

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

FREEDOM TRUST 2011-2, on behalf of ACE
Securities Corp. Home Equity Loan Trust, Series
2006-FM1,

Plaintiff,

-against-

DB STRUCTURED PRODUCTS, INC.,

Defendant,

-and-

HSBC BANK USA, NATIONAL
ASSOCIATION, in its capacity as Trustee of
ACE Securities Corp. Home Equity Loan Trust,
Series 2006-FM1,

Nominal Defendant.

Index No. _____

SUMMONS WITH NOTICE

Plaintiff designates New York County as
the place of trial.

The basis for venue is CPLR §§ 503(a) &
(c) as Plaintiff's principal New York
office is in New York County and
Defendants are domestic or foreign
corporations authorized to transact
business in New York and their principal
New York offices are in New York
County.

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED and required to
serve upon Plaintiff's attorneys, at the address stated below, a notice of appearance or a demand
for a complaint, within twenty (20) days after the service of this Summons, exclusive of the day
of service, or within thirty (30) days after the service is complete if this Summons is not
personally delivered to you within the State of New York. In case of your failure to appear or
answer, judgment will be taken against you by default for the relief demanded herein.

This Court has jurisdiction over this proceeding pursuant to CPLR §§ 301 and 302
because the Defendants have offices in New York. Defendant DB Structured Products, Inc.
("DB Products") has offices at 60 Wall St., New York, NY 10005. Nominal Defendant HSBC

Bank USA, National Association (the “Trustee”) has offices at 452 Fifth Ave., New York, NY 10016. Additionally, ACE Securities Corp. Home Equity Loan Trust, Series 2006-FM1 (the “Trust”) was formed under New York law pursuant to a pooling and servicing agreement, which contains a New York choice of law provision.

Venue is proper in this Court pursuant to CPLR §§ 503(a) and (c) because the Defendants are domestic or foreign corporations authorized to transact business in the State of New York, with principal offices in New York County.

NOTICE:

1. In this action, Plaintiff, on behalf of the Trust, seeks redress from DB Products for its breaches of, and refusal to perform, its contractual obligations under a Mortgage Loan Purchase Agreement dated August 25, 2006 (the “MLPA,” the filed copy of which is attached as Exhibit A) and a Pooling and Servicing Agreement dated as of August 1, 2006 (the “PSA,” the filed copy of which is attached as Exhibit B).

2. In 2006, DB Products purchased and securitized nearly 6,500 residential mortgage loans (“Mortgage Loans”) with the intent and understanding that such loans would serve as the basis for payment on securities sold to investors. DB Products accomplished this securitization by selling the Mortgage Loans to ACE Securities Corporation (“ACE”) pursuant to the MLPA. ACE—a “depositor” entity—in turn deposited the loans into the Trust pursuant to the PSA. The Trust then issued securities backed by the Mortgage Loans. These securities, also known as “Certificates,” were issued on August 25, 2006 and sold to investors.

3. The Trust is the permitted assignee of the MLPA and DB Products’ obligations thereunder. The MLPA expressly provided in Section 3 that ACE, as the purchaser of the Mortgage Loans, “will assign all of its right, title and interest in and to the Mortgage Loans,

together with its rights under this Agreement, to the Trustee for the benefit of the Certificateholders.” The rights were assigned in accordance with Section 2.01 of the PSA, pursuant to which ACE “transfer[ed], assign[ed], set over and otherwise convey[ed] to the Trustee, on behalf of the Trust, . . . for the benefit of the Certificateholders, all the right, title and interest of the Depositor . . . in and to the Mortgage Loans” and “the rights of the Depositor under the Mortgage Loan Purchase Agreement (including, without limitation, the right to enforce the obligations of the other parties thereto thereunder).”

