

# Order

Michigan Supreme Court  
Lansing, Michigan

September 26, 2012

144578 & (85)(86)  
(87)(88)(92)(93)(95)

WELLS FARGO BANK, N.A.,  
Plaintiff-Appellee,

v

CHERRYLAND MALL LIMITED  
PARTNERSHIP and DAVID SCHOSTAK,  
Defendants-Appellants,

and

SCHOSTAK BROTHERS & CO., INC.,  
Defendant.

Robert P. Young, Jr.,  
Chief Justice

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

SC: 144578  
COA: 304682  
Grand Traverse CC:  
2010-028149-CH

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On order of the Court, the motion to file supplemental brief, and the motions for leave to file brief amicus curiae are GRANTED. The application for leave to appeal the December 27, 2011 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for further proceedings. On remand, the Court of Appeals shall reconsider its decision in light of the Legislature's recent passage of the Nonrecourse Mortgage Loan Act, 2012 PA 67, MCL 445.1591 *et seq.*, which retroactively prohibits a post closing solvency covenant from being used as a nonrecourse carveout or as a basis for any claim against a borrower, guarantor, or other surety on a nonrecourse loan. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should now be reviewed by this Court. The motion to vacate is DENIED.

We do not retain jurisdiction.



s0919

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 26, 2012

*Corbin R. Davis*

Clerk