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**NOT FOR PUBLICATION**

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Thomas Pierog; Marci Pierog,

No. CV-10-01911-PHX-FJM

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Plaintiffs,

**ORDER**

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vs.

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HSBC Bank USA, N.A.; Mortgage  
Electronic Registration Systems, Inc.; First  
American Title Insurance Company,

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Defendants.

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The court has before it defendants HSBC Bank’s (“HSBC”) and First American Title Insurance Company’s (“First American”) motions to dismiss (docs. 5 & 8). Plaintiffs Thomas and Marci Pierog failed to respond.

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In March 2007, plaintiffs apparently borrowed money from DHI Mortgage Company to purchase a home in Surprise, Arizona. They executed a promissory note secured by a deed of trust. The deed of trust identified Mortgage Electronic Registration Systems (“MERS”) as the beneficiary and DHI Title as the trustee. In January 2010, MERS substituted First American as the trustee. First American immediately noticed a trustee’s sale. MERS allegedly assigned its interests to HSBC on April 12, 2010. HSBC bought the home at the trustee’s sale several weeks later.

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In August 2010, plaintiffs filed this action in the Superior Court of Arizona in Maricopa County seeking to set aside the trustee’s sale and prevent their eviction from the home. They allege that MERS did not have an interest in the note and was not a proper beneficiary under the deed of trust. On this basis, plaintiffs allege that the purported

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1 assignment from MERS to HSBC and the trustee's sale were invalid. They also seek  
2 declaratory relief to determine First American's rights under the deed of trust.

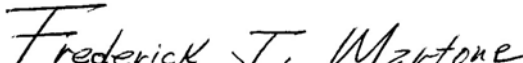
3 HSBC removed this action with First American's consent. Plaintiffs have apparently  
4 not served MERS. HSBC and First American now move to dismiss. HSBC asserts that,  
5 contrary to plaintiffs' allegations, MERS can be a beneficiary under a deed of trust in  
6 Arizona. See Cervantes v. Countrywide Home Loans, Inc., No. CV-09-517-PHX-JAT, 2009  
7 WL 3157160, at \*10-11 (D. Ariz. Sept. 24, 2009) (discussing MERS and rejecting argument  
8 that it was a sham beneficiary). HSBC also points out that plaintiffs do not allege that they  
9 were making payments on the home loan. First American contends that it is entitled to  
10 dismissal because plaintiffs do not allege a breach of the trustee's obligations. See A.R.S.  
11 § 33-807(E) (providing for the dismissal of a trustee unless the action involves a breach of  
12 the trustee's obligations under the statute or the deed of trust). Because plaintiffs failed to  
13 respond to HSBC's and First American's motions to dismiss, we may grant them summarily.  
14 LRCiv 7.2(i) (permitting non-compliance with briefing requirements to be deemed consent  
15 to the granting of a motion). After review of the merits, we grant the motions to dismiss.

16 The only remaining defendant is MERS. Plaintiffs' time to serve MERS has not run.  
17 However, given their failure to comply with briefing requirements and their prospects for  
18 relief proceeding solely against MERS, we order plaintiffs to state their intent to serve  
19 MERS.

20 Accordingly, **IT IS ORDERED GRANTING** HSBC Bank's and First American  
21 Title Insurance Company's motions to dismiss (docs. 5 & 8).

22 **IT IS FURTHERED ORDERED** that, within 10 days of this Order, plaintiffs state  
23 their intent to serve Mortgage Electronic Registration Systems with the complaint. If they  
24 fail to do so, their complaint shall be dismissed.

25 DATED this 22<sup>nd</sup> day of October, 2010.

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Frederick J. Martone  
United States District Judge