

APR 11 2011

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION  
CIVIL ACTION NO. 09-CI-4463

DEUTSCHE BANK NATIONAL TRUST COMPANT  
AS INDENTURE TRUSTEE FOR AMERICAN HOME  
MORTGAGE INVESTMENT TRUST 2005-2, MORTGAGE  
BACKED NOTES, SERIES 2005-2

PLAINTIFF/  
COUNTER/RESPONDENT

vs.

MARK B. MOODY, et al

DEFENDANTS/  
COUNTERCLAIMANTS/  
CROSS-CLAIMANTS

vs.

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.

DEFENDANT/  
CROSS RESPONDENT

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**ORDER**

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This Court reserved ruling on Cross Respondent Mortgage Electronic Registration Systems, Inc.'s ("MERS") motion for summary judgment dismissing all claims alleged in Cross-Claimants' Cross-Claim against it. Said motion was filed on October 6, 2010. This Court heard oral arguments on MERS' motion on December 17, 2010. On January 31, 2011, this Court issued an order requesting MERS to advise whether the fact that MERS' assignment was dated after the Complaint was filed "has any bearing on MERS' dispositive motion." Both parties filed supplemental memorandum. The short answer provided by MERS was that "the post-complaint assignment has no bearing on MERS' right to summary judgment." *See MERS' Supplemental Memorandum in Support of Its Motion for Summary Judgment on Cross-Claim.*

MERS succinctly summarized for the Court its status with respect to the underlying mortgage. According to MERS' summary, the debtors are Mark Moody, Sherrill Moody, and Ivy Ridge Holdings, LLC. The property in question is located at 3960 Winthrop Drive, Lexington, Kentucky. The original note amount was for \$123,500, obtained April 22, 2005. The original lender was American Home Mortgage Acceptance, Inc. ("AHM"). AHM filed for bankruptcy protection in 2007. The original mortgagee was MERS, as nominee for the lender, its successors and assigns. An assignment was made on September 2, 2009, from MERS to American Home Mortgage Servicing, Inc.

Moody filed cross-claims against MERS for violations of the Real Estate Settlement and Procedures Act (RESPA), violations of the Kentucky Usury Statute, KRS 360.020, claims pursuant to KRS 286.8-060, defamation of title, violations of the Fair Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA), violations of Kentucky Deceptive and Unfair Trade Practices Act, KRS 365 and KRS 367.170, breach of fiduciary duty, fraud claims, violations of Kentucky's Consumer Protection Act, KRS 367, claims for conspiracy and violations of the Racketeer Influence and Corrupt Organizations Act (RICO), breach of contract claims, violations of the Kentucky Financial Services Code (KFSC), KRS 286 and the Kentucky Residential Mortgage Fraud Act (KRMFA), KRS 286.8-990, as well as violations of two criminal statutes KRS 516.030, Forgery in the Second Degree, and KRS 516.060, Criminal Possession of Forged Instrument in the Second Degree.

MERS contends that all these claims fail as a matter of law and, thus, MERS is entitled to summary judgment. Particularly, MERS contends that it holds legal title, but the lender owns the beneficial interest. MERS records the mortgage, tracks ownership and transfers of said mortgage. MERS does not originate, negotiate, service or close the loan. MERS has had no

contact or communication with the borrower and MERS is not seeking affirmative relief against the borrowers in this case.


The Court has now reviewed the relevant case law regarding who has standing to challenge an assignment and finds MERS position to be correct. The Moodys do not have standing to contest the validity of the assignment of their mortgage from MERS to AHMS. The Moodys are not parties to the assignment. *See Bridge v. Aames Capital Corporation*, 2010 WL 3834059 (N.D. Ohio). *See also Rogan v. Bank One*, 457 F.3d 561 (6<sup>th</sup> Cir. 2006).

As previously noted in the January 31, 2011 Order, this Court has reviewed the Opinion & Order entered by Judge Coffman granting its Motion for Summary Judgment in the federal action *GMAC Mortgage, LLC v. Heather Boone McKeever*, United States District Court, Eastern District of Kentucky, Civil Action No. 08-510. Many of the legal issues raised above were addressed in Judge Coffman's Opinion & Order granting summary judgment in favor of MERS. This Court now finds that case to be dispositive of the same cross-claims raised herein by Moody against MERS.

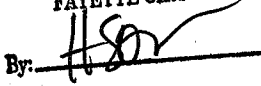
Based on the foregoing, this Court finds that the Moodys lack standing to challenge the assignment from MERS to AHMS. Since the assignment is now a nonissue, and only affects the Moodys' affirmative defenses, if any, to the underlying Complaint, MERS is entitled to judgment as a matter of law on the Moodys' cross-claims.

MERS' Motion for Summary Judgment on the Moodys' Cross-Claims is hereby **SUSTAINED**. There being no just cause for delay, this is a final and appealable Order.

SO ORDERED this 8<sup>th</sup> day of April, 2011.

  
JUDGE, FAYETTE CIRCUIT COURT  
FOURTH DIVISION

A True Copy  
ATTEST: WILMA F. LYNCH, CLERK  
FAYETTE CIRCUIT COURT

By:  Deputy

**CLERK'S CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Order was mailed, first class, postage prepaid, on this 11<sup>th</sup> day of April, 2011 to the following:

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WILMA F. LYNCH, CLERK  
FAYETTE CIRCUIT COURT

BY: \_\_\_\_\_

*H. Son*

D.C.