

**IKB Intl. S.A. v Morgan Stanley**

2024 NY Slip Op 32778(U)

August 5, 2024

Supreme Court, New York County

Docket Number: Index No. 653964/2012

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. MELISSA A. CRANE PART 60M**

*Justice*

-----X

IKB INTERNATIONAL S.A. IN LIQUIDATION, IKB  
DEUTSCHE INDUSTRIEBANK AG,

Plaintiff,

- v -

MORGAN STANLEY, MORGAN STANLEY & CO. LLC  
(F/K/A MORGAN STANLEY & CO. INCORPORATED),  
MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS  
LLC D/B/A MORGAN STANLEY MORTGAGE CAPITAL  
INC., MORGAN STANLEY CAPITAL I INC., MORGAN  
STANLEY ABS CAPITAL I INC., SAXON FUNDING  
MANAGEMENT LLC (F/K/A SAXON FUNDING  
MANAGEMENT, INC.), SAXON ASSET SECURITIES  
COMPANY

Defendant.

-----X

INDEX NO. 653964/2012

MOTION DATE N/A, N/A, N/A,  
N/A

MOTION SEQ. NO. 013 013 014  
014

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 013) 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 696, 704, 713, 714, 715, 716, 717, 819, 820, 821, 822 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 696, 704, 713, 714, 715, 716, 717, 819, 820, 821, 822 were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 697, 705, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 794, 795, 796, 797, 798, 799, 800, 801, 823, 824, 825, 826 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 697, 705, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 794, 795, 796, 797, 798, 799, 800, 801, 823, 824, 825, 826 were read on this motion to/for PRECLUDE.

The motions are decided in accordance with the reasoning on the record of August 5, 2024. This is a fraud case. The negligence claims are long gone, having been dismissed in 2014. On summary judgment, this court dismissed fraud claims relating to underwriting guidelines thereby limiting the fraud issues to representations concerning Loan to Value ratio (LTV) and Owner Occupancy (OO) (2023 WL 2307489 [March 1, 2023]). The Appellate Division, First Department affirmed (225 AD3d 542 [1<sup>st</sup> Dept 2024] [finding that the court properly dismissed the fraud-based claims to the extent they were based on plaintiffs' reliance on purported misrepresentations regarding the underwriting guidelines. Defendants made a prima facie showing that they conveyed no such misrepresentations to plaintiffs]).

Therefore, the evidence plaintiff wishes to place before the jury that involve any loan characteristics other than LTV and OO are no longer relevant. The court therefore precludes evidence concerning other aspects of the underlying loans. Plaintiff argues that so-called other "collateral characteristics" were always in this case. This is simply not accurate. One only has to read the May 2013 complaint to see that plaintiff's fraud claims relied on misstatements about LTV and CLTV ratio data, OO data and the now dismissed underwriting guidelines.

Nor were "Collateral Characteristics" part of summary judgment. If plaintiff meant to include different factors, it should have said something. Instead, it remained silent, even after summary judgment when this court threw out the aspect of the fraud claim related to underwriting factors. Plaintiff has accordingly charted its course. The trial will be about LTV, OO and only as to the loans underlying the securities in this case.

It follows then, that misstatements IKB never reviewed prior to purchase are irrelevant. Morgan Stanley's knowledge of defects in loans, originators or securitizations other than the ones at issue in this case are not relevant. Admitting evidence like this would confuse

the jury and would be prejudicial because it would not mean that the loans underlying the securities at issue were fraudulent.

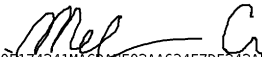
However, the mortgage loan schedule (MLS), to the extent relevant to the LTV and OO with respect to the loans at issue here, is fair game. Likewise, if plaintiff can lay a proper foundation at trial, and subject to the restrictions set forth in this decision, plaintiff can use the loan files its experts actually created and relied upon.

The court precludes plaintiff's experts Bitner and Holt from testifying beyond the limitations set forth in this decision. **Plaintiff has until August 12, 2024 to identify what parts, if any, of Holt's report fit within these limitations.** Bitner's report contains several areas that pass muster given the limitations, but plaintiff should confirm to defendants what sections it intends to elicit testimony about by August 12, 2024.

The court precludes the entirety of Milner's damage calculation. It is based too much on the market and the ratings agencies, but not enough on the securities and loans at issue. It uses too much of the Holt and Bitner reports that have been excluded. As the court stated throughout the hearing on the motions *in limine*, the court does not want the trial not become a referendum on Morgan Stanley's role in the financial crisis of 2008 (*see Abu Dhabi Commercial Bank v Morgan Stanley*, 2013 WL 1155420 [SDNY March 20, 2013] [in deciding motions in limine, court stated "I have declined to make this trial a full investigation into the Rating's Agencies' 'method and practice of rating everything' and have sought to limit plaintiff's prosecutions to particular transactions."])).

Accordingly, Milner's report is precluded. Milner can have until **August 12, 2024** to interpose new calculations. While precluding Milner's damage calculations in their entirety, the court does note that the part of defendant's motion seeking to preclude recessionary damages is

denied because it is a summary judgment motion in disguise. Therefore, to the extent defendant was seeking to exclude recessionary damages in general, the motion is denied. The next opportunity for defendant to try to preclude recessionary damages is at the close of plaintiff's case per CPLR 4401.

  
20240805174241MACRANE02AA634E7DF242A58D2B588880AD8B6

<u>8/5/2024</u> DATE					<hr/> <b>MELISSA A. CRANE, J.S.C.</b>
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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE