STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0134

In the Matter of: Loan Group I of the trusteeship created by
Option One Mortgage Acceptance Corporation relating to the
issuance of certificates by Option One Mortgage Loan Trust 2006-3
pursuant to a Pooling and Servicing Agreement dated as of October 1, 2006.

Filed August 14, 2017
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-TR-CV-16-52

Michael A. Rosow, Thomas H. Boyd, C. Richard Hansen, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for appellant TIG Securitized Asset Master Fund, L.P.)

Eric R. Sherman, Christina Hanson, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondent Law Debenture Trust Company of New York)

Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this trust proceeding, appellant beneficiary argues that the district court erred in determining that appellant does not have standing to object to a settlement offer made to respondent trustee. Because the district court did not err in determining that appellant does not have standing, we affirm and decline to address other issues that appellant has raised on appeal.

FACTS

A pooling-and-servicing agreement (PSA), dated October 1, 2006, was executed by Option One Mortgage Acceptance Corporation, as depositor; Option One Mortgage Corporation, as servicer; and Wells Fargo Bank, N.A., as trustee. Wells Fargo maintains a corporate office in Minnesota, and the trust is administered in part in Minnesota. Homeward Residential, Inc. is the successor in interest to Option One Mortgage Corporation.

Under a Mortgage Loan Purchase Agreement (MLPA), dated October 19, 2006, the depositor bought specified mortgage loans from Sand Canyon Corporation, formerly known as Option One Mortgage Corporation. The PSA states that the mortgage loans are to be held in trust for the benefit of certificate holders. The PSA assigns the mortgage loans to two separate groups, Loan Group I and Loan Group II, and provides for the issuance of corresponding Group I and Group II mortgage-backed certificates. Except in specific circumstances stated in the PSA, Group I certificates receive distributions from Loan Group I, and Group II certificates receive distributions from Loan Group II. Appellant TIG Securitized Asset Master Fund, L.P. (TIG) holds Group II certificates.

On October 11, 2012, the Hennepin County District Court filed an order authorizing Wells Fargo to enter into a Master Instrument of Appointment and Acceptance of Separate Trustee (IAA) to appoint respondent Law Debenture Trust Company of New York as separate trustee. The IAA authorizes Law Debenture to compromise and settle claims for breaches of representations and warranties contained in the governing agreements. The governing agreements are the PSA and the MLPA.

Federal Home Loan Mortgage Corporation (Freddie Mac), which is a certificate holder and beneficial owner of Group I certificates,[1] alleged that Sand Canyon breached warranties and representations with respect to 119 mortgage loans. One hundred and nine of those loans are in Loan Group I (the Subject Group I Mortgage Loans) and are the subject of this proceeding.

Under the PSA, the servicer is responsible for pursuing claims for breaches of representations and warranties against Sand Canyon. Homeward Residential, as servicer, brought a lawsuit against Sand Canyon in the United States District Court for the Southern District of New York,[2] alleging breaches of representations and warranties on 96 of the 119 mortgage loans (2006-3 Group I rep-and-warranty claims). Eighty-seven of those loans are in Loan Group I. In December 2015, Homeward Residential moved to amend the complaint to allege claims for breaches of representations and warranties with respect to an additional 649 loans in Loan Group II.

On December 22, 2015, Sand Canyon made an offer to Law Debenture to settle the claims relating to the Subject Group I Mortgage Loans. On December 30, 2015, Law Debenture received a letter from Freddie Mac stating that it believed that the settlement offer was in the trust's best interests and requesting that Law Debenture accept the offer on behalf of the trust.

[1] Freddie Mac is a certificate holder and beneficial owner of about 22% of the outstanding principal balance of all certificates and about 50% of the outstanding balance of Group I certificates.

[2] *Homeward Residential, Inc. v. Sand Canyon Corporation*, No. 12-CV-7319.

On January 13, 2016, Law Debenture sent a notice to certificate holders informing them about the settlement offer and the Freddie Mac letter. The original February 20, 2016 deadline for accepting the settlement offer was extended until April 5, 2016. On March 25, 2016, Law Debenture notified certificate holders that its financial adviser had concluded that the settlement offer was within a reasonable range for settlement of the representation-and-warranty claims after considering various factors, "including underwriting breach rates, certain litigation factors, and investor support." A copy of the financial adviser's summary of findings was made available to certificate holders. On April 1, 2016, Law Debenture sent a notice to certificate holders that the acceptance date had been extended through April 12, 2016.

On April 11, 2016, Law Debenture sent a notice to certificate holders informing them that Sand Canyon had modified the settlement offer. Law Debenture also made the modified offer available to certificate holders. The acceptance date was extended until April 15, 2016. The modified offer includes the following release:

> The Trust, the Accepting Separate Trustee, and any Persons claiming by, through, or on behalf of any one of them (collectively, the "Releasors"), irrevocably and unconditionally grant a full, final, and complete release, waiver, and discharge of (a) the 2006-3 Group I Rep and Warranty Claims with respect to the Subject Group I Mortgage Loans; and (b) in connection with, related to or arising from the Subject Group I Mortgage Loans, all alleged or actual claims, demands to repurchase, demands to cure, demands to substitute, counterclaims, crossclaims, defenses, rights of setoff, rights of rescission, liens, disputes, liabilities, losses, debts, costs, expenses, obligations, demands, damages, rights, and causes of action of any kind or nature that (i) previously existed, currently exists, exists as of the Effective Date, would exist with discovery or the giving of notice, would exist with (or but

> for) the passage of time, or would exist in the event of a default, delinquency, or other loss; (ii) could have been or could be asserted against Sand Canyon by the Releasors directly, indirectly, derivatively, or upon demand or direction by any Releasor to any other Person, alone or in conjunction with one or more other Persons; and (iii) are based in contract or equity and assert a breach of the Representations and Warranties (collectively, the "Released Claims"). . . . *For the avoidance of doubt, nothing herein shall release or otherwise affect any claims for breaches of Representations and Warranties, including the 2006-3 Rep and Warranty Claims, in connection with, related to or arising from Mortgage Loans that are not Subject Group I Mortgage Loans*. (emphasis added).

In exchange for the release, the trust would receive a $1,000,000 settlement payment.

Before the April 15 deadline, Law Debenture received an e-mail from TIG objecting to the settlement offer. TIG referred to Homeward Residential's motion to amend the complaint in the federal action in New York with respect to the 649 mortgage loans in Loan Group II and stated, "By settling the bulk of the pre-existing breach claims, [Law Debenture] would be creating a risk that the judge finds that there are insufficient remaining loans in the case to justify the proposed expansion by allowing relation back and granting the Motion [to Amend]." TIG stated that it would reconsider its objection if the acceptance date was extended beyond the date when the court ruled on the motion to amend.

Law Debenture determined that the modified settlement offer was in the certificate holders' best interests and accepted it on behalf of the trust subject to Law Debenture obtaining the relief requested in this proceeding. Law Debenture, as separate trustee, filed a verified petition for instructions in administering a trust under Minn. Stat. § 501C.0201 (2016), seeking an order authorizing Law Debenture to accept on behalf of the trust the

settlement offer for breach-of-warranty and breach-of-representation claims relating to mortgage loans held by the trust and granting Law Debenture a release and exculpation from claims and liability relating to Law Debenture's evaluation and acceptance of the settlement offer. TIG filed objections to the relief sought by Law Debenture.

Following an initial hearing, Law Debenture moved for judgment on the pleadings, arguing that TIG lacked standing to object to the settlement offer and that the relief requested in the petition should be granted as a matter of law. TIG moved to dismiss, arguing that, under a forum-selection clause in the trust agreement, the district court lacked subject-matter jurisdiction.

Meanwhile, in the federal action, the district court granted Homeward Residential's motion to amend the complaint. Sand Canyon filed a motion to dismiss the second amended complaint and a motion for leave to appeal the order granting the motion to amend.[3]

In this proceeding, following a hearing, a referee recommended that the district court (1) deny TIG's objections, (2) authorize Law Debenture to accept the settlement offer, and (3) grant Law Debenture's motion for judgment on the pleadings. The referee also recommended determining that TIG had no legal standing to object to the settlement offer because, as a holder of Group II certificates, TIG had no economic interest in and was not an interested person in the settlement offer and its alleged injury was "totally speculative." The district court confirmed the referee's recommended order. TIG appeals.

[3] The motions were pending when the parties filed their briefs in this appeal.

D E C I S I O N

"Appellate courts review a district court's findings of fact concerning . . . trusts under a clearly erroneous standard and review conclusions of law de novo." *In re Estate of King*, 668 N.W.2d 6, 9 (Minn. App. 2003).

> Whether a party has standing is a question of law we review de novo. . . . The lack of standing bars judicial consideration of a claim. A party acquires standing by statute or as an aggrieved party suffering an injury-in-fact. To demonstrate an injury-in-fact, [a party] must point to an injury that is fairly traceable to the [other party's] challenged action and that is likely to be redressed by a favorable decision.

Scheffler v. City of Anoka, 890 N.W.2d 437, 451 (Minn. App. 2017) (citations omitted), *review denied* (Minn. Apr. 26, 2017).

Statutory Standing

The district court concluded that "TIG[,] as a holder of Group II Certificates[,] has no economic interest in Group I Certificates, and therefore has no financial stake or claim in the Settlement Offer[,] which applies only to Group I Certificate holders." TIG argues that "as a beneficiary of the Trust and 'interested person' statutorily entitled to notice of the Petition, TIG was a beneficiary of a legislative grant of standing under Minnesota's Trust Code." *See State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (stating that a party has standing when it "is the beneficiary of some legislative enactment granting standing").

The trust code states:

> (a) An interested person may petition the district court and invoke its jurisdiction as provided in sections 501C.0201 to 501C.0208 for those matters specified in section 501C.0202.

> (b) As used in sections 501C.0201 to 501C.0208, "interested person" includes an acting trustee, any person named as successor trustee under the trust instrument, any person seeking court appointment as trustee whether or not named in the trust instrument, a beneficiary, a creditor, and any other person having a property or other right in or claim against the assets of the trust. Interested person also includes a fiduciary representing an interested person and any other person acting in a representative capacity as provided in sections 501C.0301 to 501C.0305, any person who takes action with respect to a trust in the absence of an acting trustee or otherwise within the meaning of section 501C.0701, an agent to whom a trustee has delegated a duty or power within the meaning of section 501C.0807, and any person with a power to direct the trustee within the meaning of section 501C.0808. *The meaning of interested person, as it relates to a particular person, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any petition.*

Minn. Stat. § 501C.0201 (2016) (emphasis added). The trust code further states:

> *Notice of the judicial proceeding must be given by an interested person* as follows: (1) by publishing, at least 20 days before the date of the hearing, a copy of the order for hearing one time in a legal newspaper for the county in which the petition is filed; and (2) by mailing, at least 15 days before the date of the hearing, a copy of the order for hearing *to* those current trustees and *qualified beneficiaries of the trust* whose identity is known and whose location is known or reasonably ascertainable to the petitioner after making reasonable efforts to locate such persons.

Minn. Stat. § 501C.0203, subd. 1 (2016) (emphasis added).

Section 501C.0201(b) identifies specific classes of persons who can be an "interested person," but it also expressly states that "[t]he meaning of interested person, as it relates to a particular person, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any petition." Under this

express statement, the mere fact that TIG is a beneficiary of the trust does not mean that TIG is an "interested person," and whether TIG is an interested person must be determined according to the particular purposes of, and matter involved in, the petition.

TIG contends that, as a certificate holder, it is a beneficiary of the trust and, therefore, qualifies as an "interested person" under Minn. Stat. § 501C.0201(b). TIG argues:

> If interested persons such as TIG have a recognized interest in the outcome of the proceedings requiring notice, it follows that such interested persons must also be afforded an opportunity to participate in those proceedings. It is incongruous that the Legislature would provide that interested persons shall be entitled to notice of a trust proceeding, but shall not have standing to act on the concerns that they may have and wish to bring to the court's attention pursuant to that notice.

This argument fails to recognize that, under the plain language of section 501C.0203, subdivision 1, TIG was not required to receive notice of this proceeding because it is an interested person; it was required to receive notice because it is a beneficiary of the trust. The requirement that TIG receive notice is not a recognition that TIG has an interest in the outcome of the proceeding sufficient to give it standing to participate. Consequently, section 501C.0201(b) and section 501C.0203, subdivision 1, do not act together to grant TIG standing.

Standing Based on Injury-In-Fact

To have standing based on an injury-in-fact, a party must "have a sufficient stake in a justiciable controversy to seek relief from a court." *Enright v. Lehmann*, 735 N.W.2dd 326, 329 (Minn. 2007) (quotation omitted). Standing may be based on "some actual or

threatened injury" that flows from the challenged conduct. *Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 176 (Minn. App. 2012) (quotation omitted). "However, an organization's abstract concern with a subject which may be affected by an adjudication does not substitute for the injury-in-fact requirement." *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. App. 1993), *review denied* (Minn. Apr. 20, 1993).

TIG contends that it has standing because it is threatened with an injury-in-fact. TIG argues that "[t]he relief Law Debenture seeks in its Petition poses a real economic danger to TIG because it threatens to thwart Homeward's ability to succeed on hundreds or thousands of additional claims [in the federal action] for the benefit of the Trust and all certificate holders including TIG." Although the federal court in New York granted Homeward Residential's motion to amend, TIG argues that the potential for injury remains because Sand Canyon is challenging the order that granted the motion to amend. Citing *Bhatia v. Piedrhita*, 756 F.3d 211, 218 (2d Cir. 2014), the Minnesota district court rejected this argument.

The *Bhatia* court stated that a nonsettling defendant generally lacks standing to object to "a partial settlement because a non-settling defendant is ordinarily not affected by such a settlement." *Id.* The court then stated:

> However, there is a recognized exception to this general rule which permits a non-settling defendant to object where it can demonstrate that it will sustain some formal legal prejudice as a result of the settlement.
>
> That level [of legal prejudice] exists only in those rare circumstances when, for example, the settlement agreement formally strips a non-settling party of a legal claim or cause of action, such as a cross-claim for contribution or

> indemnification, invalidates a non-settling party's contract rights, or the right to present relevant evidence at trial.

Id. TIG has not demonstrated that it has been stripped of a legal claim or cause of action. The potential injury that TIG identified in the federal action in New York is not that Homeward Residential will not be able to make a motion; it is that Homeward Residential's motion will not ultimately succeed. Homeward Residential has moved to amend its complaint to allege claims related to 649 loans in Loan Group II, and, at this point, its motion has been granted.

TIG argues that the district court should not have relied on *Bhatia* because federal law on standing differs from Minnesota law. *See Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 31-32, 221 N.W.2d 162, 165 (1974) (stating that Minnesota state court was not "bound to adhere" to federal standing decisions because the "[f]ederal doctrine of standing has been described as this complicated specialty of federal jurisdiction" and "state courts have usually tended to adopt a much simpler 'injury in fact' concept of standing"). But, under Minnesota law, TIG's concern that the settlement regarding Group I loans may affect its interest in another action as a holder of Group II certificates is an abstract concern that does not substitute for the injury-in-fact requirement.

TIG also contends that because Law Debenture's expert determined that "the Trust's losses associated with the subject loans were $14 million," the $1 million settlement offer is low. TIG argues that this low offer threatens an injury-in-fact because prior settlements are a factor used to evaluate later settlement offers, and "a low settlement of Group I certificateholders' claims will undoubtedly be considered by a future expert in assessing

the reasonable range of recovery on claims benefitting certificateholders like TIG." As with TIG's previous argument, however, the concern that the settlement in this proceeding might have some effect on an expert's opinion in another action is speculative and does not constitute an injury-in-fact.

TIG argues that it is threatened with an injury-in-fact because

> [t]he exculpatory relief sought by Law Debenture in the Petition also threatens to deprive TIG of claims against Law Debenture arising from its decision to settle a small handful of claims in a manner that jeopardized the extensive claims of other certificateholders like TIG, as well as its failure to timely, diligently, and prudently investigate, identify and pursue hundreds of additional claims against Sand Canyon on which the Trust otherwise stood to recover.

TIG argues that Law Debenture violated the fiduciary obligation that it owed to the trust and all certificate holders under the PSA. The district court granted Law Debenture "exculpation from liability in connection with its evaluation and acceptance of the Settlement Offer on behalf of the Trust and the implementation of its terms." Under the express terms of the settlement offer, only claims with respect to the Group I Mortgage Loans were released. This release does not threaten to deprive TIG of claims against Law Debenture arising from other mortgage loans.

Finally, in its reply brief, TIG cites the following provision in the PSA and argues that the interests of Group I and Group II certificate holders are linked.

> With respect to the Group II Certificates, all principal distributions will be distributed sequentially to the Class II-A-1, Class II-A-2, Class II-A-3 and Class II-A-4 Certificates, in that order, until the Certificate Principal Balance of each such Class of Certificates has been reduced to zero; provided, however, on any Distribution Date on which the aggregate

> Certificate Principal Balance of the Subordinate Certificates has been reduced to zero, all principal distributions will be distributed concurrently to each Class of the Group II certificates *pro rata* based on the Certificate Principal Balance of each such Class.

TIG argues:

> [I]n the event that the Trust were to obtain a large enough recovery on Group I certificateholders' claims to drive the aggregate Certificate Principal Balance of the Subordinate Certificates above zero, TIG would no longer receive distributions on a pro rata basis, but would instead receive more favorable sequential distributions. Thus, there *are* instances where Group I and II certificateholders benefit and share from the same sources of recovery; indeed, they are supported and protected by the same Subordinate Certificates.

The mere possibility that a set of circumstances could arise under which holders of Group I and Group II certificates could benefit and share from the same sources of recovery is not sufficient to prove an injury-in-fact, which requires "a concrete and particularized invasion of a legally protected interest." *Enright*, 735 N.W.2d at 329.

Because TIG failed to show that it will suffer an injury that is fairly traceable to Law Debenture's acceptance of the settlement offer and is likely to be redressed by the district court's denial of Law Debenture's petition, we agree with the district court that TIG does not have standing to object to the petition. Given our determination that TIG does not have standing, we will not address the additional issues that TIG has raised on appeal.

Affirmed.