

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 11-10786-GAO

IRIS J. PAYNE,  
Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR J.P. MORTGAGE  
ACQUISITION CORP. 205-OPT1, ASSET BACKED PASS-THROUGH  
CERTIFICATES SERIES 2005-OPT1, and AMERICAN HOME MORTGAGE  
SERVICING, INC.  
Defendants.

OPINION AND ORDER

February 21, 2012

O'TOOLE, D.J.

The plaintiff, Iris J. Payne, alleging that she is “named as the mortgagor” under a certain mortgage, Compl. ¶ 4, claims that the defendants improperly accelerated the amounts due under the mortgage at issue. She seeks remedies as a wronged mortgagor under two Massachusetts statutes, Mass. Gen. Laws ch. 244, § 35A and ch. 93A, §§ 2 and 9.<sup>1</sup> She also alleges that her signatures on the mortgage document were forged; she neither signed nor authorized anyone to sign them on her behalf, Compl. ¶ 19, and seeks cancellation of any obligation or liability under the mortgage. The defendants have moved to dismiss all claims.

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<sup>1</sup> She does not identify the sections of chapter 93A she relies on, but the context strongly suggests the cited sections.

Pleading claims in the alternative is not uncommon, but the plaintiff carries it too far. She cannot both be and not be a mortgagor. She should decide which horse she wants to ride.

Within 21 days of the date of this order, the plaintiff shall file an amended complaint that alleges either claims she has as a mortgagor or claims she has as a victim of a forged mortgage. Failure to do so will result in dismissal of the complaint.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.  
United States District Judge