

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLAUDIO D. & DALINDA ANDRADE, §  
§  
Plaintiffs, §

v. §

Civil Action No. 3:14-CV-3969-K

COUNTRYWIDE KB HOME LOANS, §  
MORTGAGE ELECTRONIC §  
REGISTRATION SERVICES, INC., §  
G. TOMMY BASTIAN, et al., §  
RECONTRUST COMPANY, NA, BANK §  
OF AMERICA, NA, COUNTRYWIDE §  
HOME LOANS, INC., THE BANK OF §  
NEW YORK MELLON, COLFIN AI- §  
TX 1, LLC, and DOES 1-X, §

Defendants. §

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

After reviewing all relevant matters of record in this case, including the Findings, Conclusions, and Recommendation of the United States Magistrate Judge and any objections thereto, in accordance with 28 U.S.C. § 636(b)(1), the undersigned District Judge is of the opinion that the Findings and Conclusions of the Magistrate Judge are correct in part and they are accepted in part as the Findings and Conclusions of the Court.

For the reasons stated in the Findings, Conclusions, and Recommendation, Bank Defendants’ Motion to Dismiss Plaintiffs’ Complaint and Brief in Support,

filed November 17, 2014 (doc. 5) is GRANTED in part. Plaintiffs' claims regarding the assignment of the deed of trust against Countrywide KB Home Loans, Mortgage Electronic Registration Systems, Inc., ReconTrust Company, N.A., Bank of America, N.A, Countrywide Home Loans, Inc., The Bank of New York Mellon f/k/a the Bank of New York, as Trustee for the Certificateholders CWALT Inc., Alternative Loan Trust 2006-28CB, Mortgage Pass-Through Series 2006-28CB, and CWALT Inc., Alternative Loan Trust 2006-28CB, Mortgage Pass-Through Series 2006-28CB, as they relate to Plaintiffs individually, are DISMISSED with prejudice for failure to state a claim upon which relief can be granted.

Since the bankruptcy trustee declined to intervene in the action as allowed by Fed. R. Civ. P. 17(a)(3), Plaintiffs' claims against the above-referenced defendants regarding the assignment of the deed of trust, as they relate to the bankruptcy estate, are also DISMISSED with prejudice for failure to prosecute.


Since Plaintiffs have timely filed an amended complaint as allowed by the recommendation, the above-referenced defendants' motion to dismiss as to Plaintiffs' wrongful foreclosure claim is DENIED as moot. The action will now proceed against those defendants on the first amended complaint.

Trustee Defendant's Motion to Dismiss, filed December 15, 2014 (doc. 11) is GRANTED. The Court finds the Trustee filed his verified denial in accordance with TEX. PROP. CODE § 51.007(a), containing a proper assertion that, in his reasonable belief, he was named solely in his capacity as substitute trustee. Furthermore,

Plaintiffs failed to file a timely verified response to the Trustee's verified denial giving the Court reason why the Trustee is a necessary party. *See* TEX. PROP. CODE § 51.007(b). Therefore, according to TEX. PROP. CODE § 51.007(c), the Court DISMISSES Trustee Bastian without prejudice from this lawsuit.

**SO ORDERED.**

SIGNED September 1<sup>st</sup>, 2015.

  
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ED KINKEADE  
UNITED STATES DISTRICT JUDGE