4. As with all mortgage loan securitizations, the credit quality of the Certificates was at the time and remains dependent in significant part upon the credit quality of the Mortgage Loans in the Trust, the underwriting of those loans, and the quality of the information provided with respect thereto. The MLPA, in Section 6, sets forth a series of enforceable representations, warranties, and covenants concerning those matters, including, without limitation, that accurate and complete information had been provided with respect to the Mortgage Loans and the origination and selection thereof; that the loans had been underwritten in accordance with the related originator’s guidelines; and that, in connection with each Mortgage Loan, no error, omission, misrepresentation, fraud or similar occurrence with respect to a Mortgage Loan had taken place on the part of any person. When a representation is breached, Section 7 of the MLPA requires the Defendant to cure the breach or repurchase the affected loan. Defendant has breached these and other representations, warranties, and covenants in the MLPA, including, without limitation, its obligation to cure or repurchase the breaching loans.¹

¹ All rights continue to be reserved with respect to all Mortgage Loans, including, without limitation, the right to notice breaches with respect to any additional Mortgage Loan or to identify additional breaches relating to the Mortgage Loans already identified as non-conforming.

5. Prior to the commencement of this action, a forensic review of loan files for a substantial number of the Mortgage Loans in the Trust was undertaken. This review examined loan files for 797 loans in the Trust. The review reflects that at least 449 of the 797 loans for which loan files were reviewed breached applicable representations and warranties and required cure or repurchase in accordance with the MLPA and PSA. Although requested, many loan files have not been made available for review. Supplemental investigation of certain of the Mortgage Loans for which loan files were not made available to Certificateholders identified 1,358 additional loans that breached representations and warranties.

6. This high rate of breaches indicates that breaches of the representations and warranties may be pervasive and systemic across the loan pool that DB Products caused to be transferred to the Trust.

7. In letters to DB Products, submitted more than 90 days ago, the Trustee notified DB Products of breaches of representations and warranties with respect to at least 1,807 loans, which breaches materially and adversely affected the value of the Mortgage Loans and the interest therein of the Certificateholders. Although not required, supporting documentation was included, as applicable.

8. The defects generally fell into one or more of the following categories:

- (a) Misstatement of Debts. Mortgage Loan documents misstated the borrower's existing debt obligations, despite clear indications at the time that the borrower had more debts than were listed.
- (b) Misstatement of Owner-Occupancy Status. Mortgage Loan documents listed certain properties as "owner-occupied" despite clear indications at the time that the borrower did not intend to occupy the property. Owner-occupied properties have a very different risk profile, in part because a borrower who occupies the property is less likely to default than a borrower who lives elsewhere.
- (c) Misstatement of Debt-to-Income Ratios. A borrower's "debt-to-income" ratio (or "DTI" ratio) compares the borrower's monthly debt obligations to

the borrower's monthly income. For many Mortgage Loans, the actual DTI ratios were far higher than those represented, meaning that the borrowers had much higher debt relative to their incomes than was represented.

- (d) Misstatement of Income and Employment. Many mortgage files misstated the borrowers' income, misrepresented the borrowers' employment, or listed incomes that were not accurate or reasonable given the borrowers' stated occupations.
- (e) Underwriting Guideline Breaches. Many of the mortgage files relating to the Mortgage Loans reflect that the Mortgage Loans were not issued in accordance with the applicable mortgage loan origination guidelines.

9. These breaches materially and adversely affect the value of the Mortgage Loans and the interest therein of the Certificateholders, including, among other reasons, by altering the Mortgage Loan's risk profile in a way that negatively affects the pricing and marketability of the loan and of the Certificates collateralized by the loan. Under Section 2.03(a) of the PSA, certain of these breaches are "automatically deemed to affect materially and adversely the interests of the Certificateholders."

10. Pursuant to Section 7 of the MLPA titled "Repurchase Obligation for Defective Documentation and for Breach of Representation and Warranty," when DB Products learns "of a breach of any of the representations and warranties contained in Section 6 that materially and adversely affects the value of any Mortgage Loan or the interest therein" of the Trust and the Certificateholders, DB Products must within 60 days "cure such defect or breach in all material respects or . . . within ninety (90) days of its discovery or receipt of notice of any such missing or materially defective documentation or of any such breach of a representation and warranty, . . . repurchase the affected Mortgage Loan at the Purchase Price." Section 7 of the MLPA further provides that any repurchase required under the MLPA "shall be made in a manner consistent with Section 2.03 of the Pooling and Servicing Agreement."

11. The Trustee, as the assignee of ACE, may enforce DB Products' repurchase obligations for the benefit of the Trust and its Certificateholders, pursuant to the deal documents, including Section 2.03 of the PSA, which provides that "[u]pon discovery or receipt of notice" of a defective or missing document "or of a breach by the Sponsor of any representation, warranty or covenant under the Mortgage Loan Purchase Agreement . . . that materially and adversely affects the value of such Mortgage Loan or the interest therein of the Certificateholders, the Trustee shall promptly notify" DB Products of said breach "and request that [DB Products] cure the breach within sixty (60) days." If DB Products fails to cure the breach within the 60-day period, "the Trustee shall enforce" DB Products' obligations under the MLPA to repurchase the Loan "within ninety (90) days after the date on which" DB Products was first notified of the breach.

12. DB Products is on notice that specific loans in the mortgage pool were defective. In letters sent by the Trustee on April 23, 2012, April 30, 2012, and May 22, 2012, respectively, which referenced letters sent to the Trustee on April 13, 2012, April 26, 2012, and May 21, 2012, respectively, the Trustee notified DB Products of 1,807 loans in the Trust with breaches of DB Products' representations and warranties that materially and adversely affected the value of the related Mortgage Loans and the interest therein of the Certificateholders and requested that DB Products repurchase the breaching loans. Further, DB Products is on notice of additional loans with material and adverse defects, in part due to the pervasive nature of the breaches in the loan pool identified to date.

13. DB Products breached its obligation to repurchase the defective loans. The 90-day period for DB Products to cure the breaches of which it has been provided notice, or which it otherwise discovered, or failing such cure, to repurchase the affected loans, has now expired

without DB Products curing a single breach or repurchasing a single loan. DB Products is therefore in breach of and has repudiated its obligations to cure or repurchase the breaching loans.

14. The PSA and MLPA are valid, binding and enforceable contracts.

15. Plaintiff has performed all of the conditions, covenants, and promises required in accordance with the PSA and the MLPA in order to enforce the repurchase obligations of DB Products set forth in the MLPA and referenced in the PSA: (1) Plaintiff has notified the Trustee that DB Products' failure to comply with its repurchase obligations constitutes a continuing default under the MLPAs; (2) Plaintiff is entitled to at least 25% of the Voting Rights in the Trust, as confirmed by the proof of ownership provided to the Trustee; (3) in the direction letter, dated July 27, 2012, Plaintiff directed the Trustee to "commence litigation . . . to enforce the obligation of the Sponsor arising under Section 2.03 of the PSA and Section 7 of the related Mortgage Loan Purchase Agreement to repurchase" the breaching loans and offered the Trustee reasonable indemnity against the costs, expenses, and liabilities to be incurred by the Trustee; and (4) more than 15 days have passed since Plaintiff gave its directions without the Trustee taking any action.

16. Section 12 of the MLPA provides that "[a]ll rights and remedies of [ACE] and therefore the Trustee as its permitted assignee] under this Agreement are distinct from, and cumulative with, any other rights or remedies under this Agreement or afforded by law or equity and all such rights and remedies may be exercised concurrently, independently or successively." The Trust's remedies include, but are not limited to, DB Products' specific performance of the repurchase obligations as alleged above. For each loan, the repurchase amount must include,

among other things, 100% of the outstanding principal balance, accrued interest at the applicable rate, and expenses incurred in respect of the breach giving rise to the repurchase obligation.

17. The Trust and Certificateholders have been damaged by DB Products' breaches of its cure and repurchase obligations. The nature of those breaches—including violations of representations, warranties, and covenants concerning the completeness and accuracy of the information provided and required to be provided—is such that Plaintiff is not limited to its repurchase remedy but is also, or in the alternative, entitled to compensatory damages.

18. DB Products must specifically perform its obligations under the MLPA and the PSA, including the repurchase of all Mortgage Loans that (i) breach representations and warranties in a manner that materially and adversely affects the interests of the Certificateholders in any Mortgage Loan or (ii) are automatically deemed under the PSA and the MLPA to materially and adversely affect such interests. DB Products' obligation to repurchase includes both the Mortgage Loans specifically identified by the Trustee and also all other Mortgage Loans with material and adverse breaches. Additionally, or in the alternative, DB Products should be required to pay damages or otherwise compensate the Trust and its Certificateholders for the losses caused by DB Products' breaches of its representations, warranties, and covenants.

