

**Federal Hous. Fin. Agency v HSBC Fin. Corp.**

2017 NY Slip Op 30846(U)

April 24, 2017

Supreme Court, New York County

Docket Number: 651627/2013

Judge: Marcy Friedman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – PART 60

PRESENT: Hon. Marcy Friedman, J.S.C.

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FEDERAL HOUSING FINANCE AGENCY, AS  
CONSERVATOR FOR THE FEDERAL HOME  
LOAN MORTGAGE CORPORATION, on behalf  
of the Trustee of the HSI SECURITIZATION  
CORPORATION TRUST, SERIES 2007-HE2  
(HASC 2007-HE2),

Index No.: 651627/2013

DECISION/ORDER

*Plaintiff,*

– against –

HSBC FINANCE CORPORATION et al.,

*Defendants.*

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This residential mortgage backed securities (RMBS) breach of contract action alleges breaches of representations and warranties by defendants Decision One Mortgage Company, LLC (Decision One) and HSBC Bank USA, National Association (HSBC Bank) regarding the quality and characteristics of the mortgage loans underlying the securitization. Defendant Decision One originated substantially all of the underlying mortgage loans. (Am. Compl., ¶ 4.) Defendant HSBC Bank served as the securitization Sponsor and allegedly “retained contractual liability for certain ‘gap’ R&Ws [representations and warranties] that were not made by Decision One.” (Id., ¶ 5.) Defendant HSBC Finance Corporation (HSBC Finance) is alleged to be the corporate parent and alter ego of defendant Decision One, and to be vicariously liable for its obligations. (Id., ¶¶ 2 n 2, 12.) Deutsche Bank National Trust Company is Trustee of HSI Securitization Corporation Trust, Series 2007-HE2, the Trust to which the loans were conveyed. By separate motions, each of the defendants moves to dismiss the amended complaint pursuant

to CPLR 3211 (a).<sup>1</sup>

The amended complaint pleads five causes of action. The first and second causes of action, for breach of contract, are pleaded against Decision One based on its alleged breaches of representations and warranties and failures to repurchase or provide notice of defective loans. (Am. Compl., ¶¶ 120-134, 135-148.) The fourth and fifth causes of action, also for breach of contract, are pleaded against HSBC Bank based on its alleged separate breaches of representations and warranties and failures to repurchase or provide notice of defective loans. (Id., ¶¶ 163-173, 174-185.) The third cause of action seeks a declaration that Decision One “is required to reimburse the Trustee for all losses resulting from Decision One’s R&W breaches, as well as the expenses of enforcing its remedies, including the costs of this action, attorneys’ fees and other such expenses.” (Id., ¶ 162.) The first, second, and third causes of action are also pleaded against HSBC Finance, as Decision One’s alleged alter ego. (Id., ¶¶ 122, 137, 151.)

The agreements that govern the parties’ claims are the following: a Master Mortgage Loan Purchase and Interim Servicing Agreement (Transfer Agreement), dated as of October 27, 2006, entered between Decision One as Seller and HSBC Bank as Initial Purchaser (Rudge Aff., Exh. 1); an Assignment, Assumption and Recognition Agreement (AARA), dated as of April 1, 2007, entered between and among Decision One as the Company, HSBC Bank as Assignor, and HSI Asset Securitization Corporation (HSI) as Assignee (Rudge Aff., Exh. 3); a Mortgage Loan Purchase Agreement (MLPA), dated as of April 1, 2007, entered between HSI as the Company, and HSBC Bank as Seller (Rudge Aff., Exh. 2); and a Pooling and Servicing Agreement (PSA),

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<sup>1</sup> The motions were briefed before the Court of Appeals decision in ACE Securities Corp. v DB Structured Products, Inc. (25 NY3d 581 [2015], affg 112 AD3d 522 [1st Dept 2013]). At the request of the parties, the court issued an order, dated September 11, 2014, holding the motions in abeyance pending the Court of Appeals decision. (NYSCEF No. 84.) Subsequent to that decision, the court restored the motions to the calendar and heard oral argument. (Order, dated Mar. 31, 2016 [NYSCEF No. 166].)

dated as of April 1, 2007, between and among HSI as Depositor, Wells Fargo Bank, N.A. as Master Servicer, OfficeTiger Global Real Estate Services Inc. as Credit Risk Manager, and the Trustee (Rudge Aff., Exh. 4).

The relevant facts and procedural history are not disputed. Federal Housing Finance Agency (FHFA), acting as conservator for The Federal Home Loan Mortgage Corporation (Freddie Mac), a certificateholder in the Trust, commenced this action by filing a summons with notice naming Decision One and HSBC Finance as defendants on May 3, 2013, six years minus one day after the closing date of the securitization. The Trustee, purporting to substitute itself as plaintiff, filed the complaint and a supplemental summons naming HSBC Bank as a defendant on July 31, 2013. The Trustee filed the amended complaint on November 15, 2013.

Defendant Decision One moves to dismiss the amended complaint pursuant to CPLR 3211 (a) (1), (5) and (7) on the grounds, among others, that the Trustee's claims against it are time-barred and defectively pleaded. Defendant HSBC Bank moves to dismiss, pursuant to CPLR 3211 (a) (5), solely on the ground that the claims against it are time-barred. Defendant HSBC Finance moves to dismiss, pursuant to CPLR 3211 (a) (1) and (7), on the ground that the allegations of the amended complaint do not sufficiently plead that it is the alter ego of or vicariously liable for the obligations of Decision One. HSBC Finance also contends that, for the reasons stated in Decision One's motion to dismiss, "the underlying claims should be dismissed on the merits." (HSBC Finance Memo. In Supp., at 2.)

The issues raised by defendants' motions have largely been decided by this court, and in many instances, by the appellate courts, on substantially similar pleadings involving substantially similar agreements. The court will therefore not discuss those issues at length here, and will instead refer to prior authority.

The court holds that the Trustee's breach of representation and warranty claims accrued, at the latest, on May 4, 2007, the closing date of the securitization. (See ACE Secs. Corp. v DB Structured Prods., 25 NY3d 581, 589 [2015] [ACE].) As defendant HSBC Bank was not named as a defendant in this action until the filing of the supplemental summons and complaint on July 31, 2013, the breach of representation and warranty claims against it are untimely under the six year statute of limitations. Moreover, even assuming that FHFA's May 3, 2013 summons with notice against defendants Decision One and HSBC Finance was timely filed, FHFA failed to comply with the no-action clause in the governing Pooling and Servicing Agreement before bringing suit (see PSA, § 12.07), and therefore lacked standing to commence this action. The Trustee's claims for breaches of representations and warranties do not relate back to FHFA's ineffective summons with notice and are therefore untimely. (See Federal Hous. Fin. Agency v Morgan Stanley ABS Capital I Inc., 146 AD3d 566, 567 [1st Dept 2017] [FHFA (Morgan Stanley)], affg Federal Hous. Fin. Agency v Morgan Stanley ABS Capital I Inc., 2016 WL 1587345 [Sup Ct, NY County, Apr. 12, 2016, No. 650291/2013] [FHFA (NC1)] and Federal Hous. Fin. Agency v Morgan Stanley Mtge. Capital Holdings LLC, 2016 WL 1587344 [Sup Ct, NY County, Apr. 12, 2016, No. 651959/2013] [FHFA (NC3)];<sup>2</sup> U.S. Bank N.A. v DLJ Mtge. Capital, Inc., 141 AD3d 431, 432-433 [1st Dept 2016]; Nomura Asset Acceptance Corp. Alternative Loan Trust v Nomura Credit & Capital, Inc., 139 AD3d 519, 520 [1st Dept 2016]; ACE Secs. Corp. v DB Structured Prods., 112 AD3d 522, 523 [1st Dept 2013], affd on other grounds 25 NY3d 581, supra.)

<sup>2</sup> This court has issued four opinions that address the standing of FHFA to commence RMBS breach of contract actions: FHFA (NC1) and FHFA (NC3), which were affirmed by FHFA (Morgan Stanley), as well as Federal Housing Finance Agency v Equifirst Corp. (2016 WL 3906070 [Sup Ct, NY County, July 19, 2016, No. 650692/2013] [FHFA (BC2)]) and Federal Housing Finance Agency v UBS Real Estate Secs., Inc. (2016 WL 4039321 [Sup Ct, NY County, July 27, 2016, No. 651282/2012] [FHFA (OA1)]), which have not been the subject of appellate decisions (collectively, the FHFA Opinions).

