UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Deutsche Bank National Trust Company, as trustee of Argent Mortgage Securities, Inc. Asset Backed Pass Through Certificates, Series 2006-W3 under the Pooling and Servicing Agreement Dated as of March 1, 2006, Without Recourse	:	**Case No. 1:07-cv-357**
	:	**District Judge Christopher A. Boyko**
Plaintiff	:	**MOTION TO RECONSIDER DISMISSAL ON GROUNDS OF LACK OF STANDING AND SUBJECT MATTER JURISDICTION**
vs.	:	
Clayborne Moore, Jr., et al.	:	
Defendants.		

MOTION TO RECONSIDER DISMISSAL ON GROUNDS OF LACK OF STANDING AND SUBJECT MATTER JURISDICTION

Now comes Plaintiff Deutsche Bank National Trust Company, as trustee of Argent Mortgage Securities, Inc. Asset Backed Pass Through Certificates, Series 2006-W3 under the Pooling and Servicing Agreement Dated as of March 1, 2006, Without Recourse (hereinafter, "Plaintiff"), by and through undersigned counsel, and hereby moves this Court under Fed.R.Civ.P. 59(e) to reconsider its order dismissing this action on grounds that the Plaintiffs lacked standing to pursue foreclosure and/or that this Court lacked jurisdiction over the subject matter. A memorandum in support is attached.

Respectfully submitted,
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MEMORANDUM IN SUPPORT

On October 10, 2007, this Court dismissed the above-mentioned foreclosure cases on grounds that the Plaintiffs had failed to establish standing and subject matter jurisdiction at the time Plaintiffs filed their Complaints. Specifically, this Court determined that Plaintiffs were "not the owner[s] and holder[s] of the Notes and Mortgages at the time the Complaints were filed."

However, Plaintiffs were in fact the owners and holders of the Notes and Mortgages at the time they filed Complaints in foreclosure in these dismissed cases. Indeed that fact is the only one that matters with respect to Plaintiffs' standing to file. The factual record is replete with evidence, evidence that no other party has challenged or opposed, that Plaintiffs were the owners and holders of the Notes and Mortgages when they filed the Complaints.

Plaintiffs have claimed in their Complaints that they are the owners and holders of the Notes and Mortgages and have included a good-faith jurisdictional statement establishing federal diversity jurisdiction. These allegations have not been opposed by any party. Plaintiffs have also submitted unopposed affidavits stating that they are the owners and holders of the Notes and Mortgages. Finally, Plaintiffs have filed assignments of mortgages, evidencing the transfer of the security interest to the Plaintiffs that occurred **before** the Complaints were filed.

In any event, to establish standing and subject matter jurisdiction in federal court, Plaintiffs are not required to be the owners and holders of the Notes and Mortgages at the time they file Complaints. Neither federal standing doctrine nor Fed.R.Civ.P. 17(a) requires Plaintiffs to be the owners and holders of Notes and Mortgages when they file Complaints in foreclosure proceedings. In fact, under the liberal pleading standards embodied in Fed.R.Civ.P. 17(a),

Courts are denied the power to dismiss actions until parties are given a "reasonable time" to cure standing issues of this type. Nor has there been any finding that diversity of citizenship is lacking in these cases.

For these reasons, Plaintiff respectfully requests that this Court vacate its order dismissing the cases stated in its October 10, 2007 Order.

I. The pleadings and evidence in the record indicate that Plaintiffs were the owners and holders of the Notes and Mortgages at the time Plaintiffs filed Complaints in this Court.

A. Plaintiffs have pled and submitted admissible and unopposed evidence to the Court that Plaintiffs were the owners and holders of the Notes and Mortgages when they filed Complaints.

Plaintiffs' respective Complaints each contain unambiguous allegations that Plaintiffs are the owners and holders of the Notes and Mortgages on which they are foreclosing. Compl. at ¶¶ 9 ("Plaintiff **is** the owner and holder of the Note.") (emphasis supplied) & 12 ("Plaintiff **is** the owner and holder of the Mortgage and is entitled to foreclose on the Mortgage.") (emphasis supplied). Further, Plaintiffs have submitted admissible evidence to this Court indicating unambiguously that Plaintiffs are the owners and holders of the Notes and Mortgages. Finally, Plaintiffs have filed documents reflecting assignments of the Notes and Mortgages to Plaintiffs.

In the face of these filings, and in the absence of any party's challenge to them, the Court has made a finding of fact that Plaintiffs were not in fact the owners and holders of the Notes and Mortgages at the time Plaintiffs filed their Complaints. This finding is erroneous. Unless the Court has determined that Plaintiffs have committed perjury or fraud upon the Court, and/or that Plaintiff's counsel has violated Rule 11 in filing Complaints on Plaintiffs' behalf, then there is no sound basis for the Court's finding of fact. Plaintiffs hope no such finding of perjury or

dishonesty was intended by the Court as such a finding would be both incorrect and harmful to Plaintiffs' reputation for honesty and integrity.

Under Ohio law, a holder of a note is the person who possesses the note instrument and who is entitled to be paid under it. See R.C. § 1301.01(T)(1). Notes and mortgages are inextricably conjoined, such that a holder of a note secured by a mortgage is also the owner of the mortgage. See Kuck v. Sommers (Mercer Cty. 1950), 100 N.E.2d 68, 75 (mortgage equitably assigned when note is assigned, even when mortgage not delivered to assignee). Notes and mortgages are freely assignable in the open market, and an assignee of a full interest in a note and mortgage is possessed of the same rights as the assignor, including the right to foreclose. See Hollinger v. Bates (1885), 43 Ohio St. 437, 445 (free assignability of notes and mortgages); Olympic Title Ins. Co. v. Fifth Third Bank (Montgomery Cty, October 25, 2002), Nos. 193124, 19319, 2002 WL 31398652, at *3 ¶ 19 ("An assignment of a mortgage transfers to the assignee all the rights, powers and equities owned by the mortgagee.").

For an assignee to be a holder and owner of a note and mortgage, the note must be delivered to the assignee, and a writing must exist evidencing the assignment. See Martin v. Drake (Hamilton Cty. C.P. 1887), 10 Ohio Dec Reprint 77, 18887 WL 458, at *3 (title to note and mortgage as assignee sufficient when assignee had possession of the note and an executed assignment). However, there is no requirement under Ohio law that an assignment be recorded, and failure to record an assignment works no prejudice against the assignee as between the assignee and the borrower under the note. See Hollinger, 43 Ohio St. at 446 (statute does not require recording and failure to record cannot divest the assignee of rights and equities under note).

On the facts of these cases, the Plaintiffs are the owners and holders of the notes and mortgages on which they are seeking recovery. The Plaintiffs have possession of both the note and mortgage, and the Plaintiffs have produced a writing evidencing the assignments to the Plaintiffs. Furthermore, Plaintiffs have attached other evidence which indicates unambiguously that Plaintiffs are the owners and holders of the notes and mortgages, including an affidavit from employee-agents of Plaintiffs and a payment history evidencing the borrower-defendants' payments to Plaintiffs under the notes. No evidence has been introduced to suggest that Plaintiffs are not the owners and holders of the notes and mortgages. Additionally, Plaintiffs' counsel has filed hundreds of complaints in foreclosure in the Northern District of Ohio without any indication that Plaintiffs lacked standing or that these filings have violated Rule 11.

Further, the Court's finding of fact is based on the assumption that Plaintiffs are required to do more than simply to satisfy the Federal Rules of Civil Procedure in advancing their claims. Plaintiffs' filings, in addition to Plaintiffs' consistent allegations in their Complaints, already exceed the requirements of the Federal Rules. Plaintiffs cannot be required to do more without raising equal protection issues.

Plaintiffs are concerned that the Court's Order appears to have created a presumption, even if unintentionally, of dishonesty and misrepresentation by Plaintiffs that is not based on fact and is not provided for by law. The correct presumption is that parties are accurately and truthfully representing their status to the Court and that if a mistake is made there will be an opportunity to cure. Counsel for Plaintiffs signed his name in good faith to properly-pled complaints with accurate statements as to the Plaintiffs' holder and owner interests, citizenship, venue, jurisdiction, and the authority of the Court. That is sufficient under the Federal Rules of

Civil Procedure and the federal court's jurisprudential law interpreting the federal rules and statutes.

Plaintiffs, however, have gone beyond those requirements to provide admissible evidence in the form of a sworn affidavit of holder and real party in interest status, a payment history, and an assignment to provide the Court with a higher comfort level than the law requires. The law does not permit the Court to create a presumption that Plaintiffs are misrepresenting their holder status and then to make that presumption rebuttable by one and only one piece of evidence.

Plaintiffs acknowledge and respect the Court's duty to exercise only proper jurisdiction. Plaintiffs ask for nothing more. Plaintiffs note, however, that in a related Order denying extension of the seven days given to obtain satisfactory assignments, the Court suggests that its presumption against Plaintiffs' holder status may arise from the impulse to hold Plaintiffs to a higher standard on the ground that foreclosure cases are unique and that the consequence of a foreclosure sale is the loss of the borrower's home. These are understandable concerns, but **all** Court cases involve important interests of the parties. The Equal Protection Clause of the 14th Amendment to the Constitution prevents courts from identifying classes of litigants and departing from established rule either to raise or lower the bar for their admission to court. This Court lacks the discretion to apply the law differently so as to place additional jurisdictional burdens on the limited class of foreclosure Plaintiffs.

B. The factual circumstances provide additional guarantees that Plaintiffs' allegations, sworn statements, and assignments are reliable and sufficiently evidence Plaintiffs' standing to pursue foreclosure.

Plaintiffs have no basis nor incentive to sue on notes and mortgages held by others. Plaintiffs would have no basis in fact for determining whether notes and mortgages they do not

own and hold are in default. They would not have the payment histories they have filed in these cases, or any other loan records or documents if they were not the holders. Even if Plaintiffs could obtain this information, inevitably the real owners and holders of the notes and mortgages would seek to intervene, assuming the real owners and holders of the notes and mortgages had not themselves already instituted foreclosure proceedings. Additionally, the false "owners and holders" would incur the unnecessary expense of filing fees without any apparent object or advantage. Furthermore, if a Plaintiff foreclosed on a note and mortgage held by another, and the note and mortgage were not in default, doing so would provoke both the borrower and the true owner and holder, and would of course be a useless and wasteful act possibly subject to sanctions.

Plaintiffs' counsel has filed hundreds of foreclosures in the Northern District of Ohio. In each and every case, complaints signed and filed by Plaintiffs' counsel contained accurate and truthful statements of holder and owner status that have never been successfully opposed through the adversarial process. This has remained true despite the obvious incentive for a borrower to challenge Plaintiffs if indeed the Plaintiffs were either dishonest or mistaken. In no case were multiple parties claiming to be the holder of a defaulted mortgage. As a class of Plaintiffs, therefore, the record would appear to confirm the honesty and concern for accuracy characteristic of foreclosure Plaintiffs in general. A presumption against their holder status raising the bar for their admission to federal court is neither supported by the law nor this Court's experience.

Dismissing these cases works an injustice to Plaintiffs because Plaintiffs are in fact, and were in fact at the time the Complaints were filed, the owners and holders of the Notes and Mortgages. The Order should be vacated.

II. Under applicable federal standards, Plaintiffs are not required to be the owners and holders of the Notes and Mortgages when the Complaints are filed.

Even if Plaintiffs were not the owners and holders of the Notes and Mortgages when they filed their Complaints, Plaintiffs have violated no rule, nor are Plaintiffs' actions subject to dismissal. No applicable federal standards require Plaintiffs to be the owners and holders of the Notes and Mortgages when they file Complaints. Neither federal standing jurisprudence nor Rule 17(a) applies to require Plaintiffs to be the owners and holders of the Notes and Mortgages at they time they file Complaints, or else see their Complaints dismissed. Federal standing jurisprudence is almost entirely inapplicable to the facts before this Court, as federal standing principally addresses the question of whether the Plaintiff has suffered an injury.

On the other hand, Rule 17(a), pertaining to the real party in interest standards and embodying the liberal pleading principles of the Federal Rules of Civil Procedure, places no requirement that the Plaintiffs be the owners and holders of the Notes and Mortgages at the time they file Complaints, or else risk dismissal. In fact, the opposite is true, as cases cannot be dismissed unless and until a party is given a reasonable length of time to cure standing issues of this type.

A. Under federal standing jurisprudence, Plaintiffs have standing to pursue foreclosure proceedings against the mortgagors.

Federal standing jurisprudence applies in only a general way to the facts before this Court, in the sense that the Plaintiffs are required to have a sufficient interest in the action to pursue relief on their claims. See 6A Wright and Miller, FEDERAL PRACTICE AND PROCEDURE CIV.2D § 1542 (2007). Otherwise, federal standing doctrine is a complex network of prudential and Article III requirements that principally address the question of whether the plaintiff has

suffered an actual injury caused by the defendant. Id.

Specifically, plaintiffs must satisfy two sets of requirements. First, plaintiffs must show the federal court that an Article III "case or controversy" is before the court, by showing that the plaintiff has been injured and is otherwise entitled to seek redress from the court. See, e.g., Allen v. Wright, 468 U.S. 737, 750-752 (1984). Second, plaintiffs must show the federal court that the plaintiffs are not seeking redress of generalized grievances, that they are asserting their own rights and not the rights of others, and are within the zone of interests protected by the relevant law plaintiffs claim entitles them to relief. See Warth v. Seldin, 422 U.S. 490, 499-500 (1975); Bennett v. Spear, 520 U.S. 154, 163 (1997).

On the facts of these dismissed cases, there is no question that Plaintiffs have suffered an injury, or that they have a sufficient interest in the subject matter of the proceedings. Plaintiffs have provided funds to the mortgagors on condition that mortgagors pay the funds back, and the mortgagors have stopped paying the funds back. In this respect, Plaintiffs have filed pay histories in each case, showing their right to receive payments and the defendants' failure to make them. Every day, Plaintiffs are losing money, an obvious injury. There is no question that Plaintiffs have standing to pursue foreclosure in these cases.

B. Under Rule 17(a), Plaintiffs are the real-parties-in-interest in the dismissed cases, and this Court is not permitted to dismiss these cases unless and until the Plaintiffs are given a reasonable time to cure the standing issues raised by the Court.

Instead, the more applicable standard applying to the standing issues raised by the Court and facts before it is Fed.R.Civ.P. 17(a) ("Real Party in Interest") . See Firestone v. Galbreath, 976 F.2d 279, 283 (6th Cir. 1992) (distinguishing between federal standing doctrine and real party in interest doctrine). Rule 17(a) provides, in pertinent part:

> Every action shall be prosecuted in the name of the real party in interest. . . . **No action shall be dismissed** on the ground that it is not prosecuted in the name of the real party in interest **until a reasonable time has been allowed after objection** for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution **shall have the effect as if the action had been commenced in the name of the real party in interest**.

(Emphasis supplied.) Rule 17(a) unquestionably requires actions to be prosecuted in the name of the real party in interest. However, Rule 17(a) also provides for a liberal means of addressing real party in interest issues short of dismissing the action. First, under the explicit terms of Rule 17(a), no real party in interest issue arises until an objection has been raised and sustained. See also Chicago & Northwestern Transp. Co. v. Negus-Sweenie, 549 F.2d 47, 50 (8th Cir. 1977). In this respect, Rule 17(a) makes no requirement that a Plaintiff establish that it is the real party in interest in the absence of a sustained objection, let alone at the time the complaint is filed. Id. Second, even if a party raises, and the court sustains, a real party in interest objection, the final sentence of Rule 17(a) makes clear that the case cannot be dismissed unless and until the party objected to has a reasonable time to cure the sustained objection. Finally, even if a real party in interest issue must be cured through ratification, joinder, or substitution, the final sentence of Rule 17(a) permits the cure to relate back to the filing of the complaint.

