UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Doctors Hospital of	)	
Hyde Park, Inc.,	)	Chapter 11
	)	Case No. 00 B 11520
Debtor.	)	
	)	
______________________________	)	
	)	
	)	
Gus A. Paloian, Chapter 11 Trustee of	)	
Doctors Hospital of Hyde Park, Inc.,	)	
	)	
Plaintiff,	)	
	)	Adversary No. 02 00363
v.	)	
LaSalle Bank National Association,	)	
f/k/a LaSalle National Bank,	)	
as Trustee for Certificate Holders	)	
of Asset Securitization Corporation	)	
Commercial Pass-Through Certificates,	)	
Series 1997, D5,	)	
Defendant.	)	

Expert Report of Craig A. Wolson

1. INTRODUCTION AND QUALIFICATIONS

1.1 I have been retained by ORIX Capital Markets, LLC, as special servicer for LaSalle Bank National Association, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation Mortgage Pass-Through Certificates, Series 1997, D5, Defendant in this case, to testify as an expert concerning the structure of securitization financing transactions.

1.2 I am Of Counsel to the law firm of Tully Rinckey PLLC in Albany, NY and Washington, DC and the Law Offices of John F. Lang in New York City. In addition, I am on the roster of arbitrators of the American Arbitration Association; I was chosen for this role in particular because of my expertise in structured finance.

1.3 A copy of my Curriculum Vitae is attached hereto as Appendix A. As noted in my Curriculum Vitae, I attended the University of Michigan Law School, where I was an editor of the *Michigan Law Review*. I was licensed as an attorney in the State of New York in 1975. I began my legal career with the New York law firm of Shearman & Sterling. Thereafter, I was employed by Thomson McKinnon Securities Inc. as Vice President and Assistant General Counsel, by J.D.Mattus Company, Inc. as Vice President, Secretary and General Counsel and by Chemical Bank as Vice President and Assistant General Counsel.

1.4 Beginning in 1995, I worked at several law firms including Mayer Brown & Platt, Brown & Wood LLP and Cadwalader Wickersham & Taft, LLP, where my practice focused on securitization and other financing transactions. I have been a member of The New York City Bar Association's Structured Finance Committee since 2004 and served as the Chairman of the Committee from 2004-2008; the Committee consists, on a revolving basis, of 35 of the leading structured finance attorneys in the United States. I have co-authored and/or edited numerous articles on securitization financing, and I have spoken at or moderated several seminar panels relating to structured finance. Appendix B lists such articles and seminars. I have acted as an expert witness and/or consultant in numerous cases involving collateralized debt obligations, mortgage-backed securities and other types of securitization financing structures. In 2006 I was chosen by *Law and Politics Magazine,* based on a survey of my peers, as a New York Super Lawyer. I have been included in *Who's Who in the World* since 1993*, Who's Who in America* since 1992*, Who's Who in Finance and Business* since 1993 *and Who's Who in American Law* since 1986*.*

1.5 This report explains the basics of securitization, that securitization is a regular and unexceptional tool and why securitization creates benefits for lenders and borrowers alike.

1.6 In preparing this Report, I have relied on my general knowledge, training, experience, and expertise. Both my analysis and the factual observations I make in this Report are, subject to paragraph 1.7 below, based solely on the foregoing.

1.7 My work on this matter is ongoing. I may review additional materials or conduct further analysis. I reserve the right to update, refine, or revise my opinion as appropriate.

1.8 I am being compensated for my time in this matter at my normal billing rate, currently $575 per hour ($675 per hour for depositions and trial testimony). This compensation is not contingent upon the nature of my findings or on the outcome of this litigation. I have worked approximately 70 hours to date, and I anticipate working further in connection with this litigation as needed.

2. THE BASICS OF SECURITIZATION

2.1 By "securitization", or "structured finance"[1] I mean financing transactions that utilize special-purpose vehicles ("SPVs")--sometimes interchangeably called special-purpose entities or "SPEs"--under which the financing from the lender to the SPV is repaid by the SPV from cash flows of receivables or other financial assets transferred to the SPV. Generally speaking, a receivable is a right to receive payment from another. It is this right to payment that a lender in a securitization financing primarily looks to for repayment of principal and interest. Although securitization financing can involve a wide range of cash-flow assets, for ease of reference I will refer to cash-flow assets herein as "receivables".

2.2 The first securitization transaction to be identified as such took place in the early 1970s and involved pools of mortgages originated by savings and loan associations. These institutions needed to convert the long-term payments under the mortgages owned by them into cash in order to finance local housing demands. To achieve this, the Government National Mortgage Association ("Ginnie Mae") facilitated securitizations through SPVs in the form of trusts holding mortgage pools and issuing trust certificates to investors. By 1992, securitization had become so important to the American economy that the Securities and Exchange Commission characterized it as "becoming one of the dominant means of capital formation in the United States".[2] Thereafter, the use of securitization exploded so that many, if not most, major banks, financial institutions, and companies throughout the world routinely engaged in securitization transactions, both domestic and international. In 1997 securitization financing was an economically important and widely used financing technique.

2.3 Securitization financing is premised on the concept that a lender can look to cash-flow assets transferred to an SPV for payment and remove from the lender's risk analysis the potential bankruptcy of the entity that generates the cash-flow assets. Elimination of the bankruptcy risks separates securitization financing from a secured loan, pursuant to which the loan is made directly to the entity that generates the cash-flow assets and is secured by those and, sometimes, other assets.

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[1] The two terms are often used interchangeably. The term "structured finance" is actually a broader term than "securitization". In fact, "securitization" transactions are a subset of "structured finance". Because securitizations constitute the main subset of structured finance and because securitization is the more commonly used term, I will use the terms "securitization" and "structured finance" interchangeably throughout this report .

[2] Investment Company Act, Release No. 19105, [1992 Transfer Binder] Fed. Sec. L. Rep.(CCH) P 85,062, at 83,500 (Nov. 19, 1992) (provided in connection with the issuance of Rule 3a-7 under the Investment Company Act of 1940).

2.4 The principal feature of securitization is the separation of the credit quality of receivables, which serve as collateral for the loan by the lender, from the credit risk of the entity that transfers the receivables. Because of such separation, securitization enables a company originating receivables (the "originator") to obtain lower-cost financing.

2.5 The process of separation involves two fundamental aspects. First, the receivables are transferred by the originator to an SPV, usually newly-formed, either pursuant to an outright sale or pursuant to a capital contribution. The transfer to the SPV is structured and documented so that the transfer is "absolute" in the sense that the entity that originates the receivables retains no legal or equitable interest in the receivables following the transfer. In the world of structured finance this is commonly referred to as a "true sale" or "true contribution". A Uniform Commercial Code financing statement is filed, as required by Article 9 of the Uniform Commercial Code, reflecting the absolute transfer of the receivables to the special purpose entity and putting all existing and future creditors and the rest of the world on notice of the transfer (Article 9 covers sales of accounts in addition to granting of security interests). In the case of a transfer of receivables, sale or contribution of receivables is evidenced by the terms of the relevant sale or contribution agreement. The objective is to remove the receivables from the bankruptcy estate of the transferor should it subsequently become a debtor in a bankruptcy proceeding.

2.6 Second, the SPV is structured so that it is a "bankruptcy remote" entity. A "bankruptcy remote" entity is one that is designed to have a "remote" chance of becoming a debtor in bankruptcy, either by a voluntary bankruptcy filing by the SPV itself or by an involuntary bankruptcy filing initiated by creditors. Despite this premise, however, the SPV is not "bankruptcy proof." The SPV remains at risk of being a debtor in a bankruptcy proceeding if the SPV's assets perform poorly and it defaults on the loans with its lender. If the lender were to seek to enforce its rights against the SPV and its assets (the lender's collateral), the SPV may have reason to file a voluntary bankruptcy proceeding. Likewise, the lender could seek to initiate an involuntary bankruptcy against the SPV. The SPV is additionally structured to minimize the risk that, if the originator parent were to become a debtor in bankruptcy, the bankruptcy court having jurisdiction over the originator parent would use the court's power to consolidate substantively the assets and liabilities of the SPV with those of the originator parent.

2.7 In order to effectuate the "bankruptcy remote" structure, the activities of the SPV typically are limited to (a) owning the receivables, (b) borrowing specifically limited to the relevant transaction and (c) taking actions consistent with the two preceding activities. Specific provisions in the organization documents and loan documents typically prohibit the SPV from engaging in any activities that are likely to produce creditors other than the intended lender(s) in the securitization; the SPV clearly is not intended to be an operating company. This helps to ensure that there are no creditors of the SPV which could file an involuntary bankruptcy proceeding against the SPV. In addition, the corporate governance documents of the SPV typically restrict the ability of the SPV to file a voluntary bankruptcy proceeding. This is

accomplished by requiring the affirmative vote of a person independent of the originator before the SPV can file for bankruptcy; in the case of a corporate SPV, this person would be an independent director on the board of directors while, in the case of an LLC, this person would be an independent manager. In addition, the activities of the SPV are structured to ensure that the SPV is a separate and distinct legal entity. As noted above, these measures do not make the SPV "bankruptcy proof" or make it impossible for the SPV to become a debtor in a voluntary or involuntary bankruptcy proceeding. Such restrictions would likely be void against public policy. Rather, these measures merely make the likelihood of such a bankruptcy proceeding "remote."

2.8 When a borrower becomes a debtor in a bankruptcy case, the bankruptcy process can involve risks to a secured lender, even when its liens and security interests in the assets of its borrower are properly perfected and non-avoidable. Such risks flow from the "automatic stay" that arises when a bankruptcy case is commenced, restricting the ability of the secured lender to obtain repayment or to realize the value of the lender's collateral, and can include (a) the borrower's right to use or sell the lender's collateral during the bankruptcy case and (b) the delay in repayment of the lender's loans which is attendant to the bankruptcy process. The secured lender must also incur expenses to protect its interests in the bankruptcy case. By minimizing these risks through a "bankruptcy remote" structure, the lender can provide lower-cost loans to the SPV.

2.9 Once receivables are transferred to the SPV, the SPV grants a security interest in the receivables to the lender to secure the loan, a Uniform Commercial Code financing statement is filed reflecting the SPV's grant of a security interest to the lender, and the loan is made to the SPV. The lender deals with the SPV as the lender's borrower and as the absolute owner of the receivables.

2.10 The premise of securitization financing is that, if the entity that generates the receivables becomes a debtor in a bankruptcy case, the receivables will not become part of such entity's bankruptcy estate. Therefore, the seller would not be able to use the proceeds of those receivables if it became a debtor, and the lender would not need to lift the automatic stay in the seller's bankruptcy case in order to collect the receivables.

2.11 In securitization financing, the SPV is often wholly-owned by the entity that generates the receivables.[3] The entity that originates the receivables participates in the benefits of financing in various ways, including receipt of cash payments and/or distributions or other funds made by or at the direction of the SPV in accordance with applicable law in exchange for the transfer of the receivables. In addition, the entity that originates the receivables owns some or all of the equity interest of the SPV; in this situation, even if the originating entity were to receive no cash payments or distributions, it would still receive value for the transfer: the increase in value of

[3] There are many different permutations of structured finance structures. It is not always the case that the parent of the SPV is the originator.

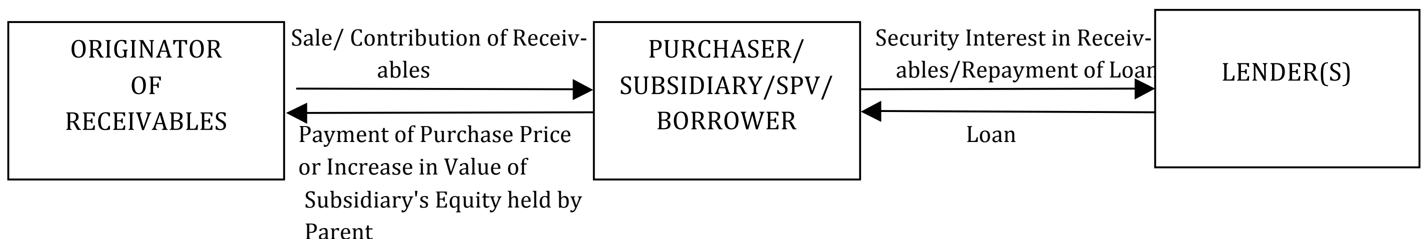
such equity. This equity ownership, of course, is to be distinguished from owning the receivables themselves, which are owned by the SPV.

2.12 In securitization financing, the SPV is usually a corporate entity, a limited liability company, or a statutory trust, that is newly formed at the time of the consummation of the loan. The SPV does not engage in "operations" but, rather, is formed for the sole and exclusive purpose of owning the receivables and borrowing funds from the lender. Therefore, a financial statement of an SPV in a simple securitization structure (see, for example, Section 2.15 below) would reflect, as assets, only the receivables (and any cash proceeds thereof or of the loans to the SPV held by the SPV) and, as liabilities, only the loans due to the lender (and unpaid professional expenses, if any). Because of the SPV's very limited function, there is no need for the SPV to have its own employees. It is not uncommon for employees of the entity that generates the receivables also to act on behalf of the SPV.

2.13 It is not uncommon for structured finance loans to be made to the SPV on a revolving basis. In this circumstance, the entity that generates the receivables transfers existing receivables to the SPV on the original closing date and agrees on the closing date that additional receivables generated thereafter shall be transferred to the SPV pursuant to the documents executed on the closing date with minimal further documentation or action by the parties.

2.14 Securitization lenders rely on the securitization structure, including the separateness of the SPV and the absolute transfer of the receivables to the SPV. Securitization lenders commonly receive legal opinions at closing which opine that the SPV has been duly formed and is validly existing, that the receivables have been transferred to the SPV in a "true sale" or "true contribution", and that the SPV will not be substantively consolidated into the entity that sells or contributes the receivables if it becomes a debtor in a bankruptcy case. These legal opinions are usually supported by an "officer's certificate" that attests to factual matters; the law firm that delivers these opinions usually relies heavily on such certificate. In addition, securitization lenders rely on representations and warranties in the transaction documents, including representations concerning the ongoing separateness of the SPV (the breach of which give rise to default in favor of the securitization lender). By isolating the receivables in the SPV, and eliminating the credit risk of the entity that generates the receivables, securitization financing permits securitization lenders to make loans to SPVs at more favorable rates of interest than loans made directly to operating entities.

2.15 The following is an illustration of a fairly simple securitization structure:



3 STANDARD SECURITIZATION DOCUMENTS AND COVENANTS

3.1 Securitizations take many shapes and forms. However, there are certain documents that I would expect to see executed and/or delivered and certain language that I would expect to see in or in conjunction with such documents in a securitization of the type at issue--that is, a securitization of receivables that are not related to real estate loans and mortgages. In this section, I will set out a list of these.

3.2 The documents I would expect to see are of the following types (often these documents are combined, but, for simplicity, I will list them separately):

a. An agreement under which the originator of the receivables sells or contributes the receivables to an SPV. The receivables can be sold or contributed entirely at the beginning of the transaction or partially at the beginning and partially at one more times between the beginning and the end (usually the maturity of the relevant loan) of the transaction. Typically such an agreement would have a number of representations and warranties relating to the originator of the assets as well as the assets themselves and a number of covenants.

b. A loan agreement between the SPV and one more lenders. If there are many lenders, often a separate agreement would be entered into appointing a trustee to stand in the place of the lenders and enforce the rights of the lender(s) against the borrower/SPV.

c. A security agreement between the borrower SPV and the lender (or trustee representing the lenders) pursuant to which the borrower will pledge most or all of its assets to secure its obligations to the lender(s).

d. A servicing agreement among the borrower, the lender(s) and the servicer under which the servicer agrees to collect the receivables from the parties that owe money with respect to such receivables. It is very common for the originator to remain as the servicer of the assets. This is often done because the originator is very familiar with the assets and the relevant underlying obligors, because the parties do not want to confuse such obligors and because the originators want to maintain a strong relationship with such obligors on an on-going basis or to avoid disruption of customer relationships. It is also very common for the originator/servicer to be paid for performing these services out of proceeds received by the SPV/obligor from the receivables owned by it.

e. An agreement among the originator(s) of the receivables, the servicer, the borrower, the lender(s) (or a trustee on behalf of the lender(s)) and a bank agreeing that all payments under the receivables will be paid to and held by the bank and then paid over to the lenders (or a trustee on behalf of the lender(s)).

f. A UCC-1 financing statement reflecting the absolute transfer of the receivables from the originator(s) to the SPV (in accordance with the provisions of Article 9 of the U.C.C. relating to the sale of accounts).

g. A precautionary UCC-1 financing statement showing the borrower as the lender and the originator as the borrower just in case a court, despite the clearly stated intent of the parties, decides that the relevant transaction was, rather than a sale or contribution from the originator to the SPV, as the parties intended, a loan by the SPV to the originator secured by the receivables.

h. A UCC-1 financing statement to perfect the security interest granted to the lender(s) (or trustee on behalf of the lender(s)) under the security agreement.

i. An opinion letter to the effect that the transfer of the receivables from the originator to the SPV constitutes a "true" sale or contribution.

j. An opinion letter to the effect that, in the event of bankruptcy of the originator parent, the wholly -owned SPV would not be consolidated with the originator parent and the assets of the SPV would not be made available to the creditors of the originator parent.

k. Documents reflecting the due formation and good standing of the SPV.

l. An opinion letter with respect to same.

3.3 In order for the relevant firm to be able to render the opinion referred to in 3.2i above, the relevant documents should do such things as the following:

i. The originator(s) and the SPV would expressly state that they intend the transaction to constitute a full and complete transfer of ownership of receivables.

ii. The originator should not have any obligation to pay principal or interest to the SPV or the lender(s).

iii. There should be little or no recourse to the originator for credit risk (that is, the risk that the financial assets sold will not be paid in full) or interest-rate risk (that is, the risk that the yield on the assets sold will be higher or lower than future market rates) relating to the receivables. In other words, the SPV should have no recourse against the originator(s) arising from the financial inability of underlying obligors represented by receivables, and there should not be provisions that could be characterized as an interest charge or that could otherwise be characterized as recourse for yield protection. Recourse against the originator for breaches of representations with respect to the receivables (for example, that no more than 10% of the receivables are overdue by more than 30 days) or the originator itself (for example, that the originator owns the

receivables free and clear of all liens and other encumbrances at the time of the transfer) is acceptable.

iv. There should be little or no right of the originator to any surplus generated by the receivables or the payment of any amount to which the SPV is entitled. This does not mean that the originator cannot participate in such surplus or amount through the originator's equity interest in the SPV (through distributions by the SPV to the originator).

v. There should be little or no right of the originator to repurchase any or all of the receivables.

vi. The originator should have little or no control over the assets post-closing (although originators often retain servicing rights without causing true sale (contribution) problems).

vii. It is helpful if the lender(s) indicate(s) that its (their) willingness to make loans to the SPV is premised on the understanding that the transfer of the receivables to the SPV are true sales/contributions.

viii. The originator and the SPV should agree that each will treat the transfer as a sale/contribution for all purposes.

ix. Neither the originator nor any of its affiliates should have any obligation to maintain the solvency of the SPV.

x. The transfer should be irrevocable, assuming that the receivables meet warranty requirements at the time of transfer.

xi. The receivables in each case should be identified.

xii. Each obligor with respect to a receivable should be informed of the transfer.

4. SUMMARY

A securitization is a financing transaction that utilizes a special purpose vehicle under which the financing is repaid from cash flows of receivables or other financial assets transferred to the SPV. Securitization financing is premised on the concept that a lender can look to cash-flow assets transferred to an SPV for payment and remove from the lender's risk analysis the potential bankruptcy of the entity that generates the cash-flow assets. Elimination of the bankruptcy risks separates securitization financing from a secured loan, pursuant to which the loan is made directly to the entity that generates the cash-flow assets and is secured by those and, sometimes, other assets.

The principal feature of securitization is the separation of the credit quality of receivables, which serve as collateral for the loan by the lender, from the credit risk of the entity that generates the receivables. The process of separation involves two fundamental aspects. First, the receivables are transferred by the originator to an SPV; the transfer to the SPV is structured and documented so that the transfer is "absolute", in the sense that the entity that originated the receivables retains no legal or equitable interest in the receivables following the transfer. The objective is to remove the receivables from the bankruptcy estate of the transferor should it subsequently become a debtor in a bankruptcy proceeding. Second, the SPV, its activities and its relationship with the transferor are structured so that the SPV itself is unlikely to become the subject of a bankruptcy case (that is, it is made "bankruptcy remote") and its assets are unlikely to be consolidated with the assets of the transferor in the event of the transferor's bankruptcy.

Securitization techniques have been used now for over 40 years. They are a very popular and widely accepted method used by originators and lenders to permit a lower cost of funds for the originator.

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Craig A. Wolson