

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

U.S. BANK NATIONAL ASSOCIATION as)
successor (Wells Fargo Bank, NA), as Trustee)
(Registered Holders of Citigroup Commercial)
Mortgage Trust 2007-C6, Commercial)
Mortgage Pass-Through Certificates, Series)
2007-C6), acting by and through Special)
Servicer CWC Capital Asset Management LLC,)

Case No. 1:14-cv-01492-TWP-DKL

Plaintiff,)

vs.)

BANK OF AMERICA, N.A.,)

Defendant.)

ENTRY ON PENDING MOTIONS

This matter is before the Court on pending motions. Specifically, on January 20, 2015, Plaintiff, U.S. Bank National Association (“U.S. Bank”) filed a motion for oral argument regarding the Defendant’s, Bank of America, pending motion to dismiss. ([Filing No. 30.](#)) In addition, on February 17, 2015, U.S. Bank filed a motion for leave to file a sur-reply to Bank of America’s reply brief. ([Filing No. 34.](#)) For the reasons stated below, these motions are **DENIED**.

Courts generally do not permit litigants to file a sur-reply brief. *Hall v. Forest River, Inc.*, 3:04-CV-259-RM, 2008 WL 1774216, at *1, n.1 (N.D. Ind. Apr. 15, 2008). A sur-reply is only occasionally allowed “where the moving party raises *new* factual or legal issues in its reply brief, in order to ensure that the non-moving party has an adequate chance to respond to the new issues.” *Cummins, Inc. v. TAS Distrib. Co.*, 676 F. Supp. 2d 701, 705-06 (C.D. Ill. 2009) (emphasis added); *Indianapolis Minority Contrs. Ass’n v. Wiley*, No. IP 94-1175-C-T/G, 1998 WL 1988826, at *3 (S.D. Ind. May 13, 1998) (denying motion to file sur-reply when new or impermissible arguments

were not raised in the reply). A court's decision to permit the filing of a sur-reply is purely discretionary. *Meraz-Camacho v. United States*, 417 F. App'x 558, 559 (7th Cir. 2011) (unpublished opinion).

To begin, this Court considers the briefing on Bank of America's motion to dismiss to be extensive. S.D. Ind. Local R. 7-1(e) sets the page limit for supporting and response briefs, excluding the table of contents, table of authorities, and the certificate of service, at 35 pages. In addition, the same rule sets the page limit for reply briefs at 20 pages. S.D. Ind. Local R. 7-1(e). Bank of America's opening brief in support of its motion to dismiss, excluding the table of contents, table of authorities, and the certificate of service, is 17 pages long. ([Filing No. 24.](#)) U.S. Bank's response brief, excluding the table of contents, table of authorities, and the certificate of service, is exactly 35 pages. ([Filing No. 27.](#)) Bank of America's reply brief, excluding the table of contents, table of authorities, and the certificate of service, is exactly 20 pages. ([Filing No. 31.](#)) Both briefs contain substantive and argumentative footnotes throughout; in addition, in the course of their argument the parties cite 130 unique cases and 12 unique statutes and rules. The veritable library of legal authorities already cited in the parties' briefs, all of which this Court must carefully consider and review when deciding the motion to dismiss, is sufficient for the Court to address the motion to dismiss. In addition, U.S. Bank raises no *new* factual or legal issues in its reply brief which would justify the proposed sur-reply.

Similarly, this Court also does not consider oral argument to be necessary or helpful to resolve the motion to dismiss.

To the extent that U.S. Bank believes that additional briefing and argument is necessary to clarify Bank of America's alleged "mischaracterization" of the legal authorities presented, this Court is capable of addressing any such issues during its own assessment of the authorities.

Further, to the extent that both parties object to the tone of the opposing party's brief, this Court reminds both parties that Courts do not respond kindly to either name-calling or quickly-made accusations of illicit motives or ethical violations. In this regard, both parties are reminded to remain civil with one another and to retain perspective, even in the face of a highly-contested motion.

For these reasons, U.S. Bank's motion for leave to file a sur-reply ([Filing No. 34](#)) is **DENIED**. In addition, U.S. Bank's motion for oral argument ([Filing No. 30](#)) is **DENIED**.

SO ORDERED.

Date: 9/22/2015



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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