As such, Rule 17(a) provides no explicit nor implicit basis for requiring Plaintiffs to establish that they are the real party in interest in advance of sustained objection or at the time of the filing of the complaint, or else risk dismissal. It is an abuse of discretion when a Court dismisses an action without giving the plaintiff an opportunity to cure a real party in interest issue. See Wieburg v. GTE Southwest, Inc., 272 F.3d 302, 309 (5th Cir. 2001) (stating that "it was an abuse of discretion for the district court to dismiss the action without explaining why the

less drastic alternatives of either allowing an opportunity for ratification by the Trustee, or joinder of the Trustee, were inappropriate").

Rule 17(a) was promulgated in order to avoid the restrictive common law practice of requiring that only the legal title holder, and not the beneficial or equitable interest holder, could maintain an action in a court of law. See Kilbourn v. Western Surety Co., 187 F.2d 567, 571 (10th Cir. 1951) ("The new rules of Federal Procedure were adopted to unshackle the practice of law in the courts from the straight jacket of technical rules of pleading and procedure. The rules were liberalized to the end that there might be more speedy and complete adjudication of a controversy between all interested parties without regard to technicalities and mere formal technical rules.") Most recently, in 1966, the final sentence of Rule 17(a) was added specifically to avoid the injustice of dismissal when a real party in interest question arises. 6A Wright and Miller, FEDERAL PRACTICE AND PROCEDURE CIV.2D Rule 17 (2007) ("Instead, the real party in interest can be joined or substituted and the action continued as if it had been instituted in that party's name."); see also Chicago & Northwestern Transp. Co., 549 F.2d at 50 ("[T]his matter could have been easily disposed of in the trial proceedings. If an objection to plaintiff's right to institute an action is sustained by the trial judge, Rule 17 allows the joinder or substitution of the real party in interest in the action to avoid forfeiture or injustice.")

Even when assignments occur **after** the complaints have been filed, and there is no prejudice to an opposing party, federal courts do not dismiss cases because Rule 17(a) denies them the power to do this. See Kilbourn, 187 F.2d at 571 ("Under Rule 17(a) of the Federal Rules of Procedure, 28 U.S.C.A. [sic], Kilbourn was from and after the written assignment and the filing of the amended pleading, the real party in interest.").

Federal courts have further determined that a mere claim that is assigned **after** the Complaint was filed is sufficient to overcome a real party in interest objection and avoid dismissal. See Campus Sweater and Sportswear Co. v. MB Kahn Construction Co., 515 F. Supp. 64, 84 (D.S.C. 1979) (collecting cases). The Campus Sweater, the federal court found that a tenant was permitted to pursue a products liability action against a roofing manufacturer when the assignment by the property owner to the tenant was made after the complaint was filed. Id. After extensively reviewing the existing case law on assignments and Rule 17(a), the court stated that "[a]lthough Rule 17(a) does not explicitly address the issue of the timeliness of an assignment, courts in construing the rule have held that even when the claim is not assigned until after the action has been instituted the assignee is the real party in interest and can maintain the action." Id.

This Court has dismissed several cases on grounds that the Plaintiffs lacked standing because the Court found that Plaintiffs were not the owners and holders of the Notes and Mortgages at the time they filed Complaints. Neither Rule 17(a) nor any other federal standard requires that Plaintiffs be the owners and holders of the Notes and Mortgages at the time they filed Complaints. Nor did any party raise a proper Rule 17(a) objection that the Plaintiffs were not the real parties in interest which the Court sustained. Further, even if a proper Rule 17(a) objection had been raised and sustained, under Rule 17(a), Plaintiffs are entitled to a reasonable length of time to cure the issue. Instead, Plaintiff's cases were dismissed without a hearing and without having been provided a reasonable length of time to address or settle the standing issue. These actions violate Rule 17(a) and constitute an abuse of discretion.

To the extent that the Court questions the validity of the assignments of the Notes and

Mortgages in the dismissed cases, the assignments are not invalid and do not trigger dismissal under any applicable federal standard. While the assignments in these cases are dated after the Complaints were filed, they are not fraudulent and merely memorialize assignments that occurred long before the Complaints were filed, when large pools of loans were transferred in bulk on the secondary mortgage market. (This is not the only way modern mortgages are transferred, but the large majority are now assigned in this manner.) Only the memorialization of the individual transfer, prepared and filed **because** of the foreclosure action, took place after the complaint filing date.

In every case, the assignments occurred before the Complaints were filed — sometimes years before, sometimes months, and in the rare case, weeks. Plaintiffs were the owners and holders of the Notes and Mortgages in every case before the mortgagors fell far enough behind in payments to be sent to foreclosure, and in any event are not under any duty to be the owners and holders of the Notes and Mortgages when they file Complaints.

Because no applicable rule requires Plaintiffs to have been the owners and holders of the Notes and Mortgages at the time the Complaints were filed, the Court's dismissal of these actions on that basis was erroneous. This Court should vacate its order dismissing these cases and allow them to proceed without further delay.

C. This Court has subject matter jurisdiction over these actions because diversity jurisdiction has not been destroyed and Plaintiffs have not colluded nor committed fraud in assigning the Notes and Mortgages.

Under Section 1332, parties may litigate cases in federal court if the citizenship of the parties is diverse and the amount in controversy exceeds $75,000. Because this Court's Order dismissing these cases does not address the amount in controversy, the basis for this Court's

order dismissing these cases for lack of subject matter jurisdiction is lack of diversity. However, diversity is not lacking on the facts of these cases.

Again, the issue is whether Plaintiffs were proper parties in interest with standing to sue when they filed their complaints, or following a reasonable opportunity to cure that relates back to the filing date. The foreclosure Plaintiffs qualify on both grounds. They are the undisputed holders and owners at the time of filing and, for the convenience of the Court and accuracy of the public records, have executed and filed a memorialization that they have no legal obligation to file that cures any perceived uncertainty as to holder status. In any event, Plaintiffs are entitled to a reasonable length of time under rule 17(a) to cure this issue. Dismissal for lack of subject matter jurisdiction is not proper.

Furthermore, Plaintiffs' respective assignments were not executed out of collusion nor fraud in order to create diversity jurisdiction. As such, Plaintiffs have not violated the anti-collusion statute. See 28 U.S.C. § 1359 ("A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court."). Federal courts have determined that an assignment is deemed valid if it has been executed for a nonfraudulent and legitimate business purpose. See, e.g., Tower Realty v. City of East Detroit, Mich., 185 F.2d 590, 593 (6th Cir. 1950) ("The test is whether [the assignment] . . . is done with the purpose and in such a manner as to work a fraud upon the federal court by creating a temporary and, in reality, a spurious citizenship."). If the assignor has assigned its interest for a valid business purpose and the assignee's citizenship creates jurisdiction, subject matter jurisdiction exists, provided the amount in controversy is met. Because Plaintiffs were assigned the Notes and Mortgages for valid

purposes, their assignments are valid and subject matter jurisdiction is present.

III. Dismissing these cases requires the performance of useless acts and compromises the status of numerous cases before this Court that are pending or which have been closed.

If this Court's Order dismissing these cases is not vacated, Plaintiffs will be required to re-file their Complaints anew and to incur additional costs attendant to re-filing and delay. As a general rule, Courts should not require the performance of useless acts that unnecessarily increase the costs of parties when there are adequate means of disposing of outstanding issues short of dismissal. See, e.g., Fed.R.Civ.P. 15 (relation back rule) & 17(a) (stating that no case should be dismissed on grounds that the plaintiff is not the real party in interest until the plaintiff is provided a reasonable length of time to cure and, if cured, the cure relates back to the filing of the complaint). Plaintiffs are now forced to re-file numerous cases when there is no legal nor equitable basis for doing so, and when doing so unnecessarily increases the costs for Plaintiffs through re-filing charges and delay. By contrast, the mortgagor-defendants in these actions are permitted the inequitable benefit of avoiding paying their mortgages for an even longer period of time than they have to this point.

The Court's finding of fact and subsequent dismissal of numerous cases on this ground has worked another set of problems. In its Order dismissing these cases, the Court has also stated that Plaintiffs have not established subject matter jurisdiction. This conclusion of law has called into question the status of numerous federal foreclosures that are currently pending or even those that have been closed. If this Court lacks, or even has lacked subject matter jurisdiction, in the pending or closed cases, then these cases are subject to vacation and dismissal, even after foreclosed properties have been sold and transferred to other parties. Plaintiffs do not believe the

Court could have intended this result.

Plaintiffs have shown that dismissal of these cases is not proper on legal grounds. The practical consequence of dismissal speaks even more loudly against such a result. Assignments have been prepared and filed in each case naming Plaintiff as the holder. By the Court's own reasoning, these cases were properly refileable on the day they were dismissed. It has long been the rule in Ohio and federal courts in every context that the law abhors the doing of a useless act. See Evans v. Eaton, 20 U.S. 356, 413 (1822) ("The law requires nobody to do that which would be useless if done, or it is impossible to do."); MX Group, Inc. v. City of Covington, 293 F.3d 326, 344 (6th Cir. 2002) ("[t]he law requires no one to perform a useless act.") (internal citations omitted); Northern Ohio Chapter of Associated Builders & Contractors, Inc. v Gateway Economic Development Corporation of Greater Cleveland, No. 1:92 CV 0649, 1992 WL 119375 at *6 (N.D. Ohio May 12, 1992) ("It is a long standing proposition that the law never requires a vain or useless act.") (citing Cary v. Curtis, 44 U.S. 236 (1845)). However, by dismissing these cases and requiring them to be re-filed, when nothing has changed, this Court has required the performance of the useless act of re-filing.

This is in large part the reasoning behind the Rule 17(a) jurisprudence on relation back and cure. It is also part of the reasoning behind the Civil Justice Reform Act of 1990, 28 U.S.C. 471 et seq. (Supp. 1991); see Mindek v. Rigatti, 964 F.2d 1369, 1374 (3rd Cir. 1992) ("Congress enacted the Civil Justice Reform Act of 1990 after having found that unnecessary costs and delays in the federal judicial system had seriously decreased access to the courts and that 'solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litgants' attorneys, and by the Congress and the executive branch.'") (Citations

omitted.) To dismiss a case for lack of standing or real party in interest status when all, including the Court, agree that it could be refiled the same day by the same party without changes to the documents, and meet all jurisdictional requirements, is not a ruling that accomplishes an legitimate objective. Its only effect is to cause Plaintiffs extra expense and delay. Accordingly, Plaintiffs respectfully request that the Court reconsider its dismissal of all the foreclosure cases and restore them without the repayment of a filing fee to the active docket at their procedural posture on the date of the dismissal.

CONCLUSION

Plaintiffs are the owners and holders of the Notes and Mortgages in these cases and were when the Complaints were filed. The Court has made an erroneous finding of fact. Even if Plaintiffs were not the owners and holders when the Complaints were filed, under Rule 17(a) Plaintiffs are protected from the drastic and inequitable remedy of dismissal. It was an abuse of discretion for this Court to dismiss these cases without allowing Plaintiffs a reasonable time to address the real party and interest issue. For all of the reasons stated above, this Court should vacate its Order and reinstate these cases. Plaintiffs request the privilege of a hearing on their motion and the opportunity to answer any further questions the Court may have regarding these and any other issues of concern to the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 24, 2007, a copy of the foregoing Motion to Reconsider was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

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