SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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PARK ROYAL I LLC, PARK ROYAL II LLC

Plaintiff,

- v -

HSBC BANK USA, N.A.,

Defendant.

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INDEX NO. 650933/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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VRS HOLDINGS 2 LLC, RELIANCE STANDARD LIFE INSURANCE COMPANY

Plaintiff,

-against-

HSBC BANK USA, N.A., AS TRUSTEE (AND PREDECESSORS OR SUCCESSORS THERETO),

Defendant.

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INDEX NO. 657392/2017

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. MARGARET CHAN:

The following e-filed documents for action Index No. 650933/2019, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 47, 61, 72, 73, 74, 75, 76; and

the following e-filed documents for action Index No. 657392/2017, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 41, 55, 66, 67, 68, 69, 70

were read on this motion to/for DISMISS

These two actions arise from defendant's alleged breaches of contractual, common law, and statutory duties as the trustee for three residential mortgage-backed securities (RMBS) trusts. In both actions, defendant HSBC Bank USA, N.A. (Trustee or defendant) moves pursuant to CPLR 3211(a)(1), (3), (5), and (7) for an order dismissing the complaints.[1] Plaintiffs VRS Holdings 2 LLC and Reliance Standard Life Insurance Company (VRS) and plaintiffs Park Royal I LLC and Park Royal II LLC (Park Royal) oppose the motions. The separate motions to dismiss in the two actions are granted in part and denied in part for the reasons below.

[1] The motions are consolidated for disposition.

BACKGROUND

The actions are two of many lawsuits in which RMBS certificateholders have brought claims against their trustees in the wake of the financial crisis. The three RMBS trusts at issue, for which defendant served as Trustee, are Nomura Asset Acceptance Corporation Alternative Loan Trust, Series 2005-S4 (the 2005 Trust), Nomura Asset Acceptance Corporation Alternative Loan Trust, Series 2006-S2 (the 2006 Trust), and Nomura Asset Acceptance Corporation Alternative Loan Trust, Series 2007-S1 (the 2007 Trust, together, Trusts). VRS purchased certificates issued by all three Trusts, while Park Royal only purchased certificates issued by the 2007 Trust. Plaintiffs allege that their investments into these Trusts suffered losses of hundreds of millions of dollars as a result of the Trustee's breaches.

Briefly, the RMBS securitization process begins when a lender makes home loans, secured by a mortgage, to borrowers. The lenders, typically referred to as the originators, then sell the mortgage loans to an affiliate that is usually called a depositor (NYSCEF # 20-VRS Complaint ¶ 34).[2] In this process, the originators, through the depositor, convey the loan portfolio to a trustee (*id.* ¶ 52). Finally, the depositor parcels the right to receive income from the portfolio into certificates and sells the trust certificates to an underwriter, which further markets and sells them to investors (*id.* ¶ 38). In addition to creating the trusts, the seller also appoints one or more servicers to collect mortgage payments and enforce loan terms and a master servicer to manage and monitor the servicers' performance (*id.* ¶¶ 39, 40).

In the instant actions, the Trusts are governed by their respective pooling and servicing agreements (PSAs, NYSCEF #'s 27, 29, 31),[3] which contain various representations and warranties (R&W) made by the seller Nomura Credit & Capital, Inc. (Nomura or the Seller) regarding the quality and characteristics of the mortgage loans (VRS Complaint ¶ 34). As remedies, the Seller agreed to cure any defects or to substitute or repurchase mortgage loans that did not comply with those R&W (*id.*). The depositor for the Trusts is Nomura Asset Acceptance Corporation (Depositor), an affiliate of the Seller.

Unlike a common law trustee, an RMBS trustee is a creature of contract, and its obligations are limited to those explicitly set forth in the PSAs unless the trustee is aware of the occurrence of a Master Servicer Event of Default (EOD) (*see AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 11 NY3d 146, 156-157 [2008]). The parties dispute the scope and nature of the Trustee's obligations prior

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[2] The complaints and briefs of VRS and Park Royal are highly overlapped. Unless otherwise noted, the NYSCEF numbers in the text of the decision refer to the ones in Park Royal Action (Index No. 650933/2019).

[3] The parties stipulate that the PSAs for the three Trusts contain the same or substantially similar provisions with respect to all the issues in the motions.

to the occurrence of an EOD, particularly, whether the Trustee was obligated to enforce the Seller's repurchase obligations upon learning of R&W breaches and loan document deficiencies. Notably, unlike the governing agreements in many other RMBS trustee cases that explicitly set forth the enforcement duties of the trustees, the PSAs for the at-issue Trusts do not contain that language.

The parties generally agree that upon discovering the occurrence of an EOD, the Trustee is obligated to exercise its rights and powers under the PSAs and use "the same degree of care and skill in their exercise, as a prudent person would exercise under the circumstances in the conduct of such Person's own affairs" (PSA § 9.01[a]) and to notify all certificateholders of the Trusts (Certificateholders) of such EOD (PSA § 8.05). Yet, the parties dispute whether an EOD occurred and whether defendant had actual knowledge of the EOD, if any.

Both the VRS and Park Royal complaints contain overlapping allegations as to claims that defendant breached its pre-EOD duties, including the duty to give notice and to enforce Nomura's duty to remedy the breaches of R&W (PSA § 2.03) and the duty to ensure the completeness of mortgage loan files (PSA § 2.02). VRS additionally alleges that as to the 2005 and 2006 Trusts, defendant failed to act at the direction of non-party investors whose assets were managed by Fir Tree Partners, Inc. (Fir Tree) (PSA § 9.02[a][iii]). Both plaintiffs also allege that defendant breached its post-EOD duties, including the duty to notify Certificateholders of the EODs (PSA § 8.05) and the heightened duty to act as a prudent person would governing his own affairs (PSA § 9.01). In addition, plaintiffs assert that defendant breached its contractual duty to address the Servicers' and the Master Servicer's failure to meet servicing standards.

Plaintiffs also allege that defendant breached the implied covenant of good faith and fair dealing. Further, both plaintiffs assert claims that are based on defendant's alleged *quid pro quo* conflicts of interest and failure to exercise due care; however, VRS pleads those claims as breach of fiduciary duty and negligence claims and Park Royal pleads them as breach of contract claims. Lastly, plaintiffs allege that defendant violated Section 126(1) of the Streit Act.

Defendant moves to dismiss the complaints in both actions in their entirety based on various grounds, including lack of standing, failure to state a claim, untimeliness, and based on documentary evidence. Specifically, defendant argues that plaintiffs lack standing as they cannot bring an action directly and fail to comply with the prerequisites set forth in the PSAs' no-action clause. Defendant also argues that VRS has no standing to assert the claim that is based on defendant's failure to act at Fir Tree's direction. Defendant primarily contends that plaintiffs' pre-EOD claims have no contractual basis since the Trustee's role was strictly limited under the PSAs: it had no duty to enforce Nomura's repurchase obligations in connection with either the R&W breaches or mortgage file delivery

deficiencies, and no duty to address servicing misconducts. In addition, defendant contends that it did not discover any specific R&W breaches and its only obligations to give notice of breaches were fulfilled with respect to the 2005 and 2006 Trusts. Defendant next argues that the claims based on mortgage file deficiencies are time-barred. As to plaintiffs' post-EOD claims, defendant argues that plaintiffs fail to allege any EOD in fact occurred or that defendant had actual knowledge of any EOD. Defendant further argues that the implied good faith covenant claims should be dismissed as duplicative of the breach of contract claims and barred by a disclaiming clause in the PSAs, and that the Streit Act claims fail as the statute does not impose any duties on trustees. Lastly, as to plaintiffs' conflicts of interest claims and due care claims, defendant argues that they should be dismissed as duplicative of the breach of contract claims and as insufficiently pleaded.

DISCUSSION

I. Standing

As a threshold matter, defendant argues that plaintiffs lack standing to bring their claims. Defendant contends that, technically, plaintiffs are "Certificate Owners" rather than "Certificateholders," and the former are contractually restrained from bringing actions directly. This argument rests on the requirement in section 6.06(d) of the PSAs that "the rights of the respective Certificate Owners of such Certificates shall be exercised only through the Depository and the Depository Participants ...." (PSA § 6.06[d]).

Plaintiffs counter that they have standing since they have obtained authorizations from Certificateholder Cede & Co. to bring the actions (NYSCEF #'s 42-44, 46 –Allen Aff, Exs. 5-7, Cede & Co. authorizations). Defendant does not dispute that Cede & Co. is the Depository and the registered holder of the RMBS Certificates. Yet, defendant argues that the authorizations are ineffectual because the PSAs do not specifically permit the registered holder to assign its right to sue. Defendant also argues that plaintiffs' claims should be deemed time-barred because plaintiffs obtained the Cede & Co. authorizations after the statute of limitations had expired (NYSCEF # 61-Def. Reply at 3 n2).

Under well-established caselaw, if authorized by the registered certificateholder, a beneficial owner can directly bring an action to exercise its rights despite the negating clause (*Springwell Nav. Corp. v Sanluis Corp., S.A.*, 81 AD3d 557 [1st Dept 2011]). Even though the PSAs here do not specifically permit such arrangement, the authorization is still valid since no provision in the PSAs explicitly bars such assignment of rights to sue (*Allhusen v Caristo Constr. Corp.*, 303 NY 446 [1952] [contracts are freely assignable absent language that clearly prohibits assignment]; *Natl. Credit Union Admin. Bd. v U.S. Bank N.A.*, 439 F Supp 3d 275, 278-279 [SD NY 2020] [*NCUA/US Bank*] [allowing plaintiffs to seek

authorization from Cede & Co. even when the contract does not specifically allow them to do so]; *Phoenix Light SF Ltd. v Deutsche Bank Natl. Trust Co.*, 172 F Supp 3d 700, 712 [SD NY 2016] [*Phoenix Light/Deutsche Bank*] [same]).

Here, although plaintiffs did not have standing when they filed the lawsuits, they have cured the standing defect by obtaining Cede & Co.'s authorization (*Cortlandt St. Recovery Corp. v Hellas Telecoms., S.A.R.L.*, 996 NYS2d 476, 489 [Sup Ct, NY County 2014] [the standing defect can be cured if the plaintiff subsequently obtains authorization to sue from a registered holder]; *Royal Park Invs. SA/NV v Deutsche Bank Natl. Trust Co.*, 2016 WL 439020, *2-3 [SD NY, Feb. 3, 2016] [*Royal Park/Deutsche Bank*] [plaintiff has standing to proceed with the suit since it obtained authorization, though post-filing, from Cede & Co.]).

Except for the claims regarding document deficiencies, it is not disputed that plaintiffs commenced these actions before the applicable statute of limitations expired. When, as here, a standing defect is curable and in fact cured, the plaintiff's status has changed and its action is maintainable (*Springwell*, 81 AD3d at 557). At oral argument, defendant relied on two cases to argue that the Cede & Co. authorization does not relate back to the commencement of the suits. But those cases are inapplicable.

The first one is a Report and Recommendation (R&R) in *Phoenix Light SF Ltd. v Wells Fargo Bank, N.A.*, 2021 WL 7082193 (SD NY, Dec. 6, 2021). Besides its non-binding nature, the R&R reasoned that the authorizations are ineffective and cannot relate back to commencement since plaintiffs obtained the authorizations five years after defendant first challenged their standing, which was beyond "a reasonable time after objection" as required by Federal Rule of Civil Procedure 17(a)(3). Here, aside from the inapplicability of FRCP as applied in the R&R, plaintiffs timely obtained the Cede & Co. authorizations for all three Trusts in April, June, and August 2020 respectively (NYSCEF #'s 42-44, 46) as their standing was first objected in defendant's July 6, 2020 motion (NYSCEF # 37) (*Allan Applestein TTEE FBO D.C.A. v Province of Buenos Aires*, 415 F3d 242 [2d Cir 2005] [plaintiff cured its standing defect by obtaining authorization in December 2003 after defendant first asserted lack of standing in November 2003]).

In the other case, *Phoenix Light SF Ltd. v Deutsche Bank Natl. Trust Co.*, 2022 WL 384748 (SD NY, Feb. 8, 2022), the district court found that the lack of standing was incurable because the plaintiff did not meet a contractual condition precedent to suit (*i.e.* written consent of the Bond Issuer or the occurrence of a Bond Issuer Default) and a post-filing satisfaction of the condition precedent cannot relate back. By contrast, no condition precedent to suit is present in the instant actions, and courts have consistently held that Cede & Co.'s authorization would cure certificate owners' standing defect (*see e.g. Royal Park/Deutsche Bank*, 2016

WL 439020, *2-3; *Diverse Partners, LP v AgriBank, FCB*, 2017 WL 4119649, *5 [SD NY, Sept. 14, 2017]).[4]

Notably, plaintiffs themselves are "the only person[s] that [have] an interest in pursuing any rights or remedies under the Notes" since Cede & Co., "as a street name ... has no actual interest in the Notes beyond just holding them in the form of a Global Security for others" (*Diverse Partners*, 2017 WL 4119649, *5). Accordingly, with Cede & Co.'s authorization, plaintiffs have standing to bring these actions.

II. No-action Clause

Defendant also argues that plaintiffs' claims are barred by the PSAs' no-action clause, which requires a certificateholder who intends to bring an action to (1) provide the Trustee or Master Servicer with written notice of an EOD, (2) gather support for the lawsuit from at least 25% of the holders, and (3) demand the Trustee to file the lawsuit and indemnify the Trustee accordingly (PSA § 11.08).

Defendant does not dispute that the third condition, a pre-suit demand on itself, is futile and unnecessary. Rather, it argues that other aspects of the no-action clause should be enforced before plaintiffs initiate the actions, including the requirements to notify the Master Servicer of an EOD and to obtain support of at least 25% of the certificateholders. However, as plaintiffs correctly point out, courts have rejected this argument and held that "performance of the entire provision is excused" (*Blackrock Balanced Capital Portfolio v U.S. Bank N.A.*, 165 AD3d 526, 528 [1st Dept 2018] [*Blackrock/US Bank*]; *Quadrant Structured Prods. Co., Ltd. v Vertin*, 23 NY3d 549, 566 [2014] [claims against the trustee cannot be prohibited by a no-action clause]; *Phoenix Light/Deutsche Bank*, 172 F Supp 3d at 716 [same]). Thus, the no-action clause does not bar plaintiffs from bringing these actions.

III. The Pre-EOD Claims

Plaintiffs have brought two sets of claims alleging that defendant breached its pre-EOD duties: claims based on the Trustee's section 2.03 duty regarding R&W breaches, and claims based on the Trustee's section 2.02 duty regarding mortgage loan document defects. Defendant moves to dismiss both claims.

A. Breach of Contract Claims Related to Alleged Breaches of R&W

Plaintiffs assert that upon discovery of breaches of certain R&W, the Trustee's duties are two-fold: to give prompt written notice to the other parties and

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[4] Defendant also relies on *Applestein* to support its position that plaintiff must obtain the Cede & Co. authorization before the statute of limitations expired. However, the parties in *Applestein* did not litigate the statute of limitations issue and the court did not conclusively require that either (*Applestein*, 415 F3d at 246).

to enforce the Seller's obligation to repurchase those breaching loans, both of which defendant allegedly breached.

Plaintiffs' claims are premised on section 2.03(c) of the PSAs, which requires that any party discovering a breach of a representation or warranty as provided in "[s]ection 2.03(b)(viii), (ix) and (x) and Section 8 of the Mortgage Loan Purchase Agreement that materially and adversely affects the interests of the Certificateholders in any Mortgage Loan, . . . shall give prompt written notice thereof to the other parties" (PSA § 2.03[c]). The R&W in those referenced sections were made by the Seller regarding the quality of the loans.

Duty to give notice

Defendant does not dispute its obligation to provide notice upon discovery of R&W breaches but argues that it had no actual knowledge of any specific breach in any specific mortgage loan. Defendant contends that plaintiffs' allegations of systemic and widespread misconduct in the RMBS market are insufficient to show that it was aware of any R&W breaches in the at-issue Trusts.

At the pleading stage, plaintiffs do not need to prove defendant's actual knowledge of loan-specific breaches in each trust; rather, it would be adequate to survive a motion to dismiss if plaintiffs' allegations raise a plausible inference that defendant had such knowledge (*Blackrock/US Bank*, 165 AD3d at 527-528). And contrary to defendant's assertion, while the Court of Appeals' recent decision in *U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 2022 WL 801440, 2022 NY LEXIS 346 [NY Ct App, Mar. 17, 2022]) (*US Bank/DLJ*) states that in put-back actions, the trustees' pre-suit letters to sellers, as a contractual condition precedent to suit, should identify the breaches on a loan-specific level (*id.*), the decision does not speak to the pleading standard in investor-trustee actions as to whether a trustee's knowledge should be pleaded on a loan-specific level.

Here, plaintiffs allege that defendant knew of the R&W breaches through various avenues including: (1) notices from investors about breaches in other trusts that involved common sponsors and originators as the Trusts; (2) the performance reports of the loans in the Trusts showing high default rate, enormous losses, declining credit ratings, and high loan modification rate; (3) government reports and news reports uncovering the pervasive abandonment of underwriting standards that involved common loan sellers; (4) its involvement with other RMBS trusts in its capacity as servicer; and (5) its put-back efforts against common loan sellers. Courts have found similarly detailed allegations enough to raise a plausible inference that defendant had actual knowledge of loan-specific and trust-specific R&W breaches (*Fixed Income Shares: Series M v Citibank, N.A.*, 61 NYS3d 190 [Sup Ct, NY County 2017], *affd as mod* 157 AD3d 541 [1st Dept 2018]; *Blackrock Balanced Capital Portfolio v U.S. Bank N.A*, 2018 WL 452001, *3 [Sup Ct, NY

County, Jan. 17, 2018], *affd* 165 AD3d 526 [1st Dept 2018]; *Phoenix Light/Deutsche Bank*, 172 F Supp 3d at 713–714; *but see Natl. Credit Union Admin. Bd. v U.S. Bank N.A*, 2020 WL 4226689 [SD NY, July 23, 2020]).[5] Here, plaintiffs' allegations about defendant's knowledge of the breaches are sufficient at the pleading stage. Discovery will shed light on whether defendant had any actual knowledge of loan-specific breaches, which must be proven at the summary judgment stage or at trial.

However, with respect to the 2005 and 2006 Trusts, it is undisputed that the Seller (Nomura), Master Servicer (Wells Fargo), and the Trustee (HSBC) received notice of R&W breaches from investor Fir Tree at the same time. Under the PSAs, the duty to give notice of breaches was not exclusively on the Trustee—"[any] party discovering such breach shall give prompt written notice thereof to the other parties" (PSA § 2.03[c]). Since the same notices regarding breaches in the 2005 and 2006 Trusts were already given to the parties, requiring the Trustee to send them again would be redundant. Therefore, defendant's notice duty was relieved.

Plaintiffs counter that defendant is still liable because had defendant (instead of Fir Tree) sent the notice and made repurchase demands on behalf of the Trusts, Nomura would have responded differently and repurchased the defective loans. This argument fails because it is premised on defendant's duty to enforce Nomura's repurchase obligation, which, as detailed below, is not found in the PSAs.

Duty to enforce repurchase obligation

Defendant argues that it had no duty under the PSAs to enforce the Seller's obligation to repurchase any breaching loans so that any claims based on its failure to enforce should be dismissed. Plaintiffs maintain that the PSAs should be interpreted to impose such an enforcement duty because defendant's duty to notify Nomura of breaches would be meaningless if it was not further required to enforce Nomura's corresponding repurchase duty. Plaintiffs also point to a provision that entitles the Trustee to be reimbursed for fees incurred in enforcing repurchase, arguing that this provision implicates an enforcement duty for the Trustee.

Notably, unlike the governing agreements in many other trustee cases which explicitly state that the trustee shall enforce or request the repurchase (*see e.g. W. & S. Life Ins. Co. v U.S. Bank N.A.*, 132 NYS3d 740 [Sup Ct, NY County 2020] [*W&S/US Bank*]; *NCUA/US Bank*, 439 F Supp 3d at 280-281), the PSAs at issue contain no such language. When the agreements are drafted in a clear and complete

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[5] Defendant also misreads *Commerce Bank v Bank of N.Y. Mellon*, 141 AD3d 413 (1st Dept 2016) (*Commerce Bank/BNYM*). The Appellate Division dismissed the claims not based on the failure to plead defendant's knowledge on a loan-specific level but for a different reason—that "plaintiffs do not allege that defendant discovered breaches of [the types of] representations and warranties" that were addressed in section 2.03(a) of the governing agreements (*e.g.* loan-to-value ratio, liens on property, compliance of underwriting guidelines) (*id.* at 414).

manner by sophisticated contracting parties, "courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing" (*US Bank/DLJ*, 2022 WL 801440, *3). The duty to ensure that Nomura complied with its repurchase obligation is an extra step from the notice duty. Thus, if the parties intended to impose the heavier duty on the Trustee to enforce the remedies, they would have included it in the PSAs as those deal parties did for other RMBS trusts. The absence of the language precludes the finding of such a duty (*Phoenix Light SF Ltd. v Deutsche Bank Natl. Trust Co*, 2022 WL 384748, *26 [SD NY, Feb. 8, 2022] [finding that for thirty-seven of the forty-five trusts, Deutsche Bank had no duty to enforce repurchase because the governing agreements did not provide for that duty, and for the remaining trusts, Deutsche Bank did have an enforcement duty as their agreements explicitly required]). Further, plaintiffs' reliance on the indemnification clause is unavailing since a provision providing a right to reimbursement for expenses incurred from enforcing the remedies does not give rise to a duty to enforce (*see* PSA § 9.01[d][i] ["no implied covenants or obligations shall be read into this Agreement against the Trustee ...."]).

Accordingly, plaintiffs' claims that are based on defendant's failure to enforce repurchase are dismissed in their entirety. As to plaintiffs' claims that are based on defendant's failure to notify Nomura of R&W breaches, claims with respect to the 2005 and 2006 Trusts are dismissed.

B. Breach of Contract Claims Related to Alleged Mortgage Loan File Defects

Plaintiffs allege that defendant breached the PSAs by accepting incomplete mortgage files without enforcing Nomura's obligation to repurchase those loans. Defendant argues that the claims fail because (1) the Trustee had no duty to enforce the Seller's repurchase obligations; (2) the duties to review mortgage files and examine their completeness were assigned to the Custodian instead of the Trustee; and (3) the claims are barred by the statute of limitations.

Section 2.02 of the PSAs sets forth the process of mortgage loan file delivery and each party's duties therein. Briefly, the Trustee shall receive and hold certain loan files for the benefit of Certificateholders (PSA § 2.02[a]). Within 180 days of the closing date, the Custodian shall review the mortgage loan files and issue final certifications to the Seller and the Trustee (PSA § 2.02[b]). During the review, if the Custodian finds any missing or defective loan files, it shall note such defect in the exception report attached to the final certifications, and the Trustee is obliged to promptly notify the Seller so that the Seller can cure any such defect (PSA § 2.02[b]). If the Seller is unable to cure the defect or substitute the loans, it must repurchase the loans (PSA § 2.02[b]). This section also contains a reimbursement clause for enforcement expenses incurred by the Trustee (PSA § 2.02[c]).

An RMBS trustee's pre-EOD duties are strictly defined and limited to those expressly specified in the four corners of the governing agreements (*Blackrock/US Bank*, 165 F Supp 3d at 91; *W&S/US Bank*, 132 NYS3d at 740). Here, the plain language of the provision shows that the duty to review the loan files and identify any defective or missing documents was placed on the Custodian, not the Trustee.[6] Also, the PSAs do not require defendant to either ensure that the mortgage file deficiencies were cured or enforce Nomura's repurchase obligation once the deficiencies became incurable. Plaintiffs cannot rely on *W&S/US* Bank either (132 NYS3d 740). The relevant section in *W&S/US Bank* provided, at the minimum, that the trustee "shall enforce" or "agrees to ... exercise the rights referred to above," that is, the right to enforce repurchase as provided in a previous section (*id.*). This section-bridge language, significantly, was found to "evince[ ] an *express* obligation on US Bank" to enforce the repurchase obligations (*id.*) (emphasis in original). However, such language is absent from the PSAs here. Also, as explained above, the reimbursement clause alone does not create an enforcement duty for defendant. Thus, plaintiffs' claims fail to the extent that they are based on defendant's failure to ensure the completeness of the files or enforce the Seller's repurchase obligation.

