

**Deer Park Rd. Mgt. Co., LP v Nationstar Mtge., LLC**

2024 NY Slip Op 31832(U)

May 20, 2024

Supreme Court, New York County

Docket Number: Index No. 654474/2022

Judge: Andrew Borrok

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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: COMMERCIAL DIVISION PART 53

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DEER PARK ROAD MANAGEMENT COMPANY, LP, STS MASTER FUND, LTD.	INDEX NO. <u>654474/2022</u>
Plaintiff,	MOTION DATE <u>02/26/2024,</u> <u>02/26/2024</u>
- v -	MOTION SEQ. NO. <u>003 004</u>
NATIONSTAR MORTGAGE, LLC, NRZ SPONSOR HOLDCO LLC,	<b>DECISION + ORDER ON MOTION</b>
Defendant.	
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 114, 117, 120, 121, 122, 123, 124, 125

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 85, 107, 108, 109, 110, 111, 112, 113, 115, 116, 118, 126, 127, 128, 129

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 5.20.24), Deer Park’s motion to compel (Mtn. Seq. No. 003) is granted solely to the extent set forth below, and the Defendants’ motion (Mtn. Seq. No. 004) to compel is granted to the extent that they may serve a contention interrogatory to ascertain if a copy of the relevant 2021 Intex model as of a particular date still exists and is in Deer Park’s possession. If so, it must be produced.

- Deer Park is entitled to review relevant Documents in connection with the Defendants’ Re-Securitization of the At-Issue Loans, and Deer Park is also entitled to additional 11(f) Deposition Testimony.**

Deer Park seeks documents connected to proceeds received in connection with the re-

securitization of the at-issue loans post-termination, arguing that they are entitled to know how

the loans that survived termination were re-securitized and to review the offering memoranda, the governing agreements of the new vehicles, and other documents relating to the resulting proceeds of the re-securitization. The Defendants argue (i) that these documents are not relevant given that post-termination proceeds are not an element of damages in this case and that Deer Park's expert does not opine on a damages theory relating to post-termination proceeds and (ii) that Deer Park waited ten months to seek these documents. The arguments are unavailing. The Defendants have not demonstrated undue delay under the circumstances, and they may not seize on their own failure to produce relevant documents and then argue that Deer Park's expert did not explore and Deer Park has not asserted a theory of damages based on the Defendants' re-securitization or profit motive, when it is the Defendants' failure to provide relevant documents that has prevented Deer Park from exploring and possibly presenting precisely these theories.

Deer Park further seeks additional Rule 11(f) deposition testimony from NRZ's representative on the basis that the original witness refused to answer questions on relevance grounds (*see* NYSCEF Doc. No. 105, pages 140-142, lines 8-22). More precisely, the Defendants had earlier objected to providing corporate testimony, and when a topic arose during NRZ's representative's deposition that they objected to, counsel indicated that the questions were out of scope (*id.*). As discussed above, Deer Park is entitled to explore these topics during discovery to, among other things, explore damages sounding in disgorgement.

**2. The Defendants may serve a Contention Interrogatory concerning the Existence of certain 2021 Intex Financial Models.**

The Defendants seek to compel production of certain SAIL 2004-3 financial modeling performed by Deer Park in 2021 on the Intex platform.

Deer Park argues (i) that the specific 2021 versions of the financial models that the Defendants seek were overwritten long ago on the Intex platform (NYSCEF Doc. No. 128, pages 50-51, lines 15-4), (ii) that this request would force Deer Park to create new documents in response to discovery requests, which documents would in any event be different than the 2021 models sought because they would be based on today's assumptions and information (or a best guess as to what went into the 2021 models) such that the newly created models would necessarily differ from the 2021 models, and (iii) that this information is not relevant to the issue of damages, given this court's prior rulings.<sup>1</sup>

The record is not clear as to whether the 2021 termination information was overwritten or not. At the deposition, the Defendants only asked about 2018 information and whether this information was overwritten and is not available. The Plaintiffs indicate that the information was overwritten regularly based on changing assumptions and information. Thus, the Defendants may serve a contention interrogatory to inquire if a copy of the 2021 Intex model(s) currently exists as of a particular date. To the extent that the Intex model with the assumptions as of the date identified by the Defendants remains (i) intact, (ii) not changed, and (iii) in Deer Park's possession, they shall produce it.

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<sup>1</sup> See *In re U.S. Bank Nat'l Ass'n*, Index No. 652307/2022, NYSCEF Doc. No. 185 (Sup. Ct. N.Y. Cnty. Oct. 6, 2023).

The parties are directed to meet and confer and shall submit a stipulation containing a proposed discovery schedule as to the timing of the above by 5:00 pm on June 3, 2024. The parties shall appear for a remote status conference with the court via the Microsoft Teams platform on June 4, 2024, at 11:30 am to discuss a revised discovery schedule.

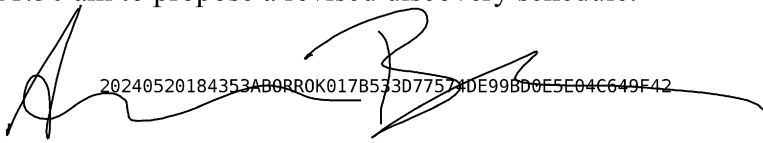
The court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that Deer Park's motion to compel (Mtn. Seq. No. 003) is granted solely to the extent set forth in this decision and order; and it is further

ORDERED that the Defendants may serve a contention interrogatory concerning the existence of the 2021 Intex models, which shall be produced in accordance with this decision and order, if it exists; and it is further

ORDERED that the parties shall appear for a remote status conference with the court via the Microsoft Teams platform on June 4, 2024, at 11:30 am to propose a revised discovery schedule.

  
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5/20/2024  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE