

Nomura Home Equity Loan, Inc., Series 2006-FM2 v Nomura Credit & Capital, Inc.
2014 NY Slip Op 33937(U)
July 17, 2014
Supreme Court, New York County
Docket Number: 653783/2012
Judge: Marcy Friedman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN Justice PART 60

NOMURA HOME EQUITY LOAN, INC., SERIES 2006-FM2, INDEX NO. 653783/2012
by HSBC BANK USA, NATIONAL ASSOCIATION, solely
in its capacity as Trustee,
Plaintiff,

-against- MOTION DATE

NOMURA CREDIT & CAPITAL, INC.,
Defendant. MOTION SEQ. NO. 001

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

This residential mortgage backed securities (RMBS) action for breach of contract, arising out of the failure of Nomura Credit & Capital, Inc. (Nomura) to repurchase allegedly defective loans from Nomura Home Equity Loan Trust, Inc., Series 2006-FM2 (Trust), is based on substantially similar pleadings and raises issues that do not differ in any material respect from those determined by this court in a related action, Nomura Asset Acceptance Corp. Alternative Loan Trust, Series 2006-S4, by HSBC Bank USA, Natl. Assn. v Nomura Credit & Capital, Inc., 2014 WL 2890341 (Index No. 653390/2012, June 26, 2014).

According to plaintiff the benefit of every possible favorable inference, the court rejects defendant's contention here that the complaint fails to plead breaches of the following four specific representations made by Nomura in the Mortgage Loan Purchase Agreement (MLPA): truthful information provided to rating agencies (§ 8[i]), no fraud in origination (§ 8[ii]), qualified appraisal (§ 8[xxix]), and origination in accordance with underwriting guidelines (§ 8[xlii]). (See 2014 WL 2890341, at * 17, and the authority cited therein.) On the authority and reasoning relied on in the June 26, 2014 decision, the court finds that the first and second causes of action, for breach of the Mortgage Representations, are adequately pleaded.

It is accordingly hereby ORDERED that defendant's motion to dismiss the complaint is granted only to the extent of dismissing the third and fourth causes of action based on breach of the No Untrue Statement provision, and is otherwise denied.

Dated: 7/17/14 Mary S. Friedman, 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

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