

Allstate Ins. Co. v Morgan Stanley

2013 NY Slip Op 31130(U)

March 14, 2013

Supreme Court, New York County

Docket Number: 651840/2011

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. EILEEN BRANSTEN
J.S.C.

PRESENT: Justice

PART 3

Index Number : 651840/2011
ALLSTATE INSURANCE COMPANY
vs
MORGAN STANLEY
Sequence Number : 001
DISMISS ACTION

INDEX NO. 651840/2011
MOTION DATE 4/30/12
MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to/for dismiss

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1
Answering Affidavits — Exhibits No(s) 2
Replying Affidavits No(s) 3

Upon the foregoing papers, it is ordered that this motion is

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 3-14-13

Eileen Branstén, J.S.C.
EILEEN BRANSTEN
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

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ALLSTATE INSURANCE COMPANY, ALLSTATE
LIFE INSURANCE COMPANY, ALLSTATE LIFE
INSURANCE COMPANY OF NEW YORK, AGENTS
PENSION PLAN, and ALLSTATE RETIREMENT
PLAN,

Index No. 651840/2011
Motion Seq. No. 001
Motion Date: 4/30/12

Plaintiffs,

v.

MORGAN STANLEY; MORGAN STANLEY & CO.,
INC., MORGAN STANLEY ABS CAPITAL I INC.,
MORGAN STANLEY MORTGAGE CAPITAL INC.,
MORGAN STANLEY CAPITAL I INC., MORGAN
STANLEY MORTGAGE CAPITAL HOLDINGS LLC,

Defendants.

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BRANSTEN, J.:

This fraud action arises from the Allstate plaintiffs' purchase of nearly \$105 million worth of residential mortgage backed securities ("RMBS") from the Morgan Stanley defendants. Defendants move to dismiss the Amended Complaint as time-barred and for failure to state a claim under CPLR 3211(a)(5) and (7).

Background / The Amended Complaint

Plaintiff's Allstate Insurance Company ("Allstate Insurance") and Allstate Life Insurance Company ("Allstate Life") are insurance companies domiciled in, and with their principal places of business in, Illinois. Plaintiff Allstate Life Insurance Company of New York ("Allstate New York") is an insurance company domiciled in and with its

principal place of business in New York. Allstate Life is a wholly-owned subsidiary of Allstate Insurance, and Allstate New York is a wholly-owned subsidiary of Allstate Life. Plaintiffs Agents Pension Plan and Allstate Retirement Plan are Employee Retirement Income Security Act (“ERISA”) plans sponsored by Allstate Insurance. (Am. Compl. ¶¶ 18-20.) For the purposes of this motion the plaintiff entities will be referred to as “Allstate,” unless a distinction between them needs to be made.

Between 2005 and 2007, Allstate purchased \$104,820,588 in RMBS from the Morgan Stanley defendants in six offerings: MSAC 2006-HE4, MSHEL 2006-3, MSIX 2006-1, MSM 2006-10SL, MSAC 2006-HE8 and MSAC 2007-NC4 (the “Certificates”). (Am. Compl. ¶¶ 2, 14, 37.) The Certificates represent interests in a pool of mortgage loans. The securities represent a participating interest in an “issuing trust” that holds the loan pool. The cash flows from the borrowers who make interest and principal payments on the individual mortgages comprising the mortgage pool are “passed through” to the certificate holders. (Am. Compl. ¶ 30.)

RMBS certificates are created in a multi-step process. The first step is the acquisition by a “depositor” of an inventory of loans from a “sponsor” or “seller,” which either originates the loans or acquires them from other mortgage originators in exchange for cash. The depositor then transfers, or deposits, the acquired pool of loans to the issuing trust. Although there can be more than one “sponsor” or “depositor” in a given

securitization, the Morgan Stanley entities acted as the depositor and sponsor of the RMBS securitizations purchased by Allstate. (Am. Compl. ¶¶ 27-28, 31.) Defendants Morgan Stanley Mortgage Capital Inc. and Morgan Stanley Mortgage Capital Holdings LLC served as the sponsor for all six RMBS purchased by Allstate, provided warehouse financing to the originators that issued the mortgage loans, acquired the mortgage loans from the originators, and initiated the securitization of the mortgage loans into RMBS by transferring the loans to Morgan Stanley ABS Capital I Inc. or Morgan Stanley Capital I Inc. (Am. Compl. ¶ 34.) With respect to the MSIX 2006-1 RMBS, Morgan Stanley Mortgage Capital Inc. and IXIS Real Estate Capital Inc. served as sponsors. (Am. Compl. ¶ 31 n.3.)

RMBS securitization transactions are structured so that the risk of loss is divided among different levels of investment, or “tranches,” with each having a different level of risk and reward. All of the RMBS purchased by Allstate were among the most senior, risk-averse tranches of the relevant offerings and were all rated “AAA/Aaa.” (Am. Compl. ¶ 32.) Once the tranches are established, the issuing trust passes the securities back to the depositor, which becomes the issuer of the RMBS. The depositor then passes the RMBS to the underwriter, which here was Morgan Stanley & Co. (Am. Compl. ¶¶ 24, 33.)

The collateral pool for each securitization usually contained thousands of loans. Information about those mortgages was included in the “loan files” that the mortgage originators developed while making the loans. Investors, like Allstate, were not given access to the loan files. (Am. Compl. ¶ 36.) Instead, they relied on the representations made by Morgan Stanley in registration statements, prospectuses, draft prospectus supplements, prospectus supplements and term sheets (the “Offering Materials”) about the quality and nature of the loans forming the security for the RMBS. (Am. Compl. ¶¶ 2, 35-36.) The Offering Materials represented that the originators’ underwriting guidelines were “intended to assess the borrower’s ability to repay the mortgage loan and that exceptions would be made on a case-by-case basis where compensating factors existed. (Am. Compl. ¶¶ 59, 63, 83, 94, 108, 118.) They further represented that each loan would be evaluated after review of the loan application and other documentation submitted by the borrower, including the applicant’s liabilities, income, credit history, employment history and personal information. (Am. Compl. ¶¶ 60, 64, 95, 109.)

Allstate alleges that the various companies which originated the loans routinely violated or abandoned their stated underwriting guidelines by disregarding or failing to obtain information regarding the borrowers’ ability to repay, by allowing exceptions to underwriting guidelines without sufficient compensating factors; and manipulating the appraisal process in order to inflate the values of the underlying mortgaged properties to

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originate and sell as many loans as possible. (Am. Compl. ¶ 134.) The companies included New Century Financial Corp. (“New Century”) (Am. Compl. ¶¶ 63-82), WMC Mortgage Corporation (“WMC”) (Am. Compl. ¶¶ 83-91), Decision One Mortgage Company (“Decision One”) (Am. Compl. ¶¶ 92-105), First NLC Financial Services LLC (“First NLC”) (Am. Compl. ¶¶ 106-116), AIG Federal Savings Bank and Wilmington Finance Inc. (collectively, “AIG”) (Am. Compl. ¶¶ 117-126), Accredited Home Lenders, Inc. (“Accredited”) (Am. Compl. ¶¶ 128-131), Aegis Mortgage Corporation (“Aegis”) (Am. Compl. ¶ 132) and Meritage Mortgage Corp. (“Meritage”). (Am. Compl. ¶ 133.) All of these loan originators subsequently closed down their operations, filed for bankruptcy were shut down by regulators, and are the subject of numerous governmental investigations and private lawsuits alleging misconduct arising out of pervasive illegal and improper mortgage lending practices and other violations of law. (Am. Compl. ¶ 4.)

Plaintiffs assert that the Offering Materials misrepresented or concealed material facts regarding the underwriting and quality of the loans, including the loan originators’ underwriting guidelines (Am. Compl. ¶¶ 217-19), Morgan Stanley Mortgage Capital, Inc.’s loan purchasing guidelines (Am. Compl. ¶¶ 220-21), the loan-to-value (“LTV”) ratios (Am. Compl. ¶¶ 222-23), the debt-to-income (“DTI”) ratios (Am. Compl. ¶¶ 137-46, 231, 245), Morgan Stanley’s due diligence into the loan originators and the mortgage loans (Am. Compl. ¶¶ 224-25), and the accuracy of the credit ratings assigned to the

Certificates. (Am. Compl. ¶¶ 226-29.) Allstate also contends that defendants' purported warnings in the Offering Materials deliberately understated the severity of the investment risk. (Am. Compl. ¶¶ 230-33.)

The complaint alleges that defendants knew of the defects in the loans and the underwriting process because they retained an independent third-party due diligence provider, Clayton Holdings, Inc. ("Clayton") which uncovered the problems. (Am. Compl. ¶¶ 5, 7, 84, 87, 144, 154-58.) Defendants nevertheless continued to purchase and securitize the loans to continue its subprime operations and generate fees. (Am. Compl. ¶¶ 167-68.) Defendants also allegedly used their knowledge of the poor quality of the loans to negotiate a discounted price for the ones it knew were not compliant with the underwriting guidelines (Am. Compl. ¶¶ 9, 171-176), and to profit by betting against a series of collateralized debt obligations ("CDOs") backed by some of the RMBS. (Am. Compl. ¶¶ 193-99.) Additionally, the complaint alleges that defendants would "shred" loan documentation which demonstrated that the borrower's income was insufficient and demand that the loan originator get a new, "stated" income that made the loan appear reasonable. (Am. Compl. ¶¶ 10, 173-74.) Another practice of which defendants were aware, and allegedly participated in, was providing unqualified borrowers with the cash to close their purchase or make the first few payments, in order to make additional loans

available for securitization or keep the initial default rate artificially low. (Am. Compl. ¶¶ 190, 192.)

The loans backing the RMBS consequently experienced a very high default rate. By May 2011, on average, over 35% of the mortgage loans underlying the Certificates were over 60 days delinquent, in foreclosure, bankruptcy or repossession. (Am. Compl. ¶ 14.) The serious delinquency rate for MSAC 2006-HE4 was 40.29% (Am. Compl. ¶¶ 14, 91); for MSHEL 2006-3 it was 35.05% (Am. Compl. ¶¶ 14, 126); for MSIX 2006-1 it was 44.60% (Am. Compl. ¶¶ 14, 116); for MSM 2006-10SL it was 10.02% (Am. Compl. ¶ 14); for MSAC 2006-HE8 it was 44.93% (Am. Compl. ¶¶ 14, 105); and for MSAC 2007-NC4 it was 38.20%. (Am. Compl. ¶¶ 14, 81.) Allstate has lost money because all of the RMBS have been downgraded from Triple-A to “junk” and are no longer marketable or salable at the prices Allstate paid. (Am. Compl. ¶¶ 14, 195, 199, 214, 243.)

The original complaint was filed on July 5, 2011. The Amended Complaint sets forth four causes of action, each asserted against all of the defendants: common law fraud (Am. Compl. ¶¶ 246-54), fraudulent inducement (Am. Compl. ¶¶ 255-63), aiding and abetting fraud (Am. Compl. ¶¶ 264-69), and negligent misrepresentation. (Am. Compl. ¶¶ 270-86.)

Discussion

Defendants move to dismiss the claims as time-barred under New York and Illinois law. Additionally, defendants argue that plaintiffs have not pled scienter, loss causation, justifiable reliance or damages, or alleged material misrepresentations with respect to underwriting or appraisal guidelines, adherence to due diligence standards, or the risk of the RMBS. Defendants further assert that plaintiffs have not pled the special relationship required to state a claim for negligent misrepresentation. For the following reasons, the motion is granted as to the claim for negligent misrepresentation, but is otherwise denied.

I. Statute of Limitations

In moving to dismiss, defendants invoke New York's borrowing statute, CPLR 202, which "requires the cause of action to be timely under the limitations period of both New York and the jurisdiction where the cause of action accrued." *Global Fin. Corp. v. Triarc Corp.*, 93 N.Y.2d 525, 528 (1999); see *Stichting Pensioenfonds ABP v. Credit Suisse Group AG*, 38 Misc.3d 1214(A), at *2 (Sup. Ct., N.Y. Cty. 2012). The purpose of the statute is to "prevent[] nonresidents from shopping in New York for a favorable Statute of Limitations," *Global*, 93 N.Y.2d at 528. Furthermore, "[w]hen an alleged injury is purely economic, the place of injury usually is where the plaintiff resides and

sustains the economic impact of the loss,” *Id.* at 529. The parties agree that in view of the Allstate plaintiffs’ residence, their claims must satisfy the limitations provided by both New York and Illinois law.¹ Furthermore, “in ‘borrowing’ a Statute of Limitations of another State, a New York court will also ‘borrow’ the other State’s rules as to tolling,” *Antone v. General Motors Corp.*, 64 N.Y.2d 20, 31 (1984).

