



NY Court: RMBS Statute of Limitations Runs from Time of Securitization

Posted by Theodore N. Mirvis, Wachtell Lipton Rosen & Katz, on Monday, June 15, 2015

Editor's note: [Theodore N. Mirvis](#) is a partner in the Litigation Department at Wachtell, Lipton, Rosen & Katz. The following post is based on a Wachtell Lipton memorandum by Mr. Mirvis, [George T. Conway III](#), [Elaine P. Golin](#), [Graham W. Meli](#), and [Justin V. Rodriguez](#).

In an important decision for financial institutions and investors in residential mortgage-backed securities (RMBS), the New York Court of Appeals unanimously ruled yesterday (June 11, 2015) that claims for breach of representations and warranties made in an RMBS securitization accrue when the representations and warranties are made, which typically occurs when the securitization closes. *ACE Securities Corp. v. DB Structured Products, Inc.*, No. 85 (June 11, 2015) (see our prior [memo](#)). The court held that New York's six-year statute of limitations for breach-of-contract claims thus begins to run at that time—and not when the securitization sponsor refuses, possibly years or decades later, to comply with a securitization trustee's demand for the contractual remedy of cure or repurchase of non-compliant loans. Accordingly, claims arising out of most pre-financial crisis RMBS securitizations are now time-barred.

Applying longstanding principles of New York law, the Court of Appeals held that “[w]here, as in this case, representations and warranties concern the characteristics of their subject as of the date they are made, they are breached, if at all, on that date.” And so that is when the statute of limitations begins to run. A sponsor's refusal to cure or repurchase, in contrast, does not constitute a contractual breach: the “cure or repurchase obligation was not a separate and continuing promise of future performance; rather, it was the Trust's sole remedy in the event of [the defendant's] breach of representations and warranties. Viewed in this light, the cure or repurchase obligation was not an independently enforceable right, nor did it continue for the life of the investment.” And so failure to carry out the cure or repurchase remedy could not set the statute of limitations running anew.

The court noted that, as we emphasized in the [amicus curiae brief](#) we submitted on behalf of the Securities Industry and Financial Markets Association in support of the result reached by the court, “statutes of limitation serve the same objectives of finality, certainty and predictability that New York's contract law endorses.” Yesterday's decision reaffirms those vital public policies, and provides RMBS sponsors with certainty that claims for breaches of representations and warranties relating to pre-financial crisis securitizations will not persist for decades to come.