



No Private Cause of Action by Non-Party to Securitization Documents: It's Not My Cross to Bear

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In *Andersen v. Bank of N.Y. Mellon f/k/a The Bank of New York, as Trustee for the Certificate Holders of the CWABS Inc. Asset Backed Certificates, Series 2007-1*, the Supreme Court of New York, Richmond County held that the plaintiff did not have standing, as a third party, to enforce contractual rights in a prospectus supplement and/or pooling and servicing agreement (“PSA”) and other extrinsic securities documents to the mortgage.

This action arose from a 2006 residential mortgage transaction in which plaintiff executed a promissory note in favor of Countrywide Home Loans, Inc., which was secured by a mortgage executed by plaintiff. On or about May 16, 2011, MERS, acting as nominee for lender pursuant to the mortgage, executed an assignment of mortgage, transferring the mortgage to Bank of N.Y. Mellon f/k/a The Bank of New York, as Trustee for the Certificate Holders of the CWABS Inc. Asset Backed Certificates, Series 2007-1 (“Trustee”).

In May 2022, the Trustee commenced a foreclosure action against plaintiff. In response, plaintiff filed a complaint seeking to quiet title to the subject property and to declare the mortgage void. Plaintiff’s principal argument was that the assignment of mortgage to the securitized trust in 2011 occurred after the trust’s closing date, thereby violating provisions of a PSA governing the CWABS Inc. Asset Backed Certificates, Series 2007-1 trust and rendering the assignment of mortgage void and Trustee’s interest in the mortgage invalid. The Trustee filed a motion to dismiss plaintiff’s complaint in its entirety with prejudice for, *inter alia*, lack of standing to challenge compliance with the securitization documents.

As a matter of law, the Court rejected plaintiff’s claim because New York State courts have long held^[1] that “a mortgagor who is neither a party to nor an intended third-party beneficiary of a securitization trust or its governing agreements lacks standing to assert claims predicated on alleged noncompliance with those documents.” The Court emphasized that the assignment of mortgage, even if irregular, is not void but voidable by a party to the trust and not by plaintiff. The acts of trustees in contravention of trust terms are voidable at the instance of a party to the trust, not by an unrelated third party.

The Court found plaintiff’s claim to be without legal foundation and thus granted Trustee’s motion, dismissing the complaint with prejudice.

^[1] See *Bank of Am., N.A. v Patino*, 128 AD3d 994 [2d Dept 2015]; see also *U.S. Bank Nat’l Ass’n v Carnivale*, 138 AF3d 1220 [3d Dept 2016]; *767 Third Ave. LLC v Orix Capital Mkts., LLC*, 26 AD3d 216 [1st Dept 2006].