

**CT Inv. Mgt. v Chartis Specialty Ins.**

2014 NY Slip Op 33512(U)

April 18, 2014

Sup Ct, New York County

Docket Number: 653896/2012

Judge: Shirley Werner Kornreich

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

**PRESENT:** JUSTICE SHIRLEY WERNER KORNREICH, PART 54

*Justice*

Index Number : 653896/2012  
CT INVESTMENT MANAGEMENT  
vs  
CHARTIS SPECIALTY INSURANCE  
Sequence Number : 002  
DESMISS ACTION

INDEX NO. \_\_\_\_\_

MOTION DATE 3/20/14

MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

No(s) 53-58

Answering Affidavits — Exhibits \_\_\_\_\_

No(s) 60+

Replying Affidavits \_\_\_\_\_

No(s) 62-69

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

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION AND ORDER.**

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

Dated: 4/18/14

**SHIRLEY WERNER KORNREICH**

*[Signature]*  
J.S.C.

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: PART 54

-----X  
CT INVESTMENT MANAGEMENT CO., LLC,  
as Special Servicer and attorney-in-fact of the  
registered holders of Merrill Lynch Floating Rate  
Trust Pass-Through Certificates, Series 2006-1, and on  
behalf of the Insured U.S. Bank, National Association  
as successor to Bear Stearns Commercial Mortgage, Inc.  
and Bear Stearns & Co., Inc.,

Index No.: 653896/2012

**DECISION & ORDER**

Plaintiff,

-against-

CHARTIS SPECIALTY INSURANCE COMPANY,  
formerly known as AMERICAN INTERNATIONAL  
SPECIALTY LINES INSURANCE COMPANY,

Defendant.

-----X  
SHIRLEY WERNER KORNREICH, J.:

Defendant Chartis Specialty Insurance Company (Chartis) moves for summary judgment and dismissal of the Complaint pursuant to CPLR 3211 and 3212. Defendant's motion is denied for the reasons that follow.

The court assumes familiarity with the facts of this case and the related litigation in federal district court, federal bankruptcy court, and various courts in Mexico, which are set forth in an order dated May 3, 2013 (the 2013 Order).<sup>1</sup> *See* Dkt. 33; 40 Misc3d 415. In the 2013 Order, the court stayed this action pending clarity about the proceedings in Mexico. However, the court specifically invited Chartis to renew its dismissal motion "if it can present evidence that Cozumel was actually reorganized or liquidated." 40 Misc3d at 423. This is the only relevant inquiry regarding the applicability of the Policy's bankruptcy exclusion to a Currency

<sup>1</sup> All capitalized terms have the same meaning as in the 2013 Order.

Claim because, as the court held in the 2013 Order, “the fact that the loss was caused by a ‘bankruptcy court order’ does not mean that the loss was caused by bankruptcy.” *Id.* Simply put, the troublesome manner in which the Mexican litigation was proceeding strongly suggested that, despite the nominal pendency of “bankruptcy” proceedings, no true reorganization or liquidation of Cozumel was occurring. Rather, as it appears, a suspect “bankruptcy” proceeding of merely one of the Mexican Borrowers was being used to shield the others and their guarantors – whose ability to repay their \$103 million debt is not in question – from paying back the loan. Indeed, these international legal gymnastics, if rubber-stamped by New York courts, may have the effect defrauding plaintiff.

Based on the record on this motion, nothing appears to have changed in Mexico. To be sure, much subsequent litigation has occurred in U.S. and Mexican federal courts. Nonetheless, the facts in Mexico remain the same – a continued, possibly pretextual stay. Though the arguments made by Chartis are compelling, they are a regurgitation of the issues considered and rejected by the court on the original motion to dismiss. Since no new evidence of bona fide bankruptcy proceedings has been presented – as opposed to mere orders issued by a “bankruptcy court” apparently apathetic about engaging in real bankruptcy proceedings – this court declines to dismiss the Complaint for the same reasons stated in the 2013 Order. The action remains stayed pending further clarification.

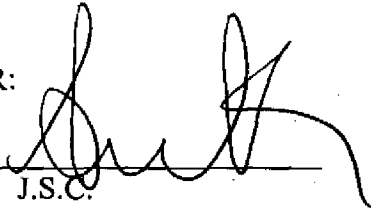
It should be noted, however, that two outcomes appear probable. The first: that the stay will remain indefinitely in place, in which case summary judgment may be warranted in plaintiff’s favor (as the loss may be deemed to have nothing to do with bankruptcy), leaving Chartis to pursue a subrogation claim against the Mexican Borrowers. The second: that the “bankruptcy” stay will be lifted, allowing plaintiff to collect from the Mexican Borrowers and

discontinue this action. The latter scenario, of course, is both ideal and a matter of common sense. Unfortunately, here, this outcome is uncertain and the very reason which impelled plaintiff to obtain the political risk insurance at issue. Accordingly, it is

ORDERED that the renewed motion to dismiss by defendant Chartis Specialty Insurance Company is denied, and this action is stayed pending further relevant developments.

Dated: April 18, 2014

ENTER:

  
\_\_\_\_\_  
J.S.C.