

## Citibank Aims To Deep Six \$2.3B RMBS Class Action

By **Stewart Bishop**

*Law360, New York (June 22, 2016, 6:38 PM ET)* -- Citibank NA on Wednesday asked a New York judge to quash a proposed class action accusing the bank of ignoring widespread problems with toxic residential mortgage-backed securities, calling the suit inadequately pled.

Investors claim Citibank turned a blind eye to pervasive problems in how the underlying loans allegedly worth more than \$13.8 billion were written or serviced, alleging the bank feared jeopardizing its relationship with loan servicers like Washington Mutual, Lehman Brothers Holdings Inc. and Wells Fargo. But Citibank contends the class action fails to properly state breach of contract claims, and makes up duties the bank was under no obligation to perform.

During oral arguments over Citibank's dismissal motion before New York Supreme Court Judge Charles Ramos in Manhattan, an attorney for Citibank said the bank has limited duties in its role as trustee for the 25 securitization pools at issue, and argued that the investors have failed to allege the trustee discovered any loan-specific breaches that would require Citibank to act.

"The sole remedy the trustee has under the contract is to identify the specific loan that has breached and put it back to the originator. So unless the trustee has discovered specific breaches ... how can you put it back?" Christopher J. Houpt of Mayer Brown LLP said.

Judge Ramos asked an attorney for the investors how a duty of the trustee's had been triggered if it had not been made aware that there was a breach of the representations and warranties of the RMBS contracts.

Timothy DeLange of Bernstein Litowitz Berger & Grossmann LLP, an attorney for the investors, said Citibank was asking for too much, arguing that particularity isn't required at this pleading stage.

"The pleading standard they are arguing for is not the pleading standard," DeLange said.

He further argued that there were specific allegations about the trustee's knowledge of breaching loans in the compliant.

But Houpt countered that the investors have to allege facts that support an inference not that the trustee discovered a risk that there might have been breaches somewhere, but that the trustee discovered breaches on specific loans.

“At the pleading stage the court does not have to credit conclusory allegations,” he said.

Judge Ramos said he would allow the investors to replead the complaint to add more specific allegations about Citibank’s knowledge of the problem with poor-performing loans, telling Houpt that whether the investors can defend their allegations is a different issue. He further derided some similar suits claiming banks had knowledge of breaching loans based on certain publicly available information.

“If all the plaintiffs are going to rely on is the nonsense we’ve seen in some of these complaints, you’re right, and you’ll win summary judgment,” the judge said.

The putative class action — filed by Prudential Retirement Insurance and Annuity Co. and other investors — claims the bank breached contracts and its fiduciary duties as trustee for 25 private-label RMBS trusts from 2004 to 2007.

It further alleges that Citibank was the target of government investigations and lawsuits over its allegedly deficient servicing operations.

“The abysmal performance of the trust collateral — including spiraling defaults, delinquencies and foreclosures — is outlined on monthly remittance reports that Citibank, as trustee, publishes and publicly files with the government,” the complaint claims. “Citibank did nothing to protect the trusts and certificate holders, choosing instead to deliberately ignore the egregious events of default for its own benefit and to the detriment of the class.”

PIMCO and other Citibank shareholders previously filed suit in New York federal court accusing the bank of misrepresenting the health of RMBS for some \$17.4 billion worth of pools of loans that the bank trusted. That suit is still pending.

The investors are represented by Blair A. Nicholas, Timothy A. Delange, Benjamin Galdston, Brett M. Middleton and Lucas E. Gilmore of Bernstein Litowitz Berger & Grossmann LLP.

Citibank is represented by Matthew D. Ingber, Christopher J. Houpt, Lisa R. Blank and Allison J. Zolot of Mayer Brown LLP.

The case is Fixed Income Shares: Series M et al. v. Citibank NA, index number 653891/2015, in the Supreme Court of the State of New York, County of New York.

--Additional reporting by Kurt Orzeck. Editing by Emily Kokoll.

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