UBS Ams. Inc. v Countrywide Home Loans, Inc.
2026 NY Slip Op 31132(U)
March 22, 2026
Supreme Court, New York County
Docket Number: Index No. 653841/2024
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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UBS AMERICAS INC., UBS REAL ESTATE SECURITIES INC., UBS SECURITIES LLC, and MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC.

Plaintiffs,

- v -

COUNTRYWIDE HOME LOANS, INC. and CWALT, INC.,

Defendants.

INDEX NO. 653841/2024

MOTION DATE

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 42, 43, 44, 45, 47, 48, 49, 75, 76, 77, 78, 79

were read on this motion to/for DISMISSAL.

In motion sequence 002 defendants Countrywide Home Loans, Inc. (Countrywide) and CWALT, Inc. (CWALT) move pursuant to CPLR 3211(a)(1), (5), and (7) to dismiss plaintiffs' complaint. (NYSCEF Doc. No. [NYSCEF] 9, Notice of Motion.) In the complaint, plaintiffs UBS Americas Inc. (UBS Americas) UBS Real Estate Securities Inc. (UBS Real Estate), UBS Securities LLC (UBS Securities), and Mortgage Asset Securitization Transactions, Inc. (MASTR, and collectively UBS) allege five causes of action for (1) breach of the Mortgage Loan Purchase and Servicing Agreement (MLPSA) against Countrywide; (2) breach of the MLPSA against Countrywide; (3) breach of 07-2 Agreements against Countrywide; (4) breach of the CWALT ICAs against CWALT and Countrywide; and (5) contribution against CWALT and Countrywide. (NYSCEF 1, Complaint.)

Background

This action arises from UBS's offer and sale of residential mortgage-backed securities (RMBS) backed by Countrywide's mortgage loans using offering materials that contained alleged misrepresentations, which in turn gave rise to lawsuits against UBS that Countrywide refuses to indemnify. (NYSCEF 1, Complaint ¶¶ 1, 3-4.)

Pursuant to the MLPSA, Countrywide sold loans to UBS Real Estate. (*Id.* ¶ 14; NYSCEF 20, MLPSA.) UBS Real Estate would then sell a pool of loans to MASTR, which, in turn, deposited the loans into a trust that would issue certificates. (NYSCEF 1, Complaint ¶ 13.) UBS Securities then sold certificates to investors. (*Id.*)

The certificates were sold to investors "pursuant to a shelf registration statement and prospectus supplement." (*Id.*) The prospectus supplement contained information about "the underwriting standards used to originate the loans" as well as "key characteristics of the loans." (*Id.*) UBS obtained the information included in the prospectus supplement to investors from Countrywide, the originator of the loans. (*Id.* ¶¶ 13-14.) Pursuant to the MLPSA, Countrywide "assumed the risk that Countrywide's representations and warranties might be incorrect." (*Id.* ¶ 15.)

In 2006, the Securities & Exchange Commission (SEC) implemented Regulation AB. (*Id.* ¶ 16.) Regulation AB established disclosure requirements for RMBS. (*Id.*) To ensure compliance with the new regulation, Countrywide and UBS Real Estate amended the MLPSA on March 1, 2006. (*Id.;* NYSCEF 24, Amended MLPSA.) As part of the amendment, "Countrywide also agreed to indemnify UBS Real Estate and its affiliates if an investor sued as a result of any actual or alleged misstatement in the information Countrywide provided." (NYSCEF 1, Complaint ¶ 16.)

At issue in this case are three RMBS transactions where Countrywide loans represented more than 50% of the loan pool: MASTR Adjustable Rate Mortgages Trust 2005-8 (MARM 2005-8); MASTR Adjustable Rate Mortgages Trust 2007-2 (MARM 2007-2); and MASTR Adjustable Rate Mortgages Trust 2007-3 (MARM 2007-3). (*Id.* ¶ 18.) Each of these transactions were governed by the MLPSA, as well as transaction-specific indemnifications from Countrywide (the 07-2 Agreements). (*Id.* ¶ 19.)

In addition to the three above-mentioned transactions, Countrywide sponsored an additional four RMBS transactions: Alternative Loan Trust 2006-12CB (CWALT 2006-12CB); Alternative Loan Trust 2006-23CB (CWALT 2006-23C); Alternative Loan Trust 2006-43CB (CWALT 2006-43CB); and Alternative Loan Trust 2007-3T1 (CWALT 2007-3T1). (*Id.* ¶ 23.) For each of these Countrywide-sponsored transactions, Countrywide and CWALT entered into Indemnification and Contribution Agreements (ICAs), agreeing to indemnify UBS "against any actual or alleged misstatements in the prospectus supplement for the transaction." (*Id.* ¶ 21.) UBS later re-securitized certificates from the CWALT transactions, creating the MASTR Re-securitization Trust 2007-1 (MARS 2007-1.) (*Id.* ¶ 24.)

On March 15, 2010, the Federal Home Loan Bank of San Francisco (FHLB) sued UBS alleging that prospectus supplements for MARM 2007-2 and MARS 2007-1 "misrepresented the underwriting standards applied to the loans and misrepresented the borrowers' [loan-to-value (LTV)] ratios and occupancy status of the mortgaged properties." (*Id.* ¶¶ 34-35.) On December 21, 2010, UBS notified Countrywide of the FHLB lawsuits, demanding that Countrywide "fulfill its obligation to indemnify UBS." (*Id.* ¶ 37.)

On July 27, 2011, the Federal Housing Finance Agency (FHFA) sued UBS in the United States District Court for the Southern District of New York (SDNY), alleging that the prospectus supplements for MARM 2005-8 and MARM 2007-3 "misrepresented the underwriting criteria that Countrywide applied to its loans." (*Id.* ¶¶ 26, 28.) On August 9, 2011, UBS notified Countrywide of the FHFA action. (*Id.* ¶ 31.) Countrywide never responded to UBS's letter. (*Id.*)

UBS proceeded to defend itself in the lawsuits brought by FHLB and FHFA. (*Id.* ¶¶ 32, 38.) On July 25, 2013, UBS settled with FHFA for $885,00,000. (*Id.* ¶ 33.) UBS incurred over $40 million in defense costs. (*Id.*) Similarly, UBS settled with FHLB on March 30, 2016, for a confidential amount. (*Id.* ¶ 40.) UBS incurred nearly $13 million in defense costs. (*Id.*)

In July 2019, UBS contacted Countrywide to discuss indemnification for the FHFA and FHLB actions. (*Id.* ¶ 41.) When Countrywide refused to comply with its indemnification obligations, UBS initiated this action on July 31, 2024. Defendants seek herein to dismiss UBS' complaint.

Legal Standard

On a motion to dismiss pursuant to CPLR 3211, the court must afford the pleadings a liberal construction, "accept the facts alleged in the complaint as true, afford plaintiffs the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994].)

CPLR 3211(a)(1) allows a party to seek dismissal of a cause of action asserted against him because "a defense is founded upon documentary evidence." (CPLR 3211

[a] [1].) A cause of action may be dismissed pursuant to CPLR 3211(a)(1) "only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." (*Leon v Martinez*, 84 NY2d at 88); *see also Goshen v Mut. Life Ins. Co.*, 98 NY2d 314, 326 [2002] ["motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law."].)

CPLR 3211(a)(5) allows a party to seek dismissal of a cause of action asserted against them as barred by the applicable statute of limitations. (CPLR 3211 [a] [5].) When moving pursuant to CPLR 3211(a)(5),

> "a defendant must establish, prima facie, that the time within which to sue has expired. Once that showing has been made, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled, an exception to the limitations period is applicable, or the plaintiff actually commenced the action within the applicable limitations period." (*Flintlock Constr. Servs., LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020] [quotation marks and citation omitted].)

CPLR 3211(a)(7) allows a party to seek dismissal of a cause of action asserted against him because "the pleading fails to state a cause of action." (CPLR 3211 [a] [7].) When considering a motion pursuant to CPLR 3211(a)(7) "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one." (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977].) "[B]are legal conclusions as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence" cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted].) However, "a court may freely consider affidavits submitted by the plaintiff to remedy any defects in

the complaint." (*Leon v Martinez*, 84 NY2d 83, 88 [1994] [citing *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 (1976)].)

Discussion

Breach of the MLPSA – Section 7.03 (Against Countrywide)

UBS alleges that Countrywide was obligated under § 7.03 of the MLPSA to indemnify UBS for the settlement payment and defense costs associated with the FHFA and FHLB actions and that Countrywide's failure to do so constitutes a breach of the MLPSA. (*See* NYSCEF 1, Complaint ¶¶ 42-49.) Countrywide moves to dismiss the breach of contract claim arguing that (i) the claim is time-barred, (ii) the indemnification claim for the FHFA settlement is precluded by a court order, and (iii) UBS fails to state a claim.

Statute of Limitations

Countrywide argues that UBS's breach of contract claims under the MLPSA are time-barred under California's four-year statute of limitations. For the reasons state don't he record, the New York, and not the California statute of limitations applies to the claims herein. (NYSCEF 79, tr 4: 21-22.)

Countrywide argues that even under New York's six-year statute of limitations for indemnification claims (CPLR 213 [2]), UBS's contract claim is time-barred because § 7.03 of the MLPSA provides for an earlier accrual date than what would otherwise "be supplied by background legal principles." (NYSCE 32, Defendants' MOL at 11-12.)

Section 7.03 of the MLPSA provides that

> "Any cause of action against [Countrywide] relating to or arising out of the breach of any representations and warranties made in Subsections 7.01 or 7.02 shall accrue as to any Mortgage Loan upon (i) discovery of such breach by [UBS] or notice thereof by [Countrywide] to [UBS], (ii) failure by [Countrywide] to cure such

> breach or repurchase such Mortgage Loan as specified above, and (iii) demand upon [Countrywide] by [UBS] for compliance with the relevant provisions of this Agreement." (NYSCEF 20, MLPSA § 7.03.)

Countrywide argues that pursuant to the MLPSA's accrual provision, the FHFA claims accrued in August 2011 when UBS notified Countrywide of the lawsuit, demanded that Countrywide satisfy its contractual obligations, and Countrywide failed to cure its alleged breach. (*See* NYSCEF 1, Complaint ¶ 31.) Similarly, Countrywide argues that the FHLB claims accrued by March 2015 because UBS notified Countrywide of the lawsuit in December 2010, demanding that UBS satisfy its contractual obligations, and received no further response from Countrywide after March 2, 2015. (*See id.* ¶ 37.)

Countrywide's interpretation "would lead to an absurd result" in which an indemnification claim "could accrue even before any underlying claim." (*UBS Ams. Inc. v Impac Funding Corp.*, 2024 NY Slip Op 33827[U], *6-7 [Sup Ct, NY County 2024].) As this court explained in *UBS Ams. Ins.*,

> "[s]ection [7].03 governs the procedure that UBS must follow when there is a breach of the representations and warranties contained in the previous two sections as well as the remedies available to UBS for such a breach by [Countrywide]. The accrual provision contained in this section clearly applies to UBS's claims regarding breaches of the representations and warranties and not for any claim UBS might have for indemnification for third-party claims against [Countrywide]. Section [13].01, which governs indemnification and third-party claims, only requires UBS to 'immediately notify' [Countrywide] of any third-party claim. Section [13].01 is tellingly silent as to an accrual period for claims for indemnification as there is none." (*Id.* at *7.)

Applying the same reasoning to the issue here, the court finds that New York's six-year statute of limitations applies. Moreover, because the parties entered into two tolling agreements, which tolled the statute of limitations, UBS's claims are not time-barred. (*See* NYSCEF 18, 2019 Tolling Agreement; NYSCEF 19, 2022 Tolling Agreement.)

Bar Order

Countrywide further argues that UBS's indemnification claim for the FHFA settlement is precluded by the bar order entered in the action captioned *Federal Housing Finance Agency v Countrywide Financial Corp*., No. 12 CIV. 1059. (*Countrywide* action). UBS contends that the bar order is irrelevant to the claims here because the order insulates defendants from claims related to the Countrywide action but does not bar indemnification claims related to any other actions, including the action captioned *Federal Housing Finance Agency v UBS Americas Inc.*, No. 11 CIV. 5201 (*UBS* action).

On September 4, 2013, the Hon. Mariana R. Pfaelzer of the United States District Court for the Central District of California ordered that

> "UBS Securities is hereby permanently BARRED, ENJOINED AND RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against any of the Non-Settling Defendants[1] that seeks to recover any part of the settlement payment to be made by UBS Securities to Plaintiff in connection with the settlement of this Action, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States." (NYSCEF 17, Bar Order at 2.)

