State of New York
Court of Appeals

To be argued Tuesday, April 19, 2022 (arguments begin at 2 pm)

No. 34 ACE Securities Corp. v DB Structured Products, Inc.

This breach of contract action stems from a residential mortgage-backed securities (RMBS) investment deal that went sour. The appeal hinges on whether the trustee of an RMBS trust qualifies as a "plaintiff" under CPLR 205(a), which gives a "plaintiff" six months to revive an action that is dismissed for reasons other than the merits, when the original action was commenced by the trust's certificate holders rather than the trustee.

DB Structured Products, Inc. (DBSP) purchased 8,815 residential mortgages, which were pooled in a trust and securitized through the sale of more than $500 million in certificates to investors in 2006. In a Mortgage Loan Purchase Agreement (MLPA), executed on March 28, 2006, DBSP made representations and warranties regarding the quality of the mortgage loans. The MLPA and related agreements require that DBSP be notified of a breach of any of its warranties and gives it 60 days to cure the breach. If the breach cannot be cured, DBSP is required to repurchase the affected loan within 90 days of receiving notice. The agreements provide that the trustee -- HSBC Bank USA, National Association -- may not sue or demand that DBSP repurchase a defective loan until the cure period expires.

Two investors filed this suit on behalf of the trust against DBSP on March 28, 2012, the last day of the 6-year limitations period, alleging extensive breaches of the loan warranties. In September 2012, HSBC, as trustee, sought to substitute itself as the plaintiff, making similar claims of extensive breaches and DBSP's refusal to cure or repurchase the loans. The Appellate Division, First Department dismissed the suit as untimely (112 AD3d 522). The Court of Appeals affirmed the dismissal (25 NY3d 581), in part because the investor-plaintiffs failed to comply with a contractual condition precedent to suit when they commenced the action without affording DBSP 60 days to cure and 90 days to repurchase the loans.

While that appeal was pending at this Court, HSBC commenced this action to revive the original action pursuant to CPLR 205(a), noting that "the 60- and 90-day cure and repurchase periods ... have now elapsed." Supreme Court dismissed HSBC's suit, finding the trustee was not a "plaintiff" under the statute.

The Appellate Division, First Department affirmed, saying, "The dispositive issue ... is whether the trustee of a [RMBS] trust is a 'plaintiff' within the meaning of CPLR 205(a) when the prior action was commenced by the trust's certificate holders. In U.S. Bank N.A. v DLJ Mtge. Capital, Inc. (141 AD3d 431 ...), we concluded that 'the trustee [was] not entitled to refile the claims under CPLR 205(a), because it [was] not a "plaintiff" under that statute....'"

HSBC argues that prior cases interpreting CPLR 205(a) have applied a "same rights" test to determine who is a proper "plaintiff" to revive an action under the statute, and that it is entitled to the benefits of the statute "because the named plaintiffs in the Original Action and this Revival Action acted to enforce the exact same rights each time – those afforded to the Trust by the securitization agreements that DBSP sponsored.... In each of the two actions, the same rights were invoked, the same allegations were made, and the same relief was sought on behalf of the same true party in interest."

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State of New York
Court of Appeals

To be argued Tuesday, April 19, 2022 (arguments begin at 2 pm)

No. 17 People v Cesar Garcia

Cesar Garcia was arrested by two plain clothes officers who followed him as he traveled on the Lexington Avenue subway line in Manhattan in June 2015, after they saw him masturbate on a platform at Union Square, rub up against a woman on a northbound subway car, and rub up against another woman on a southbound train. He was charged with five class-B misdemeanors: two counts each of forcible touching and sexual abuse and one of public lewdness.

Garcia, an undocumented immigrant from Mexico, moved for a jury trial. Although B misdemeanors are generally "petty offenses" that do not require a jury trial under the Sixth Amendment because the maximum sentence is less than six months, Garcia argued that he would be subject to deportation under federal immigration law if he were convicted, a "serious" consequence that should entitle him to a jury. Criminal Court denied his motion. After a bench trial in August 2016, Garcia was convicted of public lewdness and acquitted of the other four counts. He was sentenced to seven days of community service.

In 2018, while his appeal was pending at the Appellate Term, the Court of Appeals held for the first time in People v Saylor Suazo (32 NY3d 491) that "a noncitizen defendant who demonstrates that a charged crime carries the potential penalty of deportation – i.e. removal from the country – is entitled to a jury trial under the Sixth Amendment."

The Appellate Term, First Department, affirmed Garcia's conviction in 2019, saying he "is not entitled to a jury trial, since he failed to meet his burden to establish that a conviction for public lewdness carries the potential for deportation (see People v Suazo ...). Even assuming that public lewdness ... is a crime of moral turpitude" under federal law, "an issue that has not yet been categorically decided..., defendant would still not be deportable ... because that provision requires convictions for two or more crimes involving moral turpitude to subject an individual to deportation.... Moreover, even if we now consider all the crimes for which defendant was tried, including the offenses of which he was acquitted, as two or more crimes of moral turpitude, he would not have been subject to deportation by a conviction because the charges arose out of a single scheme of criminal misconduct." The federal statute "makes deportable any alien who has been convicted of 'two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct' (emphasis added)."

Garcia argues that he "faced trial for an assortment of charges relating to three incidents: public lewdness on the subway platform, and forcible touching and third-degree sexual abuse against" different victims on different trains. "Each one of these offenses was a crime involving moral turpitude under federal immigration law subjecting noncitizen defendants to the potential penalty of deportation. A showing that a crime is classified as a crime of moral turpitude alone is enough to establish jury-trial entitlement for a noncitizen. More, because the charges here involved three separate incidents, a conviction arising from any two of those incidents would have mandated Mr. Garcia's deportation. That Mr. Garcia was ultimately convicted of only the public lewdness charge does not change this result, because entitlement to a jury trial is measured by the potential penalty defendant faces when the trial begins, not the ultimate penalty imposed."

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