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# NY High Court Says Oral Contract OK For Securities Trades

By [Joyce Hanson](#)

Law360, New York (January 10, 2017, 6:30 PM EST) -- New York state's highest court has slapped down an earlier state appellate division ruling against investment firm Stonehill Capital Management that permitted parties to back out of agreed-upon securities trades without a written sales agreement, saying oral or emailed agreements are sufficient.

The Court of Appeals for the State of New York on Dec. 20 unanimously upheld Stonehill's motion for summary judgment in its breach of contract suit against distressed mortgage lender [Bank of the West](#) and real estate advisory firm Mission Capital Advisors LLC, ruling that a trade is executable even if a formal agreement has not been signed as long as the material terms and conditions are spelled out and mutually accepted in conversations or emails.

"BOTW concedes that it accepted Stonehill's bid and then refused to transfer the loan, but claims it had no legal obligation to do so because the parties never executed a written sales agreement and Stonehill failed to submit a timely cash deposit. However, these prerequisites are not conditions precedent to formation of the parties' contract and do not render their agreement unenforceable," Associate Judge Jenny Rivera wrote in the Court of Appeals opinion.

Stonehill's suit against Bank of the West and Mission, which BOTW retained to manage a competitive online sealed-bid auction of a group of nonperforming mortgage loans, stems from a March 2012 memorandum for an offering that sought bids for an auction portfolio of loans, including a syndicated loan with an aggregate principal value of \$8.79 million known as "the Goett loan," according to the Court of Appeals.

Mission notified Stonehill by phone on April 20, 2012, that it had submitted the winning bid, at \$2.36 million, for the Goett loan, Stonehill's complaint said. After a number of emailed exchanges involving the loan sale agreement, Mission on May 16 told Stonehill that Bank of the West would not proceed with the trade following a refinancing of the Goett loan that would allegedly increase the value of the loan, according to the complaint.

New York State Supreme Court Judge O. Peter Sherwood ruled in favor of Stonehill's motion for summary judgment on March 24, 2014, and Bank of the West appealed Sherwood's decision to the state's Appellate Division of the Supreme Court, which ruled unanimously in favor of the bank.

The New York State Court of Appeals held oral arguments on Nov. 14, 2016, before unanimously reversing the Appellate Division's ruling on Dec. 20.

Stonehill Capital Management's legal counsel, Martin Eisenberg, told Law360 on Tuesday that the sale of portfolios of distressed mortgages typically gets done over the phone, followed by a written confirmation of mutually agreed-upon terms of sale. Because it's a fast-changing market, Eisenberg said, participants rely on more informal agreements.

"The ruling solidifies that a trade is a trade," Eisenberg said. "As far as my client was concerned, this was a deal. When parties agree to material terms of a trade, through emails and conversations, the mere fact that they contemplate signing a further agreement to memorialize it does not negate the trade."

Representatives for Bank of the West and Mission Capital Advisors did not immediately respond Tuesday to requests for comment.

Stonehill Capital Management is represented by Martin Eisenberg.

Bank of the West is represented by David A. Crichlow of [Katten Muchin Rosenman LLP](#).

Mission Capital Advisors is represented by Damian R. Cavaleri of [Hoguet Newman Regal & Kenney LLP](#).

The case is Stonehill Capital Management LLC et al. v. Bank of the West and Mission Capital Advisors LLC, case number 191, in the Court of Appeals for the State of New York.

The underlying case is Stonehill Capital Management LLC v. Bank of the West and Mission Capital Advisors LLC, case number 652287, in the Supreme Court of the State of New York.

--Editing by Jack Karp.