Even if the court were to accept Countrywide's argument that the bar order precludes UBS Securities from asserting an indemnification claim to recover any part of the settlement in the *Countrywide* **and** *UBS* actions, the Settlement Agreement defeats such an interpretation.

[1] The order defines 'Non-Settling Defendants' to include defendants Countrywide Home Loans, Inc. and CWALT, Inc. (NYSCEF 17, Bar Order at 2.)

In the July 25, 2013 Settlement Agreement between FHFA and UBS, UBS agreed "to pay $850 million in settlement of the claims asserted against the UBS Defendants in the *UBS*, *Ally*, *Countrywide*, and *First Horizon* Actions." (NYSCEF 16, Settlement Agreement at 2.) As an additional condition to settlement, the parties agreed that

> "[n]o later than one (1) business day from the Effective Date, the Settling Parties shall jointly file a stipulation of voluntary dismissal with prejudice of the *UBS* Action . . . No later than five (5) business days from the Effective Date, the Settling Parties shall jointly file a motion for voluntary dismissal with prejudice **and entry of a bar order** as to UBS Securities in the *First Horizon*, *Ally*, and *Countrywide* Actions." (NYSCEF 16, Settlement Agreement § 5 [a] [emphasis added].)

The fact that the Settlement Agreement specifically provides for the entry of a bar order in the *Countrywide* action but not in the *UBS* action suggests that the bar order is only intended to preclude indemnification claims related to the *Countrywide* action, and not the *UBS* action. Accordingly, the documentary evidence does not conclusively establish a defense as a matter of law to plaintiff's first cause of action for breach of contract. (*See Leon*, 84 NY2d at 88 ["a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (citation omitted)].)

Failure to State a Claim

To state a cause of action for breach of contract, a plaintiff must allege "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010] [citation omitted].) In the complaint, UBS alleges that the MLPSA "is a valid and enforceable contract," UBS "complied in all material respects with its

obligations under the MLPSA," and Countrywide failed to comply with its obligations under § 7.03 of the MLPSA to indemnify UBS for the settlement payment and defense costs resulting from the FHFA and FHLB actions. (NYSCEF 1, Complaint ¶¶ 43-48.)

Countrywide argues that UBS' first cause of action for breach of contract should be dismissed because UBS has failed to sufficiently plead that Countrywide breached any representations and warranties in § 7, or that the allegations by FHFA and FHLB against UBS were based on a breach of any representations in § 7. Section 7.03 of the MLPSA provides in relevant part that

> "[Countrywide] shall indemnify [UBS] and hold it harmless against **any losses**, damages, penalties, fines, forfeitures, reasonable and necessary legal fees and related costs, judgments, and other costs and expenses **resulting from any claim**, demand, defense **or assertion based on or grounded upon**, or resulting from, a breach of [Countrywide's] representations and warranties contained in this Section 7." (NYSCEF 20, MLPSA § 7.03 [emphasis added].)

In § 7.01(ix) Countrywide represents and warrants that

> "[n]o written statement, report or other document prepared and furnished or to be prepared and furnished by [Countrywide] pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained therein not misleading." (NYSCEF 20, MLPSA § 7.01 [ix].)

Similarly, in § 7.02(i) Countrywide represents and warrants that "[t]he information set forth in the Mortgage Loan schedule is complete, true and correct." (*Id.* § 7.02 [i].)

In the amended complaint, UBS alleges that

> "FHFA alleged that the prospectus supplements for MARM 2005-8 and MARM 2007-3 misrepresented the underwriting criteria that Countrywide applied to its loans. . . . The information that FHFA alleged was false is the information Countrywide provided to UBS and represented was true and correct. Countrywide represented and warranted that its loans complied with its underwriting standards. Countrywide provided descriptions of those underwriting standards for inclusion in the prospectus supplements . . . Further, Countrywide provided the LTV ratios and occupancy status for each of its loans in the related

> Mortgage Loan Schedule, which it also represented and warranted was true and correct." (NYSCEF 1, Complaint ¶¶ 28, 30.)

Similarly, UBS alleges that

> "FHLB alleged that the prospectus supplements for the at-issue transactions, and the prospectus supplements for the certificates serving as collateral for MARS 2007-1, misrepresented the underwriting standards applied to the loans, and misrepresented the borrowers' LTV ratios and occupancy status of the mortgaged properties. . . . The information that FHLB alleged was false is the information Countrywide provided to UBS and represented was true and correct. . . . Countrywide provided descriptions of those underwriting standards for inclusion in the MARM 2007-2 prospectus supplement . . . Further, Countrywide provided the LTV ratios and occupancy status for each of its loans in the related MARM 2007-2 Mortgage Loan Schedule, which it also represented and warranted was true and correct." (*Id.* ¶¶ 35-36.)

At this stage of the ligation, UBS's allegations sufficiently plead that Countrywide breached representations and warranties contained in § 7, and moreover, that FHFA and FHLB asserted claims against UBS based on or grounded upon Countrywide's breach of representation and warranties contained in § 7.

Accordingly, defendant's motion to dismiss the first cause of action is denied.

Breach of the MLPSA – Regulation AB (Against Countrywide)

UBS alleges that Countrywide was obligated under § 2(g) of the MLPSA Regulation AB Amendment (Amended MLPSA) to indemnify UBS for the settlement payment and defense costs associated with the FHFA and FHLB actions and that Countrywide's failure to do so constitutes a breach of the MLPSA. (*See* NYSCEF 1, Complaint ¶¶ 50-57.) Countrywide moves to dismiss the breach of contract claim, arguing that (i) the claims are time-barred, (ii) the indemnification claim for the FHFA settlement is precluded by a court order, and (iii) UBS fails to state a claim.

Statute of Limitation

For the same reasons previously detailed, the court finds that that New York's six-year statute of limitations applies, and UBS's claims are not time-barred. (*See supra* at 6-7.)

Bar Order

For the same reasons set forth above, the court finds that the documentary evidence does not conclusively establish that the bar order precludes UBS from asserting this claim for indemnity to recover the part of the settlement payment made to FHFA in the *UBS* action. (*See supra* at 8-9.)

Failure To State a Claim

Countrywide argues that UBS' second cause of action for breach of contract should be dismissed because (i) Regulation AB came into force on March 1, 2006 and is, therefore, irrelevant to claims regarding older securitizations and (ii) UBS fails to connect the allegations made by FHFA and FHLB to any information Countrywide provided under the Amended MLPSA.

To the extent UBS concedes in the complaint that the SEC implemented Regulation AB in 2006, and Countrywide and UBS Real Estate amended the MLPSA on March 1, 2006 to comply with Regulation AB (NYSCEF 1, Complaint ¶ 16), any claims for breach of Regulation AB prior to 2006 must be dismissed. UBS does not offer the exact dates for the relevant RMBS transactions in the complaint. To the extent the transactions appears to be labeled by year – MARM 2005-8, MARM 2007-2, MARM 2007-3, CWALT 2006-12CB, CWALT 2006-23CB, CWALT 2006-43CB, and CWALT

2007-3T1 (*see id.* ¶¶ 18, 23) – only claims related to MARM 2005-8 can conclusively be dismissed.

Countrywide further argues that UBS's contract claim should be dismissed for failure to connect the allegations made by FHFA and FHLB to any information Countrywide provided under the Amended MLPSA. However, in the complaint UBS alleges that

> "[t]he information that FHFA alleged was false is the information Countrywide provided to UBS and represented was true and correct. Countrywide represented and warranted that its loans complied with its underwriting standards. Countrywide provided descriptions of those underwriting standards for inclusion in the prospectus supplements and, for MARM 2007-3, did so for purposes of compliance with **Regulation AB**" (NYSCEF 1, Complaint ¶ 30 [emphasis added]); [and]
>
> "[t]he information that FHLB alleged was false is the information Countrywide provided to UBS and represented was true and correct. FHLB's claims were precisely the type of claim against which Countrywide agreed to indemnify UBS. Countrywide provided descriptions of those underwriting standards for inclusion in the MARM 2007-2 prospectus supplement and did so for purposes of compliance with **Regulation AB**." (*Id.* ¶ 36 [emphasis added].)

To the extent the Amended MLPSA requires Countrywide to

> "indemnify [UBS Real Estate and], each affiliate of [UBS Real Estate] . . . and [] hold each of them harmless from and against any claims, losses, damages, penalties, fines, forfeitures, legal fees and expenses and related costs, judgments, and any other costs, fees and expenses that any of them may sustain arising out of or based upon: (A)(1) any untrue statement of a material fact contained or alleged to be contained in any information, reports . . . certification or other material provided under this Amendment Reg AB . . . or (2) the omission or alleged omission to state in the Company Information a material fact required to be stated in the Company Information or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading" (NYSCEF 24, Amended MLPSA § 2 [g] [i].)

USB' allegations are sufficient, at this stage of the litigation, to plead that FHFA and FHLB's claims against UBS arose out of or were based on information Countrywide provided to comply with the Amended MLPSA.

Accordingly, defendant's motion to dismiss the second cause of action is denied.

Breach of 07-2 Agreements (Against Countrywide)

UBS alleges that Countrywide was obligated under the 07-2 Agreements to indemnify UBS for "all losses and defense costs arising out of or based on alleged misstatements or omissions of material fact in the description of Countrywide's underwriting standards in the term sheet and prospectus supplement for MARM 2007-2" and that Countrywide's failure to indemnify UBS for the settlement payment and defense costs from the FHLB action, therefore, constitutes a breach of the 07-2 Agreements. (NYSCEF 1, Complaint ¶¶ 61-63.) Countrywide moves to dismiss the breach of contract claim, arguing that the 07-2 Agreements limit indemnification to specific information appended to the Agreements, and UBS fails to identify or connect any such specific information to FHLB's allegations.

With respect to the MARM 2007-2 transaction, Countrywide, UBS Securities, UBS Real Estate, and MASTR entered into two indemnification agreements, the 07-2 Agreements. (NYSCEF 25, February 8, 2007 Indemnification Agreement; NYSCEF 26, February 26, 2007 Indemnification Agreement.) In the 07-2 Agreements Countrywide agreed

> "to indemnify and hold harmless [UBS Securities, UBS Real Estate, and MASTR] . . . from and against any and all losses, claims, expenses, damages or liabilities to which [UBS Securities, UBS Real Estate, and MASTR] . . . may become subject under the [Securities] Act or otherwise, as and when such losses, claims, expenses, damages or liabilities are incurred, insofar as such losses, claims, expenses, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Term Sheet Supplement, or arise out of, or are based upon, any omission or any alleged omission to state therein any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, in each case to the extent that such untrue statement or alleged untrue statement or omission or

> alleged omission is contained in (i) the static pool data with respect to the delinquency, cumulative loss and prepayment data for Countrywide . . . as of February 8, 2007 (the 'Static Pool Information') or (ii) the information set forth on Exhibit A attached hereto (the 'Countrywide Disclosure' and, together with the Static Pool Information, the 'Countrywide Information') and will reimburse [UBS Securities, UBS Real Estate, and MASTR] . . . for any legal or other expenses reasonably incurred by it or any of them in connection with investigating or defending any such loss, claim, expense, damage, liability or action, as and when incurred." (NYSCEF 25, February 8, 2007 Indemnification Agreement at 2/16 [NYSCEF pagination]; NYSCEF 26, February 26, 2007 Indemnification Agreement at 2/16 [NYSCEF pagination].)

Countrywide argues that UBS fails to identify any statement or issue in the Static Pool Information of Countrywide Disclosure that is connected to the allegations in the FHLB action. The court disagrees.

In the complaint, UBS alleges that

> "FHLB alleged that the prospectus supplements for the at-issue transactions . . . misrepresented the underwriting standards applied to the loans, and misrepresented the borrowers' LTV ratios and occupancy status of the mortgaged properties. FHLB alleged it conducted a review of the loans and identified substantial numbers of loans in each transaction that were misrepresented. FHLB included transaction-specific allegations in schedules to its complaints. Schedule 48 to the *FHLB v. Credit Suisse* complaint included allegations pertaining to Countrywide loans in MARM 2007-2. In total, FHLB alleged that at least 44.4% of Countrywide loans in MARM 2007-2 were falsely or misleadingly described in the prospectus supplement. . . . Countrywide provided descriptions of those underwriting standards for inclusion in the MARM 2007-2 prospectus supplement and did so for purposes of compliance with Regulation AB. Further, Countrywide provided the LTV ratios and occupancy status for each of its loans in the related MARM 2007-2 Mortgage Loan Schedule, which it also represented and warranted was true and correct." ((NYSCEF 1, Complaint ¶¶ 35-36.)

