

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
AS TRUSTEE OF ARGENT SECURITIES, INC., ASSET  
BACKED PASS THROUGH CERTIFICATES, SERIES  
2003-W5, UNDER THE POOLING AND SERVICING  
AGREEMENT DATED AS OF OCTOBER 1, 2003,

Plaintiff,

v.

GARY BOYD, JACQUELINE J. BOYD, CURRENT  
SPOUSE OR CIVIL UNION PARTNER, IF ANY, OF  
GARY BOYD, CURRENT SPOUSE OR CIVIL UNION  
PARTNER, IF ANY, OF JACQUELINE J. BOYD,  
UNITED STATES OF AMERICA and UNKNOWN  
OWNERS AND NON-RECORD CLAIMANTS,

Defendants.

Case No. 12-cv-714-JPG-PMF

**MEMORANDUM AND ORDER**

This matter comes before the Court on the motion to vacate the judgment in this case filed by plaintiff Deutsche Bank National Trust Company, As Trustee Of Argent Securities, Inc., Asset Backed Pass Through Certificates, Series 2003-W5, Under The Pooling And Servicing Agreement Dated As Of October 1, 2003 (“Deutsche Bank”) (Doc. 31). The United States has responded to the motion (Doc. 32), and Deutsche Bank has replied to that response (Doc. 33).

On June 6, 2013, the Court dismissed this case with prejudice as to the United States pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute. The Court found Deutsche Bank had failed to obey a court order to appear for the Final Pretrial Conference and had failed to prosecute this case by failing to comply with discovery rules and by failing to appear. The Court further dismissed the claims as to all the other defendants, none of whom had been served, pursuant to Federal Rule of Civil Procedure 4(m) for failure to serve in a timely manner.

The Court has reviewed the briefing on the motion and finds it is appropriate to vacate the

judgment in this case. Judgment of dismissal with prejudice as to the claims involving the United States is too harsh in the circumstances of this case without prior warning and/or imposing lesser sanctions first. Dismissal without prejudice as to the other defendants is too harsh without giving Deutsche Bank an opportunity to show good cause or excusable neglect for its failure to timely serve those defendants. However, the denial of the motion for summary judgment will not be vacated in light of Deutsche Bank's failure to carry the burden of proving entitlement to judgment as a matter of law.

Accordingly, the Court:

- **GRANTS** the motion to vacate the judgment in this case (Doc. 31);
- **VACATES** the judgment (Doc. 29) and **REINSTATES** this case;
- **ORDERS** Deutsche Bank to **SHOW CAUSE** on or before August 9, 2013, why its claims as to the unserved defendants should not be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m) for failure to serve process in a timely manner; and
- **ORDERS** that a Final Pretrial Conference is set for September 13, 2013, at 9:30 a.m. and a Bench Trial is set for September 23, 2013, at 9:00 a.m. These dates will remain on the calendar unless the Court specifically notifies the parties otherwise.

**IT IS SO ORDERED.**

**DATED: July 31, 2013**

s/J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**