

2

At an IAS Term, Part 27 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14th day of January 2008

PRESENT: **HON. ARTHUR M. SCHACK J.S.C.**

HON. ARTHUR M. SCHACK

Justice

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE OF ARGENT MORTGAGE
SECURITIES, INC. ASSET-BACKED PASS
THROUGH CERTIFICATES, SERIES 2005-W4
UNDER THE POOLING AND SERVICING
AGREEMENT DATED AS OF NOVEMBER 1,
2005, WITHOUT RECOURSE,
Plaintiff,

DECISION & ORDER

Index No. 22375/06

- against -

GUSTAVO CASTELLANOS, ARGENT MORTGAGE,
LLC, AND NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE,
Defendants.

The following papers numbered 1 read on this motion:

Papers Numbered:

Proposed judgment of foreclosure and sale with
affidavits and exhibits attached _____

_____ 1 _____

Plaintiff's renewed application for a judgment of foreclosure and sale for the premises located at 78 Van Sicken Avenue, Brooklyn, New York (Block 3932, Lot 45, County of Kings) is denied without prejudice. In my prior decision in this case, issued on May 11, 2007, 15 Misc3d 1134 (A), I enumerated various defects in plaintiff's (Deutsche Bank) application. This renewed application does not address any of these defects. Further, my review of the instant application raises two additional matters that must be satisfactorily addressed or I will dismiss the instant action with prejudice.

As noted in my May 11, 2007 decision, Deutsche Bank lacks standing to bring this action since January 19, 2007, the day when Deutsche Bank assigned the instant mortgage and note to MTGLQ Investors, L.P. Goldman Sachs calls MTGLQ Investors, L.P. a "significant subsidiary" in exhibit 21.1 of its November 25, 2006 10-k Filing with the Securities and Exchange Commission. I explained (*citing Saratoga County Chamber of Commerce, Inc. v Pataki*, 100 NY2d 81, 812 [2003], *cert denied* 540 US 1017 [2003], *Carper v Nussbaum*, 36 AD3d 176, 181 [2d Dept 2006], and *Stark v Goldberg*, 297 AD2d 303 [1st Dept 2002])) how Deutsche Bank now lacks standing to pursue this action. Further, I held, at 5-6:

It is clear that plaintiff Deutsche Bank lacks standing to sue since January 19, 2007, when it assigned its ownership of the Castellanos' mortgage loan to the Goldman Sachs subsidiary, MTGLQ Investors, L.P. The Court, in *Campaign v Barba*, 23 AD3d 327, instructed that

"[t]o establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and the mortgage note, *ownership of the mortgage*, and the defendant's default in payment [*Emphasis added*]." (See *Household Finance Realty Corp. of New York v Wynn*, 19 AD3d 545 [2d Dept 2005]; *Sears Mortgage Corp. v Yahhobi*, 19 AD3d 402 [2d Dept 2005]; *Ocwen Federal Bank FSB v Miller*, 18 AD3d 527 [2d Dept 2005]; *U.S. Bank Trust Nat. Ass'n Trustee v Butti*, 16 AD3d 408 [2d Dept 2005]; *First Union Mortgage Corp. v Fern*, 298 AD2d 490 [2d Dept 2002]; *Village Bank v Wild Oaks Holding, Inc.*, 196 AD2d 812 [2d Dept 1993]).

However, in light of the fact that Deutsche Bank has established the existence of the mortgage and the note, and defendant's default in payment, the Court is denying the judgment of foreclosure and sale without prejudice. If Deutsche Bank moves to substitute assignee MTGLQ Investors L.P. as plaintiff, pursuant to CPLR § 1021 and no other material facts change, the Court will grant the substitution of plaintiff to MTGLQ Investors L.P., which will allow the proper mortgagee, the one with standing, to receive a judgment of foreclosure

and sale. (*East Coast Properties v Galang*, 308 AD2d 431 [2d Dept 2003];
Lincoln Savings Bank, FSB v Wynn, 7 AD3d 760 [2d Dept 2004]; CPLR
§ 1018; GOL § 13-101).

Plaintiff Deutsche Bank has failed to move to substitute MTGLQ Investors, L.P. as plaintiff.

Two additional matters plaintiff needs to address in a renewed motion

In my recent review of the moving papers in the renewed motion, I noticed that the July 21, 2006-"affidavit of merit" was executed by Jeff Rivas, who claims to be Deutsche Bank's Vice President Default Timeline Management. On the same day, Mr. Rivas executed, before the same notary public, M. Reveles, a mortgage assignment from Argent Mortgage Company, LLC, claiming to be Argent's Vice President Default Timeline Management. Did Mr. Rivas somehow change employers on July 21, 2006 or he is concurrently a Vice President of both assignor Argent Mortgage Company, LLC and assignee Deutsche Bank? If he is a Vice President of both the assignor and the assignee, this would create a conflict of interest and render the July 21, 2006-assignment void.

Also, Mr. Rivas claims that Argent Mortgage Company, LLC is located at 1100 Town and Country Road, Suite 200, Orange, California, while Deutsche Bank has its offices at One City Boulevard West, Orange, California. Did Mr. Rivas execute the assignment at 100 Town and Country Road, Suite 200, and then travel to One City

Boulevard West, with the same notary public, M. Reveles, in tow? The Court is concerned that there may be fraud on the part of Deutsche Bank, Argent Mortgage Company, LLC, and/or MTGLQ Investors, L.P., or at least malfeasance. If plaintiff renews its motion for a judgment of foreclosure and sale, the Court requires a satisfactory explanation by Mr. Rivas of his recent employment history.

In my May 11, 2007 decision, in discussing the January 19, 2007 assignment from Deutsche Bank to MTGLQ Investors, L.P., I observed, at 5, that:

the January 19, 2007 assignment has the same address for both the assignor Deutsche Bank and the assignee MTGLQ Investors, L.P., at 1661 Worthington Road, Suite 100, West Palm Beach, Florida 33409.

The Court will not speculate about why two major financial behemoths, Deutsche Bank and Goldman Sachs share space in a West Palm Beach, Florida office suite. What is clear to this Court is that Deutsche Bank assigned the mortgage during the pendency of this application, but neglected to move to amend the caption to reflect the assignment or discontinue the foreclosure action. The Court . . . has no choice but to deny the application for a judgment of foreclosure and sale without prejudice. Plaintiff Deutsche Bank lacks standing to

proceed with this action since January 19, 2007.

However, my subsequent decision, *HSBC Bank, N.A. v Cherry*, 18 Misc3d 1102 (A), issued on December 17, 2007, observed that Scott Anderson, on June 13, 2007, as Vice President of Mortgage Electronic Registration Systems, Inc. (MERS) assigned a mortgage and note to HSBC Bank, N.A., as Trustee for various collateralized debt obligations. Mr. Anderson's assignment lists 1661 Worthington Road, Suite 100, West Palm Beach, Florida 33409 (Suite 100), as MERS address. The assignment also lists Suite 100 as the address for HSBC. Further, Mr. Anderson, two days later, on June 15, 2007, executes an "affidavit of merit" as "Senior Vice President of Residential Servicing for Ocwen Federal Bank, FSB, servicing agent of HSBC Bank, N.A."

I noted, at 3, that:

with HSBC, OCWEN and MERS, joining with Deutsche Bank and Goldman Sachs at Suite 100, the Court is now concerned as to why so many financial goliaths are in the same space. The Court ponders if Suite 100 is the size of Madison Square Garden to house all of these financial behemoths or if there is a more nefarious reason for this corporate togetherness.

Therefore, if Deutsche Banks seeks to renew its motion for a judgment of foreclosure and sale, it must provide an affidavit explaining why Suite 100 is such a popular venue for all

of these corporations. Should Deutsche Bank fail to provide an adequate explanation in its affidavit, I will conclude that this corporate togetherness is evidence of corporate collusion.

Conclusion

Accordingly, it is

ORDERED, that the motion of plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF ARGENT MORTGAGE SECURITIES, INC. ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2005-W4 UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF NOVEMBER 1, 2005, WITHOUT RECOURSE, for a judgment of foreclosure and sale for the premises located at 78 Van Sicken Avenue, Brooklyn, New York (Block 3932, Lot 45, County of Kings), is denied without prejudice; and it is further

ORDERED, that leave is granted to plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF ARGENT MORTGAGE SECURITIES, INC. ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2005-W4 UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF NOVEMBER 1, 2005, WITHOUT RECOURSE, to renew its motion for a judgment of foreclosure and sale for the premises located at 78 Van Sicken Avenue, Brooklyn, New York (Block 3932, Lot 45, County of Kings), only if it presents to the Court within thirty (30) days from the date of this decision and order: an affidavit from Jeff Rivas describing his employment history

for the past three years; and, an affidavit explaining why it shares office space at Suite 100, 1661 Worthington Road, West Palm Beach, Florida 33409 with Goldman Sachs, HSBC Bank, N.A., Ocwen Federal Bank FSB, and Mortgage Electronic Registration Systems, Inc.

This constitutes the Decision and Order of the Court.

E N T E R



HON. ARTHUR M. SCHACK

J. S. C.

HON. ARTHUR M. SCHACK J.S.C.