19. Further, DB Products is contractually required to reimburse the Trust and Certificateholders for expenses in enforcing DB Products' obligations under the MLPA and the PSA. Section 4(d) of the MLPA provides that "[a]ny expense reasonably incurred by or on behalf of the Purchaser or the Trustee in connection with enforcing any obligations of the Seller under this Agreement will be promptly reimbursed by the Seller." We also note that Section 3.09(a)(viii) of the PSA provides for reimbursement of the Trustee "for expenses reasonably incurred in respect of the breach or defect giving rise to the purchase obligation under Section

2.03 of this Agreement that were included in the Purchase Price of the related Mortgage Loan, including any expenses arising out of the enforcement of the purchase obligation.” Expenses included in the Purchase Price include “expenses reasonably incurred or to be incurred by . . . the Trustee in respect of the breach or defect giving rise to the purchase obligation.” Because in this derivative action, Plaintiff stands in the shoes of the Trustee in enforcing the repurchase obligations of DB Products, Plaintiff is to be reimbursed from any recoveries obtained as a result of Plaintiff’s actions for all expenses reasonably incurred or to be incurred by Plaintiff in respect of the breach or defect giving rise to the purchase obligation of DB Products, including, without limitation, the loan file review costs, other investigation costs, and attorneys’ fees.

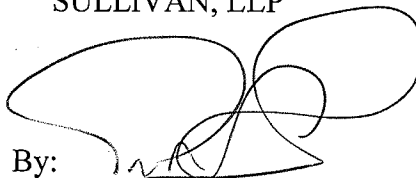
20. The relief sought by Plaintiff includes the following:

- a) An order requiring DB Products to specifically perform its contractual obligations to repurchase in accordance with the MLPA and the PSA all Mortgage Loans that breach representations and warranties set forth in the MLPA.
- b) Additionally, or in the alternative, a declaration that DB Products is required to comply with its contractual obligations to repurchase the Mortgage Loans already identified as breaching DB Products’ representations and warranties, as well as any such Mortgage Loans identified in the future, at the contractually specified Purchase Price.
- c) Additionally, or in the alternative, an award of compensatory damages in an amount to be proven at trial for DB Products’ breaches of its representations, warranties, and covenants and its refusal to perform and repudiation of its contractual obligations.
- d) Additionally, an award of damages in an amount to be proven at trial to compensate and reimburse the Trust and/or Plaintiff, as applicable, for its expenses, including but not limited to attorneys’ fees and investigation costs, incurred in enforcing the remedies for DB Products’ breaches.
- e) A declaratory judgment that Plaintiff should be reimbursed for all expenses reasonably incurred or to be incurred in enforcing the Trust’s rights in respect of the breach or defect giving rise to the purchase obligation of DB Products, including, without limitation, attorneys’ fees and investigation costs.
- f) Such other and further relief as the Court may deem just and proper.

21. **YOU ARE HEREBY NOTIFIED** that on your failure to appear or answer, a default judgment will be entered against you (a) in the amount of at least \$392,564,662, representing the Purchase Price for the 1,807 Mortgage Loans previously identified to you as breaching the applicable representations and warranties, including, without limitation, outstanding principal balance, accrued interest, and costs incurred in enforcing DB Products' repurchase obligation, including the costs of this action, investigation costs (including loan file and other forensic reviews), attorneys' fees and other expenses to be established to the satisfaction of the Court; (b) in the further amount of at least \$174,000,000, representing the repurchase amount and damages with respect to other comparable Mortgage Loans in the applicable loan group; (c) for a declaration that you are in breach of your repurchase obligations under the MLPA and the PSA to cure or repurchase the breaching loans and that such obligations continue into the future as to any Mortgage Loans discovered to materially and adversely breach your representations and warranties; and (d) to the extent that there is recovery for the Trust, for a declaration that Plaintiff be reimbursed from the Collection Account for all expenses reasonably incurred or to be incurred by Plaintiff in respect of the breach or defect giving rise to the repurchase obligation of DB Products, including, without limitation, the attorneys' fees and investigation costs.

DATED: New York, New York
August 24, 2012

QUINN EMANUEL URQUHART &
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