

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**BRADY C. ERVIN and GINGER A.
ERVIN, Husband and Wife,**

PLAINTIFFS

vs.

Case No. 1:14-CV-14-KGB

**DEUTSCHE BANK TRUST COMPANY
AMERICAS, OCWEN LOAN SERVICING, LLC,
as Loan Servicer and Attorney-in-Fact for
Deutsche Bank Trust Company Americas,
MACKIE WOLF ZIENTZ & MANN, P.C., as
Trustee for DEUTSCHE BANK TRUST
COMPANY AMERICAS**

DEFENDANTS

AGREED ORDER OF DISMISSAL AND OTHER RELIEF

This matter comes before the Court on the agreement of plaintiffs, Brady C. Ervin and Ginger A. Ervin (collectively, "Plaintiffs"), and defendants Deutsche Bank Trust Company Americas, as Trustee for Saxon Asset Securities Trust 2003-1, Mortgage Loan Asset Backed Certificates, Series 2003-1 (incorrectly named herein as "Deutsche Bank Trust Company Americas") ("Trustee"), Ocwen Loan Servicing, LLC ("Ocwen") and Mackie Wolf Zientz & Mann, P.C. ("Mackie Wolf") (collectively, "Defendants"), as represented by the below signatures of their counsel. Plaintiffs

and Defendants are referred to collectively as the "Parties." The Parties have agreed as follows

1. On November 20, 2002, Plaintiffs executed a Note, with principal and interest as set forth therein (the "Note"). See First Amended Complaint for Specific Performance (Doc. 7) filed herein February 20, 2014, at ¶ 2.

2. On the same date, contemporaneously with the execution of the Note and to secure its payment, Plaintiffs executed a Deed of Trust on real property which had the address of 14 Woodland West, Heber Springs, Arkansas 72543, and is more particularly described as Lot Number Sixteen (16), Beloit Bay Number One (1), Cleburne County, Arkansas (the "Property"). A redacted copy of the Deed of Trust, with attached riders, is attached as Exhibit "A" to the First Amended Complaint for Specific Performance (Doc. 7) filed herein February 20, 2014. The Deed of Trust with attached riders was filed for record on December 4, 2002, in the real property records of the Cleburne County Circuit Clerk and Ex-Officio Recorder, in Book 259, Pages 633-644 (the "Deed of Trust").

3. Trustee is the current holder of the indebtedness documented by the Note and Mortgage and is entitled to enforce the Note and the Deed of Trust. The servicer of Plaintiffs' loan is Ocwen Loan Servicing, LLC.

4. Mackie Wolf is the substitute trustee under the Deed of Trust. A substitution of trustee was filed for record on July 19, 2013, in the real property records of the Cleburne County Circuit Clerk and Ex-Officio Recorder, as Document No. 201305100. A redacted copy of the Substitution of Trustee, is attached as

Exhibit "B" to the First Amended Complaint for Specific Performance (Doc. 7) filed herein February 20, 2014.

5. On or about June 6, 2013, Trustee initiated a statutory foreclosure proceeding against Plaintiffs by recording a Trustee's Notice of Default and Intention to Sell in the real property records of Cleburne County Circuit Clerk and Ex-Officio Recorder as Document No. 201303975 (the "Notice of Default"). A redacted copy of the Notice of Default and Intention to Sell is attached as Exhibit "C" to the First Amended Complaint for Specific Performance (Doc. 7) filed herein February 20, 2014.

6. On August 23, 2013, a Trustee's Deed by a Substitute Trustee was filed for record and recorded in the real property records of Cleburne County, Arkansas as Document No. 201306145 (the "Trustee's Deed"). A redacted copy of the Trustee's Deed is attached as Exhibit "I" to the First Amended Complaint for Specific Performance (Doc. 7) filed herein February 20, 2014. The Trustee's Deed recites that on August 16, 2013, at or about 12:00 o'clock p.m., the Property was sold to Trustee pursuant to a statutory foreclosure sale under the Arkansas Statutory Foreclosure Act, codified at Ark. Code Ann. § 18-50-101, *et seq.* for the sum of \$61,830.36 (the "Foreclosure Sale").

