

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 Thursday, September 6, 2018 (arguments begin at noon)

No. 96 Deutsche Bank National Trust Company v Flagstar Capital Markets Corporation

Quicken Loans, Inc. originated mortgage loans that it sold in 2006 to the sponsor of an investment pool for eventual sale to investors in residential mortgage-backed securities (RMBS). In a mortgage loan purchase and warranties agreement, Quicken Loans made representations and warranties to the sponsor regarding the quality and risk profile of the loans, which were made effective as of the closing date for the sale of each package of loans. Those sales were completed between December 2006 and May 2007. In the event of a breach of the warranties, the agreement required Quicken to cure the breach or, if it could not, to repurchase the defective loan or substitute a conforming loan in its place. The agreement also contained a provision that would delay the accrual of a breach of contract claim, and thus the running of the statute of limitations, until three conditions were met. The provision stated that any cause of action against Quicken arising from a breach of warranties "shall accrue as to any Mortgage Loan upon (i) discovery of such breach..., (ii) failure by [Quicken] to cure such breach [or repurchase or substitute a qualified loan] ... and (iii) demand upon [Quicken] by the Purchaser for compliance with this agreement." The loan pool was ultimately conveyed to a trust, along with the sponsor's rights under the purchase agreement. They were securitized and the RMBS were sold to investors.

One of the investors, the Federal Home Loan Mortgage Corporation (Freddie Mac), hired an underwriting firm in 2013 to conduct a forensic review of some of the underlying loans. The review found many loans breached Quicken's representations and warranties, and Freddie Mac informed the loan trust's trustee, Deutsche Bank National Trust Company. After Quicken was notified of the breaches and a demand was made for compliance with the repurchase protocol, Deutsche Bank commenced this breach of contract action against Quicken on August 30, 2013.

Supreme Court granted Quicken's motion to dismiss the suit as untimely because it was commenced more than six years after the representations and warranties were made -- on or before May 31, 2007. It said the accrual provision could not extend the statute of limitations.

The Appellate Division, First Department affirmed, saying, "We find that dismissal of the action is mandated by the Court of Appeals' decision in ACE Sec. Corp., Home Equity Loan Trust, Series 2006-SL2 v DB Structured Prods., Inc. (25 NY3d 581 [2015]), which sets forth a clear rule that a breach of contract claim in an RMBS put-back action accrues on the date the allegedly false representations and warranties were made. Notwithstanding the parties' sophistication and their assent to a contract provision specifying a set of conditions that would have delayed the cause of action's accrual, we find that the accrual provision is unenforceable as against public policy, because it is tantamount to extending the statute of limitations based on an imprecise 'discovery' rule, which the Court of Appeals has consistently rejected in the commercial sphere...."

Deutsche Bank argues the accrual clause should be enforced. "It is a basic principle of New York law that agreements are to be enforced as written to effectuate the contracting parties' intent. Where the language of an agreement is clear and unambiguous, the contract is interpreted and applied in accordance with its plain terms.... The Appellate Division was wrong ... in thinking that the Accrual Clause jeopardizes any public policies. A contractually agreed-upon accrual date enhances 'certainty and predictability;' there is no surer way for the parties to know when a cause of action accrues than to agree upon it in their contract. And the policy of finality is not undermined when a claim is allowed to exist for no more than the statutory limitation period ... from a contractually-chosen moment." Under the accrual clause, the trustee says, "a cause of action accrues not on discovery, but after 'demand upon [Quicken] by the Purchaser for compliance with [the agreement]' -- a date that is easily, and precisely, ascertainable."

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No. 99 Matter of Hon. Terrence C. O'Connor

Queens Civil Court Judge Terrence C. O'Connor is challenging a determination of the State Commission on Judicial Conduct that he should be removed from office for misconduct on the bench and for refusing to cooperate with the Commission's investigation. It said he "was belligerent, rude and condescending to attorneys" in his courtroom. "Quick to chastise lawyers for perceived discourtesy, sarcasm and unprofessional behavior, [O'Connor] himself engaged in such conduct, subjecting lawyers to harsh personal criticism and insults in front of their clients, peers and others in the courtroom." At bench trials in two landlord-tenant cases, the Commission said Judge O'Connor accused two attorneys of trying to lead their witnesses by saying "okay" after the witnesses answered questions, struck the testimony of those witnesses, and then dismissed the cases for lack of evidence." It said this was "an abuse of judicial power that penalized the litigants, subjecting them to undue litigations costs and unnecessary delays." It said he deprived plaintiffs of due process and failed to comply with "court-mandated procedures" in nine no-fault insurance cases when, after granting defense motions for dismissal or summary judgment, he awarded counsel fees sua sponte without permitting attorneys to address whether fees should be awarded or in what amount. As for cooperation, the Commission said that on March 7, 2017, when the judge was scheduled to testify before the referee, he appeared without counsel and refused to be sworn in the absence of counsel. The proceeding was adjourned to March 29, 2017, and he was warned that his failure to appear "may be found to be a failure to cooperate" with the investigation. He did not appear and instead sent a letter that said, "Based on the blatant lies in your most recent letter, it is clear that nothing you are involved with would be remotely fair and thus I decline your invitation to appear on the 29th." Judge O'Connor, whose term expires on December 31 and who reaches the mandatory retirement age on December 29, is not seeking reelection.

The Commission said in its determination, "The extensive record before us, based on an evidentiary hearing before a referee in which [O'Connor] willfully refused to participate, establishes that [he] violated well-established ethical standards by mistreating attorneys, abusing his judicial power and failing to follow the law in numerous cases and that his misconduct was significantly compounded by his failure to cooperate with the Commission's investigation.... [A] judge's willful refusal to cooperate in the disciplinary process is a breach of the public trust."

Judge O'Connor asks the Court to vacate the determination "on the ground that the [referee's] hearing was a nullity and remand to the Commission for further proceedings" because the emailed notice of the hearing that he received did not satisfy the Judiciary Law's requirement that a judge be given written notice "either personally ... or by certified mail." He says his alleged misconduct on the bench "constituted at most errors of law rather than judicial misconduct" and, even if it were misconduct, it "did not warrant the drastic sanction of removal." He concludes, "In light of the adversarial nature of Commission investigations, this Court's admonition against using the investigative process to generate more serious sanctions, and the fact that noncooperation is its own punishment, Judge O'Connor's alleged failure to cooperate is an insufficient aggravating factor to justify removal."

For petitioner O'Connor: Jonathan I. Edelstein, Manhattan (212) 871-0571
For respondent Commission: Edward Lindner, Albany (518) 453-4613