IKB Deutsche Industriebank AG v Credit Suisse Sec. (USA) LLC
2014 NY Slip Op 31066(U)
March 3, 2014
Sup Ct, New York County
Docket Number: 653122/2011
Judge: Marcy S. Friedman

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN PART 60
Justice

IKB DEUTSCHE INDUSTRIEBANK AG and IKB INTERNATIONAL S.A. in LIQUIDATION

Plaintiffs,

-against-

CREDIT SUISSE SECURITIES (USA) LLC (F/K/A CREDIT SUISSE FIRST BOSTON LLC), CREDIT SUISSE HOLDINGS (USA), INC. (F/K/A CREDIT SUISSE FIRST BOSTON, INC.), CREDIT SUISSE (USA), INC. (F/K/A CREDIT SUISSE FIRST BOSTON (USA), INC.), CREDIT SUISSE FIRST BOSTON MORTGAGE ACCEPTANCE CORP., CREDIT SUISSE FINANCIAL CORP. (F/K/A CREDIT SUISSE FIRST BOSTON FINANCIAL CORP.), CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., CREDIT SUISSE MANAGEMENT LLC (F/K/A CREDIT SUISSE FIRST BOSTON MANAGEMENT LLC), ASSET BACKED SECURITIES CORP., and DLJ MORTGAGE CAPITAL, INC.,

Defendants.

INDEX NO. 653122/2011

MOTION DATE _____

MOTION SEQ. NOs. 001

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

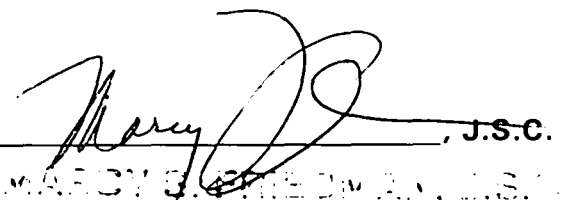
The following papers, numbered 1 to _____ were read on this motion to dismiss.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	No (s). _____
Answering Affidavits — Exhibits _____	No (s). _____
Replying Affidavits _____	No (s). _____

Cross-Motion: ☐ Yes ☐ No

Defendants' motion to dismiss is decided in accordance with the attached decision/order, dated March 3, 2014.

Dated: 3-3-14



_____, J.S.C.
MARCY S. FRIEDMAN, 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 60

PRESENT: Hon. Marcy S. Friedman, JSC

IKB DEUTSCHE INDUSTRIEBANK AG and
IKB INTERNATIONAL S.A. in LIQUIDATION, Index No. 653122/2011

Plaintiffs,

- against -

CREDIT SUISSE SECURITIES (USA) LLC (F/K/A CREDIT SUISSE FIRST BOSTON LLC), CREDIT SUISSE HOLDINGS (USA), INC. (F/K/A CREDIT SUISSE FIRST BOSTON, INC.), CREDIT SUISSE (USA), INC. (F/K/A CREDIT SUISSE FIRST BOSTON (USA), INC.), CREDIT SUISSE FIRST BOSTON MORTGAGE ACCEPTANCE CORP., CREDIT SUISSE FINANCIAL CORP. (F/K/A CREDIT SUISSE FIRST BOSTON FINANCIAL CORP.), CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., CREDIT SUISSE MANAGEMENT LLC (F/K/A CREDIT SUISSE FIRST BOSTON MANAGEMENT LLC), ASSET BACKED SECURITIES CORP., AND DLJ MORTGAGE CAPITAL, INC.,

Defendants.

This fraud action arises out of the IKB plaintiffs' purchase of residential mortgage backed securities (RMBS) Certificates from the Credit Suisse defendants. Defendants move to dismiss the Consolidated Complaint (Complaint), pursuant to CPLR 3211 (a) (5) and (7), on the grounds that it is barred by the statute of limitations and fails to state a cause of action.

BACKGROUND/THE COMPLAINT

Unless otherwise indicated, the following facts are pleaded in the Complaint. Plaintiff IKB Deutsche Industriebank AG (IKB Germany) is a commercial bank incorporated in Germany. Plaintiff IKB International S.A. in Liquidation (IKB International) is a commercial bank in liquidation, with a main office in Luxembourg. (Compl. ¶¶ 28-29.)

Defendant Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston Inc.) (CS Holdings) is a financial holding company. It is the sole owner of Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston [USA], Inc.) (CS USA), Credit Suisse Management LLC (CS Management), and Credit Suisse First Boston Mortgage Acceptance Corp. (CS Mortgage Acceptance). (Compl. ¶ 30.) CS USA is the sole owner of Asset Backed Securities Corp. (ABSC) and Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC) (CS Securities). (Compl. ¶¶ 31, 38.) CS Management is the sole owner of Credit Suisse First Boston Mortgage Securities Corp. (CS Mortgage Securities). (Compl. ¶ 32.) Defendants were an integrated group of affiliates, with most of them sharing the same directors, officers and other high level employees. (Compl.¶¶ 52-53.)

Between June 2005 and January 2007, IKB International purchased $97,435,00 in RMBS (the "Certificates") from CS Securities in eleven offerings.[1] By contract dated November 20,

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[1] The offerings were as follows:

Offering	Tranche	Purchase Price	Date
HEAT 2005-5	2A3	5,000,000.00	6/22/2005
HEAT 2005-8	M5	10,000,000.00	10/5/2005
HEAT 2005-9	M7	1,250,000.00	10/27/2005
HEAT 2006-1	M7	4,750,000.00	12/5/2005
HEAT 2006-2	M4	6,000,000.00	1/18/2006
HEAT 2006-4	M4	7,000,000.00	3/30/2006
ABSHE 2006-HE5	M4	2,000,000.00	6/26/2006
" "	M5	2,500,000.00	6/26/2006
" "	M7	2,000,000.00	6/26/2006
HEMT 2006-4	M1	6,000,000.00	7/26/2006
" "	M2	6,000,000.00	7/26/2006
CSAB 2006-3	M1	18,935,000.00	10/20/2006
CSAB 2006-4	M1A	11,000,000.00	11/14/2006
CSMC 2007-1	1A6A	15,000,000.00	1/23/2007

(Compl. ¶¶ 1, 42.)

2008, IKB International sold the Certificates to IKB Germany. (Compl. ¶ 41.) IKB International is an indirect wholly-owned subsidiary of IKB Germany. (Miranne Aff., Exh. 19.)

In an RMBS securitization, an investment bank typically pools thousands of residential mortgages in a trust, which issues securities in the form of certificates to investors. The certificates entitle the holders to a portion of the monthly revenue stream produced by principal and interest payments made by the mortgage borrowers. (Compl. ¶ 43.) The process begins when a lending institution makes a home loan, secured by a mortgage, to a borrower. The lender, also known as the "originator," typically sells such loans, in bulk, to the "sponsor," an affiliate of the investment bank initiating the securitization. The sponsor (or the originator if there is no sponsor) then sells the loans to a "depositor," typically also an affiliate of the same investment bank. The depositor "deposits" all of the loans into the trust. (Compl. ¶¶ 44, 49.) The trust then issues certificates of varying seniority, called "tranches," which entitle the certificate-holder to receive a portion of the principal and interest paid by the borrowers pursuant to the mortgages. (Compl. ¶ 50.) The certificates are ultimately allocated to one or more underwriters for sale to investors. (Compl. ¶ 51.)

In this case, the originators included defendants DLJ Mortgage Capital, Inc. (DLJ) and Credit Suisse Financial Corp. (CS Financial), which shared officers, directors, and high level employees with the remaining defendants. (Compl. ¶¶ 52, 60.) DLJ originated loans for several of the securitizations, including CSAB 2006-03, CSAB 2006-04, and CSMC 2007-01. (Compl. ¶¶ 34, 115.) CS Financial originated loans for several securitizations, including CSAB 2006-3, CSAB 2006-4, and CSMC 2007-1 (Compl. ¶¶ 33, 115.) Other loans were originated by non-parties Wells Fargo Bank, N.A. (Wells Fargo), Finance Americas LLC (Finance Americas), Aames Capital Corporation (Ames), AEGIS Mortgage Corporation (Aegis), Option One

Mortgage Corporation (Option One), WMC Mortgage Corporation (WMC), American Home Mortgage Corporation (American Home), Countrywide Home Loans, Inc. (Countrywide) and Fremont Investment and Loan (Fremont) (Compl. ¶¶ 115, 121.)

DLJ also served as the sponsor for a number of the offerings. The remaining securitizations did not have sponsors. (Compl. ¶¶ 34, 61.) Credit Suisse First Boston Mortgage Securities Corp. (CS Mortgage) served as the depositor for all the securitizations except HEAT 2005-9, for which CS Mortgage Acceptance served as the depositor, and ABSHE 2006-HE5, for which ABSC served as the depositor. (Compl. ¶ 62.) CS Securities was the underwriter of all of the offerings. (Compl. ¶¶ 58, 65.)

The sponsor and depositor are considered the "issuers" of the securities. (Compl. ¶ 44.) They perform a due diligence review of the loan files associated with the pool of mortgages and, based on the results of the review, determine which loans to include in the mortgage pool for each securitization. They also prepare Offering Documents, including prospectuses and prospectus supplements, which make representations to investors concerning the loan-to-value (LTV) and combined loan-to-value (CLTV) ratios of the mortgages, the owner occupancy status, adherence to underwriting guidelines, and the fact that notes and mortgages are assigned to the trust. (Compl. ¶¶ 46-48, 64.) Here, the issuer defendants were responsible for the Offering Documents and were allegedly assisted in their preparation by the underwriter defendant. (Compl. ¶¶ 10, 20, 35-37, 63-64, 67-68, 167.)

Plaintiffs contend that the Offering Documents materially misrepresented a variety of facts pertaining to the loans. First, based on their sampling of approximately 3300 loans (or 275-367 loans per trust) using an Automated Valuation Model (AVM), plaintiffs allege that the Offering Documents understated the LTV ratios by more than 10% for approximately 26%-32%

of the sampled loans in each of the securitizations, and that the actual weighted average LTV ratios were between 5.8% and 10.2% higher than reported. (Compl. ¶¶ 4, 82-86.) Plaintiffs further allege that the LTV ratios were calculated based upon deliberately inflated appraisals, and that the Offering Documents understated the percentage of loans with LTV ratios over 100%, representing that in all but one of the securitizations there were no such loans. (Compl. ¶¶ 75-79, 87.)

Second, plaintiffs allege that the Offering Documents misrepresented the owner occupancy rates of the mortgaged properties. Specifically, the Offering Documents set forth rates for the securitizations ranging from approximately 66% to 95%. Plaintiffs allege, based on their loan sampling, that these rates were overstated by between 8.8% and 18.2%. (Compl. ¶¶ 4, 93-100.)

Third, plaintiffs allege that the Offering Documents contained false representations that the loans either conformed to the underwriting guidelines of the originators, or qualified for inclusion in the pool due to certain compensating factors. (Compl. ¶ 7.) However, plaintiffs' third-party due diligence provider Clayton Services Inc. (Clayton) determined that 32% of the Credit Suisse loans that it reviewed during the period from 2006 to 2007 did not meet the guidelines or qualify under an exception. Defendants nevertheless allegedly "waived" into the pool 33% of those nonconforming loans. (Compl. ¶¶ 102-110, 116-19.)

According to the Complaint, a number of the originators, including Option One, Wells Fargo and Fremont, later faced public and private lawsuits and investigations through which it was determined that they engaged in the wholesale abandonment of underwriting standards, extending loans regardless of the borrowers' ability to repay and sometimes even falsifying credit-related documentation. (Compl. ¶¶ 123-37.)

Finally, the Offering Documents represented that the notes and mortgages underlying the securitizations would be transferred to a trust as of the date of issuance of the Certificates. (Compl. ¶¶ 143-44.) Plaintiffs allege that an investigation of publicly filed satisfactions and assignments revealed that "a substantial majority of the sampled mortgages and notes were not properly and/or timely transferred to the RMBS Trusts." (Compl. ¶¶ 146-147.) Only 6.4% of the 358 sampled satisfactions listed the trust or trustee as the satisfying party, and not a single assignment of the 990 that were reviewed had been executed as of the trust's closing date. (Compl. ¶¶ 148-155.) Further, in reviewing publicly filed records of foreclosure proceedings, plaintiffs claim to have found one note that should have been transferred to a trust upon closing, but that was unendorsed. (Compl. ¶ 157.) Plaintiffs allege that the failure to transfer the instruments was an "industry-wide business practice" intended to save the time and expense of effectuating physical delivery. (Compl. ¶ 158.)

The Complaint alleges that defendants knew of the defects in the loans and the underwriting process through their own due diligence efforts, and those of their due diligence provider Clayton. (Compl. ¶¶ 101-105.) Plaintiffs contend that defendants' knowledge is also inferable from defendants' substantial involvement in the securitization process, including origination of some of the loans included in the mortgage pools, as well as the facts that all of the high level executives of the issuer defendants were also high ranking employees of the underwriter defendant, and that the originator defendants shared high ranking employees with other defendants. (Compl. ¶¶ 195, 198.) In addition, the Complaint pleads defendants' practice of negotiating with the originators for discounts of the purchase price for nonconforming loans, rather than requiring the originators to repurchase the loans. (Compl. ¶ 108.) Defendants also

allegedly knew of the failure to transfer the notes and mortgages, as evidenced by CS Financial's practice of issuing satisfactions without transferring the instruments to a trust. (Compl. ¶ 160.)

Plaintiffs claim that in reliance on the representations in the Offering Documents, they paid a price for the Certificates that was much higher than what they were worth. The market value of the Certificates declined, and the vast majority were downgraded to junk status. In addition, "[t]he failure to transfer the notes and mortgages to the Trusts made foreclosures more difficult and expensive to effectuate (if they were even possible)." (Compl. ¶¶ 172-174.)

This action was commenced by a summons with notice on November 10, 2011 and the Consolidated Complaint was filed on July 2, 2012. The Complaint sets forth four causes of action: (1) common law fraud (Compl. ¶¶ 175-82); (2) fraudulent concealment (Compl. ¶¶ 183-92); (3) aiding and abetting fraud (as against DLJ, CS Securities, CS USA, CS Financial and CS Management only) (Compl. ¶¶ 193-99); and, in the alternative, (4) negligent misrepresentation. (Compl. ¶¶ 200-209.) The prayer for relief seeks punitive damages in connection with plaintiffs' fraud claims.

DISCUSSION

Defendants move to dismiss the claims as time-barred under German law. Defendants also argue that plaintiffs have not pled scienter, justifiable reliance, or loss causation, and have not alleged material misrepresentations with respect to the underwriting guidelines, LTV ratios, owner occupancy statistics, or transfer of title. Defendants further assert that plaintiffs have not pled the special relationship or duty required to state claims for fraudulent concealment or negligent misrepresentation, or particularized their aiding and abetting claim. Finally, defendants assert that the plea for punitive damages fails because plaintiffs have not identified a public wrong.

Statute of Limitations

It is undisputed that both plaintiffs are non-residents and that their cause of action accrued outside New York. New York's borrowing statute, CPLR 202, thus "requires the cause of action to be timely under the limitation periods of both New York and the jurisdiction where the cause of action accrued." (Global Fin. Corp. v Triarc Corp., 93 NY2d 525, 528 [1999].) It is also undisputed that plaintiffs' claims are timely under New York's six year statute of limitations for fraud. The parties disagree as to whether the cause of action accrued in Germany, and is therefore subject to Germany's three year statute of limitations, or whether it accrued in Luxembourg, which has a thirty year statute of limitations.

In cases involving purely economic loss, "the place of injury usually is where the plaintiff resides and sustains the economic impact of the loss." (Global Fin. Corp., 93 NY2d at 529; Portfolio Recovery Assocs., LLC v King, 14 NY3d 410, 416 [2010], rearg denied 15 NY3d 833.) It has been held, however, that a court "can properly consider all relevant factors in determining where the loss is felt." (Lang v Paine, Webber, Jackson & Curtis, Inc., 582 F Supp 1421, 1424-1426 [SD NY 1984] [holding that the place of injury was not plaintiff's residence, but where he maintained his "financial base" – i.e., the situs of his bank account and brokerage account, and of the broker's office through which plaintiff's trades were placed].)

In claiming that the German statute of limitations is applicable, defendants argue that the impact of the loss was sustained by IKB Germany in Germany where it is incorporated, notwithstanding that IKB International, its wholly owned subsidiary, maintained its principal office in Luxembourg and purchased the Certificates there. (See Ds.' Memo. In Reply at 4.) In support of this contention, defendants rely on Baena v Woori Bank (2006 WL 2935752, * 7 [SD

NY Oct. 11, 2006]), an action brought on behalf of a Belgian parent corporation, L & H Belgium, against various defendants that had engaged in a fraudulent scheme involving its wholly-owned South Korean subsidiary, L & H Korea. L & H Belgium had made capital contributions to the Korean subsidiary and some of the payments made on account of the fraud had come from the corporate treasury and been approved by its Belgian board of directors. The court held that although L & H Belgium engaged in activities in South Korea through L & H Korea, and that country was the site of the events underlying all of the causes of action, Belgium was the place of accrual because "the direct impact of the alleged events was to cause financial harm to L & H Belgium." (Id.)

Baena is distinguishable. Although the statute of limitations issue was decided in Baena on a motion to dismiss, the record there was factually developed as to the financial arrangements between the parent and the subsidiary at the time of the alleged fraud. Here, the complaint alleges merely that IKB International was IKB Germany's wholly owned subsidiary at the time it purchased the Certificates from Credit Suisse, that it assigned the Certificates to IKB Germany, and that IKB Germany "has standing to bring claims by way of assignment." (Compl. ¶ 41.) The complaint does not contain allegations about the price that IKB Germany paid for the securities; the terms of the assignment; the losses, if any, that IKB International sustained on the Certificates prior to the assignment; and the financial relationship between IKB International and IKB Germany at the time of the purchase. Nor does the record on the motion contain any evidence on these issues. It is undisputed that IKB International is in liquidation and that its "results were consolidated into the results of" IKB Germany. (Ds.' Memo. In Support at 7 n 3.) However, defendant's bare assertion that the consolidation establishes that the economic injuries accrued in Germany (id.) is unsupported by any legal authority.

On this record, the court cannot determine whether the cause of action accrued in Germany or Luxembourg.[2] In view of this holding, the court need not decide whether plaintiffs' claims are barred by the German statute of limitations. A few observations may nevertheless be of assistance in the event the statute of limitations is further litigated in this action. HSH Nordbank AG v Barclays Bank PLC (Sup Ct, NY County Index No. 652678/11, Mar. 3, 2014]), this court's decision of the same date, discusses the German statute of limitations, which commences at the end of the year in which the claim arose and the plaintiff obtains knowledge of the circumstances giving rise to the claim and the identity of the defendant, or would have obtained such knowledge absent gross negligence. As in HSH Nordbank, the parties' experts – Professor Heinz-Peter Mansel, also plaintiffs' expert there, and Professor Wulf Goette, defendants' expert – discuss, in only the most cursory terms, the standards to be applied in determining whether the limitations period has run. Here, however, defendants' expert takes the position that defendants had a heightened obligation to investigate facts about their claims, based on their status as "major market participant[s] in charge of supervising a portfolio of similar investments," and on German legislation requiring financial institutions to monitor securitization-transactions exceeding certain amounts. (Supp. Aff. of Wulf Goette, ¶¶ 10-16.) Plaintiffs had no opportunity to respond on the instant motion to this assertion, which was raised for the first time on the reply. It must be addressed, with detailed references to German legal

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[2] Although it is not plaintiffs' burden on this motion to establish the place of accrual of the cause of action, the court notes that they also fail to do so. Metropolitan Life Ins. Co. v Morgan Stanley (2013 WL 3724938, * 7 [Sup Ct, NY County June 8, 2013]), on which plaintiffs rely, held that where RMBS certificates were purchased by non-resident subsidiaries of Metropolitan Life Insurance Co. (Met Life), a New York resident, the injuries occurred in the subsidiaries' states of residence, notwithstanding that the purchases were made through Met Life's custodian bank in New York and were held in accounts maintained in New York. This case did not adopt a blanket rule that the investor's residence controls. Nor did it involve an assignment of claims from the subsidiary to the parent.

authorities, in the event of further litigation of the statute of limitations issue. The court also notes, parenthetically, that this action involves unique facts, including the conviction of plaintiffs' CEO for misrepresentations to German investors regarding the extent of IKB's exposure to the subprime market, and IKB's acceptance of a German government bailout in July 2007. These facts raise a serious issue as to whether plaintiffs had either actual knowledge of their claims, or imputed knowledge under the gross negligence standard.

Fraud

In HSH Nordbank (supra) and Allstate Ins. Co. v Credit Suisse Secs. (USA) LLC (2014 WL 432458 [Jan. 24, 2014]), this court attempted to survey the extensive legal authority that has developed in the New York and federal Courts on the pleading of fraud claims in RMBS cases. As noted in Allstate, the court's task, in determining the motion to dismiss, is the case-specific one of applying this body of law to the particular allegations of the complaint at issue.

The Complaint pleads misrepresentations based on loan-to-value and combined loan-to-value ratios, owner occupancy status of the mortgaged properties, adherence to underwriting guidelines, and assignment of the notes and mortgages to the trusts. The allegations of the complaint are substantially similar to the allegations considered in HSH Nordbank and Allstate, as are defendants' arguments in support of the motion to dismiss. On the reasoning and authority cited in those cases, the court holds that the Complaint adequately pleads material misrepresentations, except with respect to assignment of the notes and mortgages to the trusts. The court also holds that the Complaint adequately pleads scienter, justifiable reliance, and loss causation. The punitive damages claim will stand as the fraud claim stands. The fraudulent concealment and negligent misrepresentation claims will be dismissed for the reasons stated in the prior decisions.

As defendants have not advanced any arguments in support of dismissal that were not advanced in HSH Nordbank and Allstate, the court will not discuss each claim in any detail here. In brief, the court again rejects defendants' argument that the alleged misrepresentations based on LTVs or CLTVs are not actionable because defendants did not vouch for the appraisals or the appraisals themselves are inactionable statements of opinion. These misrepresentations are actionable, as plaintiffs allege facts that cast doubt on the falsity of the representations – here, based in part on plaintiffs' loan level analyses – and that defendants were aware, based on their due diligence, that the originators deliberatedly deflated the appraisals. (Compl. ¶ 76.) The court again rejects defendants' argument that the alleged misrepresentations regarding owner occupancy statistics are inactionable because the Offering Documents disclosed that they were based on unverified borrower statements. The Complaint alleges that defendants were aware of the falsity of the representations based on their due diligence. (Compl. ¶¶ 111-112.) If this allegation is proved, defendants cannot stand behind the borrowers' representations to immunize their conduct. The court again also holds that the disclosures in the Offering Documents were ineffective to notify investors of the systematic or wholesale abandonment of underwriting standards that is alleged here. In this regard, the court notes that the disclosures cited by defendants fall within the range of disclosures that have repeatedly been held ineffective to give such notice to investors. The pleading of scienter is supported by plaintiffs' reliance on Clayton's performance of due diligence, under these circumstances in which it is alleged, as in HSH Nordbank, that Clayton provided detailed reports to defendants during and prior to the preparation of the Offering Documents. (Compl. ¶ 104.) The inference of scienter in this action is supported as well by defendants' role in originating loans underlying the securitizations.

Finally, in rejecting plaintiffs' claim based on defendants' alleged misrepresentations regarding assignment of the notes and mortgages to the trusts, the court relies on its reasoning in HSH Nordbank. Plaintiffs' forensic review revealed that various sampled assignments were not made at the time of the closings of the trusts. As in HSH Nordbank, the depositor was permitted to deliver the mortgage files to the trustee or a custodian (Prospectus Supplement for CSAB 2006-3 at S-68), and MERS mortgages were exempted from the delivery requirement. (Id.) Plaintiffs do not, however, allege that the assignments they sampled did not fall within these exclusions.

It is hereby ORDERED that defendants' motion to dismiss is granted to the following extent: The first cause of action for fraud is dismissed only to the extent that it is based on alleged misrepresentations regarding transfer of notes and mortgages to the trusts. The second cause of action for fraudulent concealment and the fourth cause of action for negligent misrepresentation are dismissed.

This constitutes the decision and order of the court.

Dated: New York, New York
March 3, 2014

MARCY S. FRIEDMAN, J.S.C.