

3RD CIRCUIT HOLDS TRUSTEE NOT LIABLE FOR RMBS LOSSES

On May 21, the U.S. Court of Appeals for the 3rd Circuit [affirmed](#) the trial court's dismissal of an investor action against Residential Mortgage-Backed Securities (RMBS) trustees, concluding the investors failed to show that the trustees breached any duties owed under the governing documents. According to the opinion, investors filed suit against the owner trustee for fifteen RMBS trusts, which became "worthless in the wake of widespread loan defaults," claiming breach of contract and the implied covenant of good faith. The investors argued the trustee (i) abdicated its responsibilities relating to the loan files; (ii) failed to provide written notice of default; and (iii) failed to intervene when other parties exercised their duties carelessly. The trial court dismissed all claims against the trustee.

On appeal, the appellate court concluded the trial court correctly dismissed the claims. Specifically, the appellate court noted that under the trusts' governing documents, **the trustee was acting as an "owner trustee," which was "primarily ministerial, involving limited duties such as executing documents on behalf of the trusts and accepting service of legal process."** The trustee did not have an overarching duty to protect the trusts, as **it agreed "to perform only the modest functions" under the governing agreements and therefore, was shielded from that general liability.** The appellate court concluded that the investors failed to show the trustee breached any actual duties owed under the governing agreements, rejecting the investors' three specific claims for breach of contract. Moreover, the court emphasized that the governing agreement "forecloses the implied duty [the investors] propose," noting that the trustee negotiated for limited liability and received a fee in exchange for modest functions, making it "difficult to imagine" the trustee would willingly agree to "sweeping supervisory responsibility."