7. On September 20, 2013, Plaintiffs filed their Complaint for Specific Performance against Mackie Wolf as Defendant in the Cleburne County Circuit Court, State of Arkansas, which action was pending as Case No. CV-2013-136 and styled: *Brady C. Ervin and Ginger A. Ervin, Husband and Wife, Plaintiffs versus*

Mackie Wolf Zientz & Mann, P.C. as Trustee for Deutsche Bank Trust Company Americas, Defendant (the “State Court Action”). On January 17, 2014, Plaintiffs filed their First Amended Complaint for Specific Performance in the State Court Action, which named Trustee and Ocwen as parties defendant.

8. Trustee and Ocwen timely removed the State Court Action to this Court on February 20, 2014. *See* Notice of Removal (Doc. 1) filed herein February 20, 2014.

9. On March 7, 2014, Plaintiffs filed a motion to remand (Doc. 13). Defendants timely responded to the motion to remand (Docs. 16, 19).

10. On February 27, 2014, Trustee and Ocwen timely filed a motion to dismiss the complaint, as amended. *See* Motion to Dismiss (Doc. 11).

11. The Parties to this Order have entered into a Settlement Agreement resolving all matters before the Court among themselves. As a part of the Settlement Agreement, the Parties have agreed that:

(a) As a result of the diverse citizenship of Mackie Wolf, evidenced by the affidavit of Leslie Mann (Doc. 17), Plaintiffs have agreed to withdraw their pending motion to remand;

(b) The Foreclosure Sale evidenced by the Trustee’s Deed, shall be rescinded, vacated and set aside;

(c) The Note and Deed of Trust shall be revived in all respects and shall be in full force and effect. Specifically, subject to the terms of the Settlement Agreement between the undersigned Defendants and the Plaintiffs, all terms,

provisions and obligations under the Note and Deed of Trust shall remain due and owing, and in full force and effect, as if the Foreclosure Sale held August 16, 2013, under the Arkansas Statutory Foreclosure Act had not taken place;

(d) The Notice of Default and the Trustee's Deed should be vacated, rescinded, and set aside; and

(e) Plaintiffs' complaint, as amended, should be dismissed with prejudice as to Defendants Deutsche Bank Trust Company Americas, as Trustee for Saxon Asset Securities Trust 2003-1, Mortgage Loan Asset Backed Certificates, Series 2003-1, Ocwen Loan Servicing LLC, and Mackie Wolf with each party to bear his, her or its own costs and attorneys' fees.

12. Based on the agreement of the Parties, the Court hereby finds as follows:

(a) The plaintiff's motion to remand is hereby withdrawn.

(b) The Note and Deed of Trust are hereby revived in all respects and shall be in full force and effect. The Deed of Trust shall constitute a valid lien on the Property, effective as of December 4, 2002, the date it was originally filed for record. Specifically, except as modified by the terms of the Settlement Agreement among Defendants and Plaintiffs, all terms, provisions and obligations under the Note and Deed of Trust are in full force, and effective, and the debt represented by the Note and secured by the Deed of Trust remains due and owing and, in full force and effect, as if the Foreclosure Sale held August 16, 2013, under the Arkansas Statutory Foreclosure Act had not taken place.

(b) The Foreclosure Sale held August 16, 2013, under the Arkansas Statutory Foreclosure Act and evidenced in the Trustee's Deed is hereby vacated, rescinded, and set aside.

(c) The Notice of Default and the Trustee's Deed are hereby vacated, rescinded, and set aside; and

(d) Plaintiffs' complaint, as amended, should be dismissed with prejudice as to Defendants Deutsche Bank Trust Company Americas, as Trustee for Saxon Asset Securities Trust 2003-1, Mortgage Loan Asset Backed Certificates, Series 2003-1, Ocwen Loan Servicing, LLC and Mackie Wolf Zientz & Mann, P.C., with each party to bear his, her or its own costs and attorneys' fees.

13. A certified copy of this Order shall be filed for record by Plaintiffs in the real property records of Cleburne County, Arkansas.

IT IS SO ORDERED.

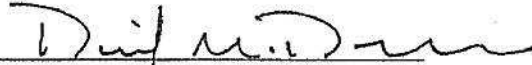
Kristine M. Paulsen

UNITED STATES DISTRICT JUDGE

October 6, 2014

DATE

Agreed:



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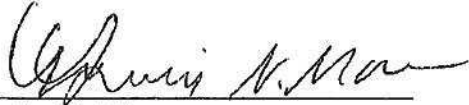
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