Exhibit A to the 07-2 Agreements – containing the Static Pool Information and Countrywide Disclosure – details Countrywide's LTV ratios and underwriting standards. (*See* NYSCEF 25, February 8, 2007 Indemnification Agreement Exhibit A; NYSCEF 26, February 26, 2007 Indemnification Agreement Exhibit A.) Because "[t]here is no heightened specificity of pleading" for a breach of contract claim (*UBS Ams. Inc.*, 2024

NY Slip Op 33827[U], *12 [Sup Ct, NY County 2024]), UBS's allegations are sufficient at this pleading stage to survive a motion to dismiss.

Accordingly, defendant's motion to dismiss the third cause of action is denied.

Breach of the CWALT ICAs (Against CWALT and Countrywide)

UBS alleges that CWALT and Countrywide were obligated under the Indemnification and Contribution Agreements (ICAs) to indemnify UBS for "all losses and defense costs arising out of or based on alleged misstatements or omissions of material fact in the CWALT Prospectus Information and the Seller Mortgage Loan Information for each of the CWALT Transactions[,]" and that defendants' failure to indemnify UBS for the settlement payment and defense costs from the FHLB action, therefore, constitutes a breach of the ICAs. (NYSCEF 1, Complaint ¶¶ 68-71.) Defendants move to dismiss the breach of contract claim because UBS created MARS-2007-1 by repackaging old RMBS certificates – a re-securitization process in which Countrywide played no role – and, therefore, MARS-2007-1 is not governed by the ICAs or subject to any indemnification rights thereunder. As to the remaining transactions, defendants contend that the ICAs limit indemnification to contractually specific categories, and UBS fails to identify or connect any information in any such categories to FHLB's allegations.

In 2006 and early 2007, UBS and defendants entered into ICAs related to four Countrywide-sponsored RMBS transactions. (NYSCEF 27, March 28, 2006 ICA [CWALT 2006-12CB transaction]; NYSCEF 28, June 27, 2006 ICA [CWALT 2006-23CB transaction]; NYSCEF 29, December 28, 2006 ICA [CWALT 2006-43CB transaction],

NYSCEF 30, February 26, 2007 ICA [CWALT 2007-3T1 transaction].) In each of the ICAs, CWALT agreed to indemnify UBS

> "against any and all losses, claims, damages or liabilities, joint or several, to which they may become subject under the [Securities] Act, the Exchange Act, or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the CWALT Memorandum Information, the CWALT Prospectus Information, the CWALT Registration Information, the Disclosure Package or the Seller Mortgage Loan Information or in any revision or amendment thereof or supplement thereto or arise out of or are based upon the omission or alleged omission to state in the CWALT Registration Information, the CWALT Prospectus Information." (NYSCEF 27, ICA § 3.1 [a].)

Similarly, Countrywide agreed to indemnify UBS "against any failure by CWALT to perform any of its obligations under [the ICAs]." (*Id.* § 3.4.)

In the complaint, UBS explains that UBS re-securitized certificates from each of the four CWALT transactions – CWALT 2006-12CB, CWALT 2006-23CB, CWALT 2006-43CB, and CWALT 2007-3T1 – to create MARS 2007-1. (NYSCEF 1, Complaint ¶ 24.) Further, UBS alleges that

> "FHLB alleged that the prospectus supplements for the at-issue transactions, and the prospectus supplements for the certificates serving as collateral for MARS 2007-1, misrepresented the underwriting standards applied to the loans, and misrepresented the borrowers' LTV ratios and occupancy status of the mortgaged properties. . . . Schedule 22 to the *FHLB v. Deutsche Bank* complaint included allegations pertaining to the CWALT Transactions certificates in MARS 2007-1. In total, FHLB alleged that the prospectus supplements for the CWALT Transactions, which represented approximately 19% of the MARS 2007-1 collateral pool, misrepresented at least 43% of the Countrywide loans in CWALT 2006- 12CB; 43.7% of the Countrywide loans in CWALT 2006-23CB; 48.4% of the Countrywide loans in CWALT 2006-43CB; and 58.9% of the Countrywide loans in CWALT 2007-3T1. . . . All of the challenged information in the prospectus supplements for the CWALT Transactions was either CWALT Prospectus Information or Seller Mortgage Loan Information, or both, as defined in the CWALT ICAs." (*Id.* ¶¶ 35-36.)

Though defendants raise the question of whether the indemnification rights provided for in the ICAs extends to MARS-2007-1, that question need not be resolved on this motion to dismiss. UBS sufficiently pleads that FHLB brought claims against UBS alleging that the prospectus supplements related to each of the four CWALT transactions misrepresented the LTV ratios and underwriting standards applied to the loans, and that the misrepresented information was contained in the CWALT Prospectus Information or Seller Mortgage Loan Information. Defendants agreed in the ICAs to indemnity UBS for "any and all" claims arising from alleged misstatements or omissions of material facts in the CWALT Prospectus Information or Seller Mortgage Loan Information. Thus, UBS's allegations are sufficient to survive a motion to dismiss at this pleading stage.

Accordingly, defendants' motion to dismiss the fourth cause of action is denied.

Contribution (Against CWALT and Countrywide)

UBS alleges that under § 2(g) of Regulation AB, the 07-2 Agreements, and the ICAs, UBS is entitled to contribution from CWALT and Countrywide to the extent indemnification is unavailable. (*See* NYSCEF 1, Complaint ¶¶ 73-79.) Defendants move to dismiss, arguing that UBS' contribution claim is barred by General Obligations Law § 15- 108(c).

UBS's contribution claim is not barred by § 15- 108(c) because UBS is not pleading a common-law contribution claim but, instead, contractual contribution. (*UBS Ams. Inc.*, 2024 NY Slip Op 33827[U], *24 [Sup Ct, NY County 2024].) Moreover, UBS has identified contractual contribution provisions in the relevant contracts. Specifically, § 2(g) of Regulation AB provides that

> "[i]f the indemnification provided for herein is unavailable or insufficient to hold harmless the indemnified party, then the indemnifying party agrees that it shall

> contribute to the amount paid or payable by such indemnified party as a result of any claims, losses, damages or liabilities incurred by such indemnified party in such proportion as is appropriate to reflect the relative fault of such indemnified party on the one hand and the indemnifying party on the other." (NYSCEF 24, Amended MLPSA § 2 [g] [iv].)

Similarly, the 07-2 Agreements provide that

> "[i]f f recovery is not available under the foregoing indemnification provisions for any reason other than as specified therein, each indemnified party shall be entitled to contribution to liabilities and expenses, except to the extent that contribution is not permitted under Section 11 (f) of the Act." (NYSCEF 25, February 8, 2007 Indemnification Agreement at 4/16 [NYSCEF pagination]; NYSCEF 26, February 26, 2007 Indemnification Agreement at 3.)

Finally, the ICAs states in § 3.2(a) that

> "[i]f the indemnification provided for in Section 3.1(a)-(b) is unavailable or insufficient to hold harmless an indemnified party under Section 3.1(a)-(b), then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in Section 3.1(a) or (b) as applicable above." (NYSCEF 27, March 28, 2006 ICA § 3.2 [a]; NYSCEF 28, June 27, 2006 ICA § 3.2 [a]; NYSCEF 29, December 28, 2006 ICA § 3.2 [a]; NYSCEF 30, February 26, 2007 ICA § 3.2 [a].)

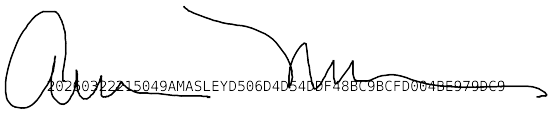
Because each of the contracts provide for contribution as an alternative remedy if indemnification is not available, defendants' motion to dismiss the fifth cause of action is denied.

Accordingly, it is

ORDERED that motion sequence 002 is denied; and it is further

ORDERED that defendants shall answer the complaint within 20 days of the date of this order; and it is further

ORDERED that the parties shall comply with Part 48 Procedure 16 (initial disclosure) by April 3, 2026. The parties shall also submit a proposed Part 48 preliminary conference order by April 3, 2026. If the parties cannot agree, each may submit competing proposals.



3/22/2026
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE