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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Shizue S. White,

10 Plaintiff,

11 v.

12 Aurora Loan Services LLC, Nationstar
13 Mortgage LLC,

14 Defendants.
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No. CV 14-1021-PHX-JAT

ORDER

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17 Pending before the Court is Defendants' Aurora Loan Servicing, LLC and
18 Nationstar Mortgage, LLC Rule 19 Motion to Join an Indispensable Party; or, in the
19 Alternative, for Permissive Joinder of a Non-Party Defendant. (Doc. 46). The Court has
20 considered Plaintiffs' Complaint (Doc. 1), Plaintiff's Response (Doc. 47), and
21 Defendants' Reply (Doc. 48). The Court now rules on the motion.

22 **I. Background**

23 In its previous Order, the Court summarized the background of this dispute as
24 follows:

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26 Plaintiff refinanced her house in March 2007, with the lender on the note
27 being American Broker's Conduit. Doc. 13 at 3; Doc. 36 at 2. The note was
28 secured by a Deed of Trust under which the Trustee was Chicago Title
Insurance Company and the beneficiary was Mortgage Electronic
Registrations Systems, Inc. ("MERS"). Defendants allege that American

1 Broker's Conduit hired Aurora Loan Services, L.L.C. ("Aurora") to service
2 the note. Doc. 13 at 2. Defendants allege that at some point American
3 Broker's Conduit sold or assigned the note and its proceeds to U.S. Bank as
4 Trustee for the Certificate Holders of the LXS 2007 7N Trust Fund
5 ("U.S. Bank"). Doc. 13 at 13. Defendants further allege that after July 1,
6 2012, either American Broker's Conduit or U.S. Bank relieved Aurora of
its servicing responsibilities, and engaged Nationstar Mortgage, L.L.C.
("Nationstar") to service the note. Doc. 13 at 2.

7 Nationstar contends that it is still the servicer through today, and that being
8 a servicer is its only involvement with this transaction. However, the
9 record, including Nationstar's own filings, shows that Nationstar's legal
10 obligations go beyond that of merely being a servicer. For example, MERS
11 assigned the beneficial interest in the Deed of Trust that secures Plaintiff's
12 residence to Nationstar. Doc. 13 at 13; 51. Notably, MERS made this
13 assignment as nominee for American Broker's Conduit on August 31,
14 2012. Then, on November 6, 2013, MERS (as nominee for American
15 Broker's Conduit) assigned the "Deed of Trust," including MERS'
16 "beneficial interest under the Deed of Trust" to U.S. Bank (in the fiduciary
17 capacity listed above). Doc. 38 at 21. After MERS assigned its beneficial
18 interest in the Deed of Trust that secures Plaintiff's residence to two
19 different entities, on February 26, 2014, Nationstar as "Attorney in Fact"
20 for U.S. Bank appointed Clear Recon Corporation as Trustee of the Deed of
21 Trust that secures Plaintiff's residence. Doc. 13 at 13, 48. Defendants
22 further allege that Clear Recon Corporation noticed a Trustee sale on April
23 26, 2014. Doc. 8 at 8. As indicated above, this Court enjoined that sale.

19 *White v. Aurora Loan Servs. LLC*, 2014 WL 5080904, at *1 (D. Ariz. Oct. 9, 2014).

20 **II. Motion to Join a Required Party**

21 **A. Legal Standard**

22 Defendants move to join U.S. Bank as a necessary party under Federal Rule of
23 Civil Procedure 19. (Doc. 46). "Federal Rule of Civil Procedure 19 governs the question
24 of whether a person not a party to a suit should be joined because he is necessary for a
25 more complete settlement of the dispute." *Cutrona v. Sun Health Corp.*, 2007 WL
26 4150210, at *1 (D. Ariz. Nov. 19, 2007). Rule 19 provides, in pertinent part:

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28 (a) Persons Required to Be Joined if Feasible. (1) Required Party. A person
who is subject to service of process and whose joinder will not deprive the

1 court of subject-matter jurisdiction must be joined as a party if: (A) in that
2 person's absence, the court cannot accord complete relief among existing
3 parties; or (B) that person claims an interest relating to the subject of the
4 action and is so situated that disposing of the action in the person's absence
5 may: (i) as a practical matter impair or impede the person's ability to
6 protect the interest or (ii) leave an existing party subject to a substantial risk
7 of incurring double, multiple, or otherwise inconsistent obligations because
8 of the interest. (2) Joinder by Court Order. If a person has not been joined
9 as required, the court must order that the person be made a party.

10 Fed. R. Civ. P. 19(a)(1)–(2); see *Damian v. CitiMortgage, Inc.*, 2014 WL 1285892, at *3
11 (D. Ariz. Mar. 31, 2014) (“A party is ‘necessary’ if in its absence, meaningful relief
12 cannot be afforded to those who are already joined, thus risking multiple lawsuits on the
13 same issue.” (quoting *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d
14 861 (9th Cir. 2004))). The absence of a necessary party under Rule 19 may be properly
15 raised by any party “at any stage in the proceeding.” *CP Nat’l Corp. v. Bonneville Power*
16 *Admin.*, 928 F.2d 905, 911–12 (9th Cir. 1991); *Weimer v. Maricopa Cnty. Cmty. Coll.*
17 *Dist.*, 184 F.R.D. 309, 310–11 (D. Ariz. 1998). Importantly, “[a]n entity’s status as a
18 ‘necessary’ party is not judged by any prescribed formula, but instead ‘can only be
19 determined in the context of particular litigation.’” *CP Nat’l Corp.*, 928 F.2d at 912
20 (quoting *Provident Tradesman Bank & Trust Co. v. Patterson*, 390 U.S. 102, 118
21 (1968)).

22 **B. Discussion**

23 Defendants argue U.S. Bank must be joined as a party defendant for several
24 reasons. Defendants first claim that without joining U.S. Bank, Plaintiff would be
25 afforded incomplete relief. (Doc. 46 at 4). Second, Defendants assert that in U.S. Bank’s
26 absence, Plaintiff would be forced to re-litigate the same issues in a separate action. (*Id.*)
27 Defendants also complain that the ability of U.S. Bank to foreclose on the property
28 secured by the deed of trust (“Subject Property”) is legally “unclear” and forcing
Defendants to “shoulder the litigation” for U.S. Bank is “unfair.” (*Id.*) Finally,
Defendants contend that U.S. Bank’s ability to protect its interest in the Subject Property

1 would be impaired if the Court issued a permanent injunction. (*Id.*) In summary,
2 Defendants “would like U.S. Bank to become a party defendant” because Plaintiff is
3 seeking a permanent injunction against foreclosure of the Subject Property. (*Id.* at 7).¹

4 In her Response, Plaintiff contends that U.S. Bank does not have an interest in the
5 litigation and believes “that the proper parties are named in the Complaint.” (Doc. 47 at
6 5). In fact, “Plaintiff has no intention to pursue further actions against U.S. Bank.” (*Id.*)
7 Moreover, Plaintiff suggests “U.S. Bank and Defendants share the same interests” and
8 “protective provisions” could lessen any prejudice to U.S. Bank resulting from a
9 permanent injunction. (*Id.*)

10 As a preliminary matter, the Court construes Defendants’ papers to concede that
11 MERS’ August 31, 2012 assignment to Nationstar of its beneficial interest in the Deed of
12 Trust securing the Subject Property (Doc. 1 at 46; Doc. 13 at 13; Doc. 13-1 at 51) is no
13 longer operative.² Rather, U.S. Bank is the sole beneficiary “under the Deed of Trust”
14 resulting from MERS’ November 6, 2013 “Corporate Assignment” to U.S. Bank. (Doc.
15 9-2 at 59; Doc. 38 at 21; Doc. 59 at 2).³ In fact, Nationstar, as U.S. Bank’s attorney in
16 fact (Doc. 31-3 at 2), is merely U.S. Bank’s servicing agent and does not own any
17 beneficial or property interest in the Deed of Trust. (Doc. 48 at 2). Therefore, the issue
18 presented is whether the borrower under a deed of trust can permanently enjoin the deed

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20 ¹ If Plaintiff’s request for a permanent injunction were abandoned, Defendants
21 note, U.S. Bank would not have an interest in the litigation, rendering the present motion
22 moot. (Doc. 48 at 3, 5).

23 ² In their papers, Defendants assert that “U.S. Bank is the beneficiary of the deed
24 of trust securing Plaintiff’s mortgage” (Doc. 48 at 2) and “U.S. Bank claims an interest in
25 the Subject Property as described by the recorded assignment of the Deed of Trust in its
26 name” (Doc. 46 at 4). Defendants also entitle U.S. Bank as “the actual owner of the
27 Deed of Trust.” (*Id.* at 6). Moreover, Defendants compare themselves with U.S. Bank by
28 noting that “only U.S. Bank has a property interest that will be impaired by an injunction
and only U.S. Bank has insurance” while “the present Defendants have no property
interests in the subject property whatsoever.” (Doc. 48 at 5). Finally, “Defendants have
taken steps to clarify beyond any doubt that U.S. Bank, and not Nationstar, is the
beneficiary of the Deed of Trust at issue in this action.” (Doc. 59 at 2).

³ Assuming U.S. Bank is the beneficiary of the Deed of Trust and given the fact
that Nationstar has given notice of this lawsuit to its principal, U.S. Bank, it would appear
that U.S. Bank could file a motion to intervene in order to protect its interests as the
outright owner of the Deed of Trust.

1 of trust's *beneficiary's servicing agent* from foreclosing on the underlying property
2 without "impairing" the ability of the *beneficiary* to protect its interest by foreclosing on
3 the property. After careful consideration, the Court answers in the affirmative.

4 As a general matter, while a permanent injunction against a principal (in this case
5 U.S. Bank) would restrict the ability of its agent (Nationstar) to foreclose on a property,
6 the reverse is not true. A permanent injunction against an *agent* will not eradicate the
7 *principal's* right to foreclose. Thus, a principal is not necessarily required to be joined to
8 litigation against its agent. *See Le Baron v. Kern Cnty. Farm Labor Union*, 80 F. Supp.
9 151, 157 (S.D. Cal. 1948) ("[I]t is not necessary that a principal be made a party to an
10 action if relief, such as an injunction, is sought only against the agent.").

11 In this case, assuming Plaintiff prevails on all claims as set forth in her complaint
12 (Doc. 1), a permanent injunction would be issued against Nationstar and Aurora *only*.
13 Consequently, as stated by Defendants, "U.S. Bank could proceed with a foreclosure or
14 sale of the subject property at any time in the future using a *different* servicing agent."
15 (Doc. 48 at 2) (emphasis added). In other words, whatever the final result of this case (as
16 it is presently positioned) may be, the ability of U.S. Bank to enforce its interest by
17 foreclosing on the Subject Property will in no way be impaired.⁴

18 For this very reason, Defendants argue that Plaintiff would not obtain meaningful
19 relief without joining U.S. Bank as a party defendant. (*Id.*) However, if Plaintiff prevails
20 on her claims, she would obtain meaningful relief because the named Defendants would
21 be barred from foreclosing on the Subject Property.⁵

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23 ⁴ The Court recognizes that if Plaintiff prevails on all of her claims, U.S. Bank
24 would not be able to utilize Defendants' services to foreclose on the Subject Property.
25 However, the Court does not consider this minimal hindrance to rise to the level of
26 "impairment" or "impediment" contemplated by Federal Rule of Civil Procedure 19.

27 ⁵ The Court notes that Plaintiff demands "The prevention of *any* foreclosure sales
28 of 11126 Nocturne Court, Sun City AZ 85251." (Doc. 1 at 16) (emphasis added). At the
time of this motion and corresponding briefing, Plaintiff was litigating *pro se*. Because
Plaintiff was *pro se*, the Court liberally construes the meaning of the word "any"
consistent with her opposition to Defendant's motion to join. Thus, the Court finds that
"any foreclosure sales" means the prevention of "any foreclosure sales" *by the named
Defendants only*. The Court does not speculate as to whether this is the result Plaintiff
ultimately desires. Of course, if Plaintiff desires to prevent any foreclosure of the Subject

1 **IV. Motion to Dismiss**

2 In the alternative, Defendants argue that if U.S. Bank cannot be joined to this
3 action, the case must be dismissed under Rule 19(b). (Doc. 46). Rule 19(b) states, in
4 pertinent part: “If a person *who is required to be joined if feasible* cannot be joined, the
5 court must determine whether, in equity and good conscience, the action should proceed
6 among the existing parties or should be dismissed.” Fed. R. Civ. P. 19(b) (emphasis
7 added).

8 As discussed, U.S. Bank is not “required to be joined” to this action and any
9 possible prejudice to U.S. Bank would be *de minimis*. Accordingly, the Court will deny
10 Defendants’ motion.

11 **V. Motion to Permissively Join**

12 Finally, Defendants argue that if U.S. Bank is not required to be joined and the
13 case is not dismissed, the Court should permissively join U.S. Bank under Rule 20.
14 (Doc. 46). Rule 20 provides, in pertinent part:

15 (2) Defendants. Persons . . . may be joined in one action as defendants if:
16 (A) any right to relief is asserted against them jointly, severally, or in the
17 alternative with respect to or arising out of the same transaction,
18 occurrence, or series of transactions or occurrences; and (B) any question of
19 law or fact common to all defendants will arise in the action.

20 Fed. R. Civ. P. 20(a)(2). Based upon the plain language of Rule 20(a)(2), Defendants
21 must make a two-prong showing, which they have not done. Defendants have failed to
22 show that “any right to relief” against U.S. Bank has been asserted; thus, they have not
23 established the first element. Accordingly, the Court will deny Defendants’ motion.

24 **VII. Conclusion**

25 Considering the convoluted facts of this case,⁶ the exact interests of each entity

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27 Property by any entity with the legal right to foreclose, she must move to amend her
complaint to name all parties with a beneficial interest in the Deed of Trust.

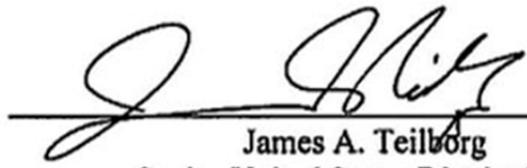
28 ⁶ The Court notes, for example, that MERS assigned its entire interest in the Deed
of Trust to two different entities (Nationstar and U.S. Bank); the October 31, 2013

1 involved in Plaintiff's mortgage and loan could be arduous to determine. Thus, the Court
2 understands Plaintiff's hesitancy to join U.S. Bank, a seemingly blameless non-party, to
3 the litigation. Plaintiff should nonetheless move to amend her complaint if she determines
4 she must sue U.S. Bank to get the full relief she desires. For the reasons set forth above,
5 however, the Court will not force her to do so.

6 Accordingly,

7 **IT IS ORDERED** Defendants' Motion to Join an Indispensable Party; or, in the
8 Alternative, for Permissive Joinder of a Non-Party Defendant (Doc. 46) is **DENIED**.

9 Dated this 31st day of March, 2015.

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James A. Teilborg
Senior United States District Judge

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foreclosure notice stated that "NATIONSTAR MORTGAGE, INC. . . . is the creditor to whom the debt is owed" (Doc. 1 at 50), yet the March 7, 2014 Notice of Trustee's Sale notice named U.S. Bank as the beneficiary under the Deed of Trust (Doc. 1 at 53); the August 16, 2012 letter from U.S. Bank to Plaintiff noted that "All actions related to your mortgage would have been done by Nationstar/Aurora as servicer. . . . U.S. Bank does not have . . . any control over the mortgage servicer" (Doc. 47 at 11); the servicing agents were substituted; and the trustee for the Deed of Trust changed.