

I have been researching cases where an MBS is assigned a non-performing, already in default, mortgage. I was hoping to find cases where the assignment of the non-performing mortgage would be invalid because it violates the PSA and remic provisions. Which would effect standing.

In my search, I came across two Massachusetts bankruptcy cases which discuss the opposite of what I want. In re Samuels, 415 B.R. 8, Case No. 06-11656 (Bankr. D. Mass. 2009) and In re Almeida, 417 B.R. 140, Case No. 08-17047 (Bankr. D. Mass. 2009).

In re Samuels states:

"Second, the Debtor argues that the PSA required that all mortgages acquired there under to be funneled to Deutsche Bank, as pool trustee, through the entity designated by the PSA as "depositor," ARSI. A failure to follow this protocol--such as by direct assignment of the mortgage from the loan originator to the pool trustee, bypassing the depositor--would, the Debtor contends, constitute a breach of the PSA, a breach of fiduciary obligations under the PSA to investors, a breach of federal regulations, and an act giving rise to unfavorable tax consequences for the investors. The Debtor argues that because the Confirmatory Assignment is a direct assignment from Argent to Deutsche

Bank that bypasses the depositor, it must be invalid. This argument falls far short of its goal. Even if this direct assignment were somehow violative of the PSA, giving rise to unfavorable tax, regulatory, contractual, and tort consequences, neither the PSA nor those consequences would render the assignment itself invalid. In fact, under the Debtor's own argument, the unfavorable consequences could and would arise only if, and precisely because, the assignment were valid and effective." *In re Samuels*, 415 B.R. 8, 22, Case No. 06-11656 (Bankr. D. Mass. 2009)

*In re Almeida* quotes the above passage from *Samuels*, and adds footnote 4:

"The Court notes that Dessin is not a third party beneficiary of the PSA, and, ironically, he would appear to lack standing to object to any breaches of the terms of the PSA. It would appear to this Court that the investors who bought securities based upon the pooled mortgages would be the parties with standing to object to any defects in those mortgages resulting from any failure to abide by the express provisions of the PSA." *In re Almeida*, 417 B.R. 140, Case No. 08-17047 (Bankr. D. Mass. 2009)