To the extent the complaints allege a breach of the duty to "promptly notify" Nomura of the document deficiencies noted in the final certifications, a duty explicitly provided in section 2.02(b) of the PSAs, such a claim is untimely since claims based on the final certifications are barred by the six-year statute of limitations (*Fixed Income*, 61 NYS3d at 190 [claims based on the trustee's failure to deliver mortgage loan files are barred by the six-year state of limitations]; *Blackrock/US Bank*, 2018 WL 452001, *3 [same]). Plaintiffs argue that they have twelve years to file suit against defendant after the initial breach because (1) the Trustee had at least six years from the delivery of the final certifications to enforce the Seller to remedy, and (2) plaintiffs then had six years to bring suits against the Trustee after the Trustee's breach became complete. This six-plus-six argument fails because it is premised on a continuing enforcement duty that was not imposed on the Trustee under the PSAs. As such, plaintiffs' breach of contract claims related to mortgage loan delivery deficiencies are dismissed.

IV. Breach of Contract Claims Related to Direction from Fir Tree

VRS also alleges that starting from February 2011, for over a year, non-party Certificateholder Fir Tree directed defendant to take various actions, including to bring lawsuits against Nomura concerning R&W breaches among mortgage loans in the 2005 and 2006 Trusts, but defendant failed to take action (VRS Complaint ¶¶ 442-527).[7] VRS alleges that due to defendant's failure to act, Fir Tree investors had

[6] Plaintiffs do not allege that defendant is liable for the Custodian's acts under the agency theory (NYSCEF # 45-Pltfs' Opp at 14).

[7] This claim is not brought by Park Royal, as it concerns only the 2005 and 2006 Trusts.

to file suits against Nomura on their own and then forced the Trustee to substitute in as plaintiffs in those actions, resulting in dismissal of those actions as untimely and thereby forfeiting the 2005 and 2006 Trusts' R&W claims against Nomura.

Defendant argues that VRS has no standing to raise claims based on Fir Tree's dispute with the Trustee since it was Fir Tree, not VRS, that made the requests to the Trustee. Defendant points to the pending litigation between it, as trustee, and Fir Tree in Virginia state court where it disputes that Fir Free offered security and indemnity satisfactory to it to trigger its obligation to act.

Section 9.02(a)(iii) of the PSAs requires the Trustee to "institute, conduct or defend any litigation ... at the request, order or direction of any of the Certificateholders" with the condition that such Certificateholders shall offer to the Trustee "reasonable security or indemnity" (PSA § 9.02[a][iii]). Put differently, direction and indemnification from any Certificateholders can give rise to defendant's duty to pursue or defend litigation on the Trusts' behalf.

As plaintiffs correctly state, as RMBS beneficial owners, they are third-party beneficiaries of the PSAs (*NCUA/US Bank*, 2020 WL 4226689, *9). Once the duty to act was triggered by appropriate direction and indemnification, defendant's obligation to pursue litigation was not investor-specific but trust-specific since it was to act as trustee on behalf of the Trusts, not as a representative of a particular certificateholder or for the benefit of that certificateholder's share of interests. Thus, VRS has standing to bring this claim. That said, the decision here simply pertains to VRS' standing and does not reach any other questions.

V. The Post-EOD Claims

Defendant also moves to dismiss all the post-EOD claims, in which plaintiffs allege that defendant (1) failed to address the Servicers' and Master Servicer's failure to meet prudent servicing standards; (2) failed to provide notice of EODs; and (3) failed to act prudently upon the occurrence of EODs.

A. Claims Related to Alleged Misconduct by the Servicers and Master Servicer

Plaintiffs allege that defendant did not address the Servicers' and Master Servicer's failure to meet servicing standards. Defendant argues that the claims lack any contractual basis since the PSAs impose no duty on the Trustee to monitor or address misconduct by any Servicers or the Master Servicer.

Pursuant to section 3A.01, it is the role of the Master Servicer, not the Trustee, to "supervise, monitor and oversee the obligation of the Servicer" (PSA § 3A.01). In addition, Servicer default would not give rise to the Trustee's post-EOD duties (PSA § 9.01). As to the Master Servicer's misconduct, the PSAs do not

contain a similar provision assigning a party to monitor the Master Servicer. Further, the PSAs disclaim that "[t]he Trustee shall not be liable for any acts or omissions of the Servicer, ... the Master Servicer" (PSA § 7.04[f]). As such, defendant has no duty under the PSAs to monitor or address the Servicers' or Master Servicer's obligations. In any event, plaintiffs do not address this issue in their opposition or at oral argument, thereby waiving their opposition and abandoning the claims (*Saidin v Negron*, 136 AD3d 458 [1st Dept 2016] [finding that plaintiff abandoned his claim by failing to oppose the part of defendant's motion to dismiss]).

B. Claims Related to Defendant's Duty upon the Occurrence of EODs

The PSAs impose additional duties on the Trustee when a Master Servicer event of default (EOD) occurs. To state a post-EOD claim against defendant, plaintiffs must allege: (1) the occurrence of an EOD; (2) defendant's actual knowledge of the EOD (PSA § 9.01[d][iv]); and (3) defendant's failure to fulfill its post-EOD duties, including its duty to notify Certificateholders of the EODs (PSA § 8.05) and its duty to act prudently (PSA § 9.01[a]).

Defendant's motion attacks only the first two prongs of plaintiffs' claims, arguing that plaintiffs fail to allege any EOD occurred and, even if an EOD occurred, plaintiffs fail to allege that defendant was aware of any EOD, without which none of the post-EOD duties apply.

Occurrence of EODs - Notice to the Master Servicer

Section 8.03 of the PSAs lists the situations that give rise to a Master Servicer EOD. Park Royal's allegations pertain to section 8.03(ii) EODs (EODs arising from Master Servicer's noncompliance) and section 8.03(vii) EODs (EODs arising from Master Servicer's R&W breaches). VRS only alleges section 8.03(ii) EODs. For both types of EODs, they occur when: (1) there is a breach; (2) the Master Servicer receives written notice of the breach by either the Trustee, the Securities Administrator, or Certificateholders with 25% or more voting interests; and (3) the breach remains uncured for thirty days.

Defendant argues that no EOD occurred because Wells Fargo, the Master Servicer, did not receive any written notice of the breaches. Plaintiffs do not dispute the lack of written notices in their opposition; instead, they argue that defendant and Wells Fargo cannot escape their post-EOD liabilities by not sending written notices to trigger an EOD. Thus, at issue are: first, whether defendant cannot argue there is no EOD when defendant itself prevented the occurrence of the EOD by not sending written notice to the Master Servicer; and second, as to section 8.03(vii) EODs, whether the written notice requirement can be excused due to the Master Servicer's actual knowledge of the R&W breaches.

The first issue hinges on the application of the "prevention doctrine," that is, a party cannot argue that its contractual obligation has not been triggered by a condition precedent, when the party itself prevented the triggering of that condition precedent (*Fixed Income Shares: Series M v Citibank, N.A.* 157 AD3d 541, 542 [1st Dept 2018]). As plaintiffs point out, state and federal courts have taken conflicting approaches regarding whether the prevention doctrine applies. The Appellate Division has held that the doctrine is inapplicable to situations like this one because it only applies when the party actively prevents the fulfilling of the condition and "[d]efendant's failure to send a notice to cure to the servicers is not active conduct" (*id.*; *see also Blackrock/US Bank*, 165 AD3d 526, 527 [1st Dept 2018]). On the other hand, federal courts have declined to follow *Fixed Income* and *Blackrock*, reasoning that "it would be counterintuitive to hold that a Trustee could avoid these duties by claiming it did not send written notice to an appropriate deal party when the Trustee is the only party in a position to learn of a service breach" and that "such a proposition would frustrate the intent behind the PSAs' imposition of duties on Trustee" (*Commerzbank AG v U.S. Bank N.A.*, 457 F Supp 3d 233, 250 [SD NY 2020] [*Commerzbank/US Bank*]; *Natl. Credit Union Admin. Bd. v Deutsch Bank Natl. Trust Co.*, 410 F Supp 3d 662, 685 [SD NY 2019] [*NCUA/Deutsch Bank*]). Conflicting approaches aside, this court is bound by the First Department; thus, claims based on the Trustee's failure to give notice are dismissed.

The second issue relates only to EODs defined in section 8.03(vii) as alleged by Park Royal. For the 2007 Trust, Wells Fargo was both the Master Servicer and the Securities Administrator. Park Royal argues that since the notice from the Securities Administrator can also give rise to an EOD, "the notice requirement reduces to the question of whether Wells Fargo was aware of such breaches" (NYSCEF # 45-Pltfs' Opp at 21). Park Royal follows that, as it has alleged Wells Fargo's awareness of the R&W breaches, it sufficiently pleads the occurrence of EODs. Defendant counters that since section 8.03(vii) explicitly requires that written notice be given, under *Fixed Income* and *Blackrock*, plaintiffs' failure to allege written notice forecloses the subsection (vii) claim as well.

Here, Park Royal does not rely on the prevention doctrine that the notice requirement was not fulfilled due to Wells Fargo's refusal to send notice; rather, it argues that the notice requirement was in fact fulfilled or otherwise excused since Wells Fargo had actual knowledge of the breaches. The provision here does not specify the content or form of a requisite written notice, suggesting that the purpose of the notice requirement is to alert Wells Fargo of an R&W breach. Thus, requiring additional notice to be sent to Wells Fargo itself would be pointless if it was already aware of the breach (*W&S/US Bank*, 132 NYS3d at 740 [servicer's statements admitting to its breaches suffices the written notice requirement for an EOD]). As Park Royal's allegation is that Wells Fargo knew of its own breach of the R&W under section 2.03(d)(iii) due to its conflicting roles (Park Royal Complaint ¶¶ 83-

94), Park Royal has sufficiently alleged the Master Servicer's actual knowledge of R&W breaches at the pleading stage.

Defendant's Knowledge of EODs

Defendant also argues that plaintiffs fail to allege defendant's "actual knowledge" of an EOD, a prerequisite for its post-EOD duties (PSA § 9.01[d][iv]). Since the post-EODs claims are trimmed to only Park Royal's claim based on section 8.03(vii) EODs (*i.e.* EODs arising from uncured breaches of section 2.03[d] R&W), the sole issue presented is whether defendant was aware of the uncured breaches of section 2.03(d)(iii) R&W. Briefly, Wells Fargo represented and warranted in that section that its roles in other deals would not materially and adversely affect its ability to perform its obligations to the Trust as Master Servicer.

Park Royal alleges that Wells Fargo breached section 2.03(d)(iii) because its contractual relationships with other parties conflicted with its duties and responsibilities as the Master Servicer to the 2007 Trust. Park Royal further alleges that Wells Fargo's breaches of section 2.03(d)(iii) by its conflicted roles were well known to defendant. Park Royal's allegations raise a plausible inference that defendant had actual knowledge of the breach. In any event, defendant does not challenge the allegations that it failed to act prudently and provide notices to Certificateholders on this motion.

Accordingly, plaintiffs' post-EOD claims are dismissed except for the claim brought by Park Royal based on section 8.03(vii) EODs that relate to the Master Servicer's breach of section 2.03(d)(iii) R&W in the 2007 Trust.

VI. Claims for Breach of the Implied Covenant of Good Faith and Fair Dealing

Defendant argues that claims for breach of the covenant of good faith and fair dealing should be dismissed as duplicative of the breach of contract claims. Plaintiffs counter that these claims are not duplicative because they are pleaded in the alternative (citing *Citi Mgt. Group, Ltd. v Highbridge House Ogden, LLC*, 45 AD3d 487, 487 [1st Dept 2007]) (NYSCEF # 45-Pltfs' Opp at 23).

To survive a motion to dismiss, a breach of the implied covenant of good faith and fair dealing claim must be based on allegations different than those underlying the accompanying breach of contract claim (*see e.g. Forman v Guardian Life Ins. Co. of Am.*, 76 AD3d 886, 888 [1st Dept 2010] [a good faith claim is not duplicative if it is not predicated on contractual terms]; *Aventine Inv. Mgt., Inc. v Can. Imperial Bank of Commerce*, 265 AD2d 513, 514 [2d Dept 1999] [stating that a good faith claim is not duplicative if based on the allegations that the defendant sought to prevent performance of the agreement or to withhold its benefits from the plaintiff]). Here, plaintiffs' breach of the covenant of good faith claims are entirely

built on defendant's alleged failure to disclose R&W breaches and to act at Fir Tree's direction "as required by the PSA" (Park Royal Complaint ¶¶ 405, 480-481; VRS Complaint ¶¶ 557-560, 645-646) — the same facts and basis as for their breach of contract claims. *Highbridge*, the case that plaintiffs rely on is inapposite. The good faith claim in *Highbridge* was based on "varying allegations" including the allegation that the counterclaim-defendant concealed the existence of a letter agreement (*Highbridge*, 45 AD3d at 487; Highbridge's counterclaims ¶ 106, available at 2007 WL 5282716).[8] But here, plaintiffs' claims are duplicative of their breach of contract claims and must be dismissed (*MBIA Ins. Co. v GMAC Mtge. LLC*, 914 NYS2d 604, 611 [Sup Ct, NY County 2010]).

Moreover, as defendant argues, the good faith claims are barred by the express terms of the PSAs, which state that "no implied covenants or obligations should be read into this Agreement against the Trustee" (PSA § 9.01[d][i]) (*Fixed Income*, 157 AD3d at 542; *STS Partners Fund, LP v Deutsche Bank Sec., Inc.*, 149 AD3d 667, 669 [1st Dept 2017]). Accordingly, plaintiffs' breach of the implied covenant of good faith and fair dealing claims are dismissed.

VII. The Streit Act Claim

Defendant argues that the complaints fail to state a claim under § 126(1) of the Streit Act because the statute does not impose any substantive duties on trustees and is also inapplicable to the Trusts. In opposition, plaintiffs argue that the PSAs should be read in a way that conforms with the Streit Act, which creates an absolute requirement that the trustee shall act with due diligence, prudence and care upon an EOD. Plaintiffs also maintain that the Streit Act applies to RMBS trusts like the ones at issue (NYSCEF # 45-Pltfs' Opp at 18, citing *Royal Park Inv. SA/NV v HSBC Bank USA, N.A.*, 109 F Supp 3d 587, 610-611 [SD NY 2015] [*Royal Park/HSBC*]; *Royal Park Invs. SA/NV v Bank of N.Y. Mellon*, 2016 WL 899320, *10 [SD NY, Mar 2, 2016] [*Royal Park/BNYM*]).

Briefly, the Streit Act merely provides that trust instruments shall contain provisions requiring trustees to exercise care and skill as a prudent person in the event of a default (Real Property Law § 126[1]). The plain language shows that the statute does not independently impose any affirmative duties on trustees (*IKB Intl., S.A. v LaSalle Bank N.A.*, 2021 WL 358318, *21 [Sup Ct, NY County, Jan. 27, 2021]). Here, plaintiffs do not allege that defendant accepted a deficient trust instrument, and in fact, the PSAs in section 9.01(a) do contain the provision required by the Streit Act. The duties that were allegedly breached are all inherent

[8] At oral argument, plaintiffs also rely on Justice Robert Reed's recent decision in *Anexia, Inc. v Horizon Data Solutions Ctr., LLC*, 2022 WL 1195436 (Sup Ct, NY County, Apr. 21, 2022) where the good faith claim was maintained. However, *Anexia* is distinguishable since the counterclaim-defendant in that case negotiated directly with a third party to cut out counterclaim-plaintiff from their contractual relationship—a ground that "does not depend on a breach of contract" (*id.*, *4).

to the PSAs, and any remedy should be provided by contract law. As such, plaintiffs' Streit Act claims are dismissed.

VIII. Breach of Duty to Exercise Due Care and Avoid Conflicts of Interest Claims

Defendant moves to dismiss all the claims based on its alleged failure to exercise due care and avoid conflicts of interest, which include VRS's tort claims (Counts 2, 3, and 4) and Park Royal's breach of contract claims (Counts 2 and 3). Defendant argues that the tort claims are barred by the economic loss doctrine and are duplicative of the breach of contract claims, and for those pleaded as contract claims, plaintiffs fail to adequately plead any actionable conflict of interest.

In opposition, plaintiffs take the position that their claims actually arise from the PSAs so that VRS's tort claims should be recast as contract-based claims in the same way as Park Royal's had done, rendering defendant's arguments regarding economic loss doctrine and duplication of claims moot. In furtherance of their contract-based conflicts of interest claims, plaintiffs argue that they have adequately alleged a *quid pro quo* situation where defendant acted as an originator and sponsor on the one side, and as a trustee on the other side.

Defendant contends that by changing its position in motion brief and attempting to improperly convert its tort claims to contract claims, VRS abandoned its tort claims. Further, defendant argues that the alleged duties to avoid conflicts of interest and exercise due care are "extra-contractual" duties that do not give rise to a breach of contract claim (NYSCEF # 61-Def. Reply at 20).

Duty to exercise due care

Plaintiffs' due care claims are grounded on defendant's alleged failure to notify deal parties of R&W breaches, to review the mortgage files and ensure any deficiencies were cured, to enforce Nomura's repurchase obligation, and to notify investors of servicing-related breaches (Park Royal Complaint ¶¶ 111, 113, 489; VRS Complaint ¶¶ 102, 104, 600, 603, 654, 658). Despite being labeled as "breach of contract" claims, these claims are pleaded in a way that seeks tort liability (Park Royal Complaint ¶74, VRS Complaint ¶ 84 ["HSBC can be held liable for its own negligence in failing to perform with due care . . . its requisite ministerial acts ..."]).

According plaintiffs "the benefit of every possible favorable inference and determin[ing] only whether the facts as alleged fit within any cognizable legal theory" in this motion to dismiss (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]), the obligation to exercise due care nonetheless applies only to ministerial tasks, which generally do not require the exercise of judgment or discretion. Courts have recognized the duty to perform ministerial acts with due care as an extra-contractual duty so "if this duty is breached the trustee will be subjected to tort

liability" (*AG Capital*, 11 NY3d at 157; *Fixed Income*, 61 NYS3d at 190 ["plaintiffs' claims based on Citibank's failure to perform ministerial acts with due care ... can only be properly pled as a negligence claim"]). And courts have dismissed tort claims against trustees that are based on non-ministerial acts (*see Commerce Bank/BNYM*, 141 AD3d at 415; *Commerzbank/US Bank*, 457 F Supp 3d at 262–263).

