

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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DEER PARK ROAD MANAGEMENT COMPANY, LP, STS
MASTER FUND, LTD.

Plaintiff,

- v -

NATIONSTAR MORTGAGE, LLC, NRZ SPONSOR
HOLDCO LLC,

Defendant.

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INDEX NO. 654474/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for EXTEND - TIME.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 63, 67, 68, 69

were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth on the record (9.6.23), the motion to dismiss is granted solely to the extent of dismissing the tortious interference with contract claim against NRZ. NRZ had a genuine economic interest in the Clean-Up Call pursuant to its letter agreement with the Master Servicer. As such, dismissal is appropriate.

The branch of the motion to dismiss the claims against the Master Servicer is predicated on the argument (i) that the Plaintiffs lack standing either because they did not make a demand (which they did) or because they surrendered their certificates and therefore can not make a claim against the Master Servicer as they are no longer certificate holders and (ii) the price paid by the Master Servicer, even though not in accordance with the express language of the Trust

Agreement was, based on a course of conduct, the right price. Both arguments fail. This is not a derivative action. It is an action alleging breach of fiduciary duty and contract against the Master Servicer for failure to disclose the correct amount and pay the right price on the clean-up call. Given the no waiver provision in the Trust Agreement, it simply can not be said that the Plaintiffs waived their rights to seek all amounts due pursuant to the Trust Agreement when they surrendered their certificates accepting partial payments of all monies due. Nothing in the record at this stage indicates that this was an accord and satisfaction of their claim. Inasmuch as the claim is leveled against the Master Servicer, who is alleged to have breached the trust agreement and their fiduciary duties, the Plaintiffs are thus not divested of standing by virtue of surrendering the certificates.

For the avoidance, the Defendants' motion for an extension of time to answer the complaint is denied as moot.



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<u>9/6/2023</u> DATE	<u>ANDREW BORROK, J.S.C.</u>			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE