

No Claim For Negligence Against Mortgage Servicer

The federal District Court for the District of New Jersey recently confirmed the rule that mortgage servicers for residential mortgage backed securities trusts have no liability for alleged negligence to trust certificate holders for alleged negligence relating to their duties under the pooling and service agreement. The Court agreed with the servicer, Wells Fargo, that its duties were “solely defined” by the pooling and service agreement.

VNB Realty held certificates representing interests in two pools of residential mortgage loans. VNB alleged that the value of its certificates had been impaired by Wells Fargo’s alleged practice of robo-signing mortgage assignments, satisfactions and other documents. VNB claimed that this practice violated Wells Fargo’s alleged duty as mortgage servicer “to act in a manner consistent with this Agreement and with customary and usual standards of practice of prudent mortgage loan master servicers.” VNB asserted that the robo-signing constituted both ordinary negligence and gross negligence.

Applying New York law, the Court held that tort claims like negligence and gross negligence could only be permitted if they “spring from circumstances extraneous to, and not constituting elements of, the contract [the pooling and service agreement].” The Court concluded that VNB’s negligence claims were not extraneous to the pooling and service agreement (that is, Wells Fargo did not owe any duty except what it undertook under the pooling and service agreements) and therefore VNB had no tort claims against Wells Fargo.

The Court reached its conclusion despite a limitation of liability provision in the pooling and service agreement that stated:

[This limitation on liability provision] shall not protect...the Master Servicer...from any liability which would otherwise be imposed by reason of willful misfeasance, bad faith or negligence in the performance of duties hereunder or by reason of reckless disregard of obligations and duties hereunder.

The Court held that this provision preserved any liabilities already existing under law but did not create any new ones.

No breach of contract claim under the pooling and service agreement was made by VNB against Wells Fargo because VNB, as a certificate holder, was not party to the pooling and service agreement. VNB did argue that it was entitled to the benefits of that agreement because of its status as certificate holder, but the Court, without deciding whether VNB was entitled to those benefits or not, held that the rule prohibiting the negligence claims would still apply.

VNB Realty v. US Bank, 2015 WL 8490948 (D.N.J. 12/10/15)

MOSES & SINGER LLP

Since 1919, Moses & Singer has provided legal services to diverse businesses and to prominent individuals and their families. Among the firm's broad array of U.S. and international clients are leaders in banking and finance, entertainment, media, real estate, healthcare, advertising, and the hotel and hospitality industries. We provide cost-effective and result-focused legal services in the following areas:

- Accounting Law Practice
- Advertising
- Asset Protection
- Banking and Finance
- Business Reorganization, Bankruptcy and Creditors' Rights
- Corporate/M&A
- Corporate Trust
- Equipment Lease Financing
- Family Offices
- Global Outsourcing and Procurement
- Healthcare
- Hospitality, Food Service and Restaurants
- Income Tax
- Intellectual Property
- Internet/Technology
- Labor, Employment & Employee Benefits
- Legal Ethics & Law Firm Practice
- Litigation
- Matrimonial and Family Law
- Privacy and Cybersecurity
- Private Funds
- Promotions
- Real Estate
- Securities and Capital Markets
- Securities Litigation
- Sports & Entertainment
- Trusts and Estates
- White Collar Criminal Defense and Government Investigations



Moses & Singer LLP is the New York City law firm member of the MSI Global Alliance (MSI). MSI is one of the world's leading international alliances of independent legal and accounting firms, with over 250 member firms in 100 countries - www.msiglobal.org.

Moses & Singer LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10174-1299
Tel: 212.554.7800, Fax: 212.554.7700

2200 Fletcher Avenue
Fort Lee, NJ 07024
Tel: 201.363.1210, Fax: 201.363.9210
Abraham Y. Skoff, Esq.
Managing Attorney for New Jersey

10 Cuttermill Road – Suite 201
Great Neck, NY 11021
Tel: 516.498.8828, Fax: 516.498.8810
James Alterbaum, Esq.
Managing Attorney for Long Island

Disclaimer

Viewing this or contacting Moses & Singer LLP does not create an attorney-client relationship.

This does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the firm on the legal issues herein described. This contains information that may be modified or rendered incorrect by future legislative or judicial developments. It is recommended that readers not rely on this in structuring or analyzing individual transactions or matters but that professional advice be sought in connection with any such transaction or matter.

Attorney Advertising

It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

Copyright © 2016 Moses & Singer LLP, All Rights Reserved