

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

PRESENT: HON. JENNIFER G. SCHECTER

PART IAS MOTION 54EFM

Justice

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MBIA INSURANCE CORPORATION,

INDEX NO. 603751/2009

Plaintiff,

- v -

ORDER

CREDIT SUISSE SECURITIES LLC, DLJ MORTGAGE
CAPITAL INC, SELECT PORTFOLIO SERVICING INC,

Defendants.

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The post-trial decision directed the parties to file letters addressing any remaining issues that must be decided before entry of judgment (*see* Dkt. 2229). Based on the parties' submissions (Dkt. 2233-2243), the only remaining issue is the Repurchase Date (*see* Dkt. 2050 ¶ 31 [“the point in time at which Credit Suisse became obligated to repurchase Significantly Defective Loans”]), which dictates the amount defendants owe. MBIA argues in favor of the date of closing because that is the time of the breach (*see ACE Secs. Corp. v DB Structured Prods., Inc.*, 25 NY3d 581, 598 [2015]). DLJ correctly responds, however, that the PSA does not obligate it to repurchase loans until 90 days after receipt of notice (Dkt. 1862 at 87). Indeed, the PSA-defined Repurchase Price computes "the unpaid principal balance of the Mortgage Loan **on the date of such purchase**" (*id.* at 59 [emphasis added]; *see U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 176 AD3d 466, 466-67 [1st Dept 2019] ["the end of the applicable 90-day cure period" was "the appropriate date of repurchase" because defendant was then "required to repurchase any uncured, nonconforming loans"]). While DLJ breached as of closing by including materially defective loans, in adopting the repurchase protocol, the parties specifically agreed to calculate the amount owed as of the repurchase date--90 days after the repurchase trigger--and not as of the date of breach. That trigger here was the July 30, 2009 notice and DLJ's liability must be computed as of the contractually agreed-upon repurchase date 90 days later, which is October 28, 2009. The amount owed as of that date under MBIA's damages model is undisputed.

The answer unmistakably lies in the PSA. There is no contractual basis for MBIA's "rolling repurchase" argument or for increasing the amount owed on the assumption


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that DLJ would not or could not have repurchased all of the loans on one date. The only date that matters for repurchase is the one the parties themselves chose.

MBIA's other arguments based on discovery or gross negligence are unavailing. They lack support in the post-trial decision or are foreclosed by controlling authority.

Accordingly, it is ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff MBIA Insurance Corporation and against Defendant DLJ Mortgage Capital, Inc. in the amount of \$603,984,008.21 plus pre-judgment contractual interest at a rate of Citibank N.A. Prime plus 3%, currently 6.25% per annum (\$102,352.82 per diem) from January 26, 2021 through the date judgment is entered and thereafter at the statutory rate.

MBIA should file a proposed judgment to the Clerk in accordance with this order.



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DATE: 1/25/2021

JENNIFER G. SCHECTER, JSC