectfully submitted,

/s/ Steven F. Molo
Steven F. Molo

Cc: All counsel of record via NYSCEF

[1] *See* CPLR 7703 (joinder in an Article 77 proceeding is limited to "persons interested in [the] express trusts"); Dkt. 14 (order to show cause) (limiting participation in this case to "Interested Persons" who "claim[] an interest in any of the Covered Trusts"); *In re Will of Wadsworth*, 139 A.D.2d 936, 936 (4th Dep't 1988) (a person who "has no interest in the[] properties" at stake in an accounting "has no standing to object to" that accounting); *see also In re Trusteeships Created by Tropic CDO I Ltd.*, 92 F. Supp. 3d 163, 175 (S.D.N.Y. 2015) (where the parties did not hold adverse interests in the trusts being instructed, there was no "actual controversy among parties with adverse legal interests" to be resolved).