

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
FEDERAL HOUSING FINANCE AGENCY, AS
CONSERVATOR FOR THE FEDERAL HOME
LOAN MORTGAGE CORPORATION, on behalf
of the Trustee of the SECURITIZED ASSET
BACKED RECEIVABLES LLC TRUST 2006-
WM4 (SABR 2006-WM4),

Plaintiff,

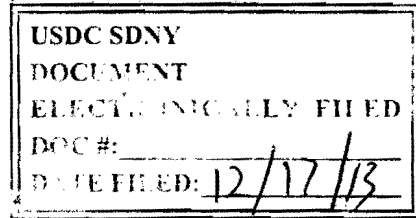
-against-

WMC MORTGAGE, LLC f/k/a WMC
MORTGAGE CORP.,

Defendant.
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**ORDER DENYING MOTION TO
DISMISS COMPLAINT AS
UNTIMELY**

13 Civ. 584 (AKH)



DEUTSCHE BANK NATIONAL TRUST
COMPANY, solely in its capacity as Trustee of the
SECURITIZED ASSET BACKED
RECEIVABLES LLC TRST 2006-WM4,

Plaintiff,

-against-

WMC MORTGAGE, LLC f/k/a WMC
MORTGAGE CORP.,

Defendant.
----- X

ALVIN K. HELLERSTEIN, U.S.D.J.:

On December 10, 2012, I heard argument on defendant's motion to dismiss in the above captioned matter. For the reasons stated on the record at oral argument, I hold that the record is insufficient to grant the motion to dismiss and that the motion, at this time, is premature.


The causes of action stated in the complaint alleged failures to cure after defendants received notice of the breach, not of the original breaches themselves. *See ACE Security Corp. v. DB Structured Products, Inc.*, 40 Misc.3d 562 (N.Y. Sup. Ct. 2013). The complaint, as alleged, on its face was therefore timely and fell within the six year statute of limitations for breaches of contract. *See* N.Y.C.P.L.R. § 213(2). Determining whether or not the complaint can relate back to the summons filed by the Federal Housing Financial Authority (FHFA) in the Supreme Court of the State of New York on December 27, 2012 requires a more developed factual record and thus is premature at this stage.

Lastly, WMC's request to strike the various forms of relief, specifically money damages, is premature and should not be decided on a motion to dismiss. *See* Fed. R. Civ. P. 8(a); *MASTR Adjustable Rate Mortgages Trust 2006-0A2 v. UBS Real Estate Securities Inc.*, No. 12-cv-07322, 2013 WL 439210, at *3 (S.D.N.Y. Aug. 15, 2013). These requests are also denied without prejudice and may be brought later at a more appropriate juncture.

Plaintiff has until December 27, 2013 to amend the complaint and defendant must answer the amended complaint by January 10, 2013. Parties are directed to appear on January 31, 2013 at 10 a.m. with a case management plan for a status conference. The Clerk shall mark the motion (Doc. No. 41) terminated.

SO ORDERED.

Dated: December 17, 2013
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge