

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

MORGAN STANLEY MORTGAGE
LOAN TRUST 2006-13ARX,

Plaintiff,

v.

MORGAN STANLEY
MORTGAGE CAPITAL
HOLDINGS LLC, as Successor-in-
Interest to Morgan Stanley Mortgage
Capital Inc.,

Defendant.

Index No.: -E

Date Purchased: September 28, 2012

SUMMONS

Plaintiff designates New York County
as the place for trial.

The basis of venue is C.P.L.R. § 503.

To the above named Defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: September 28, 2012
New York, New York

/s/ Justin V. Shur
Steven F. Molo
Justin V. Shur
Andrew M. Bernie
MOLO LAMKEN LLP
540 Madison Avenue
New York, New York 10022
Telephone: (212) 607-8160
Facsimile: (212) 607-8161

Attorneys for Plaintiff

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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Morgan Stanley Mortgage Loan Trust 2006-13ARX, by U.S. Bank National Association, in its capacity as Trustee, for its Complaint against Defendant Morgan Stanley Mortgage Capital Holdings LLC, successor-in-interest by merger to Morgan Stanley Mortgage Capital Inc., hereby alleges as follows:

NATURE OF THE ACTION

1. This is a case about Defendant's false representations and warranties regarding residential mortgage loans sold to a residential mortgage-backed securitization trust and Defendant's breach of its unambiguous contractual obligations to repurchase those defective loans from the trust. As a result of Defendant's false representations and subsequent failure to abide by its contractual obligations, Plaintiff has incurred at least \$110,834,000 in damages.

THE PARTIES

2. Plaintiff Morgan Stanley Mortgage Loan Trust 2006-13ARX (the "Trust") is a trust created and existing under the laws of the State of New York.

3. Plaintiff U.S. Bank National Association (“U.S. Bank”), as successor-trustee to Bank of America National Association, successor-by-merger to LaSalle National Bank Association, and acting solely in its capacity as Trustee on behalf of the Trust in this action, is a national banking association with its principal place of business in Minnesota.

4. Defendant Morgan Stanley Mortgage Capital Holdings LLC (“MSMCH”) is a limited liability company formed in New York with its principal place of business in New York. MSMCH is the successor-in-interest by merger to Morgan Stanley Mortgage Capital Inc.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendant pursuant to C.P.L.R. § 301 because Morgan Stanley Mortgage Capital Inc. was present and registered to do business in the State of New York at the time it participated in the transactions described herein and because MSMCH is present and registered to do business in the State of New York. This Court also has personal jurisdiction over Defendant pursuant to C.P.L.R. § 302 because the causes of action pleaded herein arise from transactions of business by Defendant within the State of New York.

6. Venue is proper in this Court pursuant to C.P.L.R. §§ 503(a) and (c). MSMCH is a domestic corporation authorized to transact business in New York and maintains its principal offices in New York County.

FACTUAL BACKGROUND

7. On or about September 29, 2006, MSMCH, as successor-in-interest to Morgan Stanley Mortgage Capital Inc., sold approximately 1,873 mortgage loans (the “Mortgage Loans” or “Loans”) with an aggregate original unpaid principal balance of approximately \$609 million, which were ultimately sold to the Trust as part of a securitization transaction.

8. As part of that transaction, the Trust issued certificates that were purchased by investors (“Certificateholders”), the proceeds of which ultimately paid for the conveyed

residential mortgage loans.

9. As relevant to this case, Defendant's obligations to Plaintiff were set forth in two agreements: the Mortgage Loan Purchase Agreement, dated as of September 1, 2006 (the "Purchase Agreement," attached as Exhibit A); and the Pooling and Servicing Agreement, dated as of September 1, 2006 (the "PSA," attached as Exhibit B) (collectively, the "Agreements").

10. In the Agreements, Defendant made numerous specific representations and warranties relating to the attributes of the Mortgage Loans and the policies and practices pursuant to which the Mortgage Loans were originated, underwritten, purchased, and sold (the "Mortgage Representations").

11. Defendant's Mortgage Representations included, but are not limited to, the guarantee that "[t]here is no default, breach, violation, anticipated breach or event of acceleration existing under the Mortgage or the related Mortgage Note and no existing or known event which, with the passage of time, (or with notice and the expiration of any grace or cure period) would constitute a default, breach, violation or event of acceleration under such Mortgage or the related Mortgage Note." Purchase Agreement § 3.01(m).

12. Defendant also represented that "[t]he information set forth in the Mortgage Loan Schedule is complete, true and correct in all material respects as of the Cut-Off Date." Purchase Agreement § 3.01(a).

13. Additional representations and warranties related to, among other things, each Mortgage Loan's compliance with applicable law.

14. Pursuant to the Agreements, Plaintiff has the benefit of the Mortgage Representations and has the right to enforce Defendant's obligations relating to, among other things, the repurchase obligations described therein.

15. Prior to the commencement of this action, a forensic review and payment analysis

of loan files for a substantial number of the Mortgage Loans was undertaken. The forensic review and payment analysis establishes numerous and repeated failures by Defendant to comply with its representations and warranties. This review, which is ongoing, reflects that at least 371 Loans violated at least one (but in many instances numerous) representations and warranties made by Defendant (the “Defective Loans”). These breaches materially and adversely affected the value of the Defective Loans or the interest therein of the Certificateholders. To date, the original principal balance of the Defective Loans exceeds \$129,000,000.

16. Under the Purchase Agreement and the PSA, Defendant contractually agreed that if it breached any of the Mortgage Representations and that breach materially and adversely affected the value of the related Mortgage Loan or the interest therein of the Certificateholders, Defendant would cure the breach in all material respects or would repurchase the Mortgage Loan within 90 days of its discovery or its receipt of notice of the breach (“Repurchase Obligations”). *See* Purchase Agreement § 3.01; PSA § 2.05.

17. Pursuant to these provisions, U.S. Bank notified Defendant of the Defective Loans and the numerous related breaches of the Mortgage Representations. Specifically, by letters sent May 8, June 21, and June 22, 2012, the Trustee notified Defendant of the breaches of Mortgage Representations that had a material and adverse effect on the value of the Defective Loans or the interest therein of the Certificateholders, and demanded that Defendant comply with their Repurchase Obligations (hereinafter the “Breach Notices,” and incorporated herein by reference). Although not required, the Breach Notices attached exhibits detailing for each Mortgage Loan the specific breach of the Mortgage Representations. In total, the Trustee demanded that Defendant repurchase or cure at least 371 Loans.

18. In direct violation of its contractual obligations, Defendant has not cured or repurchased *any* of the Defective Loans Plaintiff identified and brought to Defendant’s attention.

FIRST CAUSE OF ACTION
(Breach of Contract/Specific Performance)

19. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 18 as if each were fully set forth herein.

20. The Trust is governed by the terms of the PSA, and is entitled to enforce the obligations specified in the Agreements.

21. The Trustee is a party to the PSA and MSMCH, as successor-in-interest by merger to Morgan Stanley Mortgage Capital Inc., is a party to the Purchase Agreement and a signatory to the PSA.

22. MSMCH made certain representations and warranties concerning the Mortgage Loans in the Agreements and made certain covenants to cure or repurchase in the Agreements to facilitate their sale in exchange for valid consideration paid.

23. A forensic review and payment analysis of loan files has revealed that MSMCH breached at least one (but in many instances numerous) Mortgage Representations with respect to each Defective Loan.

24. MSMCH's breaches of Mortgage Representations have materially and adversely affected the value of the Defective Loans and the interest therein of the Certificateholders within the meaning of the Agreements.

25. Pursuant to Section 3.01 of the Purchase Agreement and Section 2.05 of the PSA, upon notice or discovery of a breach of a Mortgage Representation that materially and adversely affected the value of the related Mortgage Loan or the interest therein of the Certificateholders, Defendant contractually agreed to cure such breach in all material respects or repurchase the related Mortgage Loan within 90 days of its discovery or its receipt of notice of the breach.

26. Pursuant to the Breach Notices sent May 8, June 21, and June 22, 2012, the

Trustee notified Defendant that it had breached Mortgage Representations with respect to the Defective Loans.

27. Defendant failed to cure any of the Defective Loans within the 90-day period prescribed by the Agreements and has further failed to repurchase any of the Defective Loans. Defendant is, therefore, in breach of the Agreements.

28. Plaintiff has no adequate remedy at law. Section 3.01 of the Purchase Agreement and Section 2.05 of the PSA provide that the sole remedies for breach of Mortgage Representations are for Defendant to cure or repurchase the Defective Loans.

29. Plaintiff is, therefore, entitled to an order of specific performance by which Defendant is required to perform its obligations under the Agreements.

**SECOND CAUSE OF ACTION
(Breach of Contract/Damages)**

30. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 29 as if each were fully set forth herein.

31. The Trust is governed by the terms of the PSA, and is entitled to enforce the obligations specified in the Agreements.

32. The Trustee is a party to the PSA and MSMCH, as successor-in-interest by merger to Morgan Stanley Mortgage Capital Inc., is a party to the Purchase Agreement and a signatory to the PSA.

33. MSMCH made certain representations and warranties concerning the Mortgage Loans in the Agreements and made certain covenants to cure or repurchase in the Agreements to facilitate their sale in exchange for valid consideration paid.

34. A forensic review and payment analysis of loan files has revealed that MSMCH breached at least one (but in many instances numerous) Mortgage Representations with respect

to each Defective Loan.

35. MSMCH's breaches of Mortgage Representations have materially and adversely affected the value of the Defective Loans and the interest therein of the Certificateholders within the meaning of the Agreements.

36. Pursuant to Section 3.01 of the Purchase Agreement and Section 2.05 of the PSA, upon notice or discovery of a breach of a Mortgage Representation that materially and adversely affected the value of the related Mortgage Loan or the interest therein of the Certificateholders, Defendant contractually agreed to cure such breach in all material respects or repurchase the related Mortgage Loan within 90 days of its discovery or its receipt of notice of the breach.

37. Pursuant to the Breach Notices sent May 8, June 21, and June 22, 2012, the Trustee notified Defendant that it had breached Mortgage Representations with respect to the Defective Loans.

38. Defendant failed to cure any of the Defective Loans within the 90-day period prescribed by the Agreements and has further failed to repurchase any of the Defective Loans. Defendant is, therefore, in breach of the Agreements.

39. As noted above, Plaintiff is entitled to specific performance. If specific performance is for any reason unavailable, then Plaintiff is entitled to recover damages for the losses caused to the Trust by Defendant's conduct, in an amount to be proved at trial but no less than \$110,834,000 (the contractually specified minimum repurchase price for the Loans identified in the Breach Notices) and the amount due with respect to any other Loans that in the future the Trust may find breach representations and warranties that materially and adversely affected the value of the related Mortgage Loan or the interest therein of the Certificateholders.

PRAYER FOR RELIEF

WHEREFORE, the Trust, acting through the Trustee, respectfully requests that the Court enter judgment in its favor and against Defendant as follows:

(1) A declaratory judgment that Defendant has breached its applicable Mortgage Representations with respect to each of the Defective Loans identified in the Breach Notices and must repurchase all of the Defective Loans;

(2) A declaratory judgment that Defendant must repurchase all of the Mortgage Loans identified by the continued forensic review or analysis that breach Mortgage Representations that materially and adversely affected the value of the related Mortgage Loan or the interest therein of the Certificateholders;

(3) A declaratory judgment that Defendant must repurchase all of the Mortgage Loans that Defendant knows or has reason to know breach a Mortgage Representation that materially and adversely affected the value of the related Loan or the interest therein of the Certificateholders;

(4) An order of specific performance requiring Defendant to repurchase each of the Defective Loans identified in the Breach Notices;

(5) A mandatory injunction requiring Defendant to repurchase each of the Defective Loans identified in the Breach Notices;

(6) An award of damages against Defendant in an amount of at least \$110,834,000 or such greater amount proven at trial plus attorneys' fees and costs and other related expenses;

(7) Pre-judgment and post-judgment interest; and

(8) An award of such further relief as this Court deems just and proper.

Dated: September 28, 2012
New York, New York

/s/ Justin V. Shur
Steven F. Molo
Justin V. Shur
Andrew M. Bernie
MOLO LAMKEN LLP
540 Madison Avenue
New York, New York 10022
Telephone: (212) 607-8160
Facsimile: (212) 607-8161
Attorneys for Plaintiff

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