

## United States District Court, Northern District of Illinois

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| <b>Name of Assigned Judge<br/>or Magistrate Judge</b> | Amy J. St. Eve                                  | <b>Sitting Judge if Other<br/>than Assigned Judge</b> |           |
| <b>CASE NUMBER</b>                                    | 07 C 4147                                       | <b>DATE</b>   | 8/10/2010 |
| <b>CASE<br/>TITLE</b>                                 | Bilek vs. American Home Mortgage Servicing, Inc |   |           |

### DOCKET ENTRY TEXT

The Court denies American Home Mortgage Servicing Inc.'s motion to establish an escrow account [101].

■ [ For further details see text below.]

Notices mailed by Judicial staff.

### STATEMENT

Before the Court is Defendant American Home Mortgage Servicing Inc.'s ("AHMSI") motion to establish an escrow account in this lawsuit brought pursuant to the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601, *et seq.*, and state law. For the following reasons, the Court denies AHMSI's motion.

### BACKGROUND

On December 21, 2005, Plaintiffs Christopher Bilek and Mary Bilek refinanced the mortgage for their residence located at 8417 South 78th Avenue, Bridgeview, Illinois (the "Residence"). In the refinance transaction, Plaintiffs obtained a loan in the amount of \$262,000.00 from American Home Mortgage Acceptance and executed a promissory note (the "Residential Note"). The loan was secured by a mortgage granted by Plaintiffs on the Residence. The Residential Mortgage and Note were recorded on February 28, 2006 with the Cook County Recorder of Deeds. American Home Mortgage Servicing, Inc. serviced the loan.

On March 13, 2006, Plaintiffs purchased an investment property located in Streator, Illinois (the "Investment Property"), obtained financing for it through Solutions Funding, Inc. with a loan for \$64,400.00, and executed a promissory note (the "Investment Note"). The loan was secured by a mortgage granted by Plaintiffs on the Investment Property. The Investment Mortgage and Note were recorded on March 17, 2006 with the LaSalle County Recorder of Deeds. American Home Mortgage Servicing, Inc. serviced this loan.

Courtroom Deputy  
Initials:

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On July 23, 2007, Plaintiffs filed the present lawsuit against American Home Mortgage Servicing, Inc. alleging RESPA violations and breach of contract for sending notices of default despite Plaintiffs' claims that they timely made every mortgage payment. Meanwhile, on or about July 31, 2007, American Home Mortgage Investments Corp. ("AHM"), the parent company of American Home Mortgage Servicing, Inc., declared bankruptcy. In September 2007, American Home Acquisitions Co., a Delaware corporation, entered into an acquisition agreement to purchase the servicing rights for many of the loans American Home Mortgage Servicing, Inc. serviced.

On September 26, 2007, AHM initiated foreclosure proceedings for the Residential Mortgage in the Circuit Court of Cook County. On October 2, 2007, AHM initiated foreclosure proceedings for the Investment Mortgage in the 13th Judicial Circuit Court in LaSalle County, Illinois.

On April 11, 2008, American Home Acquisitions Co.'s acquisition of the servicing rights for many of the loans being serviced by American Home Mortgage Servicing closed. Under that agreement, American Home Mortgage Servicing, Inc. changed its name to AHM SV, Inc. and American Home Acquisitions Co. changed its name to American Home Mortgage Servicing, Inc. ("AHMSI"). On April 11, 2008, AHMSI began servicing the loans for the Residential Property and the Investment Property and took over prosecution of the foreclosure actions in the 13th Judicial Circuit Court in LaSalle County and the Circuit Court of Cook County. Since July 2009, AHMSI has not taken any steps to prosecute the foreclosures and the foreclosure lawsuits are on hold pending the outcome of this litigation.

On December 11, 2009, Plaintiffs filed an Amended Complaint in the present lawsuit replacing AHM SV, Inc. with AHMSI and adding Bank of America and Realtime Resolutions as Defendants. On February 25, 2010, Plaintiffs filed a Second Amended Complaint adding counts against AHMSI for breach of contract and negligence alleging that AHMSI maintained and failed to dismiss the foreclosure lawsuits despite the fact that Plaintiffs timely made all payments on the Residential Mortgage and Investment Mortgage.

According to AHMSI, Plaintiffs defaulted under the terms of the Residential Mortgage. Also, AHMSI maintains that Plaintiffs have not made any payments on the Residential Mortgage since April 2007, and at that time, Plaintiffs were in arrears on their payments pursuant to the Residential Note and Residential Mortgage. The payment currently due on the Residential Mortgage starts with the April 1, 2007 payment of \$1,459.14, and all payments thereafter through July 2010 for a total of \$58,365.60.

AHMSI also contends that Plaintiffs defaulted under the terms of the Investment Mortgage and that no payments have been made on the Investment Mortgage since February 2007. At that time, according to AHMSI, Plaintiffs were in arrears on their payments pursuant to the Investment Note and Investment Mortgage. The payment currently due on the Investment Mortgage starts with the March 1, 2007 payment of \$852.62 and all payments thereafter through July 2010 for a total of \$34,957.42.

## **ANALYSIS**

In the present motion to establish an escrow account, AHMSI requests that Plaintiff start making payments on the Residential Mortgage starting with the April 2007 payment moving forward. Also, AHMSI requests that Plaintiffs begin making payments starting with the March 2007 payment and moving forward as to the Investment Mortgage.

In response, Plaintiffs maintain that the funds at issue are not before this Court, but instead concern the state court foreclosure proceedings in the Circuit Court of Cook County and the 13th Judicial Circuit Court in LaSalle County. The Court agrees. Simply put, AHMSI seeks to protect the funds that are subject to the

foreclosure lawsuits in state court – not funds related to the present RESPA lawsuit. *See Hensley Const., LLC v. Pulte Home Corp.*, 399 Ill.App.3d 184, 191, 339 Ill.Dec. 490, 926 N.E.2d 965 (Ill. 2010); *All Seasons Excavating Co. v. Bluthardt*, 216 Ill.App.3d 504, 513, 159 Ill.Dec. 703 576 N.E.2d 372 (Ill. 1991). Because these funds are specific to the state court foreclosure actions, the Court denies AHMSI’s motion to establish an escrow account in the present lawsuit.