

**Federal Hous. Fin. Agency v DB Structured Prods.,  
Inc.**

2014 NY Slip Op 30925(U)

March 17, 2014

Supreme Court, New York County

Docket Number: 652978/2012

Judge: Eileen Bransten

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This opinion is uncorrected and not selected for official publication.

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

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FEDERAL HOUSING FINANCE AGENCY, AS  
CONSERVATOR FOR THE FEDERAL HOME  
LOAN MORTGAGE CORPORATION, on behalf of  
the Trustee of the ACE SECURITIES CORP. HOME  
EQUITY LOAN TRUST, SERIES 2006-FM1 (ACE  
2006-FM1),

Plaintiff,

- against -

Index No. 652978/2012  
Motion Date: 11/21/2013  
Motion Seq. No.: 001

DB STRUCTURED PRODUCTS, INC.,

Defendant.

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BRANSTEN, J.

In this breach of contract action regarding mortgage-backed securities, Defendant DB Structured Products, Inc. ("DBSP") moves to dismiss the Complaint of Plaintiff Federal Housing Finance Agency ("FHFA") pursuant to CPLR 3211(a)(1), (a)(3), (a)(7) and (a)(8). Plaintiff opposes. For the reasons set forth below, Defendant's motion is granted in its entirety and the Complaint is dismissed with prejudice.

**Background**<sup>1</sup>

DBSP was the sponsor of the securitization at issue here, known as ACE 2006-FM1 ("Trust"). (Compl. ¶¶ 38, 39.) As sponsor, DBSP purchased \$1,451,859,623 of

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<sup>1</sup> All facts in this section are undisputed, unless otherwise noted.

mortgage loans from a third-party originator and resold these mortgage loans to the depositor. (Compl. ¶ 38.) The depositor purchased these loans pursuant to the Mortgage Loan Purchase Agreement (“MLPA”), dated August 25, 2006. (Compl. ¶ 38.) The depositor then sold the mortgage loans to the Trust under the Pooling and Servicing Agreement (“PSA”), which delineated the rights and duties of the Trustee and certificateholders. (Compl. ¶ 38.) HSBC Bank USA, National Association, was designated as the trustee (“Trustee”). (Compl. ¶ 21.)

The Federal Home Loan Mortgage Corporation (“Freddie Mac”) purchased certificates in the Trust. (Compl. ¶ 23.) FHFA, in its capacity as conservator of Freddie Mac, commenced this action by filing a summons with notice on August 24, 2012, asserting DBSP’s breach of various representations and warranties that DBSP made in the MLPA. (Compl. ¶¶ 23, 41.) The Trustee joined this action on January 28, 2013, by filing a notice of appearance. *See* Notice of Appearance, Jan. 28, 2013, NYSCEF Doc. No. 4.

DBSP now moves to dismiss the Complaint.

#### **I. Defendant’s Motion to Dismiss**

This case is materially similar to the recent First Department case, *ACE Securities Corp. v. DB Structured Products, Inc.*, 112 A.D.3d 522 (1st Dep’t 2013). Three concepts from *ACE Securities Corp.* are directly applicable here: (i) the standing of

certificateholders, (ii) the expiration of the statute of limitations, and (iii) the relationship of a trustee's complaint to the certificateholder's earlier filing.

First, based upon contractual language materially similar to the contracts at issue here, the Appellate Division held that certificateholders lacked standing to sue for an RMBS sponsor's breach of its representations and warranties. *See ACE Sec. Corp.*, 112 A.D.3d at 523. The First Department held that the PSA's "no-action" clause barred the certificate holders from filing suit without first providing a notice of default to the Trustee. *See ACE Sec. Corp.*, 112 A.D.3d at 523. The Court further held that "the PSA does not authorize certificate holders to provide notices of 'default' in connection with the sponsor's breaches of the representations." *ACE Sec. Corp.*, 112 A.D.3d at 523.

Here, PSA Section 12.03 contains a similar "no-action" clause. *See Compl. Ex. B* at 229 ("No Certificateholder shall have any right . . . to institute suit . . . unless such Holder previously shall have given to the Trustee a written notice of default"). PSA Article VIII, entitled "Default," lists only Servicer and Master Servicer defaults. *See Compl. Ex. B* at 202-09 (defining default). As in *ACE Securities Corp.*, the sponsor's breach of representations and warranties is not a "default" about which FHFA is entitled to notify the Trustee. Therefore, FHFA lacks standing to sue. *See* 112 A.D.3d at 523.

Second, the statute of limitations began to run when the representations and warranties were made, which was at closing, and not each time DBSP refused a repurchase demand. *See ACE Sec. Corp.*, 112 A.D.3d at 523 (“[T]he claims accrued on the closing date of the MLPA, . . . when any breach of the representations and warranties contained therein occurred.”).

Here, the transaction closed on August 25, 2006, so the statute of limitations expired on August 25, 2012. *See* Compl. ¶ 38; CPLR § 213(2) (setting statute of limitation at six years for suit upon a contractual obligation). The Trustee did not join this action until January 28, 2013. *See* Notice of Appearance, Jan. 28, 2013, NYSCEF Doc. No. 4 (Trustee’s Notice of Appearance). Therefore, the statute of limitations bars the Trustee from prosecuting this action.

Finally, the Trustee’s complaint does not relate back to FHFA’s summons with notice. *See ACE Sec. Corp. v. DB Structured Products, Inc.*, 112 A.D.3d 522, 523 (1st Dep’t 2013) (“Nor does the substitution of the trustee as plaintiff permit us to deem timely filed the trustee’s complaint”). Therefore, the Complaint is barred by the statute of limitations and is hereby dismissed in its entirety.

*(Order of the Court appears on the following page.)*

Conclusion

Accordingly, it is hereby

ORDERED that the motion to dismiss the complaint is GRANTED in its entirety and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: New York, New York

March 17, 2014

ENTER:

  
Hon. Eileen Bransten, J.S.C.