All of plaintiffs’ claims would be timely under the six year New York statute of limitations for fraud (CPLR 213), so the parties agree that the critical analysis implicates the shorter statute of limitations under the Illinois Securities Law of 1953. That statute, 815 Ill. Comp. Stat. (“ILS”) 5/13, provides:

D. No action shall be brought for relief under this Section or upon or because of any of the matters for which relief is granted by this Section after 3 years from the date of sale; provided, that if the party bringing the action neither knew nor in the exercise of reasonable diligence should have known of any alleged violation of . . . of this Act which is the basis for the action, the 3 year period provided herein shall begin to run upon the earlier of:

(1) the date upon which the party bringing the action has actual knowledge of the alleged violation of this Act; or

(2) the date upon which the party bringing the action has notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation of

¹ One plaintiff, Allstate Life Insurance Company of New York, is alleged to be a New York resident. However, plaintiffs do not specifically assert that it purchased any RMBS in its own name, so it cannot be determined at this time which, if any, Certificates, would be entitled to the benefit of the New York statute. Because further discovery will be required with regard to whether the remaining Certificates are entitled to tolling, the issue can be resolved at a later time.

this Act; but in no event shall the period of limitation so extended be more than 2 years beyond the expiration of the 3 year period otherwise applicable.

The parties concur that the limitations provisions of this section applies not merely to statutory securities claims, but to common law fraud and negligent misrepresentations claims arising from the purchase of a security. *See Tregenza v. Lehman Bros., Inc.*, 287 Ill. App. 3d 108, 109-10 (1st Dist. 1997) (general five-year limitations period ordinarily governing common law fraud claims under 735 Ill. Comp. Stat. 5/13-205 superseded by more specific provisions of ISL 5/13(D), which imposes shorter period for both statutory securities law violations and “any of the matters for which relief is granted” under the securities law). Accordingly, absent tolling, all of plaintiffs’ claims arising out of RMBS purchases prior to July 5, 2008 would be time-barred under the statute’s base three-year limitations period accruing from the “date of sale.” Moreover, recovery relating to any RMBS purchases prior to July 5, 2006 would be barred regardless of tolling under the ultimate five-year deadline imposed by ILCS 5/13(D)(2),

As noted, the original complaint was filed on July 5, 2011. As plaintiffs plead that they purchased all of the securities between 2005 and 2007 (Am. Compl. ¶¶ 2), no claim can survive absent tolling, and claims with respect to any RMBS purchased between 2005 and July 5, 2006 are absolutely barred.

The complaint does not specify the exact dates within the 2005 to 2007 period that plaintiffs bought each RMBS. With respect to the five-year limitations period, it is thus impossible to say which securities, if any, were purchased prior to July 2006. Although defendants assert that MSHEL 2006-3, MSAC 2006-HE4, MSIX 2006-1 were purchased before that date, Defs.' Moving Br.² at 17 n.17, plaintiffs counter that they were merely issued before then, but not bought until at least January 2007, Pls.' Opp. Br.³ 40 n.36. Contrary to defendants' suggestion, plaintiffs failure to plead dates does not create a "presumption of repose," Defs.' Reply Br.⁴ at 1 n.3. "[A] plaintiff is not required to allege or plead facts which demonstrate the action was brought within the prescribed time . . . [t]he statute of limitations, in other words, is not at issue until it is raised by the defendant as an affirmative defense in either an answer . . . or motion to dismiss."

Cutsinger v. Cullinan, 72 Ill. App. 3d 527, 531-32 (2d Dist. 1979).

With respect to the three year limitations, defendants argue, as a threshold matter, that the complaint is fatally flawed because it fails to affirmatively plead that the three year sale-based limitations period was tolled. However, neither the statute nor *Rein v. David A. Noyes and Co.*, 230 Ill. App. 3d 12 (2d Dist. 1992), upon which defendants rely, impose such a rule. Although the *Rein* court did state that the effect of ILS 5/13(D) was

² Defendants' Memorandum in Support of Their Motion to Dismiss ("Defs.' Moving Br.").

³ Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss ("Pls.' Opp. Br.").

⁴ Defendants' Reply Brief in Support of Defendants' Motion to Dismiss ("Defs.' Reply Br.").

“to lengthen the time in which such a suit may be filed, provided that plaintiffs properly *allege* and demonstrate the requisite grounds,” *Id.* at 15 (emphasis supplied), there is no indication that the court was announcing a formal pleading requirement. Moreover, the plaintiffs in *Rein* did not even invoke the discovery rule set forth in ILS 5/13(D) or contest that their security purchases fell outside the longer five-year limitations period, so the case has little application to the issues at bar. The statute itself does not declare a pleading rule, but merely sets forth alternatives to the sale-based accrual period, *i.e.*, the earlier of three years from either actual knowledge of the violation or notice of facts that would with reasonable diligence lead to such knowledge.

Defendants nevertheless argue that it can be determined from the face of the complaint, and the documents referenced therein, that plaintiffs had sufficient “notice of facts” prior to July 2008 which should have led to discovery of their claims. Specifically, defendants rely on the following chronology of allegations extracted from the Amended Complaint:

2006 onward: Monthly, publicly released reports disclose the increasing delinquency rates for each RMBS (Am. Compl. ¶ 14);

November 2006: Meritage Mortgage Corp.— an originator in MSHEL 2006-3 and MSIX 2006-1—goes out of business due to poor loan performance. (Am. Compl. ¶ 133);

June 2007: AIG—an originator in MSHEL 2006-3—signs a supervisory agreement with the Office of Thrift Supervision for not adequately evaluating borrowers’ creditworthiness (Am. Compl. ¶ 122);

June 2007: MSAC 2007-NC4 Prospectus Supplement discloses that New Century—a leading originator in MSAC 2006-HE4, MSAC 2006 HE8, and MSAC 2007-NC4—had filed for bankruptcy protection and was the subject of numerous investigations by government agencies. (Am. Compl. ¶ 63);

August 2007: Aegis, an originator in MSHEL 2006-3, files for bankruptcy. (Am. Compl. ¶ 132)

September 2007: HSBC shuts down Decision One—an originator in MSAC 2006-HE4 and MSAC 2006-HE8—due to poor loan performance (Am. Compl. ¶ 93);

September 2007: WMC—an originator in MSAC 2006-HE4 and MSAC 2006-HE8—is shut down by GE due to poor loan performance (Am. Compl. ¶ 85);

January 2008: *Atlas v. Accredited Home Lenders*, 07-cv-00488 (S.D. Cal.), survives a motion to dismiss. The complaint, filed in March 2007, alleged that Accredited—an originator in MSIX 2006-1—misstated its underwriting guidelines (Am. Compl. ¶ 128);

January 2008: First NLC, an originator in the MSIX 2006-1 RMBS, files for bankruptcy. (Am. Compl. ¶ 106);

March 2008: The New Century Bankruptcy Examiner's Report discloses, inter alia, that: New Century's standard for making loans was whether the loan could be sold into the secondary market; New Century made frequent exceptions to its guidelines and often was unable to determine a borrowers' ability to afford the loans it was making; and some of New Century's warehouse lenders engaged in "wet funding." (Am. Compl. ¶ 77, 192.);

March 2008: Allstate's counsel (Bernstein Litowitz Berger & Grossmann LLP) files an amended complaint in *In re New Century*, No. 07 Civ. 931 (C.D. Cal), alleging that New Century misrepresented its underwriting guidelines (Am. Compl. ¶ 73);

April 2008: The U.S. Treasury Department's Office of the Inspector General reports that Meritage had lowered its underwriting standards, which led to poor loan quality and large losses for the lender (Am. Compl. ¶ 133);

May 2008: Morgan Stanley's own traders admit, on a National Public Radio broadcast, that Morgan Stanley knew that it was purchasing and securitizing defective loans that were bound to fail from originators like WMC;

June 2008: Washington state regulators announce their investigation of WMC for defective and illegal loan origination (Am. Compl. ¶ 89);

June 2008: Moody's downgrades the relevant tranche of MSAC 2007-NC4 to below investment grade (Am. Compl. ¶ 37; Pls.' Opp. Br., Ex. B at 5).

(Def.'s Reply Br. at 5-6.) In addition to the complaint, defendants also cite articles published between February 2007 and March 2008 by The Washington Post, The New York Times, The Chicago Tribune and Reuters reporting that appraisers were under pressure to inflate values; that WMC's delinquency rates were rising; that prosecutors were investigating whether Wall Street banks were withholding material information about the risks of investments linked to subprime loans; and that third-party diligence providers like Clayton had raised red flags about mortgages that should have been rejected, but were disregarded. (Def.'s Reply Br. at 6 n.6.)

As plaintiffs argue, defendants must demonstrate not merely that plaintiffs could have known that certain statements in the Offering Materials were false, but also that plaintiffs could have known that Morgan Stanley knew and thus acted with intent to deceive. *Baron v. Chrans*, 2008 WL 2796948, at *21 (C.D. Ill. 2008) ("In a securities

fraud context, an injured person knows sufficient facts on the date on which the person learned, or should have learned, both that the representations were untrue and that the misrepresentations were knowingly false”); see *Merck & Co. v. Reynolds*, 130 S.Ct. 1784, 1796 (2010) (“A plaintiff cannot recover without proving that a defendant made a material misstatement *with an intent to deceive* . . . [i]t would therefore frustrate the very purpose of the discovery rule . . . if the limitations period began to run regardless of whether a plaintiff had discovered any facts suggesting scienter”).

In *In re Countrywide Fin. Corp. Mortgage-Backed Securities*, 860 F. Supp. 2d 1062 (C.D. Cal. 2012) (*Countrywide I*), the Court denied a motion to dismiss under ILS 5/13(D), noting that the “reasonable diligence” requirement of the statute only required diligence in obtaining knowledge of the violation once plaintiff had obtained actual notice of the facts, but did not require diligence in obtaining the facts triggering the inquiry. The court concluded that “[i]nformation that was sent to [plaintiff] or that [plaintiff] was aware of will constitute notice, whereas information that was widely reported in the press but never seen by [plaintiff] will not suffice.” *Id.* at 1076. Contrary to defendants’ suggestion, *Ferguson v. Roberts*, 11 F.3d 696 (7th Cir. 1993), did not announce a standard permitting constructive notice of the facts which might lead to knowledge of the violation. It merely confirmed that the Illinois statute of limitations accrues when “the plaintiff knows or should know that the securities laws have been violated”; it did

not address whether the plaintiff was required to exercise due diligence in acquired the facts leading to that knowledge. *Id.* at 704.

A number of courts have denied limitations-based motions in RMBS fraud actions despite objections similar to those raised by defendants here. For example, in *In re Countrywide Fin. Corp. Mortgage-Backed Securities*, 2012 WL 1322884 (C.D. Cal. 2012) (*Countrywide II*), the court held:

Defendants have cited a number of articles from 2007 that either make or hint at this same connection. As in *Allstate* it is possible, perhaps probable, that Defendants will ultimately demonstrate that a reasonable investor was on inquiry notice by August 31, 2007. However, 2007 was a turbulent time during which the causes, consequences, and interrelated natures of the housing downturn and subprime crisis were still being worked out. The Court cannot, based solely on the [complaint] and judicially noticeable documents, conclude that by August 31, 2007 a reasonably diligent investor should have linked increased defaults and delinquencies in the loan pools underlying the Certificates with both a failure to follow the underwriting and appraisal guidelines specified in the Offering Documents and the possibility that the tranches purchased by [plaintiff] would suffer losses. That is the link that a reasonable investor would have needed to make in order to know that something material was amiss with the Offering Documents for the particular tranches that are at issue in this case. Accordingly, the Court DENIES Defendants' motions to dismiss based on the statute of limitations.

Id. at *4. See also *Massachusetts Mut. Life Ins. Co. v. Residential Funding Co., LLC*, 843 F. Supp. 2d 191, 208-09 (D. Mass. 2012) (“At this point in the litigation, Defendants have not met the relatively high burden to demonstrate that Plaintiff was on inquiry notice in 2007 . . . [i]n indeed, courts have been reluctant to conclude that purchasers of mortgage-

backed securities were on inquiry notice of similar claims as late as mid-2008, let alone as early as 2007"); *Capital Ventures Intern. v. J.P. Morgan Mortgage Acquisition Corp.*, 2013 WL 535320, at *7 (D. Mass. 2013) (finding that defendants failed to carry "heavy burden" of demonstrating that plaintiff was on notice of its claims by October 2007, despite defendants' citation to newspaper articles, government publications, and media reports noting the widespread erosion of underwriting guidelines in the mortgage market, the pressure on appraisers to generate inflated property values, pervasive misrepresentation of owner occupancy and associating the erosion of underwriting guidelines and increased default rates with the primary originators whose loans backed plaintiffs' certificates insufficient to constitute knowledge of securities fraud).

None of the allegations or facts which defendants contend should impute notice to plaintiffs directly implicate misrepresentation or scienter on the part of Morgan Stanley. The collapse of the various loan originators, or even plaintiffs' counsel's accusations of wrongdoing against one of them, would not necessarily apprise plaintiffs that Morgan Stanley was complicit in their wrongdoing. The link becomes more attenuated insofar as each originator was responsible for only a percentage, ranging from an average of 13% to 45%, of the loan placed in various combinations of the RMBS. Nor do general allegations of misconduct in the subprime industry suggest misconduct or knowledge

thereof by Morgan Stanley, much less misconduct with respect to the particular tranches representing plaintiffs' investments.

The only allegation relating to Morgan Stanley's scienter is the NPR report. However, as noted, even where facts are "widely-reported" their knowledge cannot be imputed to a plaintiff absent actual notice. Furthermore, an additional showing would be required that such facts would have led to knowledge of fraud with respect to plaintiffs' investments. At the pleading stage, such a determination cannot be made based upon either the alleged content of the NPR report or the more general press coverage regarding subprime industry problems and malfeasance. The court must credit, at this juncture, plaintiffs' claim that the statute of limitations was tolled until it learned the relevant facts when the Massachusetts Attorney General filed an Assurance of Discontinuance in 2010, or when the Financial Crisis Inquiry Commission issued a Report in 2011.

Accordingly, for the foregoing reasons, defendants' motion to dismiss the Amended Complaint as time-barred is denied without prejudice.

II. Common Law Fraud and Fraudulent Inducement Claims

As noted, defendants challenge several aspects of plaintiffs' fraud and fraudulent inducement claims. To plead fraud, the plaintiff must allege "(1) a material misrepresentation of a fact, (2) knowledge of its falsity, (3) an intent to induce reliance,

(4) justifiable reliance by the plaintiff, and (5) damages.” *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 559 (2009). The elements of a fraudulent inducement claim are substantially the same. *See Perrotti v. Becker, Glynn, Melamed & Muffly LLP*, 82 A.D.3d 495, 498 (1st Dep’t 2011).

A. *Scienter*

Defendants first dispute the adequacy of plaintiffs’ allegations of scienter. To satisfy that element, the pleading need only “contain[] some rational basis for inferring that the alleged misrepresentation was knowingly made.” *Houbigant, Inc. v. Deloitte & Touche LLP*, 303 A.D.2d 92, 98 (1st Dep’t 2003); *Seaview Mezzanine Fund, LP v. Ramson*, 77 A.D.3d 567, 568 (1st Dep’t 2010). However, this “requirement should not be confused with unassailable proof of fraud.” *Pludeman v. N. Leasing Sys., Inc.*, 10 N.Y.3d 486, 492 (2008). In a case involving RMBS, “the allegations of the mortgage loans material and pervasive non-compliance with the Seller’s underwriting Guide and the mortgage loan representations are sufficient non-compliance from which Defendant’s scienter can be inferred.” *MBIA Ins. Co. v. Morgan Stanley*, 2011 WL 2118336, at 4-5 (Sup. Ct. Westchester Co. May 26, 2011); *see China Dev. Indus. Bank v. Morgan Stanley & Co. Inc.*, 86 A.D.3d 435, 436 (1st Dep’t 2011) (“[t]he element of scienter can be reasonably inferred from the facts alleged . . . including e-mails, which support a motive

by Morgan, at the time of the subject transaction, to quickly dispose of troubled collateral [i.e., predominantly residential mortgage-backed securities] which it owned at the time”); *Stichting*, 38 Misc.3d 1214(A), at *10 (scienter requirement satisfied where complaint alleged that defendants “were involved in every step of the complex process that eventually resulted in the Certificates, including making the mortgage loans, selecting the loans for securitization, commissioning diligence reviews of the loans, servicing the loans, monitoring loan performance, bundling the loans into RMBS, and selling the RMBS Certificates to investors . . . [d]efendants’ knowledge of the poor quality of the loans can be inferred from its interactions with its due diligence vendor . . . and through its use of the ‘repricing’ program, which involved demanding extra compensation from third party originators for poor quality loans . . . [t]aken together, [plaintiff’s] allegations make it rational to infer that [defendants] knew that many of the representations in its Offering Documents were false”).

As described above, the Amended Complaint alleges, *inter alia*, that defendants knew about and ignored deficiencies in the loan pools, deliberately manipulated the due diligence process and ratings procedures to conceal the deficiencies, participated in a variety of other questionable practices to procure a high volume of loans, and used its knowledge to bet against its own RMBS and negotiate cheaper prices for loans.

Nevertheless, defendants contend that their disclosed retention of residual interests in the

same RMBS it sold to Allstate exposed it to greater financial risk than plaintiffs, and argue that this fact renders the allegation that Morgan Stanley knew the loans it was securitizing were destined to fail “economically irrational” and “legally implausible.” A similar argument was rejected in *Fed. Hous. Fin. Auth. v. Stanley*, 2012 WL 5868300 (S.D.N.Y. 2012), where defendants argued that “plaintiff’s scienter allegations are not credible because Morgan Stanley retained an interest in the securitizations that it sold to the GSEs and therefore had no motive to permit the securitization of deficient loans.” *Id.* at *2. The court concluded that “[w]hatever the merit of these arguments, they turn on factual disputes that are inappropriate for resolution through a motion to dismiss.” *Id.*

The court concurs, and declines to evaluate at this time defendants’ other motive-related arguments regarding the rationality of plaintiffs’ allegations about its warehouse lending arrangements. Furthermore, the court does not find *Ashland Inc. v. Morgan Stanley & Co.*, 700 F. Supp. 2d 453 (S.D.N.Y. 2010) persuasive, as the court was addressing a claim under the Private Securities Litigation Reform Act under a heightened standard that required that “an inference of scienter must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.” *Id.* at 486 (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 325 (2007); see *Stichting*, 38 Misc.3d 1214(A), at *9 (New York law employs “a more lenient test than the Second Circuit’s ‘strong inference of fraud’ test, and requires

only that the complaint include ‘facts from which it is possible to infer defendant's knowledge of the falsity of its statements’”) (citations omitted).

B. *Loss Causation*

Defendants next assert that plaintiffs cannot establish that the decline in the value of the six RMBS was proximately caused by their alleged misrepresentations. In particular, defendants contend that plaintiffs have impermissibly ignored non-fraudulent explanations for their losses, such as whether the economic downturn was an intervening cause. This type of argument has been repeatedly rejected as premature. “[I]t is the job of the fact-finder to determine which losses were proximately caused by misrepresentations and which are due to extrinsic forces . . . [i]t cannot be said, on this pre-answer motion to dismiss, that [plaintiffs’] losses were caused, as a matter of law, by the 2007 housing and credit crisis.” *MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, 87 A.D.3d 287, 295 (1st Dep’t 2011) (internal citations and quotations omitted); see *MBIA Ins. Co. v. Morgan Stanley*, 2011 WL 2118336, at 5 (Sup. Ct. Westchester Co. May 26, 2011) (“whether MBIA's losses were caused by Morgan Stanley's representations or the economic down is a question of fact for trial”); *In re Sadia*, 269 F.R.D. 298, 317 (S.D.N.Y. 2010) (“For the third time in as many months, the Court finds itself presented with the defense: ‘don't blame me, blame the financial crisis.’ For the same reasons I

rejected this argument in prior cases, I reject it once again”). Defendants’ argument also ignores the Amended Complaint’s pleading that the housing market collapse was not necessarily an independent event, but was rather, in part, caused by the securitization practices of industry participants like Morgan Stanley. *See* Am. Compl. ¶ 40; *see also In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1174 (C.D. Cal. 2008) (defendant’s “deteriorating lending standards were causally linked to at least some of the macroeconomic shifts of the past year”). For this reason, defendants’ reference to Allstate’s statement in its 2009 annual report that its losses were “largely due to the macroeconomic conditions and credit market deterioration, including the impact of real estate valuations” is not a dispositive admission. Plaintiffs’ failure to blame defendants in that particular report does not negate the possibility that defendants were culpable for the conditions which led to plaintiffs’ damages.

While the plaintiff must plead some facts supporting its theory that defendants’ conduct was responsible for its losses, “[i]t is not . . . necessary to allege that the entirety of the loss was caused by the alleged misstatements and none was caused by the more general market decline.” *Stichting*, 38 Misc.3d 1214(A) at *11. Thus, “[w]here the plaintiff pleads some causation between the defendant’s misstatements and the loss, and the defendant claims some other mechanism of causation such as a market downturn, causation is a matter of proof at trial and not to be decided on a . . . motion to dismiss.”

Id. (internal quotations and citations omitted). It is sufficient to allege a “chain of causation leading from the alleged abandonment of underwriting standards, to higher rates of default and delinquency in the underlying mortgages, to the Certificates’ ratings downgrades, finally to the Certificates’ decline in market value” and once that is done, “[t]he validity of this chain of causation, and the apportionment of [plaintiff’s] loss between this cause and the general credit crisis, are not sustainable issues for a motion to dismiss.” *Id.*

C. *Misrepresentation*

As noted, the Amended Complaint alleges misrepresentations in the Offering Materials including false or misleading statements regarding the loan originators’ and defendants’ underwriting guidelines, the LTV and DTI ratios, defendants’ due diligence into the loan originators and the mortgage loans and the accuracy of certain credit ratings. Defendants list a number of examples of disclosures that were made connection with the issuance of each certificate:

These mortgage loans may be considered to be of a riskier nature than mortgage loans made by traditional sources of financing The underwriting standards used in the origination of [these loans] are generally less stringent than those of Fannie Mae or Freddie Mac with respect to a borrower’s credit history and in certain other respects As a result of this less stringent approach to underwriting, the mortgage loans purchased by the trust may experience higher rates of delinquencies, defaults and foreclosures (MSIX 2006-1);

In recent years, borrowers have increasingly financed their homes with new mortgage loan products, which in many cases have allowed them to purchase homes that they might otherwise have been unable to afford. Many of these new products feature low monthly payments during the initial years of the loan that can increase (in some cases, significantly) over the loan term. There is little historical data with respect to these new mortgage loan products. Consequently, as borrowers face potentially higher monthly payments for the remaining terms of their loans, it is possible that, combined with other economic conditions such as increasing interest rates and deterioration of home values, borrower delinquencies and defaults could exceed anticipated levels. (MSHEL 2006-3);

It is expected that a substantial portion of the mortgage loans will represent these kinds of exceptions [“a [DTI] ratio exception, a pricing exception, a [LTV] ratio exception, an exception from certain requirements of a particular risk category. (MSAC 2006-HE8);

The scope of the mortgage loan due diligence varies based on the credit quality of the mortgage loans. (MSAC 2006-HE4);

New Century Financial Corporation and its subsidiaries . . . have been experiencing severe financial difficulties. These difficulties may have adversely affected the application by New Century Mortgage Corporation and its affiliates of their underwriting standards in a manner that would have an adverse effect on the default and loss experience of the mortgage loans in the future. (MSAC 2007-NC4);

A security rating is not a recommendation to buy, sell or hold securities. These ratings may be lowered or withdrawn at any time by any of the rating agencies. (MSIX 2006-1);

Your investment may not be liquid . . . you may not be able to sell your certificates readily or at prices that will enable you to realize your desired yield. The market values of the certificates are likely to fluctuate; these fluctuations may be significant and could result in significant losses to you. (MSHEL 2006-3).

Defendants further note that the prospectus supplements disclosed that the originators could make exceptions to the underwriting guidelines based on stated and non-stated factors, including “pride of ownership.” Defendants note that in connection with various certificates they, issued notices that “a significant number,” “a substantial portion,” or “a substantial number” of the loans represented underwriting exceptions. They further contend that they never misrepresented the risks of the RMBS, because the prospectus supplements disclosed that the underwriting standards were “less stringent” than those used by Fannie Mae and Freddie Mac, that the originators’ guidelines were “generally applied, with some variation,” and that many mortgages were made as exceptions to the underwriters’ general guidelines.

As in other RMBS cases where such warnings have been deemed ineffective, defendants have merely identified “boilerplate disclaimers and disclosures in the relevant offering documents . . . that . . . [did] not disclose the risk of a systematic disregard for underwriting standards or an effort to maximize loan originations without regard to loan quality,” or alert plaintiffs’ to the other allegedly wrongful practices. *In re Morgan Stanley Mortgage Pass-Through Certificates Litig.*, 810 F. Supp. 2d 650, 672 (S.D.N.Y. 2011). A general warning that “exceptions” may occur where borrower demonstrates certain compensating factors does not give notice of, as alleged here, “a wholesale abandonment of underwriting standards.” *Plumbers’ Union Local No. 12 Pension Fund v.*

Nomura Asset Acceptance Corp., 632 F.3d 762, 773 (1st Cir. 2011). *See also New Jersey Carpenters Vacation Fund v. Royal Bank of Scotland Group, PLC*, 720 F. Supp. 2d 254, 270 (S.D.N.Y. 2010) (“Disclosures that described lenient, but nonetheless existing guidelines about risky loan collateral, would not lead a reasonable investor to conclude that the mortgage originators could entirely disregard or ignore those loan guidelines”); *Pub. Employees’ Ret. Sys. of Mississippi v. Merrill Lynch & Co. Inc.*, 714 F. Supp. 2d 475, 483 (S.D.N.Y. 2010) (“[T]he alleged repeated deviation from established underwriting standards is enough to render misleading the assertion in the registration statements that underwriting guidelines were generally followed.”); *In re IndyMac Mortgage-Backed Sec. Litig.*, 718 F. Supp. 2d 495, 509 (S.D.N.Y. 2010) (“Disclosures regarding the risks stemming from the allegedly abandoned standards do not adequately warn of the risk the standards will be ignored”).

Accordingly, notwithstanding the disclaimers, plaintiffs' allegations that the Offering Materials were misleading are sufficient to withstand a motion to dismiss. The court rejects defendants' alternative argument that they are immunized from liability because the Offering Materials generally disclosed that the representations were based on information provided by the originators. Defendants may be liable for drafting and distributing statements they knew to be false, regardless of who they credit as the source of the information. *See Williams v. Sidley Austin Brown & Wood, LLP*, 38 A.D.3d 219,

220 (1st Dep't 2007); *China Dev. Indus. Bank*, 86 A.D.3d at 436. For the same reason, defendants can be held liable for promoting the securities based upon the high ratings from the credit ratings agencies, if, as alleged, they knew the ratings were based on false information provided to the agencies and they engaged in pressuring and manipulating the agencies into using outdated ratings model. (Am. Compl. ¶¶ 204-15, 226-29.)

The court also finds that plaintiffs' allegations of fraud in connection with the appraisal process and LTV ratios may stand. The complaint alleges that the appraisers retained were biased and that the originators manipulated appraised values (Am. Compl. ¶¶ 77-80, 82, 104, 113, 125) with the result that the appraisals were inflated, the LTV ratios were understated, and the mortgaged properties were often worth less than the loan. (Am. Compl. ¶¶ 52, 163-64.) Plaintiffs allege that defendants knew these facts and purposefully delayed second appraisals to allow the loans to be securitized based on the original flawed information. (Am. Compl. ¶¶ 163-65.) These types of claims have been held to be actionable, notwithstanding defendants' contention that appraisals are statements of mere opinion. *See Morgan Stanley Mortgage Pass-Through Certificates Litig*, 810 F. Supp. 2d at 672-73; *Stichting*, 38 Misc.3d 1214(A) at *9. Moreover, appraisals are "akin to representations of fact" when they purport to represent an "analysis of the market conditions, sales histories and fair market values of the relevant collateral."

Stewardship Credit Arbitrage Fund LLC v. Charles Zucker Culture Pearl Corp., 2011

WL 1744217, at * 5 (Sup. Ct. N.Y. Cty. 2011).

Plaintiffs have also identified actionable misrepresentations regarding defendants' due diligence into the loan originators and the loan origination processes and systems. The Offering Materials stated, *inter alia*, that “[p]rior to acquiring any residential mortgage loans, [defendant] conducts a review of the related mortgage loan seller” and “[t]he underwriting guideline review entails a review of the mortgage loan origination processes and systems.” (Am. Compl. ¶ 225.) Plaintiffs contend that defendants ignored the pervasive defects in the loans it securitized, ignored the findings of its due diligence providers, and used its knowledge of the defective underwriting process to negotiate reduced loan prices. Although defendants did conduct the promised reviews, the statements are misleading to the extent that they imply that defendants would act in accordance with, rather than completely disregard, the results of their findings. Defendants' disclosures that they would not review every loan, or that their review would vary with the credit quality of the originator, again cannot excuse a wholesale abandonment of underwriting standards and practices.

D. *Reasonable Reliance*

Defendants contend that Allstate could not have reasonably relied on any alleged misrepresentations because it is a sophisticated investor in the mortgage-backed security market, and the information available to it, and to the public at large at the time the securities were issued, should have alerted it to the alleged misrepresentations. The pleading requirements for reliance are minimal on a motion to dismiss, and it is generally premature to decide the question at the pleading stage. *Knight Securities LP v. Fiduciary Trust Co.*, 5 A.D.3d 172, 173 (1st Dep't 2004). While it is true that "New York law imposes an affirmative duty on sophisticated investors to protect themselves from misrepresentations made during business acquisitions by investigating the details of the transactions," *Global Minerals & Metals Corp. v. Holme*, 35 A.D.3d 93, 100 (1st Dep't 2006), "such rule is not determinative . . . where [plaintiff] . . . has sufficiently alleged that [defendant] possessed peculiar knowledge of the facts underlying the fraud, and the circumstances present would preclude any investigation by [plaintiff] conducted with due diligence." *China Dev. Indus. Bank*, 86 A.D.3d at 436. Plaintiffs allege that they lacked access to the underlying RMBS loan files and had to rely on defendants' representations about their quality. (Am. Compl. ¶ 36.) This pleading distinguishes the instant case from *HSH Nordbank AG v. UBS AG*, 95 A.D.3d 185 (1st Dep't 2012), as Plaintiffs' allegations here stem from facts not alleged by either side to be discoverable through publicly

available sources or ascertainable through means available to plaintiffs – i.e., the underwriting practices used to originate the loans in the securitization and the resulting quality of those loans. *See ACA Fin. Guar. Corp. v. Goldman Sachs & Co.*, 35 Misc.3d 1217(A), at *12-*13 (Sup. Ct. N.Y. Cty. Apr. 23, 2012). Accordingly, the Court finds that Plaintiffs have adequately pleaded reliance. *See Stichting*, 38 Misc.3d 1214(A) at *10 (“plaintiff has also alleged that it 'had no reasonable means or ability to conduct its own due diligence regarding the quality of the mortgage pools' because it did not have access to the underlying loan files, appraisals, or supporting documentation . . . [t]hese allegations are sufficient to plead justifiable reliance”).

E. *Damages*

Defendant question plaintiffs’ theories of damages and dismiss them as speculative, premature or otherwise noncognizable. However, under CPLR 3016 (b), “[i]t is not necessary . . . that the measure of damages be pleaded, so long as facts are alleged from which damages may properly be inferred.” *Black v. Chittenden*, 69 N.Y.2d 665, 668 (1986). At a minimum, plaintiffs assert that they paid more for the Certificates than they were worth, so they may seek to recover the impermissible premium they paid. *See Allstate Ins. Co. v. Countrywide Fin. Corp.*, 824 F. Supp. 2d 1164, 1188 (C.D. Cal. 2011) (“Allstate has pleaded that the Defendants misrepresented the value and riskiness

of the underlying loans and the collateral securing those loans . . . [i]f true, the RMBS may have been worth less than Allstate paid for them at the time of sale . . . [t]his is marginally sufficient, at the pleading stage, to establish damages under New York's common law rule"). Plaintiffs may also be entitled, as they claim, to the decline in the market value of the Certificates, *see Stichting*, 38 Misc.3d 1214(A), at *11.

III. *Negligent Misrepresentation*

In count four of the Amended Complaint, plaintiffs assert a claim for negligent misrepresentation. Such a claim of requires allegations of “(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information.” *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 180 (2011) (internal quotation omitted); *Gomez-Jimenez v. New York Law School*, 103 A.D.3d 13, at *3 (2012). While the existence of a special relationship to support a negligent misrepresentation claim “generally raises an issue of fact,” *see Kimmell v. Schaefer*, 89 N.Y.2d 257, 263 (1996), “where the plaintiff’s allegations, accepted as true and given all favorable inferences, simply do not support the finding of a special relationship, the claim is subject to pre-answer dismissal.” *MBIA Ins. Co. v. Residential Funding Co., LLC*, 26 Misc.3d 1204(A), at *5 (Sup. Ct. N.Y. Cty. Dec. 22, 2009).

A duty to impart correct information falls only upon “persons who possess unique or specialized expertise, or who are in a special position of confidence and trust with the injured party such that reliance on the negligent misrepresentation is justified.” *Kimmell v. Schaefer*, 89 N.Y.2d 257, 263 (1996). Plaintiffs argue that defendants possessed superior knowledge or special expertise because of their access to the loan files and their understanding of the underwriting procedures and its inherent defects. However, “a company's knowledge of the particulars of its own business is not the type of unique or specialized knowledge” that can create a duty. *MBIA Ins. Co. v. GMAC*, 30 Misc. 3d 856, 864 (Sup. Ct. N.Y. Cty. 2010) (quotations omitted). New York courts have dismissed negligent misrepresentation claims in other RMBS cases on the ground that “[m]ere possession of the loan files and servicing files does not create the type of specialized knowledge discussed in *Kimmell*.” *Id.* at 865; *see also Stichting*, 38 Misc.3d 1214(A) at *13 (dismissing negligent misrepresentation claim where plaintiff did not plead “specialized knowledge” despite assertions that Credit Suisse “had superior knowledge of its own underwriting procedures” and “it alone had the ability to investigate the underlying loans.”); *MBIA Ins. Corp. v Residential Funding Co.*, 2009 WL 5178337, *6 (Sup. Ct. N.Y. Cty. 2009). Likewise here, dismissal of the negligent misrepresentation claim is warranted, given plaintiffs’ failure to plead a special or privity-like relationship with defendants. Accordingly, count four of the Amended Complaint is dismissed.

IV. Aiding and Abetting Fraud

Defendants advance no independent arguments in favor of dismissing the aiding and abetting fraud claim (count three). Accordingly, defendants' motion to dismiss is denied as to count three.

Order

Accordingly, it is hereby

ORDERED, that defendants' motion to dismiss is granted as to the fourth cause of action for negligent misrepresentation, and it is further

ORDERED, that defendants' motion to dismiss is denied as to all other claims; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within 20 days of receipt of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 442, 60 Centre Street, on May 14, 2013, at 10:45 AM.

Dated: 3-14-13

ENTER:



Hon. Eileen Bransten, J.S.C.