

## **NY Supreme Court Affirms Six-Year Statute of Limitations Applicable to Breach of Contract Action**

On August 11, the Appellate Division of the New York Supreme Court First Department [affirmed](#) a trial court's decision that the statute of limitations bars a breach of contract action brought more than six years after the seller (defendant) of mortgage loans made allegedly false representations and warranties to the purchaser (plaintiff) regarding the characteristics, quality, and risk profile of the loans. *Deutsche Bank Nat'l Trust Co. v. Flagstar Capital Mkts. Corp.*, 2016 NY Slip Op. 05780 (N.Y. App. Div. Aug. 11, 2016). In this case, the plaintiff purchased loans from defendant with closing dates between December 7, 2006 and May 31, 2007. Through various assignments, the loan pool was conveyed to a Trust, of which the plaintiff was a trustee, securitized, and sold to investor certificateholders on October 2, 2007. In 2013, at the request of one of the certificateholders, an underwriting firm performed a forensic review of the loans underlying some of the certificates and found that "a large number of the loans breached representations and warranties made by defendant regarding the quality and characteristics of the loans." Although the defendant was notified of the breaches, it failed to comply with the repurchase protocol set forth in the agreement between the seller and purchaser.

The plaintiff commenced action against the defendant on August 30, 2013, subsequently filing a complaint on February 3, 2014 "seeking specific performance, damages and/or rescission, and asserting a cause of action for breach of contract and a cause of action for breach of the implied covenant of good faith and fair lending." The defendant moved to dismiss the case on the ground that the action was time barred, since it began more than six years after the plaintiff's accrual date of the loans. The trial court ruled in favor of the defendant, reasoning that in the Court of Appeal's recent decision in *ACE*, it "held that a breach of contract claim in an RMBS put-back action accrues on the date the allegedly false representations and warranties were made." *ACE Sec. Corp. v DB Structured Products, Inc.*, 36 N.E.3d 623 (N.Y. June 11, 2015). The Appellate Division affirmed, holding that "New York's statutes of limitation codify the public policies of 'finality, certainty and predictability that [our] contract law endorses' (*ACE*, 25 NY3d at 593). The parties' accrual provision runs afoul of these important policies."