

**Home Equity Mtge. Trust Series 2006-5 v DLJ Mtge.
Capital, Inc.**

2013 NY Slip Op 32963(U)

November 8, 2013

Supreme Court, New York County

Docket Number: 653787/12

Judge: Melvin L. Schweitzer

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This opinion is uncorrected and not selected for official publication.

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

HOME EQUITY MORTGAGE TRUST SERIES 2006-5, et al.

INDEX NO. 653787/12

Plaintiff,

MOTION DATE _____

-vs-

MOTION SEQ. NO. 005

DLJ MORTGAGE CAPITAL, INC., et al.,

MOTION CAL. NO. _____

Defendant.

The following papers, numbered 1 to _____ were read on this motion _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

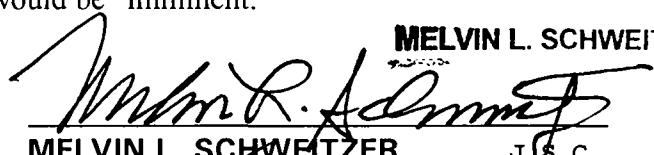
Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that defendants' motions, on order to show cause, for a stay of discovery pending resolution of an appeal in the separate case of *Ace Sec. Corp., Home Equity Loan Trust, Series 2006-SL2 v DB Structured Prods., Inc.*, are denied. Although a court's decision under CPLR 2201 whether to stay proceedings is discretionary, the case law construing that section requires an identity of parties, causes of action or relief sought before a stay should be granted. *See 700 Madison Partners, LLC v Hubrecht*, 48 AD3d 358, 359 (1st Dept 2008); *see also Hope's Windows v Albro Metal Prods. Corp.*, 93 AD2d 711, 712 (1st Dept 1983), *lv dismissed* 59 NY2d 968 (1983). Defendants have not established any of the requisite elements. In addition, "[w]hile it is true that the courts are authorized to grant a stay of proceedings where a point of law applicable to certain litigants is about to be decided by an appellate court, this should only be done where a decision is imminent. The court must take into consideration when the appeal was taken, when arguments are to be heard, and when a decision will be forthcoming." *Miller v Miller*, 109 Misc2d 982, 983 (NY Sup Ct 1981) (Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C2201:11, p 9). Defendants have not shown that the appeal in *Ace Sec. Corp., Home Equity Loan Trust, Series 2006-SL2 v DB Structured Prods., Inc.* will resolve a "point of law applicable" to the parties here, or that the decision would resolve this matter. Additionally, although it appears that *Ace* will be argued in December of this year, there is no guarantee that a decision would be "imminent."

Dated: November 8, 2013


MELVIN L. SCHWEITZER, J.S.C.

- Check one: CASE DISPOSED NON-FINAL DISPOSITION
- Check if appropriate: GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPT. REFERENCE

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