

**Park Royal I LLC v Wells Fargo Bank, N.A.**

2025 NY Slip Op 32604(U)

July 1, 2025

Supreme Court, New York County

Docket Number: Index No. 655404/2021

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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PARK ROYAL I LLC, PARK ROYAL II LLC,  
 Plaintiffs,

- v -

WELLS FARGO BANK, N.A., LAW DEBENTURE TRUST  
 COMPANY OF NEW YORK, AS TRUSTEE (AND ANY  
 PREDECESSORS OR SUCCESSORS THERETO), TMI  
 TRUST COMPANY, AS TRUSTEE (AND ANY  
 PREDECESSORS OR SUCCESSORS THERETO),  
 DELAWARE TRUST COMPANY, AS TRUSTEE,

Defendants.

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INDEX NO. 655404/2021

MOTION DATE 08/26/2024

MOTION SEQ. NO. 007

**DECISION + ORDER ON  
 MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 224, 225, 226, 227, 228, 229, 230, 231, 232, 236, 237, 238, 239, 240, 241, 244

were read on this motion to DISMISS.

This is a breach of contract case involving 34 residential mortgage-backed securities (RMBS) trusts (the “Trusts”). Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) moves pursuant to CPLR 3211(a)(1) and 3211(a)(7) to dismiss certain claims brought by Plaintiffs Park Royal I LLC and Park Royal II LLC (“Plaintiffs”) in their Second Amended Consolidated Complaint (NYSCEF 146, “SAC”).

For the reasons set forth below, Wells Fargo’s motion is **granted**. The case will proceed as to the remaining claims.

## **BACKGROUND**

### **I. Factual Background**

Plaintiffs are investors in 34 RMBS Trusts containing approximately 179,000 mortgage loans with a combined principal balance of about \$40 billion (SAC ¶ 36). Plaintiffs allege that the Trusts sustained approximately \$12 billion in damages due to Wells Fargo's failure to fulfill its contractual duties under the Trusts' Pooling and Servicing Agreements ("PSAs") (*id.* ¶ 38).

For context, the RMBS securitization process involves the transfer of mortgage loans from lenders (also known as "originators") to sponsors, who receive mortgage documents, bundle mortgages, and facilitate the securitization arrangements, and ultimately to trustees, whose duties include administering the trusts, distributing payments to investors, enforcing remedies for breaches of representations and warranties ("R&Ws") regarding the quality and characteristics of the loans, and cure defective (or missing) mortgage documents (*id.* ¶ 55-69).

Wells Fargo served as the initial trustee for the 34 Trusts in this action (*id.* ¶ 8-22). However, beginning in 2012 and continuing through 2015, Wells Fargo brought trust instruction proceedings ("TIP") in the Minnesota District Court for the Fourth Judicial District, seeking orders authorizing the transfer of some of Wells Fargo's trustee duties for certain Trusts to a separate trustee (*id.* ¶ 23). The Minnesota District Court authorized and confirmed Wells Fargo's appointment of Law Debenture Trust Company, or LDT, as successor trustee for HVMLT 2006-10 and HVMLT 2007-1 on August 29, 2012; OOMLT 2006-1, OOMLT 2006-3, OOMLT 2007-3, OOMLT 2007-4, OOMLT 2007-5, OOMLT 2007-6, OOMLT 2007-CP1 on October 11, 2012; CARR 2007-RFC1 on October 2, 2013; SVHE 2007-OPT1 on July 24, 2013; and SVHE 2007-OPT2, and SVHE 2007-OPT3 on March 19, 2014 (NYSCEF 206).

In this action, Plaintiffs allege that Wells Fargo breached its duties under the PSAs by intentionally (1) failing to cure missing or defective mortgage documents and (2) neglecting to enforce repurchase claims against obligors<sup>1</sup> for R&W breaches (SAC at ¶ 82).

