

Simpson Thacher Obtains RMBS Appellate Victory for Countrywide

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On February 8, 2022, Simpson Thacher secured dismissal of RMBS claims filed against Firm client Countrywide Home Loans, Inc. by Ambac Assurance Corporation. The appellate win stems from the December 8, 2020 dismissal of a complaint filed in 2015 by Ambac against Countrywide in connection with five residential mortgage-backed securities transactions that closed in 2005. Ambac sought hundreds of millions of dollars in damages, alleging that it was fraudulently induced by Countrywide, the originator of the mortgages that were securitized in the transactions, to issue insurance policies on the securities. In a 17-page decision, Justice Marcy S. Friedman of the Commercial Division, New York County held that the complaint is time-barred, as Ambac was on inquiry notice of its fraud claim by November 21, 2009, two years prior to the parties' execution of a tolling agreement. By that date, the ratings of the securities at issue had been downgraded to junk status, and well-publicized litigation and media reports disclosed alleged misconduct in Countrywide's originating practices. Ambac appealed the order of dismissal to the Appellate Division of the Supreme Court, First Department. On February 8, 2022, a five-judge panel unanimously affirmed the lower court's decision, finding that Ambac knew about separate fraud litigation that Countrywide was facing before November 2009 and the insurer's 2015 complaint was filed outside of New York's two-year inquiry notice limitation for commencing fraud actions.

The Simpson Thacher team included Joe McLaughlin, Rachel Sparks Bradley (who argued the motion), Jacob Lundqvist and Andrew Marrero.

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