For the reasons stated in the FHFA Opinions, and as confirmed by recent decisions of the Appellate Division and the United States Court of Appeals for the Second Circuit, the breach of representation and warranty claims are not rendered timely by an accrual clause set forth in section 7.03 of the MLPA. (See Deutsche Bank Natl. Trust Co. v Flagstar Capital Mkts. Corp., 143 AD3d 15, 16, 20-23 [1st Dept 2016]; Deutsche Bank Natl. Trust Co. v Quicken Loans Inc., 810 F3d 861, 866-867 [2d Cir 2015] [Quicken Loans]; FHFA [NC1], 2016 WL 1587345, at \* 4-5 [citing additional authorities], affd on other grounds 146 AD3d 556, supra.) Nor are they timely under the federal Housing and Economic Recovery Act of 2008 (HERA). (Quicken Loans, 810 F3d at 868-869; FHFA [NC1], 2016 WL 1587345, at \* 5, affd on other grounds 146 AD3d 556, supra.)

The court further rejects the Trustee's argument that its breach of representation and warranty claims against HSBC Bank did not accrue until it exercised what it characterizes as a "contractual option" under MLPA § 4 to require HSBC Bank to repurchase defective loans.<sup>3</sup> (See Tee.'s Memo. In Opp. To HSBC Bank Motion, at 3-4.) Far from transforming the MLPA into an "option contract," the section 4 repurchase protocol merely provided the Trustee with the right, during a limited period following the closing date, to elect between the alternative remedies of substitution and repurchase for any breach of a representation or warranty. The

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<sup>3</sup> Section 4 of the MLPA provides, in pertinent part:

"Within 30 days of the earlier of either discovery by or notice to [HSBC Bank] of any breach of any of the foregoing representations or warranties that materially and adversely affects the value of any Mortgage Loan, [HSBC Bank] shall use its best efforts to cure such breach in all material respects and, if such defect or breach cannot be remedied, [HSBC Bank] shall, at the [Depositor's] option as specified in writing and provided to [HSBC Bank], (i) if such 30 day period expires prior to the second anniversary of the Closing Date, remove such Mortgage Loan from the Trust Fund and substitute in its place a Substitute Mortgage Loan; or (ii) repurchase such Mortgage Loan at the Repurchase Price."

The MLPA was entered into between HSBC Bank and HSI, the Depositor. The Depositor's rights under the MLPA were assigned to the Trustee in section 2.01 of the PSA.

provision does not serve to distinguish the case from ACE, in which the Court of Appeals held that the cure or repurchase obligation—a remedy for a breach of a representation and warranty—is not a substantive condition precedent that delays accrual of a cause of action for such breach. (25 NY3d at 596-599.)<sup>4</sup>

The court also holds that the Trustee cannot prevail on its claim that defendants are equitably estopped from invoking the statute of limitations based on their alleged failure to notify the Trustee of breaches of representations and warranties. As is typical in agreements governing RMBS transactions, the agreements here impose an affirmative obligation upon Decision One and HSBC Bank to notify the Trustee of their discovery of breaches of representations and warranties.<sup>5</sup> (See Transfer Agreement, § 7.03; MLPA, § 4; PSA, § 2.03 [d].) However, the amended complaint fails to allege, or plead facts to support a reasonable inference, that defendants lulled the Trustee into inaction and that defendants' silence, among other things, prevented the Trustee from discovering defects in the loans or from bringing suit for breaches of representations and warranties within the statute of limitations. On the reasoning and authorities cited in this court's prior decision, the court holds that the Trustee cannot invoke the protection of equitable estoppel. (See Deutsche Bank Natl. Trust Co. v Flagstar Capital Mkts. Corp., 2015 WL 1646683, \* 3-4 [Sup Ct, NY County, Apr. 13, 2015, No. 653048/2013] [this court's prior decision to the same effect, collecting authorities], affd on other grounds 143 AD3d 15, supra;

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<sup>4</sup> The Trustee also argues that its claims are timely because the agreements do not “fix a time for performance” and the statute of limitations does not begin to run until a party makes a demand for performance. (See Tee.'s Memo. In Opp. To HSBC Bank Motion, at 4; Tee.'s Memo. In Opp. To Decision One Motion, at 5-6.) This argument is similarly foreclosed by ACE.

<sup>5</sup> Since the briefing of these motions, the Appellate Division has held that an RMBS securitizer's “alleged breach of its contractual duty to notify the Trustee of defective loans gives rise to an independent, separate claim for breach of the parties' agreements . . . .” (Morgan Stanley Mtge. Loan Trust 2006-13ARX v Morgan Stanley Mtge. Capital Holdings LLC, 143 AD3d 1, 4 [1st Dept 2016]; Nomura Home Equity Loan, Inc. v Nomura Credit & Capital, Inc. (133 AD3d 96, 108 [1st Dept 2015]; see also infra, at 11 [addressing the Trustee's failure to notify claims].)

Bank of N.Y. Mellon v WMC Mtge., LLC, 53 Misc3d 967, 971-974 [Sup Ct, NY County, Sept. 7, 2016, Kornreich, J.]

The Trustee further contends that FHFA's filing of the summons with notice preserved the Trustee's claims for statute of limitations purposes because the summons with notice was brought "on behalf of the Trustee." (See Pl.'s Memo. In Opp. To Decision One Motion, at 15.) This court and the Appellate Division have previously rejected this contention, albeit on somewhat different reasoning. (FHFA [NC1], 2016 WL 1587345, at \* 4, affd 146 AD3d 556, supra.)

In a letter submitted after the briefing and at the oral argument of the motions, the Trustee made two further arguments that were not explicitly made in the briefs. (See Ltr. from Zachary D. Rosenbaum [counsel for the Trustee], dated May 18, 2016 [NYSCEF No. 185]; Tr. of Oral Arg., at 28-37 [Tr.] [NYSCEF No. 187].) Even if these arguments may be considered, they are without merit.

First, the Trustee contends that FHFA's unauthorized summons with notice was ratified by the Trustee, and any standing defect retroactively cured, when the Trustee filed the complaint. In FHFA (OA1), this court rejected a similar argument by the trustee that it could unilaterally waive compliance with the 60-day waiting period in the PSA no-action clause because the clause was made for its sole benefit. Adopting the reasoning of Justice Hellerstein in yet another FHFA-commenced RMBS action, Federal Housing Finance Agency v WMC Mortgage, LLC (2015 WL 9450833 [SD NY, July 10, 2015, No. 13 Civ 584]), this court held that no-action clauses also protect fellow certificateholders and potential defendants, and that the trustee therefore could not unilaterally waive compliance with the provision. (FHFA [OA1], 2016 WL 4039321, at \* 2-3.)



A similar result is warranted in this case. The Trustee cites general secondary authority on agency law in support of its ratification argument.<sup>6</sup> It does not cite any case applying the principal-agent ratification doctrine to a securitization trustee's approval of an unauthorized certificateholder action following the expiration of the statute of limitations. Nor does the Trustee offer any reason why it could not itself have brought this suit within the required period. A rule permitting the self-serving ratification proposed by the Trustee would be vulnerable to abuse and could in effect significantly extend the statute of limitations applicable to claims by trustees. The Trustee's argument also appears to conflict with the Appellate Division's holding in ACE that "the substitution of the trustee as plaintiff [does not] permit us to deem timely filed the trustee's complaint." (112 AD3d at 523, affd on other grounds 25 NY3d 581, supra.)

The Trustee further contends that the no-action clause in this case is narrower than the no-action clauses considered by the Appellate Division in its RMBS decisions, and by this court in the FHFA Opinions. Section 12.07 of the PSA here bars certificateholders, including Freddie Mac, from "institut[ing] any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement [i.e., the PSA]" unless its requirements are satisfied. The Trustee contends that it is suing to enforce representations and warranties made in agreements other than the PSA—specifically, the Transfer Agreement and AARA—and that the no-action clause therefore does not apply. (See Tr., at 28-37.)

While no-action clauses are to be "strictly construed" (Quadrant Structured Prods. Co., Ltd. v Vertin, 23 NY3d 549, 560 [2014]), this contention by the Trustee is unpersuasive. It is

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<sup>6</sup> In particular, the Trustee cites the following general discussion on ratification in New York Jurisprudence:

"The doctrine of ratification applies when an agent acts outside the scope of his or her actual authority, but the agent's acts are later ratified by the principal and therefore attributable to the principal. If the person in whose name an act was performed subsequently ratifies or adopts what has been so done, the ratification relates back and supplies original authority to do the act."

(2A NY Jur 2d, Agency, § 181 [footnote and citation omitted].)

true that Decision One's representations and warranties were made in governing agreements other than the PSA.<sup>7</sup> In the AARA, Decision One also "acknowledge[d] and agree[d] that from and after the date hereof . . . [Decision One] shall look solely to the Trust for performance of any obligations of [HSBC Bank] insofar as they relate to the enforcement of the representations, warranties and covenants with respect to the Mortgage Loans," and "the Trust (including the Trustee, the Securities Administrator and the Master Servicer acting on the Trust's behalf) shall have all the rights and remedies available to [HSBC Bank], insofar as they relate to the Mortgage Loans, under the [Transfer] Agreement, including, without limitation, the enforcement of the . . . remedies with respect to breaches of representations and warranties set forth in the [Transfer] Agreement . . . ." (AARA § 2.)

The PSA, however, was entered into contemporaneously with the AARA, and was the means by which the Trustee was assigned rights, title and interest in the mortgage loans, as well as the right to enforce the remedies under the other governing agreements for breaches of representations and warranties.<sup>8</sup> (PSA § 2.01.) The Trustee itself pleads that it acquired the mortgage loans and its interest in defendants' representations and warranties from the Depositor under the PSA. (Am. Compl. ¶ 17.) In purporting to commence this action "on behalf of the Trustee," FHFA can have had no greater rights than the Trustee had under the governing

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<sup>7</sup> The Trustee's breach of representation and warranty claims against HSBC Bank are based on representations and warranties set forth in section 4 (a) of the MLPA. (See Am. Compl., ¶¶ 35, 167.) The Trustee's breach of representation and warranty claims against Decision One are based on representations and warranties set forth in sections 7.01 and 7.02 of the Transfer Agreement and restated in section 5 (f) of the AARA. (See also Am. Compl., ¶¶ 26-28, 33.)

<sup>8</sup> See Transfer Agreement §§ 7.01 & 7.02 (Decision One makes R&Ws to HSBC Bank); AARA §§ 1, 2, 5 (f) (HSBC Bank and Decision One assign their rights under the Transfer Agreement to the Depositor [HSI]; Decision One agrees that the Trust will have HSBC Bank's rights under the Transfer Agreement; and Decision One restates R&Ws for the benefit of HSBC Bank, the Depositor, and the Trust); MLPA § 3 & Exh. 2 (HSBC Bank makes R&Ws to the Depositor and assigns its rights under the AARA to the Depositor); PSA § 2.01 (the Depositor assigns its rights under the MLPA and the Transfer Agreement to the Trustee).

agreements. To hold that FHFA's suit is not a suit "upon or under or with respect to" the PSA (see PSA, § 12.07) would thus be to ignore the structure of this transaction.

Moreover, the PSA contains a no-action clause setting forth specific requirements that certificateholders must satisfy before bringing suit on behalf of the Trust. The Trustee does not claim that FHFA was relieved from the requirements of the no-action clause. (See FHFA [Morgan Stanley], 146 AD3d at 567-568.) Nor does the Trustee cite any other contractual provision which it contends afforded certificateholders, including Freddie Mac, standing to enforce the Trust's remedies against Decision One and HSBC Bank for breaches of representations and warranties.<sup>9</sup>

The court accordingly holds that the first, second, fourth, and fifth causes of action for breach of contract are untimely to the extent that they plead breaches of representations and warranties. These causes of action will also be dismissed to the extent that they plead breaches of contract based on defendants' purported failure to repurchase defective loans. Under ACE, "the cure or repurchase obligation [i]s not an independently enforceable right." (25 NY3d at 599.) In addition, for the reasons stated in this court's decision in ACE Securities Corp. v DB Structured Products, Inc. (52 Misc3d 343, 346 [Sup Ct, NY County 2016]), the Trustee will not be entitled to avail itself of the benefits of the CPLR 205 (a) savings provision. The claims for breaches and representations and warranties and for defendants' alleged failures to repurchase defective loans will therefore be dismissed with prejudice.

The remaining branches of the motions to dismiss will be denied without prejudice. To the extent that the breach of contract claims are based on defendants' alleged failure to notify the

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<sup>9</sup> Even assuming that the AARA § 2 afforded the Trustee rights separate from those assigned to it under the PSA to enforce representations and warranties, the AARA does not mention certificateholders and does not authorize the action taken by FHFA in this case.

Trustee of defective loans, defendants may seek dismissal of such claims in connection with the coordinated briefing requested by this court following the Appellate Division's decisions in Nomura Home Equity Loan, Inc. v Nomura Credit & Capital, Inc. (133 AD3d 96 [1st Dept 2015], appeal docketed [APL-2016-00024]) and Morgan Stanley Mortgage Loan Trust ARX v Morgan Stanley Mtge. Capital Holdings LLC (143 AD3d 1, 3-4 [1st Dept 2016]). It is noted that bellwether briefing on failure to notify issues is currently in progress in FHFA (NC1) and FHFA (NC3).

The branch of the motion to dismiss the third cause of action for indemnification will also be denied without prejudice. The parties dispute the applicability of U.S. Bank N.A. v DLJ Mortgage Capital, Inc. (140 AD3d 518, 519 [1st Dept 2016] [DLJ]) to the indemnification claim at issue. (See Ltr. of Michael S. Shuster [liaison counsel for the plaintiffs in the Part 60 putback litigation], dated Aug. 5, 2016.) The court notes that the indemnification provision in this case differs from the indemnification provision in DLJ. The applicability of the DLJ decision should not, however, be decided on this record and without affording the parties the opportunity to address the issue in connection with the coordinated briefing on the viability of indemnification claims following DLJ.

Finally, by stipulation dated September 14, 2016, the Trustee and defendants HSBC Finance and HSBC Bank agreed that this court "need not decide at this time the vicarious-liability issues presented in HSBC Finance's motion to dismiss."<sup>10</sup> (Stipulation, ¶ 5 [NYSCEF No. 191].) The branch of HSBC Finance's motion to dismiss concerning the Trustee's claim that

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<sup>10</sup> These parties further agreed that "[n]othing in this Stipulation shall prevent the Court from considering these issues on remand or otherwise in the event that a dismissal of the claims against Decision One is later reversed, and nothing in this Stipulation shall otherwise govern the Trustee's claims against HSBC Finance." (Id., ¶ 5.)

HSBC Finance is the alter ego of Decision One accordingly will also be denied without prejudice.

The court has considered the Trustee's remaining arguments and finds them to be without merit.

It is accordingly hereby ORDERED that the motions of defendants Decision One Mortgage Company (Decision One), HSBC Bank USA, National Association (HSBC Bank), and HSBC Finance Corporation (HSBC Finance) to dismiss the amended complaint are granted to the extent of dismissing the first cause of action (Breach of Contract: Specific Performance), the second cause of action (Breach of Contract: Compensatory, Consequential, Rescissionary and Equitable Damages), the fourth cause of action (Breach of Contract: Specific Performance), and the fifth cause of action (Breach of Contract: Compensatory, Consequential, Rescissionary and Equitable Damages), with prejudice, solely to the extent that each is based on breaches of representations and warranties or breaches of defendants' alleged duties to repurchase defective loans; and it is further

ORDERED that the branches of the motions of Decision One, HSBC Bank, and HSBC Finance to dismiss the first, second, fourth, and fifth causes of action, to the extent based on defendants' alleged failures to notify the Trustee of defective loans, are denied without prejudice to a new motion brought in conformity with procedures to be established in the coordinated put-back actions in Part 60 regarding motions with respect to failure to notify claims. Nothing herein shall be construed as determining the scope or import of the Appellate Division decision in Nomura Home Equity Loan, Inc. v Nomura Credit & Capital, Inc. (133 AD3d 96 [1st Dept 2015], appeal docketed [APL-2016-00024]) or Morgan Stanley Mtge. Loan Trust ARX v

Morgan Stanley Mtge. Capital Holdings LLC (143 AD3d 1, 3-4 [1st Dept 2016]) with respect to such claims; and it is further

ORDERED that the branch of HSBC Finance's motion to dismiss the alter ego claims asserted against it is denied without prejudice; and it is further

ORDERED that the branch of the motions of Decision One and HSBC Finance to dismiss the third cause of action (Declaratory Judgment: Indemnification) is denied without prejudice to coordinated briefing on the viability of such claims following the Appellate Division's decision in U.S. Bank Natl. Assn. v DLJ Mtge. Capital, Inc. (141 AD3d 431, 432-433 [1st Dept 2016]).

This constitutes the decision and order of the court.

Dated: New York, New York  
April 24, 2017

  
MARCY FRIEDMAN, J.S.C.