



learned that when Beech Hill entered into its loan agreement with defendant in August 2018, Beech Hill was already in breach of that agreement because of a preexisting loan it received from nonparty RCB Equities (RCB); under the terms of that loan, Beech Hill owed RCB several million dollars when it executed its agreement with defendant.

Plaintiff adequately stated a cause of action for a breach of contract, which is sufficient at this pre-discovery stage to withstand a motion to dismiss (*see William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 504 [1st Dept 2018]). The complaint alleged that in light of the preexisting outstanding loan from RCB, Beech Hill misrepresented in its loan agreement with defendant that it “has not and will not incur any indebtedness” other than the \$27.2 million mortgage loan from defendant. Moreover, the complaint alleged that in Representation 37 of the MLPA, defendant represented that “to [its] knowledge,” there was no material default under the mortgage loan; that documents required to be part of the mortgage file were deemed to be within defendant’s knowledge; and that Beech Hill’s RCB debt would have been disclosed as part of the mortgage file. Together, these allegations sufficiently assert that defendant breached the MLPA because it had knowledge of Beech Hill’s additional debt at the time of the sale (*see Second Source Funding, LLC v Yellowstone Capital, LLC*, 144 AD3d 445, 445-446 [1st Dept 2016]).

However, the complaint should have been dismissed as time-barred based on the CPLR 202 borrowing statute. The parties do not dispute that Midland Loan Services (Midland), the special servicer for the trust at issue herein and the entity prosecuting these claims, is located in Kansas, and its parent company, PNC Bank, is located in Pennsylvania. Kansas and Pennsylvania have, respectively, a five-year and four-year statute of limitations for breach of contract (Kan. Stat. Ann. § 60-511[1]; 42 Pa. Cons.

Stat. § 5525). The parties also do not dispute that Midland's claims accrued in September 2018 when the MLPA was executed. Accordingly, this breach of contract action, commenced in 2024, is time barred (*see* CPLR 202; *see also Deutsche Bank Natl. Trust Co. v Barclays Bank PLC*, 34 NY3d 327, 334 [2019]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 15, 2026

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas  
Clerk of the Court