

Plaintiff,

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEM, et al.,

Defendants.

CASE NO. 1:11-CV-02492

OPINION & ORDER [Resolving Doc. No. <u>5</u>]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

With this case, originally filed in Rhode Island state-court, Plaintiff Beverly Bradley seeks injunctive and declaratory relief against Defendants Mortgage Electronic Registration System and AmTrust Bank. Bradley seeks a declaration that a mortgage held by AmTrust is void, an injunction on eviction proceedings, and an order quieting title. [Doc. <u>1-2.</u>]

:

AmTrust is, however, in receivership, with the Federal Deposit Insurance Corporation (FDIC) as receiver. *See* [Doc. <u>4</u>.] On November 16, 2011, FDIC removed Bradley's action to this Court, [Doc. <u>1</u>], and the Court granted FDIC's motion to substitute itself for AmTrust Bank, [Doc. <u>4</u>]. On November 23, 2011, FDIC moved to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and 12 U.S.C. § 1821(d)(3)-(8) & (13) and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Bradley did not respond. Finding that Bradley failed to exhaust the administrative remedy and fails to state a claim upon which relief may be granted, the Court GRANTS FDIC's motion to dismiss.

On a factual jurisdictional attack, such as this one, the Court must "weigh the conflicting

Case No. 1:11-CV-02492 Gwin, J.

evidence to arrive at the factual predicate that subject matter jurisdiction exists or does not exist." <u>Ohio Nat'l Life Ins. Co. v. United States</u>, 922 F.2d 320, 325 (6th Cir. 1990). Moreover, this Court "has wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts." <u>Id.</u> To survive a motion to dismiss under <u>Rule 12(b)(6) of the Federal</u> <u>Rules of Civil Procedure</u>, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." <u>Ashcroft v. Iqbal</u>, 129 S.Ct. 1937, 1949 (2009) (citing <u>Bell Atlantic Corp. v. Twombly</u>, 550 U.S. 544, 570 (2007)).

As part of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), <u>12</u> <u>U.S.C. § 1821(d)</u> establishes the "[p]owers and duties of [FDIC] as conservator or receiver," for a depository institution, including the power to manage the depository institution's assets. Once FDIC is appointed receiver, <u>12 U.S.C. § 1821(d)</u> mandates an administrative-claims process for claims against the depository institution (and the FDIC as receiver). Moreover, <u>12 U.S.C. § 1821(d)(13)(d)</u> provides that "no court shall have jurisdiction over . . . any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver"

That section is not an "absolute bar to jurisdiction." <u>Village of Oakwood v. State Bank and</u> <u>Trust Co., 539 F.3d 373, 385 (6th Cir. 2008)</u> (citing <u>Home Capital Collateral, Inc. v. F.D.I.C., 96</u> <u>F.3d 760, 763 (5th Cir.1996)</u>). But the Village of Oakwood court further explained that 12 U.S.C. § 1821(d)(13)(d) is a statutory exhaustion requirement and that the "failure to file an administrative claim within the period provided by § 1821(d)(6) results in [the claimant] having no further rights or remedies with respect to such claims" <u>Id. at 385-86</u>.

That statutory exhaustion requirement applies to Bradley's claims. On December 4, 2009,

Case No. 1:11-CV-02492 Gwin, J.

the Office of Thrift Supervision closed AmTrust Bank and appointed FDIC as its receiver. [Doc. <u>5-2</u>; Doc. <u>5-3</u>.] Nearly two years later, on November 16, 2011, Bradley filed her complaint.^{1/} [Doc <u>1-2</u>.] Bradley's claim for a declaration that a mortgage held by AmTrust is void is an "action seeking a determination of rights with respect to the assets" of AmTrust Bank. <u>12 U.S.C. § 1821(d)(13)(d)</u>. Accordingly, Bradley's claims against AmTrust, with FDIC as receiver, fall within the class of claims governed by § 1821(d).

Bradley has not fulfilled that section's exhaustion requirements. According to FDIC, Bradley never filed an administrative claim with the FDIC. [Doc 5-1.] Bradley provides no proof (or argument) to the contrary. Because Bradley has not exhausted her administrative remedies as required by § 1821(d), the Court lacks jurisdiction over Bradley's claim.

Furthermore, Bradley's claims for declaratory and injunctive relief are barred by <u>12</u> <u>U.S.C § 1821(i)</u> which provides that "[e]xcept as provided in this section, no court may take any action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver." Citing a D.C. Circuit decision, the Sixth Circuit noted that "§ 1821(j) barred the court from restraining the foreclosure . . . because that would restrain or affect the FDIC's exercise of its powers or functions as . . . receiver." *Superior Bank, FSB v. Boyd (In re Lewis)*, 398 F.3d 735, 740 (6th Cir. 2005) (internal quotation marks omitted) (citing *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1398 (D.C.Cir.1995)).

Similarly, Bradley's complaint, seeking to quiet title and injunctive relief preventing eviction, would "restrain or affect the FDIC's exercise of its powers" as receiver. <u>Id.</u> Accordingly, Bradley's

^{1/}Bradley, apparently aware that FDIC was appointed receiver, states that "the U.S. Office of Thrift Supervision closed down the bank after its' [sic] parent company, AmTrust Financial Corp. filed for Chapter 11 bankruptcy." [Doc. <u>1-2</u>.]

Case No. 1:11-CV-02492 Gwin, J.

claims for injunctive and declaratory relief are barred by $\underline{12 \text{ U.S.C } \$ 1821(j)}$ and, under <u>Federal Rule</u>

of Civil Procedure 12(b)(6), must be dismissed.

For the reasons stated above, the Court GRANTS FDIC's motion to dismiss.

IT IS SO ORDERED.

Dated: February 10, 2012

s/ James S. Gwin

JAMES S. GWIN UNITED STATES DISTRICT JUDGE