IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Deutsche Bank National Trust Company as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-HE6,	)	
	)	No. 13 L 5823
Plaintiff,	)	
	)	Calendar S
vs.	)	
	)	Judge Raymond W. Mitchell
Decision One Mortgage Company, LLC,	)	
	)	
Defendant.	)	

ORDER

The matter is before the Court on Defendant Decision One Mortgage Company, LLC's motion for summary judgment against Plaintiff Deutsche Bank National Trust Company pursuant to 735 ILCS 5/2-1005.

I.

Defendant Decision One Mortgage Company, LLC formerly originated residential mortgage loans that it subsequently sold to investors. Morgan Stanley purchased a pool of 2,776 loans from Decision One which it combined with a pool of loans from another originator. Together those loans were eventually sold to Plaintiff Deutsche Bank National Trust Company as trustee for the Morgan Stanley ABS Capital I Inc. Trust 2007-HE6 as residential mortgage backed securities, pursuant to a Pooling and Servicing Agreement. The Trust issued certificates for these securities to investors who then received a portion of the monthly loan payments.

In the PSA, Decision One made representations and warranties with respect to its loans. The Agreement provided a mechanism whereby Decision One was required, upon discovery or notice of a breach of its representations or warranties, to cure the breach within 60 days or repurchase the mortgage loan. In April 2013, Decision One was informed that there were breaches in 1,443 of its loans and that there were a substantial number of additional breaches throughout the loan pool. On May 31, 2013, Deutsche Bank filed suit against Decision One, alleging breach of the PSA and seeking specific performance, rescission, rescissory damages, and compensatory damages for the 1,443 noticed loans and additional loans not previously identified. Decision One now moves for summary judgment.

II.

Summary judgment is appropriate when the pleadings, depositions, admissions and affidavits, viewed in a light most favorable to the nonmovant, fail to establish a genuine issue of material fact, thereby entitling the moving party to judgment as a matter of law. 735 ILCS 5/2-1005; *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 127-28 (2005). The purpose of summary judgment is not to try a question of fact, but simply to determine whether one exists. *Jackson v. TLC Assoc., Inc.*, 185 Ill. 2d 418, 423 (1998). A trial court is required to construe the record against the moving party and may only grant summary judgment if the record shows that the movant's right to relief is clear and free from doubt. *Id.* If disputes as to material facts exist or if reasonable minds may differ with respect to the inferences drawn from the evidence, summary judgment may not be granted. *Assoc. Underwriters of Am. Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1016-17 (1st Dist. 2005).

A. Statute of Limitations

Decision One first moves for summary judgment on the basis that Deutsche Bank's claims are barred by California's four-year statute of limitations, which Decision One asserts is the applicable statute of limitations under the Illinois borrowing statute. The Illinois borrowing statute provides that "[w]hen a cause of action has arisen in a state or territory out of this State, or in a foreign country, and, by the laws thereof, an action thereon cannot be maintained by reason of the lapse of time, an action thereon shall not be maintained in this State." 735 ILCS 5/13-210. The borrowing statute only applies to causes of action arising outside of Illinois if the parties are not Illinois residents. *Employers Ins. v. Ehlco Liquidating Trust*, 309 Ill. App. 3d 730, 737 (1st Dist. 1999). Deutsche Bank does not dispute that the Illinois borrowing statute applies. Instead, it asserts that its cause of action arose in New York, and consequently, New York's six-year statute of limitations applies. The primary issue is thus whether Deutsche Bank's cause of action arose in California or New York.

For purposes of the borrowing statute, a breach of contract cause of action arises in the state with the most significant relationship to the transaction and the parties. *Illinois Tool Works v. Sierracin Corp.*, 134 Ill. App. 3d 63, 69 (1st Dist. 1985); Restatement (Second) of Conflict of Laws § 188 (1971). To determine which state has the closest relationship, the court considers several factors: (1) the place of contracting; (2) the place of negotiation of the contract; (3) the place of performance; (4) the location of the subject matter of the contract; and (5) the domicile, residence, nationality, place of incorporation, and place of business of the parties. *Id.* Contacts are evaluated according to their relative importance with respect to the particular issue. *Ehlco Liquidating Trust*, 309 Ill. App. 3d at 739 (applying factors set forth in the Restatement (Second) of Conflict of Laws § 188 (1971)).

The place of contracting is the place where the last act necessary to give a contract binding effect took place under the forum state's offer and acceptance rules. *Youngstown Sheet & Tube Co. v. Industrial Com.*, 79 Ill. 2d 425, 433 (1980). A contract is binding when an offer is accepted, and acceptance occurs when the acceptance is mailed. Restatement (Second) of Contracts § 63 (1979); *see Gordon v. Tow*, 148 Ill. App. 3d 275, 282 (1st Dist. 1986). The place of contracting is, therefore, the place from which the acceptance is mailed. *Illinois Tool Works*, 134 Ill. App. 3d at 69; *see also Hinc v. Lime-O- Sol Co.*, 382 F.3d 716, 719 (7th Cir. 2004). Here, the Depositor sent the PSA to Decision One in North Carolina and Deutsche Bank in California for signatures. Both parties signed the documents and sent the signature pages back to the Depositor. Accordingly, the places of contracting are California and North Carolina. Place of contracting, however, is a relatively insignificant factor by itself. Restatement (Second) of Conflict of Laws § 188 cmt. e (1971).

The contract was negotiated from several different places via email. The Depositor's counsel drafted the PSA in New York and emailed drafts to Decision One and Deutsche Bank's counsel in separate states for their comments and corrections. Because the Depositor drafted the PSA, incorporated changes, and then drafted the final version of the PSA in New York, negotiation primarily took place in New York.

The place of performance and location of the subject matter are less straightforward. Unlike a contract for goods or services, the PSA involves the sale of loans and a number of obligations with respect to those loans. Plaintiff's cause of action is based on a breach of representations and warranties effective at the time of the sale. The New York-based Depositor sold the loans to a New York-based Trust. The certificates for the Trust are located in New York. But, trustee Deutsche Bank's office is located in California, and California is one of four states in which the notes for the loans are located. The Securities Administrator who is responsible for issuing certificates and who communicated breaches to the Deutsche Bank and Decision One is located in Maryland. Payments on the loans were collected from across the country as the mortgaged property is located in various states.

The final contact to consider is the domiciles, residences, nationalities, places of incorporation, and places of business for the parties. Decision One is incorporated in North Carolina. Deutsche Bank, as Trustee, has its main office in California. The Depositor is incorporated in New York and has its principal office there, too.

Taking all of the factors into consideration, New York has the most significant relationship to the parties and the transaction. Not only was New York

the place of negotiation, the Depositor who coordinated the drafting of the PSA and ultimately sold the loans to the New-York based Trust was in New York. *See, e.g., Bear Stearns Mortg. Funding Trust 2006-SL1 v. EMC Mortg. LLC*, 2015 Del. Ch. LEXIS 9 (Del. Ch. Jan. 12, 2015) (applying most significant relationship test and finding New York had most significant relationship). The other factors do not strongly suggest any other state as the place where the cause of action arose. Aside from the place of contracting, California does not have a more significant interest than New York, or even North Carolina, for the other contacts. The initial sale of the loans took place in New York and subsequent actions with respect to the loans and the certificates took place all over the country. Given that New York has the most significant relationship, New York's six-year statute of limitations will apply.

Decision One argues that even under New York's six-year statute of limitations, Deutsche Bank's claims are time-barred. According to Decision One, the statute of limitations began to run on the date the PSA was signed, May 1, 2007, not the closing date of May 31, 2007. A number of courts have determined that a cause of action accrues on the closing date based on the court's decision in *ACE Sec. Corp. v. DB Structured Prods., Inc.*, 977 N.Y.S.2d 229, 231 (N.Y. App. Div. 2013). Additionally, those courts have recognized that the contracts at issue provide that the representations and warranties are effective as of the closing date. *See, e.g., U.S. Bank N.A. v. DLJ Mtge. Capital, Inc.*, 995 N.Y.S.2d 11 (N.Y. App. Div. 2014); *Nomura Asset Acceptance Corp. Alternative Loan Trust v. Nomura Credit & Capital, Inc.*, 2014 N.Y. Misc. LEXIS 2905, 2014 WL 2890341, 2014 NY Slip Op 31671(U) (N.Y. Sup. Ct. 2014) (citing additional cases in support); *Home Equity Asset Trust 2007-2 (HEAT 2007-2) v. DLJ Mtge. Capital, Inc.*, 2014 N.Y. Misc. LEXIS 4371, 2014 WL 4966127, 2014 NY Slip Op 32568(U), ¶ 1 (N.Y. Sup. Ct. 2014); *Home Equity Asset Trust 2006-8 (HEAT 2006-8) v. DLJ Mtge. Capital, Inc.*, 2014 N.Y. Misc. LEXIS 4380, 2014 WL 4966133, 2014 NY Slip Op 32571(U) (N.Y. Sup. Ct. 2014); *U.S. Bank N.A. v. DLJ Mtge. Capital, Inc.*, 2014 N.Y. Misc. LEXIS 1885, 2014 WL 1621046, 2014 NY Slip Op 31055(U) (N.Y. Sup. Ct. 2014); *Home Equity Mtge. Trust Series 2006-5 v. DLJ Mtge. Capital, Inc.*, 2014 N.Y. Misc. LEXIS 411, 2014 WL 317838, 2014 NY Slip Op 30263(U) (N.Y. Sup. Ct. 2014); *Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc.*, 2014 U.S. Dist. LEXIS 47888; 2014 WL 1301944 (S.D.N.Y. Mar. 31, 2014); *Citigroup Mortg. Loan Trust 2007-AMC3 v. Citigroup Global Mkts. Realty Corp.*, 2014 U.S. Dist. LEXIS 47252, WL 1329165 (S.D.N.Y. Mar. 31, 2014).

Decision One relies on five cases that purportedly support its argument that a cause of action accrues on the date of signing. In *Deutsche Bank National Trust Company v. WMC Mortgage, LLC*, Civ. No. 13-584, Order (S.D.N.Y July 10, 2015), the court determined that the cause of action based on alleged breaches of warranties and representations in a PSA accrued on the signing date because no further action was contemplated by the parties between the time the PSA was signed and the closing date indicated in the PSA. *Id.* at 8-9. The court reached this

conclusion despite the fact that the PSA itself provided that the representations and warranties were made as of the closing date. In *Deutsche Bank National Trust Co. v. Quicken Loans Inc.*, 2014 U.S. Dist. LEXIS 106710, 2014 WL 3819356 (S.D.N.Y. Aug. 4, 2014), the court determined that the representations and warranties were breached, and the statute of limitations began to run, on the closing and transfer dates set forth in various purchase agreements because the warranties and representations were effective "as-of" those dates. Here, Schedule VI pertaining to Decision One's representations and warranties states that those representations and warranties are effective as of the closing date set forth in the PSA, not on the date the PSA was signed. In *Nomura Asset Acceptance Corp. Alt. Loan Trust v. Nomura Credit & Capital, Inc.*, 2013 WL 6840128 (N.Y. Sup. Ct. Dec. 23, 2013), the court applied the ruling in *ACE Securities Corp. v. DB Structured Products, Inc.*, 2015 WL 3616244 (N.Y. App. Div. June 11, 2015) without considering the factual differences. The date of signing was the same as the closing date in *ACE*, unlike in *Nomura* and in this case. The remaining two cases are equally unpersuasive. The court in *W. 90th Owners Corp. v. Schlechter*, 525 N.Y.S.2d 33, 35 (N.Y. App. Div. 1988) determined that the statute of limitations for a breach of contract action began on the date a real estate contract was signed and not on the date of closing because the representations and warranties did not survive transfer of the deed. Similarly, *Lana & Edward's Realty Corp. v. Katz/Weinstein Partnership*, 907 N.Y.S.2d 101 (N.Y. Sup. Ct. 2010) involved a real estate transaction, and its application to residential mortgage backed securities cases has been rejected by at least one other New York court. *See U.S. Bank Natl. Assn. v. DLJ Mtge. Capital, Inc.*, 984 N.Y.S.2d 635 (N.Y. Sup. Ct. 2014).

Consistent with the more persuasive authority, the statute of limitations began to run on the closing date of May 31, 2007, and Deutsche Bank's cause of action is not time-barred on this basis.

Decision One further argues that regardless of whether the closing date controls, Deutsche Bank's complaint is still untimely because Decision One did not receive sufficient notice of any breaches until the statute of limitations expired on May 31, 2013. Section 2.03(f) of the PSA provides that

> Upon discovery by any of the parties hereto of a breach of a representation or warranty made by . . . a Responsible Party. . . that materially and adversely affects the value of any Mortgage Loan or interests of the Trustee or the Certificateholders therein, the party discovering such breach shall give prompt written notice thereof (identifying, by section reference the representation or warranty breached) to the other applicable parties."

Although the PSA does not indicate how loans must be identified in a notice of breach, at least one court has held that under settled law, a "notice must be

specific enough so as to give the other party a reasonable opportunity to cure the breach if this can be done." *Wells Fargo Bank N.A. v. Sovereign Bank, N.A.*, 44 F. Supp. 3d 394, 405 (S.D.N.Y. 2014) (citing *Ulla-Maija, Inc. v. Kivimaki*, 2005 U.S. Dist. LEXIS 22249, at *11, 2005 WL 2429490 (S.D.N.Y. Sept. 30, 2005)). In the two notices Decision One received, the loans were identified by loan IDs and loan numbers assigned by the loan servicers. According to Decision One, it could not readily identify the loans from this information and requested in writing that Deutsche Bank identify the loans by their Decision One loan numbers instead. Nevertheless, Decision One did not indicate in that correspondence that they could not identify the loans from the information provided, only that it would be more expeditious with their own loan numbers. Deutsche Bank points to evidence that there were methods by which Decision One could have identified the loans from the information provided. Whether the two notices gave Decision One a reasonable opportunity to cure the breaches is thus a disputed issue of fact.

B. Actual Notice or Discovery Versus Pervasive Breach

Decision One also asserts that Deutsche Bank's recovery should be limited to 103 of the 1,443 loans for which Deutsche Bank's expert has found a breach that matches the specific breach identified in the notices. Decision One's argument involves two related issues: (1) whether Deutsche Bank must prove notice or actual discovery of breaches on a loan-by-loan basis or whether inquiry notice of "pervasive breaches" is sufficient to trigger the repurchase requirements for all identified breaches and (2) if notice or discovery on a loan-by-loan basis is required, whether Deutsche Bank can use statistical sampling evidence as circumstantial evidence that Decision One discovered breaches for loans not identified in the notices. These issue have been discussed in numerous other RMBS put-back cases; however, there is a split in authority. In some cases, courts have permitted the so-called pervasive breach theory; in others, courts have adhered to a strict interpretation of the contractual language at issue, prohibiting generalized notice of breach.

The pervasive breach theory can be traced back to Judge Rakoff's decision in *Assured Guaranty Municipal Corporation v. Flagstar Bank, FSB*, 920 F. Supp. 2d 475 (S.D.N.Y. 2013), the case relied upon by other courts that adopt the theory. In *Flagstar*, the court determined that "given the material uniformity of the underlying loan population," notice to the defendant of pervasive breaches affecting certain loans reviewed by plaintiff rendered defendant "constructively 'aware' – or, at minimum, put [the defendant] on inquiry notice – of the substantial likelihood that these breaches extended" into the broader loan pool. *Id.* at 512-13.

Plaintiffs in RMBS put-back cases that have asserted the pervasive breach theory argue that the defendants knew, had constructive knowledge, or were on inquiry notice of additional unspecified breaches in the loan pool based on *Flagstar* and the cases that have followed. To support this theory, the plaintiffs have

typically informed defendants through notices of specific breaches for specific loans that breaches pervade the remainder of the loan pool and that their investigation for additional breaches continues. Additionally, the plaintiffs point to forensic reports demonstrating a high percentage of breaches in a particular sampling of loans in the pool and allege that the defendants' own internal due-diligence procedures would have revealed pervasive breaches. *See, e.g., Deutsche Alt-A Secs. Mortg. Loan Trust v. DB Structured Prods.*, 958 F. Supp. 2d 488 (S.D.N.Y. 2013); *Assured Guar. Mun. Corp. v. DB Structured Prods., Inc.*, 997 N.Y.S.2d 97 (N.Y. Sup. Ct. 2014); *ACE Sec. Corp. v. DB Structrured Prods., Inc.*, 2014 NY Slip Op 30927(U), 2014 N.Y. Misc. LEXIS 1646, 2014 WL 1384490 (N.Y. Sup. Ct. 2014); *Nomura Asset Acceptance Corp. Alternative Loan Trust v. Nomura Credit & Capital, Inc.*, 2014 NY Slip Op 31671(U), 2014 N.Y. Misc. LEXIS 2905, 2014 WL 2890341 (N.Y. Sup. Ct. 2014); *Deutsche Bank Nat'l Trust co. v. Morgan Stanley Mortgage Capital Holdings, LLC,* 97 F. Supp. 3d 548 (S.D.N.Y. 2015).

Deutsche Bank's argument for application of the pervasive breach theory are similar. It asserts that the two notices gave Decision One adequate notice of other breaches in the loan pool because they identified material breaches for over half of the loans in the pool. Moreover, the Securities Administrator attached to those notices the certificateholder's breach notices stating that "further investigation will reveal a substantial number of additional material and adverse breaches . . . throughout the pool," that "additional breaches . . . affect[ed] a significant portion of" the Decision One loans, and that there were "pervasive, material breaches of representations and warranties throughout the Decision One Mortgage Loans in addition to the specific breaches identified." Deutsche Bank also argues that it may use evidence of pervasive breach throughout the loan pool, coupled with forensic loan reviews and Decision One's due diligence obligations as circumstantial evidence to support an inference that Decision One had discovered other breaches on its own.

There is, however, an obvious tension between the notion of constructive or inquiry notice (pervasive breach theory) and the express language in the parties' contracts. Indeed, courts that have rejected the pervasive breach theory recognize that the language of the contracts at issue suggests that actual notice or discovery is required. *See, e.g., Mastr Adjustable Rate Mortgs. Trust 2006-OA2 v. UBS Real Estate Secs. Inc.*, 2015 U.S. Dist. LEXIS 24988, 2015 WL 764665 (S.D.N.Y. Jan. 9, 2015); *U.S. Bank, N.A. v. Citigroup Global Mkts. Realty Corp.*, 2015 U.S. Dist. LEXIS 33786, 2015 WL 1222075 (S.D.N.Y. Mar. 13, 2015). These same courts have determined that if the parties had intended that a loan originator review all loans for material breaches or buy back the entire loan pool in the event material breaches were identified for a certain portion of loans, they could have contracted for such a provision. *Mastr*, 2015 U.S. Dist. LEXIS 24988, 31; *see also U.S. Bank Natl. Assoc. v. Countrywide Home Loans, Inc.*, 2013 NY Slip Op 31843(U), 2013 N.Y. Misc. LEXIS 3534 (N.Y. Sup. Ct. 2013) (defendant obligated to repurchase all

loans if defendant breached certain representations and warranties); *U.S. Bank, N.A. v. Greenpoint Mortgage Funding, Inc.*, 907 N.Y.S.2d 441 (N.Y. Sup. Ct. 2010).

Here, as in other RMBS put-back cases, the PSA does not use words like "inquiry notice," "constructive knowledge," or "pervasive breach." Additionally, the PSA uses words in the singular to describe the parties' notice obligations. For example, section 2.03(f) of the PSA provides that upon discovery "of a breach" the party discovering "such breach" must give prompt written notice. The section further requires the party who discovers a breach to specifically identify the representation or warranty breached by section reference.[1] If unable to cure a specific breach for a loan, Decision One is obligated to repurchase "such Mortgage Loan" or provide a substitute. Moreover, the repurchase price of a loan is based on the individual characteristics of that loan, such as the "unpaid principal balance of such Mortgage Loan as of the date of repurchase."

Finally, in some cases recognizing the pervasive breach theory, the issue arose—as it initially did here—under the more permissive standards governing a motion to dismiss. *See, e.g., Deutsche Alt-A Secs. Mortg. Loan Trust v. DB Structured Prods.*, 958 F. Supp. 2d 488 (S.D.N.Y. 2013). In ruling on the motion to dismiss here, this Court did not rule that notice of pervasive breach was sufficient to satisfy the notice requirements set forth in the PSA. 11/19/13 Order at 5. Instead, the Order makes clear that it was not necessary to address whether loan-specific notice was prompt and proper given that the complaint established factual allegations sufficient to support Decision One's independent knowledge of loan breaches. *Id.* Other courts that permitted the pervasive breach theory at the pleading stage have explicitly stated that proof on a loan-by-loan basis would still be required. *See ACE Secs. Corp. Home Equity Loan Trust v. DB Structured Prods.*, 5 F. Supp. 3d 543, 560 (S.D.N.Y. 2014) (a complaint for repurchase need not contain specific allegations regarding each loan at issue, but plaintiff is not relieved of its burden of proving loan-by-loan breaches at later stages of litigation); *Ace Sec. Corp. v. DB Structured Prods., Inc.*, 2014 NY Slip Op 32451(U), 2014 N.Y. Misc. LEXIS 4193, 2014 WL 4785503 (N.Y. Sup. Ct. 2014).

Both parties make compelling arguments with respect to the pervasive breach theory and its application here. While the issue may appear to be strictly a matter of law, certain factual predicates remain in dispute. Adequacy of notice depends in part on the facts and circumstances surrounding the notices and requires careful consideration of all the admissible evidence. Similarly, "discovery" implies knowledge or awareness of some fact, and what was known or unknown to

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[1] Deutsche Bank seeks to avoid the specific section reference requirement by arguing that its claims are based on section 2.03(j), not section 2.03(f). Regardless of whether the section reference requirement applies to all notices, Section 2.03(j) also uses singular language to describe Decision One's obligations. It requires cure or repurchase within 60 days of discovery by or notice to a responsible party "of any breach."

Defendant is a uniquely factual issue contested by both parties. Thus, summary judgment is inappropriate.

C. Remedies

The final issue on summary judgment is whether Deutsche Bank is precluded from recovering certain types of damages under the terms of the PSA. Section 2.03(q) of the PSA limits the remedies available to cure, repurchase, or substitution of defective loans. However, numerous courts in RMBS put-back cases have permitted plaintiffs to seek compensatory damages equivalent to repurchase price where specific performance is impossible. *See, e.g., ACE Secs. Corp. Home Equity Loan Trust v. DB Structured Prods.*, 5 F. Supp. 3d 543 (S.D.N.Y. 2014); *U.S. Bank Natl. Assn. v. DLJ Mtge. Capital, Inc.*, 984 N.Y.S.2d 635 (N.Y. Sup. Ct. 2014). Compensatory damages for liquidated loans are permitted in part because the contracts themselves provide a method for calculating a monetary amount. *Nomura Asset Acceptance Corp. Alternative Loan Trust v. Nomura Credit & Capital, Inc.*, 2014 NY Slip Op 31671(U), 2014 N.Y. Misc. LEXIS 2905, 2014 WL 2890341 (N.Y. Sup. Ct. 2014) (citing *Wells Fargo Bank, N.A. v. Bank of Am., N.A.*, 2013 U.S. Dist. LEXIS 44955, 2013 WL 1285289 (S.D.N.Y. Mar. 28, 2013)). Additionally, courts recognize that long-standing equitable precepts permit damages where granting equitable relief is impracticable or impossible. *Id.* Courts in other RMBS put-back cases have also acknowledged that the sole remedy provisions in these contracts may be unenforceable and thus compensatory damages, recission, or rescissory damages may be appropriate if the damages resulted from gross negligence or willful misconduct. *Deutsche Alt-A Secs. Mortg. Loan Trust v. DB Structured Prods.*, 958 F. Supp. 2d 488 (S.D.N.Y. 2013); *ACE Secs. Corp. Home Equity Loan Trust v. DB Structured Prods.*, 5 F. Supp. 3d 543 (S.D.N.Y. 2014).

The appropriate remedy or measure of damages is necessarily fact-dependent. Even questions that Decision One contends may be decided as a matter of law, such as whether gross negligence bars the application of the sole remedies provision, depend on factual predicates that are disputed. These damage calculations are more easily evaluated after the benefit of a bench trial where the Court will have the opportunity to fully probe all of the evidence.

III.

Given the state of the record and the nature of the issues, the Court declines to decide any of the questions presented as a matter of law as contemplated in the summary judgment procedure.

Based on the foregoing, it is hereby ORDERED:

(1) Defendant Decision One Mortgage Company, LLC's motion for summary judgment is DENIED.

(2) The case is continued for a bench trial on February 29, 2016 at 10:30 a.m.

Judge Raymond W. Mitchell

ENTERED,

DEC 31 2015

Circuit Court – 1992

Judge Raymond W. Mitchell, No. 1992