

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

CIVIL ACTION NO. 08-459-JBC
(Related action: Lexington Civil Action No. 09-362)

GMAC MORTGAGE, LLC,

PLAINTIFF,

V. MEMORANDUM OPINION AND ORDER

HEATHER BOONE MCKEEVER, ET AL.,

DEFENDANTS.

* * * * *

This matter is before the court on the motion one of the defendants, Shane Haffey, to dismiss the complaint in an action styled *Deutsche Bank Trust Company Americas v. Haffey, et. al.*, Lexington Civil Action 09-362, which is part of this consolidated action. For the reasons below, the court will deny the motion.

I. Background

This case is one of three pending consolidated actions involving property located at 3250 Delong Road in Lexington, Kentucky.¹ Deutsche Bank brought this foreclosure action against Heather McKeever and Shane Haffey, a married couple, on November 9, 2009. Lexington Civil Action 09-362, R. 1. On February 9, 2010, McKeever filed an answer/counter-claim/third-party complaint and moved to consolidate the instant foreclosure case with the other consolidated cases. *Id.* at R. 17, R. 18. That same day, Haffey moved to dismiss the complaint. R. 19. The

¹See Lexington Civil Actions No. 08-459, 08-510, and 09-362. Two other consolidated actions, 08-456 and 09-255, have been dismissed.

court granted McKeever's motion to consolidate on February 11, 2010 (R. 20) and Deutsche responded to the motion to dismiss on March 1, 2010 (R. 21). Haffey did not reply and the matter is ripe for review.

II. Analysis

As the current holder of the note and assignee of the mortgage, Deutsche has standing to pursue foreclosure. Deutsche attached to its complaint a copy of the assignment of the mortgage from Mortgage Electronic Registration Systems, Inc. ("MERS") to Deutsche. R. 1, Exh. 3; *See* Fed. R. Civ. P. 10(c). Deutsche also stated that it was the holder of the promissory note executed by the Haffeyes. R. 1 at 3. Although Haffey asserts that the underlying assignment was fraudulent, this allegation does not render Deutsche's pleading deficient, and is a factual question that can be addressed on a motion for summary judgment or at trial. In addition, Haffey provides no support for his assertions that the other cases included in this consolidated action preclude the instant lawsuit or that consolidation will cause irreparable harm.² Because Haffey has not articulated a legitimate basis for dismissal, his motion is without merit.

III. Conclusion

Accordingly,

IT IS ORDERED that the motion to dismiss, R. 19, is **DENIED**.

²Although Haffey contends consolidation will result in irreparable harm, interestingly the motion to consolidate was filed by McKeever, not Deutsche.

Signed on June 18, 2010



Jennifer B. Coffman

JENNIFER B. COFFMAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY