

IN THE CIRCUIT COURT OF THE  
FOURTH JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NUMBER: 16-2007-CA-003840-XXXX-MA  
Div. CV-G

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
AS TRUSTEE FOR THE REGISTERED HOLDERS  
OF GSAMP TRUST 2005-SEA1, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2005-SEA1,  
Plaintiff,

v.

MARGARET A MASSEY, et al,  
Defendants.

FILED  
IN COMPUTER  
K. B.

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**SEPARATE DEFENDANT MARGARET A. MASSEY'S MOTION TO DISMISS  
COMPLAINT, ALTERNATIVELY TO MAKE MORE DEFINITE AND CERTAIN**

Comes now the Defendant, Margaret Massey and for her motion to dismiss, alternatively to make more definite and certain, pursuant to Rules 1.130, 1.210(a) and 1.140(b)(6), Fla. R. Civ. P., states:

1. The Plaintiff's complaint is so vague and ambiguous this Defendant cannot reasonably be required to frame a responsive pleading because the complaint fails to attach any document to identify who or what DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR THE REGISTERED HOLDERS OF GSAMP TRUST 2005-SEA1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-SEA1, is; nor can Defendant determine from the Plaintiff's complaint upon what facts the Plaintiff is claiming to be the real party in interest with standing to pursue this foreclosure action on a promissory note which is required by the Florida Rules of Civil Procedure.

2. Plaintiff attaches documents to its complaint that identify an entity that is not the plaintiff as the owner and holder of the mortgage and these documents conflict with the Plaintiff's allegations of material facts in the complaint as to ownership of the subject note and mortgage.

3. The Plaintiff's complaint fails to contain sufficient facts to establish who the Plaintiff is or the plaintiff's relationship to the Defendant, Margaret Massey, or the

plaintiff's relationship or connection to the claim for foreclosure of a promissory note, including the failure to identify the date of the alleged assignment of the mortgage and note to the plaintiff. The Plaintiff alleges in paragraph 2 of its complaint it is "the owner and holder of the subject note and mortgage." These allegations are directly conflicting with the mortgage and other documents attached to the complaint thereby rendering the complaint insufficient to identify who the Plaintiff is or what facts establish the standing of the Plaintiff to file and pursue this foreclosure.

4. Fla. R. Civ. P. 1.130(a) provides in pertinent part: "All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading."

5. When exhibits are inconsistent with the Plaintiff's allegations of material fact as to the real party in interest, such allegations cancel each other out. Fladell v. Palm Beach County Canvassing Board, 772 So.2d 1240 (Fla. 2000); Greenwald v. Triple D Properties, Inc., 424 So. 2d 185, 187 (Fla. 4<sup>th</sup> DCA 1983); Costa Bella Development Corp. v. Costa Development Corp., 441 So. 2d 1114 (Fla. 3<sup>rd</sup> DCA 1983).

6. Florida Rule of Civil Procedure 1.130(b) provides in pertinent part: "Any exhibit attached to a pleading shall be considered a part thereof for all purposes." Because the facts revealed by Plaintiff's exhibits are inconsistent with Plaintiff's allegations as to the ownership of the subject note and mortgage, those allegations are neutralized and Plaintiff's complaint is rendered objectionable. Greenwald v. Triple D Properties, Inc., 424 So. 2d 185, 187 (Fla. 4<sup>th</sup> DCA 1983).

7. Florida Rule of Civil Procedure 1.210(a) provides in pertinent part:

"Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought."

8. The Plaintiff in this action meets none of those criteria. Because the exhibits attached to Plaintiff's complaint are inconsistent with Plaintiff's allegations as to

ownership of the subject promissory note and mortgage, Plaintiff has failed to establish itself as the real party in interest and has failed to state a cause of action.

9. In Florida, the prosecution of a residential mortgage foreclosure must be by the owner and holder of the mortgage and the note. Your Construction Center, Inc. v. Gross, 316 So. 2d 596 (Fl. 4<sup>th</sup> DCA 1975). (However, the second and third district courts of appeal have ruled that merely being the holder of the note provides standing to seek enforcement in a foreclosure action if the holder is acting for the real party in interest. Mortgage Electronic Registration Systems, Inc. v. Revoredo, 955 So. 2d 33 (Fl. 3d DCA 2007); Mortgage Electronic Registration Systems, In. v. Azize, So. 2d , 2007 Fla. App. LEXIS 2418 (Fla. 2d DCA Case no. 2D05-4544, opinion filed, February 21, 2007).

10. Defendant also moves to dismiss count II of the plaintiff's complaint for failing to state a cause of action under F.S. Chapter 71 or F.S. 673.3091.

**WHEREFORE**, Defendant, Margaret Massey, requests this court dismiss the Plaintiff's complaint, alternatively to order the plaintiff to make its complaint more definite and certain in the particulars identified hereinabove, for an award of attorney's fees and for all other relief to which this Defendant proves herself entitled.

**CERTIFICATE OF SERVICE**

The undersigned certifies a true copy of this document has been mailed by U.S. Mail to: Colleen M. Colton, Shapiro & Fishman, LLP, 2424 North Federal Highway, Suite 360, Boca Raton, Florida, 33431, attorney for Plaintiff, this 2/29/07.

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