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## Deutsche Bank Wasn't Cleared To Foreclose In Ark., Suit Says

By **Kaitlin Ugolik**

Law360, New York (March 26, 2012, 5:41 PM ET) -- Deutsche Bank National Trust Co. was hit Thursday with a proposed class action in Arkansas seeking a declaration that the bank wasn't authorized to operate in the state when it foreclosed on homes and transferred their titles in 2010.

Deutsche Bank, acting as trustee for Morgan Stanley ABS Capital I Inc. and other foreign and domestic trusts, conducted many foreclosures and foreclosure sales in Arkansas without obtaining the proper certificates from the secretary of state, invalidating all of the related title transfers, according to the complaint.

"Because [Deutsche Bank], [the Morgan Stanley trust] and all other similarly situated mortgages and trustees failed to comply with the requirements of the Statutory Foreclosure Act, all purported foreclosures are invalid, and [the defendants] did not acquire title to the real property in which they purported to foreclose their mortgage interest," the complaint said.

The named plaintiffs in the putative action, Johnathan D. and Lydia A. Dial, purchased a foreclosed property in Pulaski County, Ark., from Deutsche Bank in March 2010. The property had been foreclosed upon in January, when Deutsche Bank took ownership in its capacity as trustee.

But Deutsche Bank allegedly failed to register with the secretary of state or obtain a certificate of authority and failed to comply with the delivery and payment requirements of the Arkansas' Statutory Foreclosure Act prior to conducting this and other similar transactions, rendering them fraudulent and invalid, according to the Dials.

Because of these failures, the auction of the properties did not in fact foreclose on the previous owners' interest in them and failed to effect a sale or transfer of title, entitling the plaintiffs and others who purchased foreclosed properties from Deutsche Bank to damages.

"On account of their failure to be 'authorized to do business in this state,' neither Deutsche Bank nor [the Morgan Stanley trust] could avail themselves of the procedures of [the Statutory Foreclosure Act]," the complaint said.

The suit seeks a declaration that the previous owners of the properties Deutsche Bank auctioned in Pulaski County maintain title to those properties, that Deutsche Bank breached its covenant of warranty, and that plaintiffs are entitled to equitable and supplemental relief.

Counsel for the parties did not immediately respond to requests for comment Monday.

The plaintiffs are represented by Drake Mann and Christopher L. Travis of Gill Elrod Ragon

Owen & Sherman PA and Sean F. Rommel and James C. Wyly of Wyly-Rommel PLLC.

Deutsche Bank is represented by Elizabeth A. Frohlich and Laya R. Kaigh of Morgan Lewis & Bockius LLP and Charles T. Coleman of Wright Lindsey & Jennings LLP.

The case is Dial et al v. Deutsche Bank National Trust Company et al., case number 4:12-cv-00180, in the U.S. District Court for the Eastern District of Arkansas.

--Editing by Kat Laskowski.

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