The alleged duties here do not involve the performance of basic non-discretionary, ministerial tasks (*Commerce Bank/BNYM*, 141 AD3d at 415 [to monitor and send notices of breaches and to review mortgage files to ensure their completeness were not ministerial tasks]; *Racepoint Partners, LLC v JPMorgan Chase Bank, N.A.*, 14 NY3d 419, 425 [2010] [to review reports to ensure their accuracy was not a ministerial task]); rather, they are non-ministerial contractual obligations as asserted in plaintiffs' other breach of contract claims. As plaintiffs' breach of duty to exercise due care claims are a mere restatement of their other contract claims, and since they fail to identify any ministerial acts, this cause of action must be dismissed.

Duty to avoid conflict of interest

Similarly, although labeled as "breach of contract" claims, plaintiffs' conflict-of-interest claims are pleaded as based on trustees' common law duty instead of the strictly defined contractual obligations (Park Royal Complaint ¶ 72 ["This duty is non-waivable and arises independently of the PSA under common law."]; *id.*, ¶ 483; VRS Complaint ¶¶ 82, 648, 658). As plaintiffs have recognized in the pleading, the duty to remain free of conflicts is an extra-contractual duty and a breach of such duty may subject a trustee to tort liability (*Commerce Bank /BNYM*, 141 AD3d at 416; *Ellington Credit Fund, Ltd. v Select Portfolio Servicing, Inc.*, 837 F Supp 2d 162, 191-192 [SD NY 2011]).

Defendant correctly argues that its close business relationships with other deal parties do not raise a conflict of interest (*Commerce Bank/BNYM*, 141 AD3d at 416 ["the existence of a conflict of interest cannot be inferred solely from a relationship between an issuer and an indenture trustee that is mutually beneficial and increasingly lucrative"]). However, plaintiffs do not only allege the existence of a mutually beneficial relationship; they also allege the *quid pro quo* conflicts of interest situation, which has been recognized by courts to support a tort claim against trustees (*id.* at 416; *IKB*, 2021 WL 358318, *21; *Royal Park/HSBC*, 109 F Supp 3d at 610). The essence of plaintiffs' claims is that because defendant was both the Trustee for the at-issue Trusts and a loan originator and sponsor for other RMBS trusts where it engaged in the same wrongful activities as Nomura did here, it refused to fully enforce the Trusts' rights for fear that (1) Nomura and other banks would retaliate by making similar claims against it for its or its affiliates' roles as originators, sponsors, or servicers in other securitizations and (2) it would

have to "take positions directly adverse to its own interests in other litigations" (VRS Complaint ¶¶ 567-599; Park Royal Complaint ¶¶ 406-436).

Courts have found similar allegations regarding *quid pro quo* situation adequate to state a claim of conflicts of interest at the pre-answer motion to dismiss stage (*see e.g. Park Royal/HSBC*, 109 F Supp 3d at 610 [alleging that HSBC acted as an issuer or servicer for other RMBS trusts and thus "looked the other way in these cases so that the Master Servicers would return the favor when the roles were reversed"]; *Fixed Income Shares: Series M v Citibank, N.A.*, 130 F Supp 3d 842, 857-858 [SD NY 2015] [alleging that Citibank acted as an originator and sponsor for other RMBS trusts so it did not take action for fear of retaliation from the same servicers and sellers for those trusts]; *cf. Fixed Income*, 61 NYS3d at 190 [although plaintiffs alleged that Citibank itself was engaging in the type of wrongdoings as an originator and servicer in other RMBS trusts, the plaintiffs did not go further to demonstrate any *quid pro quo* conflict where Citibank would actually benefit or avoid detriment in return for its decision not to act]).

Thus, taking the factual allegations as true, the court finds that plaintiffs have stated a claim based on a *quid pro quo* conflict of interest and denies defendant's motion to dismiss this set of claims.

CONCLUSION

In view of the above, as to the Park Royal plaintiffs under Index No. 650933/2019, it is

ORDERED that the branch of defendant's motion to dismiss the Park Royal plaintiffs' first cause of action for breach of contract is granted only as to the claims for defendant's failure to (i) enforce repurchase obligation; (ii) ensure the completeness of mortgage loan files; (iii) address the servicers' and master servicer's failure to meet servicing standards; (iv) perform post-EOD duties upon the occurrence of EODs under section 8.03[ii] of the PSAs; and defendant's breach of the implied covenant of good faith and fair dealing; it is further

ORDERED that the branch of defendant's motion to dismiss the Park Royal plaintiffs' second cause of action for *quid pro quo* conflicts of interest is denied; it is further

ORDERED that the branch of defendant's motion to dismiss the Park Royal plaintiffs' third cause of action for failure to perform ministerial acts with due care is granted; it is further

ORDERED that the branch of defendant's motion to dismiss the Park Royal plaintiffs' fourth cause of action for violation of the Streit Act is granted; and it is further

ORDERED that defendant is to serve an answer to the Park Royal plaintiffs' complaint within 20 days of the entry of this order.

As to the VRS plaintiffs under Index No. 657392/2017, it is

ORDERED that the branch of defendant's motion to dismiss the VRS plaintiffs' first cause of action for breach of contract is granted only as to the claims for defendant's failure to (i) enforce repurchase obligation; (ii) give notice of breaches with respect to the 2005 and 2006 Trusts; (iii) ensure the completeness of mortgage loan files; (iv) address the servicers' and master servicer's failure to meet servicing standards; (v) perform post-EOD duties; and defendant's breach of the implied covenant of good faith and fair dealing; it is further

ORDERED that the branch of defendant's motion to dismiss the VRS plaintiffs' second cause of action for *quid pro quo* conflicts of interest is denied; it is further

ORDERED that the branch of defendant's motion to dismiss the VRS plaintiffs' third and fourth causes of action are granted only as to the claims that are based on defendant's failure to perform ministerial acts with due care; it is further

ORDERED that the branch of defendant's motion to dismiss the VRS plaintiffs' fifth cause of action for violation of the Streit Act is granted; and it is further

ORDERED that defendant is to serve an answer to the VRS plaintiffs' complaint within 20 days of the entry of this order.

A preliminary conference on both actions shall be held on July 14, 2022, at 2:30 p.m. via Microsoft Teams with the link to be provided by the court.

5/25/2022
DATE

MARGARET CHAN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE