

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1241

CA 10-01158

PRESENT: LINDLEY, J.P., SCONIERS, PINE, AND GORSKI, JJ.

M&T BANK CORPORATION, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

GEMSTONE CDO VII, LTD, ET AL., DEFENDANTS,
AND DEUTSCHE BANK SECURITIES, INC.,
DEFENDANT-APPELLANT.

MILBANK, TWEED, HADLEY & MCCLOY LLP, NEW YORK CITY (THOMAS A. ARENA OF
COUNSEL), FOR DEFENDANT-APPELLANT.

KORNSTEIN VEISZ WEXLER & POLLARD, LLP, NEW YORK CITY (DANIEL J.
KORNSTEIN OF COUNSEL), AND HODGSON RUSS LLP, BUFFALO, FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John A. Michalek, J.), entered May 5, 2010 in a breach of contract action. The order, among other things, granted in part and denied in part plaintiff's motion to compel production of documents.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action to recover damages for, inter alia, breach of contract arising from its purchase of certain mortgage-backed securities from defendants. Defendant Deutsche Bank Securities, Inc. (DBSI) contends on appeal that Supreme Court erred in granting those parts of plaintiff's motion to compel DBSI to produce documents concerning certain types of securities, inasmuch as DBSI had previously provided those documents to the New York State Attorney General (AG) in connection with the AG's investigation of possible fraud in the preparation, packaging and marketing of those types of securities. We affirm. Contrary to the contention of DBSI, the court neither abused nor improvidently exercised its discretion in directing DBSI to provide plaintiff with copies of the documents in question, particularly in view of the fact that CPLR 3101 (a) is to be interpreted liberally in favor of disclosure (*see generally Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 745-746). We conclude in addition that the documents sought were material and necessary to the prosecution of the action (*see generally Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406-407). Furthermore, although "the need for discovery must be weighed against any special burden to be borne by the opposing party" (*Andon*, 94 NY2d at 747 [internal quotation marks omitted]), DBSI has failed to

establish that any special burden arises from providing plaintiff with electronic copies of the documents previously supplied to the AG.

Entered: November 19, 2010

Patricia L. Morgan
Clerk of the Court