

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, April 27, 2021 (arguments begin at 2 p.m.)

No. 32 U.S. Bank National Association v DLJ Mortgage Capital, Inc.

U.S. Bank National Association, as trustee for a residential mortgage-backed securities (RMBS) trust, filed a breach of contract suit against the seller of the mortgage loans, DLJ Mortgage Capital, Inc., alleging that it failed to pay for defective loans as required by the “repurchase protocol” of the trust’s pooling and service agreement. The repurchase protocol provides that within 120 days of receiving written notice of a breach of any of its representations and warranties regarding the quality of the loans “which materially and adversely affects” the interests of the investors, DLJ must cure the breach or repurchase the defective loan. Beginning in December 2011, U.S. Bank sent letters to DLJ demanding that it cure or repurchase hundreds of defective loans, and saying its investigation of the loans was ongoing and the breaches were pervasive. The bank filed this suit in 2013, claiming DLJ did not repurchase any loans in response. DLJ moved to dismiss all claims based on loans the plaintiffs did not specifically identify in their timely pre-suit breach notices.

Supreme Court denied DLJ’s motion, ruling that U.S. Bank’s timely pre-suit breach letters notified DLJ of numerous defective loans and also of the likelihood that additional breaches would be discovered, which would then relate back to the date of the initial complaint. The courts also ruled the plaintiffs were entitled to interest accrued on liquidated loans up to the date they are repurchased.

The Appellate Division, First Department affirmed based, in part, on the relation-back doctrine. In a related case, it said, “The trustee’s timely presuit letters,” which stated that DLJ had placed defective loans into the trust on a “substantial” scale and “stated that its investigation into the loans in the trusts was ongoing, put DLJ on notice that the breaches plaintiffs were investigating might uncover additional defective loans for which claims would be made. Therefore, plaintiffs’ timely complaints that identified certain breaching loans may be amended to add the claims at issue, as they relate back to the original complaints....” It also upheld the ruling on interest.

DLJ argues that the plaintiff failed to comply with the repurchase protocols in the governing agreements, which “require timely notice as to every loan for which plaintiffs assert a claim.” The parties “agreed to a loan-specific sole remedy that requires timely, loan-specific breach notices,” it says, and “relation back cannot be used to excuse timely compliance with contractual requirements.” It also contends that the plaintiff is not entitled to interest on liquidated loans.

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To be argued Tuesday, April 27, 2021 (arguments begin at 2 p.m.)

No. 33 Matter of West 58th Street Coalition, Inc. v City of New York

In 2017, New Hampton, LLC – owner of the former Park Savoy Hotel at 158 West 58th Street in Manhattan – sought permission to use the building as a shelter to be operated by the nonprofit Westhab, Inc., under a contract with the City. New Hampton and Westhab proposed housing 150 homeless men – with jobs or seeking jobs – in the shelter, which would also provide them with employment and housing placement services. At the City’s public hearings on the project, a number of neighborhood residents and organizations opposed the plan for a new shelter, complaining it would hurt property values and increase “the threat of crime and danger.” The City’s Department of Buildings (DOB) assessed the structure and history of the nine-story building, which was built in 1910 and received, in 1942, a permanent certificate of occupancy as a tenement SRO (single room occupancy) building. DOB concluded that the building’s prior designation as a tenement SRO was equivalent to a nontransient “apartment hotel” in the R-2 occupancy group of the current Building Code and in “Use Group 2” of the City’s Zoning Resolution, based in part on its finding that Westhab’s residents would on average remain in the shelter well beyond 30 days. Under the Code’s grandfathering provisions, this meant the building would be exempt from most requirements of the current Code because there would be no significant change in its use. DOB approved renovation plans and issued a work permit for the building in May 2018. Two months later, the West 58th Street Coalition and other neighborhood opponents brought this suit to block the project, contending that it had to meet current standards because the building’s use and occupancy group would change and that it was a dangerous fire trap. While the suit was pending, DOB issued a temporary certificate of occupancy (TCO) for the cellar and first four floors, which it renewed at 90-day intervals.

Supreme Court dismissed the suit, finding there was a rational basis for DOB’s classification of the building and for the decision to open a homeless shelter there. Rejecting the opponents’ argument that the building could not be grandfathered because it would endanger “the general safety and public welfare,” the court said that “such considerations were already taken into account when issuing the TCO” and that DOB’s judgment is entitled to judicial deference.

The Appellate Division, First Department modified by remanding the case for a hearing on whether the building’s use as a shelter would threaten public safety and welfare. It ruled DOB had a rational basis for its classification of the building and conclusion that the grandfathering provisions applied, but it said there was “conflicting evidence” on the safety issue. “We do not agree that the issuance of the TCO reflects DOB’s assessment that the temporary occupancy of the building will not endanger public safety, health or welfare. The TCO ‘merely creates a rebuttable presumption that a building complies with New York City law’ which has been rebutted by petitioners’ expert affidavits...,” it said.

The City argues the Appellate Division, after it found DOB’s assessment of the building was rational, should have deferred to the agency’s judgment instead of ordering a hearing on safety issues. The petitioners argue that use of the building as a shelter is a change of use and occupancy classifications which eliminate any grandfathering protections and, therefore, they are entitled to an injunction barring operation of the shelter until it meets all requirements of the current Building Code. Alternatively, they say the Appellate Division properly ordered a hearing on public safety.

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