## II. Procedural Background

RMBS litigation has proliferated in the wake of the 2008 financial crisis. While the initial wave of cases involved RMBS trustees, investors, or their insurers bringing suits against RMBS sponsors, depositors, servicers, and originators to recover losses on the certificates, this case is part of a later wave in which subsequent investors (which acquired trust certificates years after the problems with these portfolios became widely known) brought lawsuits against the trustees.

Plaintiffs initially commenced multiple actions against Wells Fargo between 2019 and 2021 seeking to recover losses that they allege were caused by Wells Fargo's breach of the PSAs in 27 Trusts (NYSCEF 2 and 16). Plaintiffs consolidated those actions in their Amended Consolidated Complaint (NYSCEF 128).

On February 28, 2023, this Court dismissed Plaintiffs' claims relating to ten Trusts on the ground that Wells Fargo had been replaced by a separate trustee—LDT<sup>2</sup>—before Plaintiffs' enforcement claims had accrued (NYSCEF 118; NYSCEF 124, Tr. 66:8–68:24). Plaintiffs then

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<sup>1</sup> Obligor is the party responsible for repurchasing mortgages with defective documents or breaches of R&Ws. An obligor may be the one of several entities in the RMBS securitization chain, including the loan originator or sponsor (SAC ¶ 2, 57).

<sup>2</sup> Plaintiffs sued LDT on May 15, 2023 and added it as a defendant in this action as well as three other newly filed cases that collectively involved 34 trusts (NYSCEF 146 ¶1, 36). The four cases were consolidated into this action on June 11, 2024 (NYSCEF 171). The Court dismissed Plaintiffs' claims against LDT on the ground that LDT had been judicially dissolved prior to the suit (NYSCEF 245).

filed the SAC, reasserting claims as to those Trusts and adding claims involving three additional Trusts as to which similar issues arise (NYSEF 146).

The instant motion targets Plaintiffs' claims concerning 20 of the 34 Trusts, including: (1) claims concerning thirteen Trusts<sup>3</sup> subject to the Minnesota TIP court orders appointing LDT as successor trustee; (2) claims arising from seven so-called "non-enforcement" Trusts<sup>4</sup> with PSAs that do not impose pre-event of default enforcement obligations on the trustee; and (3) claims for punitive damages (NYSCEF 199 at 2).

### DISCUSSION

On a motion to dismiss, the Court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "When evidentiary material is considered the criterion on a CPLR 3211(a)(7) motion is whether a plaintiff has a claim, not whether he or she has stated one" (*Weksler v Weksler*, 81 AD3d 401, 402, [1st Dept 2011]). Dismissal under CPLR 3211(a)(1) is appropriate where the documentary evidence produced by Defendants "utterly refutes plaintiffs' factual allegations" and "conclusively establishes a defense to the asserted claims as a matter of law" (*Amsterdam Hospitality Grp., LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 433 [1st Dept 2013]).

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<sup>3</sup> Those trusts include ten Trusts that were subject to this Court's February 28, 2023 Order (HVMLT 2006-10, HVMLT 2007-1, OOMLT 2006-3, OOMLT 2007-3, OOMLT 2007-4, OOMLT 2007-5, OOMLT 2007-6, OOMLT 2007-CP1, CARR 2007-RFC1, OOMLT 2006-1) (NYSCEF 146 ¶ 4) and three additional Trusts that Plaintiffs included in their SAC (SVHE 2007-OPT1, SVHE 2007-OPT2 and SVHE 2007-OPT3) (NYSCEF 199 at 11).

<sup>4</sup> Those trusts are: MSAC 2005-WMC6, MSAC 2006-WMC1, SABR 2005-HE1, SABR 2006-FR1, SABR 2006-FR2, SABR 2006-FR3, SABR 2006-HE2 (NYSCEF 199 at 5).

## **I. Wells Fargo’s Motion to Dismiss Certain Breach-of-Contract Claims Involving Trusts Subject to the Minnesota Court Orders Is Granted**

As relevant to this motion, Plaintiffs make additional factual allegations in the SAC regarding their claims against Wells Fargo, including that: (1) the Instruments of Appointment and Acceptance (“IAAs”)—the agreements appointing a separate trustee pursuant to the Minnesota TIP court orders— “made clear that Wells Fargo, not Law Debenture, was liable for damages suffered by Park Royal as a result of Wells Fargo’s actions or failures to act prior to the appointment of Law Debenture” (SAC ¶7); (2) Wells Fargo retained the responsibility to enforce the Trusts’ document defect cure rights (*id.*); and (3) Wells Fargo retained post-event-of-default duties after LDT was appointed as trustee (*id.*).

Plaintiffs’ renewed claims concerning the Trusts that were subject to this Court’s February 28, 2023 Order are precluded by law of the case. “The doctrine of [law of the case] is a rule of practice premised upon sound policy that once an issue is judicially determined, further litigation of that issue should be precluded in a particular case” (*In re Part 60 RMBS Put - Back Litig.*, 195 AD3d 40, 47 [1st Dept 2021]). The doctrine “contemplates that the parties had a full and fair opportunity to litigate when the initial determination was made” (*Chanice v Fed. Exp. Corp.*, 118 AD3d 634, 635 [1st Dept 2014]). Moreover, the same legal principles apply to the three additional TIP-impacted Trusts added in the SAC (*see* n3 *infra*).

Here, the Court has already considered and dismissed Plaintiffs’ claims arising out of ten of the thirteen Trusts governed by the Minnesota TIP court orders. That dismissal rested on three grounds. First, that “plaintiffs’ claims did not accrue until after the appointment of a separate trustee for [the ten trusts]” (NYSCEF 124 at 67). Second, the TIP orders were “binding... upon the interests of all beneficiaries” under the Minnesota statute governing TIPs

(Minn. Stat. § 501C.0204(1) [2016]). Third, the TIP court orders could not be collaterally attacked, because “it is well settled under Minnesota law that a facially valid judgment is not subject to collateral attack” (*Popp Telecom v Am. Sharecom., Inc.*, 210 F3d 928, 941 [8th Cir. 2000]).

Plaintiffs’ contention that Wells Fargo remained liable for breaches pre-dating LDT’s appointment is undermined by Plaintiffs’ accrual theory. Plaintiffs previously argued that claims for breaches of the Trusts’ PSAs were triggered at the time the trustee allowed the trusts’ enforcement rights to lapse (that is, after expiration of the six-year statute of limitations) without bringing timely enforcement actions against the obligors. Under that theory, the claims that are the subject of the instant motion did not accrue on Wells Fargo’s watch.

The statute of limitations for claims against a trustee that “failed to enforce the obligor's repurchase obligation to repurchase a loan that had missing or defective documents is 12 years after the expiration of the obligor's cure period” (*Zittman v HSBC Bank USA, N.A.*, 224 AD3d 638, 639 [1st Dept 2024], *lv to appeal denied*, 42 NY3d 911 [2025]). That consists of six years for the statute of limitations on the underlying repurchase claims plus six years for plaintiffs to sue the trustee for failing to enforce those repurchase claims (*id.*). Here, LDT was appointed as trustee prior to the expiration of the six-year period for Wells Fargo to initiate document defect claims against obligors (NYSCEF 202). Thus, all of Plaintiffs’ document-defect claims arising out of the thirteen Trusts subject to the TIP orders are dismissed.

The same is true for the R&W claims for eight of the thirteen Trusts that are the subject of this motion. With respect to those Trusts, Plaintiffs’ R&W claims accrued after LDT’s

appointment as successor trustee, and therefore those claims cannot be asserted against Wells Fargo (*id.*).<sup>5</sup>

Nor does Plaintiffs' argument that Wells Fargo retained enforcement duties for document defects that postdate LDT's appointment shield Plaintiffs' claims from the preclusive effect of the TIP orders. The TIP orders made clear that "[u]pon appointment of the Separate Trustee," Wells Fargo "shall have no further duty or obligation to the Trusts' beneficiaries with respect to the enforcement of Repurchase Claims or any other duties under the Trust Agreement to the extent that they have been delegated to the Separate Trustee pursuant to the IAA" (NYSCEF 206 at 8). The TIP orders defined repurchase claims to include: "(i) *demanding production of files* and other information relating to the Mortgage Loans [...] (the "Loan Files") by the Potentially Responsible Parties or servicers of the Mortgage Loans"; "(ii) commencing litigation or asserting claims to compel the Potentially Responsible Parties or Servicers *to turn over Loan Files*"; and "(iii) making demands on the Potentially Responsible Parties to repurchase Mortgage Loans" (*id.* at 7-8 [emphasis added]). Similarly, the IAAs, mirroring the language in the TIP orders, authorized LDT to "pursue requests for mortgage loan files and related files/information" and "commence litigation to compel servicers (or other applicable parties) to turnover mortgage loan files and related files/information" as part of the obligations LDT assumed "in connection with the Repurchase Claims[.]" (NYSCEF 228 at 21). These provisions leave no ambiguity: the authority to pursue repurchase claims, including those triggered by document defects, was transferred to LDT.

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<sup>5</sup> HVMLT 2006-10, HVMLT 2007-1, OOMLT 2006-3, OOMLT 2007-3, OOMLT 2007-4, OOMLT 2007-5, OOMLT 2007-6, OOMLT 2007-CP1.

Plaintiffs' proposed distinction between the term "mortgage loan files" in the IAAs and the term "mortgage files" in the PSAs is unavailing. "Whether a contract is ambiguous presents a question of law for resolution by the court" (*Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.*, 60 AD3d 61, 67 [1st Dept 2008]). "The existence of ambiguity is determined by examining the entire contract and considering the relation of the parties and the circumstances under which it was executed, with the wording to be considered in the light of the obligation as a whole and the intention of the parties as manifested thereby" (*id.* at 66-67 [cleaned up]). "[T]he provisions of a contract 'prevail over conclusory allegations of the complaint'" (*Sterling Resources Intern., LLC v Leerink Swann, LLC*, 92 AD3d 538, 538 [1st Dept 2012]).

Here, both the TIP orders and the IAAs define repurchase claims broadly to include enforcement duties with respect to document defects, as outlined in the PSAs. The TIP orders delegated to LDT, among other things, "the rights, powers and obligations of the Trustee [...] set forth in the [PSA] with respect to the enforcement of the Repurchase Claims, including those deemed necessary to enforce the Repurchase Claims to the extent set forth in Sections 2.01, 2.02 and 2.03 of the [PSA]" (NYSCEF 227, CARR 2007-RFC1 TIP Order dated October 2, 2013). Those Sections specify, in part, the trustee's duties with respect to document defects. For example, Section 2.03(a) of the PSA for the HVMLT 2006-10 trust<sup>6</sup> provides that upon "discovery or receipt of written notice of any materially defective document in, or that a document is missing from, a Mortgage File" or a breach of any R&W by the obligor, the trustee must promptly notify the obligor "of such defect, missing document or breach" and request that

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<sup>6</sup> The PSA enforcement provisions for the other Trusts subject to the TIP orders include materially similar language.

the obligor “deliver such missing document or cure such defect or breach,” and in the event that the obligor fails to do so, the trustee “shall enforce the [obligor’s] obligation” to repurchase the loan (NYSCEF 204 at 3). And to the extent there is any discrepancy between the IAAs and the TIP orders, and the Court finds none, the IAAs provide that “[i]n the event of any inconsistency between the terms of this Agreement and the terms of the TIP Order, the terms of the TIP Order shall control” (NYSCEF 228 at 105).

In sum, the Court does not find the contractual language to be ambiguous. “[C]lear contractual language does not become ambiguous simply because the parties to the litigation argue different interpretations” (*Riverside S. Planning Corp.*, 60 AD3d at 67). Accordingly, all of Plaintiffs’ document-defect claims arising out of the thirteen Minnesota TIP-impacted Trusts and their R&W claims arising out of eight of those Trusts are dismissed.

## **II. Claims Concerning Pre-Event of Default Enforcement Duties in Seven Non-Enforcement Trusts Are Dismissed**

Seven of the Trusts in this action are governed by agreements do not expressly specify any enforcement obligations on the trustee with respect to pre-event of default document exceptions or R&W breaches. As the Court of Appeals held in *IKB Int’l, S.A. v. Wells Fargo Bank, N.A.*, 40 N.Y.3d 277 [2023], such agreements “do not impose on defendants an affirmative duty to enforce repurchase obligations” (*IKB Intl.*, 40 NY3d at 285). Plaintiffs concede that their pre-event of default claims for these trusts should be dismissed in light of the *IKB* decision (NYSCEF 232 at 5). Therefore, the Court grants Wells Fargo’s motion to dismiss these claims.

## **III. Plaintiffs Are Not Entitled to Punitive Damages**

In order to be entitled to punitive damages under New York law, a private litigant “must not only demonstrate egregious tortious conduct by which he or she was aggrieved, but also that

such conduct was part of a pattern of similar conduct directed at the public generally” (*Macy’s Inc. v Martha Stewart Living Omnimedia, Inc.*, 127 AD3d 48, 57 [1st Dept 2015].) “Where a lawsuit has its genesis in the contractual relationship between the parties, the threshold task for a court considering defendant’s motion to dismiss a cause of action for punitive damages is to identify a tort independent of the contract” (*Matter of Part 60 Put-Back Litig.*, 36 NY3d 342, 360 [2020]).

Here, Plaintiffs’ allegations of conflicts of interest and failure by an RMBS trustee to enforce repurchase rights – which are typical fare in RMBS cases – do not rise to the level of egregious conduct (or conduct directed at the public) sufficient to state a claim for punitive damages.

### CONCLUSION

For the reasons stated above, it is

**ORDERED** that Wells Fargo’s motion to dismiss is granted, such that

- (i) all document-defect claims arising out of the following Trusts are dismissed:  
HVMLT 2006-10, HVMLT 2007-1, OOMLT 2006-1, OOMLT 2006-3, OOMLT 2007-3, OOMLT 2007-4, OOMLT 2007-5, OOMLT 2007-6, OOMLT 2007-CP1, CARR 2007-RFC1, SVHE 2007-OPT1, SVHE 2007-OPT2 and SVHE 2007-OPT3;
- (ii) all R&W claims arising out of the following Trusts are dismissed: HVMLT 2006-10, HVMLT 2007-1, OOMLT 2006-3, OOMLT 2007-3, OOMLT 2007-4, OOMLT 2007-5, OOMLT 2007-6, OOMLT 2007-CP1;

(iii) claims concerning pre-event of default enforcement duties with respect to the following Trusts are dismissed: MSAC 2005-WMC6, MSAC 2006-WMC1, SABR 2005-HE1, SABR 2006-FR1, SABR 2006- FR2, SABR 2006-FR3, SABR 2006-HE2; and

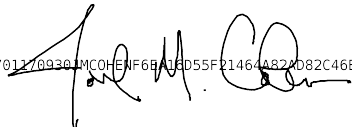
(iv) claims for punitive damages are dismissed; it is further

**ORDERED** that the remaining claims in Plaintiffs’ SAC shall proceed; and it is further

**ORDERED** that the parties appear for a preliminary conference on **July 15, 2025 at 10:00 a.m.**, with the parties circulating dial-in information to chambers at [SFC-Part3@nycourts.gov](mailto:SFC-Part3@nycourts.gov) in advance of the conference.<sup>7</sup>

This constitutes the Decision and Order of the Court.

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	<u>7/1/2025</u> DATE		 _____ JOEL M. COHEN, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input 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	

<sup>7</sup> If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.