

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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FINANCIAL GUARANTY INSURANCE :
COMPANY, :
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Plaintiff, :
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- against - :
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:
MORGAN STANLEY ABS CAPITAL I INC., :
MORGAN STANLEY MORTGAGE :
CAPITAL HOLDINGS LLC, MORGAN :
STANLEY & CO. LLC, as successor to :
MORGAN STANLEY & CO. INC., :
MORGAN STANLEY, and SAXON :
MORTGAGE SERVICES, INC., :
:
Defendants. :
:
:
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Index No. 652914/2014  
Justice Friedman  
IAS Part 60  
**PRE-ARGUMENT STATEMENT**

Pursuant to § 600.17 of the Rules of the Appellate Division, First Department, attorneys for Defendants-Appellants Morgan Stanley ABS Capital I Inc., Morgan Stanley Mortgage Capital Holdings LLC, Morgan Stanley & Co. LLC, Morgan Stanley, and Saxon Mortgage Services, Inc. (“Defendants-Appellants”) respectfully submit the following Pre-Argument Statement:

1. The title of the action is as shown in the caption above.
2. The full names of the original parties in this action are as shown in the caption above.
3. The name, address, and telephone number of counsel for Defendants-Appellants are as follows:

James P. Rouhandeh  
Brian S. Weinstein  
Elisabeth Grippando  
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450 Lexington Avenue  
New York, New York 10017  
(212) 450-4000

4. The name, address, and telephone number of counsel for plaintiff-respondent Financial Guaranty Insurance Company are as follows:

Erik Haas  
Henry J. Ricardo  
Jonathan Hatch  
Patterson Belknap Webb & Tyler LLP  
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5. The appeal is taken from the Decision and Order of the Honorable Marcy Friedman of the Supreme Court of the State of New York, County of New York, entered on January 23, 2017, which denied Defendants-Appellants' motion to dismiss plaintiff's complaint.

6. This is an action in which plaintiff seeks specific performance and/or money damages in connection with certain mortgage loan purchase agreements and trust agreements that plaintiff alleges were breached by Defendants-Appellants. Plaintiff also seeks recovery of pre-judgment interest, costs and expenses, as well as attorneys' and expert fees.

7. The Court below denied Defendants-Appellants' motion to dismiss in all respects.

8. Defendants-Appellants seek reversal of the Decision and Order of the Court below on the grounds that the Court erred in failing to dismiss plaintiff's claim for future damages; that the Court erred in finding that plaintiff's claim for fraudulent inducement was not duplicative of its breach of contract claim; that the Court erred in finding that plaintiff stated a claim for fraudulent inducement; that the Court erred in not finding that plaintiff's claims were limited by the sole

remedy provisions in the governing agreements; that the Court erred in finding that plaintiff's allegations regarding fraudulent inducement were sufficient to raise a question of fact as to plaintiff's reasonable reliance; that the Court erred in failing to dismiss plaintiff's breach of contract claims for failure to satisfy a condition precedent to suit; and that the Court erred in finding that the governing agreements evidenced an intent to cover legal fees.

Dated: New York, New York  
February 24, 2017

DAVIS POLK & WARDWELL LLP

By: /s/ Brian S. Weinstein

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