

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

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FINANCIAL GUARANTY INSURANCE  
COMPANY,

Plaintiff,

- against -

MORGAN STANLEY ABS CAPITAL I INC.,  
and MORGAN STANLEY MORTGAGE  
CAPITAL HOLDINGS LLC, as successor to  
MORGAN STANLEY MORTGAGE  
CAPITAL INC.,

Defendants.  
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Index No. 652853/2014

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. and Morgan Stanley Mortgage Capital Holdings LLC (“Morgan Stanley”) 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 appellant Morgan Stanley are as follows:

James P. Rouhandeh  
Brian S. Weinstein  
Stefani Johnson Myrick  
Davis Polk & Wardwell LLP  
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  
1133 Avenue of the Americas  
New York, NY 10036-6710  
(212) 336-2000

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 19, 2017, which denied Morgan Stanley's motion to dismiss plaintiff's complaint.

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

7. The Court below denied Morgan Stanley's motion to dismiss in all respects.

8. Morgan Stanley seeks 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 stated a claim for breach of contract because its allegations regarding owner-occupancy statistics and combined loan-to-value ratios were sufficiently pleaded; and that the Court erred in finding that plaintiff adequately alleged that contractual breaches caused its losses with respect to each of its claims.

Dated: New York, New York  
February 24, 2017

DAVIS POLK & WARDWELL LLP

By: /s/ Brian S. Weinstein  
James P. Rouhandeh  
Brian S. Weinstein  
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