

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

PRESENT: MARCY S. FRIEDMANPART 60*Justice*

DEUTSCHE BANK NATIONAL TRUST COMPANY, solely as
Trustee for HSI ASSET SECURITIZATION CORPORATION
TRUST 2007-NC1,

INDEX NO. 652001/2013

-against-

MOTION DATE _____

HSBC BANK USA, NATIONAL ASSOCIATION,

MOTION SEQ. NO. 001The following papers, numbered 1 to _____ were read on this motion to dismiss

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

No (s). _____

Answering Affidavits — Exhibits _____

No (s). _____

Replying Affidavits _____

No (s). _____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

The first cause of action on its face alleges breach of contract based on defendant's failure to cure breaches of the representations and warranties regarding the quality of mortgage loans or to repurchase defective loans. As discussed in this court's decision in Nomura Asset Acceptance Corp. Alternative Loan Trust, Series 2006-S4, by HSBC Bank USA, Natl. Assn. v Nomura Credit & Capital, Inc. (2014 WL 2890341, * 6, Index No. 653390/2012, June 26, 2014 [Nomura]), this cause of action is barred by this Department's decision in ACE Secs. Corp. v DB Structured Prods., Inc. (112 AD3d 522 [2013], lv granted 23 NY3d 906 [ACE]). The second cause of action for breach of contract alleges a breach based on defendant's failure to promptly notify plaintiff trustee of its discovery of breaches of the representations and warranties. As discussed in this court's decision in Morgan Stanley Mortgage Loan Trust 2006-13ARX v Morgan Stanley Mortgage Capital Holdings LLC (2014 WL 4829638, *2, Index No. 653429/2012, September 25, 2014), this cause of action is also barred by ACE.

At the oral argument of the motion to dismiss, plaintiff took the position that the first cause of action is based not merely on breach of the cure or repurchase obligations but also on breaches of the representations and warranties. The court has reviewed the complaint and finds that it alleges breaches of representations and warranties with specificity comparable to that in other cases that this court has heard involving residential mortgage backed securities which plead such breach of contract claims. The court finds that there is accordingly a sufficient showing of merit to warrant leave to replead. (See generally MBIA Ins. Corp. v Greystone & Co., Inc., 74 AD3d 499 [2010]). The court will entertain a motion to dismiss the amended complaint. Defendant's statute of limitations defense will more appropriately be considered upon a complaint which clearly sets forth the basis for the breach claim.

It is hereby ORDERED that the first and second causes of action of the complaint are dismissed without prejudice to plaintiff's right, if so advised, to replead a breach of contract cause of action based on alleged breaches of representations and warranties. Provided that: Such complaint shall be served within twenty days of service of a copy of this order with notice of entry.

Dated: 10-17-14

J.S.C.
MARCY S. FRIEDMAN, J.S.C.

1. Check one:

☐ CASE DISPOSED☐ NON-FINAL DISPOSITION

2. Check as appropriate:.....Motion is:

☐ GRANTED☐ DENIED☐ GRANTED IN PART☐ OTHER

3. Check if appropriate:.....

☐ SETTLE ORDER☐ SUBMIT ORDER☐ DO NOT POST☐ FIDUCIARY APPOINTMENT☐ REFERENCEMOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):