

White v Wells Fargo Advisors
2016 NY Slip Op 30962(U)
May 25, 2016
Supreme Court, New York County
Docket Number: 155206/13
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 11

-----X
IRENE WHITE and DAISY WHITE STARK,

Index No. 155206/13

Plaintiffs,

-against-

WELLS FARGO ADVISORS, and DEUTSCHE BANK,

Defendants.

-----X
JOAN A. MADDEN, J.

Plaintiffs move, by order to show cause, for an order (i) permitting them to file and serve a supplemental summons and second amended complaint (“Proposed Pleading”) upon Prudential Equity Group, LLC as successor to Prudential Equity Group, Inc¹, (ii) amending the caption to remove defendants Wells Fargo Advisors and Deutsche Bank, and (iii) changing the name of Prudential Equity Group, Inc. to Prudential Equity Group, LLC (motion seq. 003).² Prudential Equity Group LLC (“Prudential”) opposes the motion, arguing that it has provided evidence to plaintiffs that there is no meritorious claim against Prudential, and cross moves for sanctions against plaintiffs. While the order to show cause was pending, plaintiffs submitted another order to show cause, seeking permission to add Prudential as a defendant on the same grounds as in motion sequence 003, and also seeking to add Deutsche Bank as a defendant (motion no. 007). The court did not sign the order to show cause, but indicated that it would be considered in

¹While plaintiffs served and filed a supplemental summons and first amended complaint on Prudential Equity Group, Inc., as indicated below, such filing and service was made after a deadline set for the court for doing so. Accordingly, Prudential Equity Group, Inc. was never properly added as a defendant.

²Plaintiffs also moved for an order permitting service of a subpoena on Deutsche Bank prior to the service of the amended complaint on Prudential Equity Group LLC. By interim order dated April 23, 2015, the court granted this relief to the extent of permitting plaintiffs to serve a subpoena upon Deutsche Bank with respect to specified issues.

connection with this order to show cause.

Background

In this action, plaintiffs, who are mother and daughter, seek interest accruing from 1973 to 1997 on eight bearer bonds with a face amount of \$5,000 each (“the Bonds”). The Bonds were allegedly purchased through Bache & Co., Inc. (“Bache”), a New York investment firm, by plaintiffs’ husband and father Jerry White, who died in 1978. It is alleged that in or about the summer of 1973, Jerry White and plaintiffs opened a “Trading A/c 76-35901-1-19 registered in the names of plaintiffs and Jerry White, as joint tenants with the rights of survivorship (Proposed Pleading ¶ 7).³ Plaintiffs allege and that Bache “underwent several acquisitions, mergers and name changes, and is now operating as Wells Fargo...and/or Prudential Equity Group, Inc.” (Id, ¶6). It is further alleged that at the time the Bonds were purchased, the transfer/redemption agent was Morgan Guaranty Trust, which, “through mergers and acquisitions,” became Deutsche Bank (Id, ¶ 10).

Plaintiffs allege that the Bonds which were issued by N.Y.S. Urban Development Corp., General Purpose A-1973, were due on November 1, 2013, paying interest at a rate of 6%, as evidenced by Certificate Numbers 73A-17337, 73A-28159, 73A-34108, 73A-34109, 73A-35378, 73A-35379, 73A-35380, 73A-35381, for a purchase price of \$40,146.67 (Id, ¶ 8). The Bonds were called early for redemption in 1997, and allegedly escheated to the State of New York in November 2000 (Id, ¶’s 13, 14). Plaintiffs allege that the original bond certificates with the

³The allegations in the Proposed Pleading are identical to first amended complaint and differ from the original complaint insofar as the sixth paragraph includes allegations regarding Prudential Equity Co, Inc., and asserts claims only against Prudential Equity Co., Inc. The Proposed Pleading also eliminates Wells Fargo and Deutsche Bank from the caption.

coupons attached were never delivered to them, and that in August 2012, when plaintiffs sought to redeem the Bonds, they learned for the first time that the Bonds were not originals but only photocopies (Id, ¶ 11). Plaintiffs further allege that they were unaware of anyone who had the original interest coupons attached to the bonds, nor who submitted them for payment (Id, ¶ 21). Plaintiffs recovered \$41,096.69 from the State of New York, representing the principal amount of the Bonds. In this action, plaintiffs seek to recover \$2,400 in interest allegedly due annually on the Bonds from 1973 until they were redeemed in 1997, for a total of \$57,600. At oral argument, the issue of the statute of limitations was addressed, and it appears that any claims plaintiffs have to interest would be limited, at best, to June 1993 to 1997, which is 20 years prior to the commencement of this action on June, 2013.

The Proposed Pleading asserts cause of action against Prudential for negligence and recklessness “in turning over the original bonds with coupons...to the improper and wrong party or parties,” (Id, ¶ 24), and for breach of contract based on allegations that plaintiff’s “were third-party beneficiaries of the agreement made by [Prudential] with the bond issuers and that [Prudential] failed to fulfill its contractual obligations and obligations to plaintiffs as third-party beneficiaries.”

The original complaint asserted claims against only Wells Fargo and Deutsche Bank and, instead of answering the complaint, these defendants separately moved to dismiss it. Wells Fargo argued that while Prudential (a Bache successor firm) and Wells Fargo’s predecessor, Wachovia, entered into a joint venture agreement, which agreement, by its terms, provided that no liabilities relating to actions taken prior to the closing date of the agreement (July 1, 2003) were to be transferred or assumed by Wachovia, and submitted an affidavit and documentary support for its

position.

Deutsche Bank argued that the documentary evidence demonstrated that plaintiffs are not entitled to the interest payments on the Bonds since, based on allegations in the complaint, plaintiffs are not in physical possession of the coupons, which are required to be presented and surrendered in order for Deutsche Bank to disburse the accrued interest by the terms of the bonds. Deutsche Bank also argued that their records showed the original coupons for seven of the eight Bonds have been duly paid to the coupon holder, but did not indicate whether the interest was paid on the eighth bond. Deutsche Bank also argued that the claims asserted against it were untimely.

Plaintiffs opposed the motions to dismiss on various grounds, and sought to serve a supplemental summons and amended complaint naming Prudential Equity Group, Inc. as a defendant based on evidence submitted by Wells Fargo, including the affidavit of its legal Counsel, Michael Naccarto, that Bache was acquired by Prudential Financial, Inc. ("Prudential Financial") and that Prudential Financial's wholly owned subsidiary, Prudential Securities, Inc. ("PSI") subsequently changed its name to Prudential Equity Group, Inc.

By decision and order dated July 11, 2014, the court granted the respective motions by Wells Fargo and Deutsche Bank to dismiss the complaint as against them. With regard to Wells Fargo, the court found that the claims against Wells Fargo did not state a claim based on the terms of the joint venture agreement which expressly stated that Wells Fargo's predecessor, Wachovia, was not liable for actions by Prudential's predecessor, Bache, or events occurring before the 2003 closing of the agreement.

As for Deutsche Bank, the court dismissed the breach of contract claim against it based

on its alleged failure to pay plaintiffs interest on the Bonds, noting that since the Bonds were bearer bonds which do not “specif[y] a person entitled to the security,” Deutsche Bank’s obligation was limited to paying interest “to the bearer,” (New York Uniform Commercial Code §8-102 (a)) and thus Deutsche Bank did not breach any agreement with the issuer of the Bonds even if it paid the interest to the coupon holder(s) instead of plaintiff. The negligence claim was also found to be without merit, in the absence of any basis for finding that Deutsche Bank breached any duty owed to plaintiffs by paying interest to the party or parties holding the interest coupons. In addition, as the agent of the issuer of the Bonds, the court also found that there was no fiduciary relationship between plaintiffs and Deutsche Bank. As the court dismissed the complaint on the above grounds it did not address the statute of limitations issue.

The court granted plaintiffs’ cross motion to amend to add Prudential Equity Group, Inc. as a defendant, writing that “as the record contains evidence indicating that [Prudential Equity Group, Inc.] is successor of Bache, the bank that sold the bearer bonds at issue, plaintiffs’ cross motion is granted to the extent that they are permitted to serve a supplemental summons and amended complaint on Prudential Equity Group, Inc.” The court required that the supplemental summons and amended complaint as against Prudential Equity Group, Inc to be served and filed within 20 days of the date of e-filing of the decision and order. Plaintiffs missed the deadline, and by order dated September 30, 2014, the court dismissed the complaint in its entirety. On the same date, September 30, 2014, plaintiffs efiled a supplemental summons and amended complaint, naming Prudential Equity Group, Inc. as a defendant.

Motion To Amend to Add Prudential

On November 6, 2014, plaintiffs submitted a proposed order to show cause seeking, *inter alia*, leave to serve a second amended complaint adding Prudential Equity Group, LLC as opposed to Prudential Equity Group, Inc., on the ground that the former entity became inactive and terminated its existence on February 4, 2004, and asserting the information provided to the court in Mr. Naccarato's affidavit was inaccurate with respect to the identity of Bache's successor company. After plaintiffs requested an adjournment of the original order to show cause, the court issued an amended order to show cause returnable on January 29, 2015, which is now before the court. The parties agreed to adjourn the hearing until March 12, 2015, to give Prudential an opportunity to investigate the claims. By letter to plaintiffs' counsel dated February 23, 2015, Prudential provided the results of its investigation which, it asserted, showed that the Bonds were properly administered by Prudential. The parties extended the hearing date in an effort to resolve the dispute but were unable to do so.

In opposition to the motion to amend, Prudential argues that it had no involvement with the Bonds prior to 1996, and asserts that the record shows that in the summer of 1996, plaintiffs delivered the Bonds to a Prudential account and Prudential, in turn, paid over to plaintiffs interest and principal in three checks issued in June 1996, November 1996 and January 1997.

In support of its position, Prudential submits documentary evidence and an affidavit from Julia A. Herbert ("Herbert"), who is the President of Prudential Equity Group, LLC, previously known as PSI, who states that she is the Manager of Investment Products for discontinued businesses, including PSI, where she has been employed since December 1980, and where she has held her current position since November 2010.

With respect to account identified in the proposed second amended complaint "Trading A/C 76-35901-1-19" in the names of Jerry, Irene and Daisy White as joint tenants with the right of survivorship" in which the Bonds were allegedly purchased, Herbert states that after a diligent search,⁴ she was unable to find any records of this account. She further states "[i]t is now not uncommon for Prudential to be unable to find records of accounts that were closed prior to the mid-1980's, and it is possible that an account with the referenced number did at one time exist but was closed too long ago for any records of the account to be located" (Herbert Aff. ¶ 3).

Herbert states that her search did identify account no. 076-5234233, which was a joint account opened by Irene White and Daisy White Stark in June 1978, and submits a copy of Prudential Client Profile system evidencing the opening of the account and the execution of a joint account agreement on June 14, 1978⁵ (Id, ¶ 4, Exhibit A). Herbert states that Prudential provided plaintiffs with monthly account statements in the ordinary course of business, and was able to locate these statements beginning in 1984 (Id, ¶'s 4, 5). She further states that for the relevant period the address associated with the account and where account statements and checks were sent to was "Mrs. Irene White and Daisy White JT Ten, 63-33 98th Place, Rego Park NY 11374-2327"(Id, ¶ 6). The address is reflected on the monthly account statement (Exhibit B) and a January 7, 2000 letter from Prudential to Irene White and Daisy White, which was signed by Irene White and returned to Prudential (Id, ¶ 6, Exhibit C).

⁴According to Herbert, this search included a request from Wells Fargo, whose predecessor, Wachovia Corp, merged with PSI in 2003 at which time the domestic retail customer account records were transferred to an entity controlled by Wachovia.

⁵Herbert states that she was unable to locate the joint account agreement executed by the plaintiffs.

With respect to the activity in account no. 076-5234233 during the relevant period, Herbert states as follows. On or about June 11, 1996, \$40,000 worth of New York State Urban Development Bonds (the "Bonds") were received into a Prudential as reflected in a June 1996 account statement (Exhibit B), showing the receipt of the Bonds (Id, ¶ 7). The statement also reflects that on June 20, 1996, \$5,000 face value in Bonds (i.e. one Bond) was redeemed⁶ realizing \$4,700 in proceeds, and that the next day, semi-annual interest on the remaining seven bonds was received in the amount of \$1,050, representing interest due on May 1, 1996 (Id, ¶ 9). On June 24, 1996, Prudential issued a check no. 032-134762 in the amount of \$5,785.22 drawn on Banker's Trust to the plaintiffs at the address on file with the account, and a computer generated report dated June 28, 1996 from Banker's Trust reflects the payment of the check in that amount (Id, ¶ 10). The next activity in the account was on November 1, 1996, when semi annual interest on the remaining seven bonds in the amount of \$1,050 was paid by check no. 032-140816 dated November 6, 1996, and sent to the address on file with the account, as evidenced by the account statement with the payment of check drawn on Banker's Trust and paid on November 12, 1996 (Id, ¶'s 11, 12, Exhibits E, F).

In January 1997, the remaining seven bonds were called. The value of the call (\$37,500) together with accrued interest (\$396.66) was \$36,096.66, and Prudential submits a copy of the January 1997 account statement reflecting the activity (Id, ¶ 13, Exhibit G). On January 13, 1997, Prudential issued check no. 032-143919 in the amount of \$36,200, reflecting the amount

⁶According to Prudential, the redemption is consistent with an affidavit submitted by Deutsche Bank representative Jonathan Stucki, indicating that one of the seven bonds was called in 1994, prior to the time Prudential was provided with the bonds and would explain why Prudential immediately submitted one Bond for redemption as soon as it was received into the Prudential account.

received for the Bonds, accrued interest and remaining cash balance in the account; the check was drawn on Banker's Trust and sent to the plaintiffs at the address on file with the account (Id, ¶ 14, Exhibit H).

In addition to providing evidence which it asserts shows that Prudential paid to plaintiffs interest and principal due and owing on the Bonds, Prudential argues that any claim against it is untimely as under New York law as a customer's claim against a stock brokerage firm is governed by the six-year contract statute of limitations, and according to the allegations in the proposed second amended complaint, the Bonds were called in 1997 and escheated to the State in 2000, which is more than 14 years ago.

In reply, plaintiffs submit an affidavit from Irene White who states that although Prudential asserts that it sent the three checks to her dated June 24, 1996, November 5, 1996 and January 13, 1997, for interest and principal payments in the amounts, respectively of \$5,785.22, \$1,050, and \$36,200, "[a]fter searching my records extensively, I find no record of any deposit to my account in [these amounts], at or around the dates indicated by Prudential, and I do not believe I received the payments allegedly made by them" (Irene White, Aff, ¶ 4). In her affidavit affirmation in reply, Irene White states that the address on the customer confirmation and bond instruction forms from Bache at the time the bonds were purchased in 1973 have the address for her at 98th Avenue as opposed to the correct address at 98th Place and this error, plaintiffs maintain, would explain their failure to receive the original bonds and coupons. Notably, however, plaintiffs do not deny that Prudential's records associated with account number 076-5234233, used the correct address for the plaintiffs, and thus the address discrepancy would not explain plaintiffs' purported failure to receive the checks or the account statements showing the

payments to them during 1996 and 1997.

As for the statute of limitations issue, plaintiffs argue that Bache, as the seller of the Bonds and a registered securities dealer, owes a fiduciary duty to plaintiffs, and equitable estoppel should apply to toll the statute of limitations or to preclude Prudential from arguing that plaintiffs' claims are untimely. Alternatively, plaintiffs argues that since they did not discover that they were not provided with the original certificates until August 2012, this action was timely commenced within two years of discovery of the fraud under CPLR 213 [8] and CPLR 203(g). Plaintiffs alternatively argue that the twenty-year statute of limitations provided by CPLR 211(a) is applicable to this action which seeks 'to recover . . . interest upon a written instrument evidencing an indebtedness on the state of New York or any person, association or public or private corporation..secured only by the full faith and credit of the issuer...'” See generally, Vigilant Ins. Co. of America v. Housing Authority of City of El Paso, Tex., 87 NY2d 36, 43 (1995).

“Leave to amend a pleading should be ‘freely given’ (CPLR 3025[b]) as a matter of discretion in the absence of prejudice or surprise.” Zaid Theatre Corp. v. Sona Realty Co., 18 AD3d 352, 355-356 (1st Dept 2005)(internal citations and quotations omitted). That being said, however, “in order to conserve judicial resources, an examination of the underlying merits of the proposed causes of action is warranted.” Eighth Ave. Garage Corp. v. H.K.L Realty Corp., 60 AD3d 404, 405 (1st Dept), lv dismissed, 12 NY3d 880 (2009). At the same time, leave to amend will be granted as long as the proponent submits sufficient support to show that proposed amendment is not “palpably insufficient or clearly devoid of merit.” MBIA Ins Corp. v. Greystone & Co., Inc., 74 AD3d 499 (1st Dept 2010)(citation omitted). Here, as discovery has not yet commenced, there is no basis for denying the amendment on the grounds of prejudice or

surprise. However, for the reasons below, the court finds that the Proposed Pleading is of insufficient merit to permit plaintiffs to add Prudential as a defendant.

As a preliminary matter, the court notes that even applying a 20-year limitations period for actions for payment of interest and principal on a bond (See CPLR 211(a)⁷), any claim for interest accruing before June 1993 would be untimely,⁸ and plaintiffs concede that they received the principal amounts on the Bonds from New York State. Furthermore, Prudential has submitted uncontroverted evidence that from June 1996, when the Bonds were deposited in plaintiffs' account at Prudential, until January 1997, when the Bonds were called, during this approximate seven month period, they were properly administered by Prudential and the payments of interest and principal were made to plaintiffs at the address associated with the account. Moreover, while in her affidavit, Irene White states that "she does not believe" she received the payments allegedly made by Prudential and that "[a]fter searching my records extensively, [she found] no record of any deposit to my account in [these amounts]," such assertions are insufficient to give rise to a claim against Prudential. Notably, Ms White does not identify the accounts that she searched or deny receiving account statements for the account

⁷CPLR 211(a) provides that:

"An action to recover principal or interest upon a written instrument evidencing an indebtedness of the state of New York or of any person, association or public or private corporation... secured only by a pledge of the faith and credit of the issuer, regardless of whether a sinking fund is or may be established for its redemption, must be commenced within twenty years after the cause of action accrues."

⁸Plaintiffs' argument that their claims accrued when the Bonds were called in January 1997 is without merit as the interest payments were due to be paid before the time. See Vigilant Ins. Co. v. Housing Authority of El Paso, Tex., 87 NY2d 36, 45 (1995)(finding that court below properly limited recover on coupons for interest payments noting that with respect to interest installments the statute of limitations "runs on each installment from the date it becomes due").

showing that the payments were made to her.

In any event, plaintiffs do not deny that Prudential sent the checks and the account statements to the correct address, or that the account statements reflect the activity in their account, including payment of the Bonds principal and interest to plaintiffs. Under these circumstances, there is no basis for finding that Prudential breached any duty to plaintiffs during the period from the time the Bonds were deposited in the plaintiffs' account in June 1996 until the Bonds were called in January 1997.

As for the period before 1996, Prudential has provided evidence that its records do not indicate that it had any involvement with the Bonds during that time, nor do plaintiffs claim that they sought interest payments from Prudential then. Instead, the gravamen of the complaint is that plaintiffs did not attempt to collect interest on the Bonds until August 2012, when they learned that they had copies, as opposed to originals, of the Bonds and did not possess the interest coupons.⁹ As for plaintiffs' theory that Prudential's predecessor, Bache, breached its duty, by sending the original certificates and coupons to the wrong address when they were purchased from Bache in 1973, such cause of action would be untimely, even applying the 20-year statute of limitations under CPLR 211(a), since this action was not commenced until 2013.

Next, contrary to plaintiffs' position, the statute of limitations did not run from the discovery of the failure to provide plaintiffs with the original certificates, as there are no allegations or other basis for asserting a claim for fraud against Prudential or its predecessor, Bache. See generally, Lama Holding Company v Smith Barney Inc., 88 NY2d 413, 421 (1996);

⁹The certificate for the Bonds provides for the payment of interest "only upon presentation and surrender of the coupons appertaining hereto representing such interest as they severally mature."

CPLR 3016 (b). Furthermore, the doctrine of equitable estoppel may not be invoked under the circumstances here to preclude the assertion of the statute of limitations defense. To successfully apply this doctrine to preclude a party from using a statute of limitations as a defense, it must be shown that the party's "affirmative wrongdoing ... produced the long delay between the accrual of the cause of action and the institution of the legal proceeding" Putter v. North Shore University Hosp., 7 NY3d 548, 552-553 (2006)(internal citations and quotations omitted). The wrongdoing must include "subsequent and specific actions" to the original wrongdoing that prevented the party seeking to invoke the doctrine from timely bringing suit. *Id.*, quoting Zumpano v. Quinn, 6 NY3d 666, 674 (2006). Here, there are no allegations of affirmative conduct or specific and subsequent actions by Bache or its successor, Prudential, that would have prevented plaintiffs from discovering the error in sending them the original bonds and coupons such that the doctrine would apply.

Accordingly, the motion to amend to add Prudential as a defendant is denied. However, Prudential's cross motion for sanctions is also denied as it cannot be said that the plaintiffs' request for relief is frivolous.

Order to Show Cause Seeking to Add Deutsche Bank as a Defendant

As indicated above, the original complaint was dismissed as against Deutsche Bank, as the successor transfer/redemption agent for Bonds, on the ground that as the Bonds were bearer instruments, Deutsche Bank could not be held liable for paying the holder of the interest coupons as opposed to plaintiffs. However, the court noted that "[e]ven though the complaint has been dismissed as against Deutsche Bank, plaintiffs may nonetheless seek non-party discovery from Deutsche Bank, including records pertaining to the unknown presenter(s) of the interest

coupons.” In connection with the motion to amend to add Prudential, plaintiffs sought to serve a subpoena on Deutsche Bank, and the court granted the relief to the extent the information sought related to “the circumstances under which Deutsche Bank and/or Banker’s Trust paid interest on the bonds via coupons between 1973 and 1997, and whether issues of liability exist in connection with such payments.”

Plaintiffs served a subpoena issued by this court upon Deutsche Bank seeking records relating to payments of interest on the Bonds between June 1, 1973 and November 9, 2000. In its response to the subpoena, Deutsche Bank produced documents indicating that the payments on the Bonds were deposited in the accounts of three entities, State Street Bank (account 100190916), Clearing House (account 1000190120) and Depository Trust Company (account 91000093850). The earliest entry of payments is from November 16, 1992. After plaintiffs’ counsel ascertained that plaintiffs had no knowledge of the identified entities or accounts, he issued subpoenas to the three entities seeking copies of records relating to payments from the Bonds from 1973 to date.

State Street Bank objected to the subpoena on various grounds, responded that it had no responsive documents, and indicated that information might be obtained from certain other identified entities. Clearing House Payment Company LLC responded that it had no responsive documents or records of the account identified in Deutsche Bank’s response. The Depository Trust and Clearing Corporation (DTCC) responded by letter that seven of the eight bond certificates were deposited in its account on June 13, 1996, and were processed out due to a full call on January 13, 1997, and that the DTCC participant that deposited and received the certificates was Prudential. The letter further states that DTCC “engages in the business of

effectuating the transfer and pledge by computerized book-entry of securities deposited with it by its Participants (who are financial institutions such as brokerage firms and banks, not individuals) [and that] it has no knowledge as to whether the Participant is holding such securities for its own account or others. As a result (DTCC) has no information about the beneficial owners of the certificates identified in the subpoena.”

In its proposed order to show cause, plaintiffs assert that Deutsche Bank should be added as a party since “although it technically responded to its Subpoena, it has not shared useful information as far as proving to whom the interest on the bonds in question have been paid.” In support of the order to show cause plaintiffs submit, *inter alia*, a letter dated February 16, 2013, from Deutsche Bank to plaintiff’s counsel, which states that the “it is against client confidentiality policies” to provide information on coupons that the Bank has paid out, and that the coupons at issue “were already paid out.” In her affidavit in support of the proposed order to show cause, Irene White states that the letter from Deutsche Bank “shows that the interest on the bonds, represented by the coupons attached to the bonds, was not paid to New York State as Abandoned Property but was paid to whoever submitted the coupons for payment between ... 1973 and 1997 [and that] Deutsche Bank admits to being privy to details as to who presented the coupons for payment and to whom in the interest was paid since 1973” (White Aff. ¶’s 9, 10). Significantly, however, the February 2013 letter from Deutsche Bank was written before this court issued a subpoena for the relevant information.

Furthermore, while the court recognizes plaintiffs’ desire to learn the identity of the person(s) obtaining payment of the interest on the Bonds and to be made whole, allegations regarding Deutsche Bank’s failure to provide information do not give rise to a cause of action against the bank, which was entitled to pay the holder of the coupons the interest on the Bonds,

which were bearer instruments. See § 8-102 (a)(2) of New York Uniform Commercial Code. Moreover, that the documentary evidence provided by Deutsche Bank in response to the subpoena identified entities which do not have information about transactions and accounts from 1990's does not provide a basis for a claim against Deutsche Bank or mean that the information provided was incomplete, inaccurate or otherwise suspect. Likewise, the absence of records before 1992 is insufficient to show that Deutsche Bank did not adequately respond to the subpoena.

Finally, while Mrs White's affidavit submitted with the proposed order to show cause amplifies certain statements made in her previous affidavit submitted with the prior order to show cause seeking to add Prudential as a defendant, for the reasons explained above, these statements are insufficient to provide a meritorious basis for the proposed claims against Prudential.

Conclusion

In view of the above, it is

ORDERED that plaintiffs' motion for permission to file and serve a supplemental summons and second amended complaint on Prudential and for related relief (motion seq 003) is denied; and it is further

ORDERED that Prudential's cross motion for sanctions is denied; and it is further

ORDERED that the first amended complaint is dismissed; and it is further

ORDERED that this court declines to sign the proposed order to show cause filed under motion sequence no. 007.

DATED: May 25 2016


HON. JOAN A. MADDEN
J.S.C.