

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

PRESENT: MARCY S. FRIEDMAN  
*Justice*

PART 60

CIFG ASSURANCE NORTH AMERICA, INC.,

INDEX NO.

654074/2012

Plaintiff,

-against-

J.P. MORGAN SECURITIES LLC  
(f/k/a "Bear, Stearns & Co. Inc."),

Defendant.

MOTION SEQ. NO. 003

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for a leave to amend.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

No (s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

No (s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

No (s). \_\_\_\_\_

Cross-Motion:  Yes  No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

By decision and order dated June 26, 2015, this court granted the motion of defendant J.P. Morgan Securities LLC (f/k/a "Bear, Stearns & Co. Inc.") (Bear Stearns) to dismiss the complaint "with leave to move to replead a cause of action for common law fraud." (Decision at 15.) Plaintiff CIFG now moves for leave to amend the dismissed complaint. On this motion, CIFG has submitted a proposed amended complaint (PAC) with two causes of action: material misrepresentation in the inducement of insurance contract "brought under common law as informed by New York Insurance Law Section 3105" (first cause of action) and common law fraud (second cause of action). As the redline of the PAC shows, the first cause of action is identical in all material respects to the cause of action previously dismissed by this court. (See Redline, ¶¶ 115-123 [attached as Ex. C to Aff. Of Sean Baldwin in Supp.].) The June 26, 2015 decision did not grant CIFG leave to move to replead the first cause of action for common law misrepresentation "as informed by New York Insurance Law Section 3105." (Complaint, ¶ 116.) Moreover, by separate decision dated September 23, 2015, this court denied plaintiff's motion for leave to reargue the June 26, 2015 Decision.

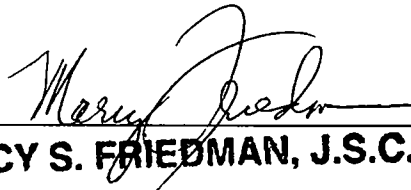
As to the proposed second cause of action for common law fraud, the PAC adds additional allegations which purport to address the failures, identified in the June 26, 2015 Decision, to plead this cause of action with particularity. In seeking leave to replead this cause of action, however, plaintiff fails to address whether a common law fraud claim may be maintained based on misrepresentations made by non-insured Bear Stearns about the collateral underlying the CDOs.

It is hereby ORDERED that CIFG's motion to amend is denied without prejudice to a motion for leave to replead a cause of action for common law fraud which addresses the above issue. The motion shall be supported by relevant legal authority, including but not limited to authority with respect to the maintainability of the claim against Bear Stearns, given that the alleged insureds, UBS and CIBC, are not parties to this action and that the complaint does not allege that they made material misrepresentations to CIFG. To the extent that the parties rely on authorities that uphold fraud claims against sponsors of CDO securitizations (see e.g. decisions discussed on pages 9-11 and 14 of the June 26, 2015 Decision), they shall discuss the facts set

forth in such authorities. In light of the denial of CIFG's reargument motion, the parties shall assume, for purposes of such briefing, that a fraud cause of action "informed by Insurance Law § 3105" may not be pleaded. Any motion for leave to amend shall be brought within 60 days of the date of this order.

Dated: \_\_\_\_\_

9-23-15

  
\_\_\_\_\_, J.S.C.  
**MARCY S. FRIEDMAN, J.S.C.**

1. Check one: .....  CASE DISPOSED     NON-FINAL DISPOSITION
2. Check as appropriate:.....Motion is:  GRANTED  DENIED     GRANTED IN PART     OTHER
3. Check if appropriate:.....  SETTLE ORDER     SUBMIT ORDER
- DO NOT POST     FIDUCIARY APPOINTMENT     REFERENCE