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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

KALE KEPEKAIO GUMAPAC, and DIANNE LEE GUMAPAC,

Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2; DEUTSCHE BANK NATIONAL TRUST COMPANY, N.A., AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2, DEUTSCHE BANK NATIONAL TRUST COMPANY, LLC., ARGENT SECURITIES INC., JOHN DOES 1-10

Attorney for Defendants.

CASE NO.: CV11-10767-ODW (CWX)

NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

REQUEST FOR JUDICIAL NOTICE; DECLARATION OF RICHARD R. SUTHERLAND; AND [PROPOSED] ORDER FILED CONCURRENTLY HEREWITH

Date: March 12, 2012
Time: 1:30 p.m.
Courtroom: 11

Judge: Hon. Otis D. Wright II

Complaint Filed: January 18, 2012
Trial Date: N/A

TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 12, 2012 at 1:30 p.m. or as soon thereafter as the matter may be heard before Honorable Otis D. Wright II in Courtroom 11, located at 312 N. Spring Street, Los Angeles, CA 90012, pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, Defendant Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2006-W2 ("Deutsche") will move the Court for an order dismissing Plaintiffs Kale Kepekaio Gumapac and Dianne Lee Gumapac ("Plaintiffs") Complaint (the "Complaint") on the grounds that the Court lacks subject matter jurisdiction and the Complaint fails to state any claim upon which relief can be granted.

This Motion is based on this Notice of Motion and the attached Memorandum of Points and Authorities; the accompanying Request for Judicial Notice and Declaration of Sherrill A. Oates; all pleadings and papers on file in this action; and such other and further matters as the Court may consider.

This motion follows the conference of counsel pursuant to Local Rule 7-3 which took place on February 3, 2012.

Dated: February 8, 2012

SMITH DOLLAR PC

/s/ Sherrill A. Oates

By _____
Sherrill A. Oates
Richard R. Sutherland
Attorneys for Defendants Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2006-W2 and Deutsche Bank National Trust Company, LLC

Table of Contents

CASES

STATUTES

Table of Contents

Defendants Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2006-W2 ("Deutsche") and Deutsche Bank National Trust Company, LLC ("Deutsche Trust Co."; with Deutsche, "Defendants") respectfully submit the following points and authorities in support of its Motion to Dismiss Plaintiffs Kale Kepekaio Gumapac and Dianne Lee Gumapac's ("Plaintiffs") Complaint as follows:

I. INTRODUCTION

Plaintiffs contend that the foreclosure of their mortgage was improper for various reasons, including that the mortgage was invalid because Plaintiffs never had an interest that could be secured or that the assignment of Plaintiffs' mortgage did not comply with Kingdom of Hawaii law. These contentions are centered on one erroneous theory: that Hawaii is a sovereign nation which may employ its own laws and that the laws of the State of Hawaii are invalid and to be ignored. Plaintiffs' basis for this action has been soundly rejected more than a decade earlier by Hawaii's own state courts.

Plaintiffs lack standing to bring these claims since the foreclosure and recording of the Mortgagee's Quitclaim Deed extinguished all legal and equitable rights Plaintiffs may have had to challenge the foreclosure. This Court should find that Plaintiffs' Complaint fails to state any claims upon which relief may be granted and should be dismissed with prejudice.

II. FACTS

A. The Loan, Default and Foreclosure by Power of Sale

In or about April 2002, the Plaintiffs, through a warranty deed, obtained title to 15-1716 2nd Avenue, Keaau, Hawaii (the "Property") from Linda and Alice Little. *See* Complaint, Ex. 1, Enclosure 1, Ex. C.[1] In 2005, the Plaintiffs refinanced the

[1] Plaintiffs appear to have "obtained" the Property through the State of Hawaii's mechanism for property ownership and transfer (the warranty deed was recorded by the State of Hawaii pursuant to its laws) and not pursuant to any title, recording or other requirements of the Kingdom of Hawaii.

Property with a $290,000 loan. *Id.* at Ex. 1, Enclosure 1, Ex. D.

Pursuant to the requirements of the State of Hawaii, the Plaintiffs' mortgage was assigned. *See* Complaint, Exs. 2 and 3. At some point, Plaintiffs defaulted on their payments and foreclosure proceedings were instituted, the power of sale exercised, Plaintiffs' mortgage extinguished and the Mortgagee's Affidavit of Foreclosure Under Power of Sale ("Affidavit") recorded. *See* Request for Judicial Notice ("RJN"), Ex. 6. After exercising the power of sale contained in Plaintiffs' mortgage and recording the Affidavit, the foreclosing mortgagee quitclaimed the deed pursuant to that power of sale, thereby transferring to the grantee title to the Property and, once recorded, creating a new Transfer Certificate of Title ("TCT"). *See* Complaint, Ex. 4, Mortgagee's Quitclaim Deed Pursuant to Power of Sale ("Mortgagee's Quitclaim Deed").

III. LEGAL ARGUMENT

A. Legal Standard for Granting Motion to Dismiss Pursuant to Rule 12(b)(1) and (6)

Plaintiffs have brought their claims in this Court based upon diversity jurisdiction. "To premise jurisdiction on diversity, Plaintiff must include in his Complaint allegations regarding both the diversity of citizenship and the proper amount in controversy." *Wilson v. Fisch*, 2009 U.S. Dist. LEXIS 14314, *6 (D. Haw. Feb. 24, 2009).

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move to dismiss a cause of action if the plaintiff fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). In evaluating the sufficiency a complaint under Rule 12(b)(6), courts should be mindful that the Federal Rules of Civil Procedure generally require only that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *See* Fed. R. Civ. P. 8(a)(2). Although detailed factual allegations are not required to survive a Rule 12(b)(6) motion to dismiss, a complaint that "offers 'labels and

conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Rather, the complaint must allege sufficient facts to support a plausible claim to relief. *See id.* In evaluating a Rule 12(b)(6) motion, the court must engage in a two-step analysis. *See id*. at 1950. First, the court must accept as true all non-conclusory, factual allegations made in the complaint. *See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993). Based upon these allegations, the court must draw all reasonable inferences in favor of the plaintiff. *See Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943, 949 (9th Cir. 2009). Second, after accepting as true all nonconclusory allegations and drawing all reasonable inferences in favor of the plaintiff, the court must determine whether the complaint alleges a plausible claim for relief. See *Iqbal*, 129 S. Ct. at 1950. Despite the liberal pleadings standards of Rule 8, conclusory allegations will not save a complaint from dismissal. *See id.*

IV. THE COURT LACKS SUBJECT MATTER JURISDICTION.

Plaintiffs' claims were brought in this court based upon Plaintiffs' theory that diversity of citizenship existed under 28 U.S.C. § 1332. *See* Complaint ¶ 17. Nowhere in the Complaint do Plaintiffs plead the amount in controversy. *Wilson*, *supra*, 2009 U.S. Dist. LEXIS 14314, *6.

Plaintiffs have named Ticor Title Insurance, Inc. ("Ticor") as a "party and participant" in this matter. Complaint ¶ 5. Plaintiffs plead that Ticor is a Hawaii corporation and therefore, its participation in this litigation destroys diversity. *Id.* Defendants submit that this Court lacks subject matter jurisdiction and the matter should be dismissed in its entirety pursuant to Fed. R. Civ. Proc. 12(b)(1).

V. THE COMPLAINT PRESENTS A NON-JUSTICIABLE POLITICAL QUESTION

Plaintiffs ask this Court, sitting in California, to determine whether Hawaiian

State law regarding real property is valid or alternatively, to decide that Hawaii is not one of the United States and is instead a sovereign nation. Defendants submit that the entire Complaint presents a nonjusticiable political question. *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1275 (9th Cir. Haw. 2004). The entire action should be dismissed because the claims alleged present a nonjusticiable political question.

VI. EACH OF PLAINTIFFS' CLAIMS IS BASED UPON THE ERRONEOUS "KINGDOM OF HAWAII" THEORY.

All of Plaintiffs' claims in this matter are based upon the theory that the mortgage was unenforceable because of a title defect. Plaintiffs' alleged "title defect" claim arises out of the "expert" report of Dr. Keanu Sai. Complaint, ¶ 60. This is not Dr. Sai's first attempt to raise Hawaiian national sovereignty as a way to interfere with others' property rights.

The tactics of Plaintiffs and Dr. Sai are identical to those employed by Perfect Title Company in the late 1990s in Hawaii. The only difference is that the document recorded by Perfect Title Company then was entitled "Notice of Investigation upon a Claim to Fee-simple" rather than a "Notice of Defect of Title." Request for Judicial Notice ("RJN"), Ex. 1. While the document names may differ and the "Notice of Defect of Title" in this case does not appear to have been recorded, the relevant parties and the purpose of the documents are the same. Dr. Sai and Mr. Gumapac, under the banner of Laulima, LLC, attempt in this case, as Mr. Sai did a decade before with Perfect Title Company, to cloud title with claims of sovereignty and a broken chain of conveyances.

In the late 1990s as the frivolous recorded documents created by Perfect Title Company began to affect the transferability of title, several lawsuits were filed. Most lawsuits arose out of Section 507D of the Hawaii Revised Statutes (hereinafter "HRS") "Nonconsensual Common Law Liens and Frivolous Financing Statements" which was enacted in 1996. HRS § 507D-1 made it clear that filings such as those recorded by Perfect Title Company were to be tolerated no longer:

> **507D-1 Findings and purpose.** The legislature finds that there is a problem with the recording at the land court or the bureau of conveyances of invalid instruments which purport to affect the property interests of various persons, including but not limited to government officers and employees. These instruments, which have no basis in fact or law, have a seriously disruptive effect on property interests and title. They appear on title searches and other disclosures based on public records, and are costly and time-consuming to expunge. When they so appear, they may obstruct a property owner's ability to transfer title or obtain title insurance and financing. . .
>
> The legislature finds that it is necessary and in the best interests of the State and private parties to legislatively provide a means to relieve this problem, and to limit the circumstances in which nonconsensual common law liens shall be recognized in this State and to remedy the filing of frivolous financing statements.

In the lawsuits filed concerning Perfect Title Company, the plaintiffs argued that the "Notice of Investigation upon a Claim to Fee-simple" and any other documents recorded by Perfect Title Company for that matter were "Nonconsensual Common Law liens." Courts across the State of Hawaii and the United States District Court for the District of Hawaii agreed.

In *Andrade v. Perfect Title Company*, S.P. No. 96-025(K), the Honorable Ronald Ibarra, issued an "Order Granting Plaintiff's Motion for Summary Judgment and Ancillary Relief Pursuant to Act 24, 1996 S.L.H." (which later became HRS § 507D). In that Order, Judge Ibarra ruled that the documents filed by Perfect Title Company that alleged that all conveyances of government lands in Hawaii, including the property that was subject of that action were themselves "invalid and of no legal effect." RJN, Ex. 2, p.3.

In *Suan v. Hauki*, Civ. No. 89-0005(2), the Honorable Shackley Raffetto issued an "Order Granting Petition to Expunge Invalid Instruments" on May 5, 1997. Judge Raffetto again found that the documents recorded by Perfect Title Company were

"invalid and shall be stricken and released upon entry of this order." RJN, Ex. 3, p 7.

In *Cyril Thomson Mitchell Trust v. Perfect Title Company, et. al.*, Civ. No. 97-191, the Honorable Riki May Amano entered her "Findings of Fact, Conclusions of law and Order Granting Motion for Summary Judgment to Grant Petition Filed Pursuant to HRS § 507D-1 *et seq*" on August 8, 1997. Judge Amano ruled that the documents filed by Perfect Title Company were "nonconsensual common law liens within the meaning of HRS § 507D." Judge Amano went on to say that the documents were "invalid and of no legal effect" and "without basis in law or in fact and . . . frivolous." RJN, Ex. 4, p. 8.

The United States District Court for the District of Hawaii reached the same conclusion. In *United States of America v. 4.030 Acres of Land, et. al.*, USDC Civ. No. 97-00571 DAE, the Honorable David Ezra found that "Perfect Title's claim is utterly and completely without merit . . . .The Court concludes that Perfect Title has absolutely no interest in the subject property. Moreover, the documents filed by Perfect Title are frivolous and invalid. Perfect Title has no authority to declare invalid prior land conveyances or to make determinations on behalf of the former Kingdom of Hawaii." RJN, Ex. 5, pp. 4 and 7.

In *Mitchell*, Judge Amano awarded damages pursuant to HRS § 507D-7(a) and injunctive relief pursuant to HRS § 507D-7(b) enjoining both Perfect Title Company and Dr. Sai from recording any documents in the Bureau of Conveyances of the State of Hawaii for a period of five years without leave of court.

Defendants request that this Court take judicial notice of these related cases in evaluating Defendants' Motion pursuant to Rule 201(d) of the Federal Rules of Evidence as more fully described in their Request for Judicial Notice, filed contemporaneously herewith. This Court should also be aware that the United States District Court for the District of Hawaii has not changed its mind about Dr. Sai's dubious theory:

> Plaintiff spends three pages of his Rule 56(d) argument summarizing a July 31, 2010 "Expert Opinion on the Continuity of the Hawaiian Kingdom as a State" ("Expert Opinion Letter"). Opp'n at 13–16. The Expert Opinion Letter and the curriculum vitae of its author, Dr. David Keanu Sai, are attached to Plaintiff's Opposition. Opp'n Ex. A. According to Plaintiff, Dr. Sai's research shows that "all transfers of title since 1873 (done through the Hawaii Revised Statutes and Bureau of Conveyances, not notarized by notaries authorized pursuant to Hawaii Kingdom law) are invalid." Opp'n at 14. The Court notes that Plaintiff's reliance on the Expert Opinion is misplaced. The Ninth Circuit, this Court, and the Hawai'i state courts have rejected similar arguments based on the continued sovereignty of the Kingdom of Hawai'i. *See Baker v. Stehura*, Civ. No. 09–00615 ACK–BMK, 2010 WL 3528987, at *4–5 (D.Haw. Sep. 8, 2010) (discussing authorities supporting the rejection of the "argu[ment] that [a] foreclosure action [was] voidable because Hawai'i courts do not have jurisdiction over [the plaintiffs] as residents of the Kingdom of Hawai'i"). Moreover, Plaintiff obtained his title through a transfer recorded in the Bureau, so his ownership rights in the Property would be impugned by the Expert opinion, were it persuasive. *See* Carrington Decl. Ex. A.

Uy v. Wells Fargo Bank, N.A., 2011 WL 1235590, fn. 16 (D. Haw. Mar. 28, 2011).

Given this great weight of authority, this Court should not now find that Plaintiffs are somehow entitled to move forward with their baseless claims based on Mr. Gumapac's self-serving Laulima's "Report" referenced in Exhibit 6 and Dr. Sai's "Expert Memorandum" as referenced in enclosure 1 to Exhibit 1 of the Complaint.

VII. PLAINTIFFS LACK STANDING TO SUE BASED UPON AN ALLEGED "TITLE DEFECT" BECAUSE THEY NO LONGER HAVE ANY INTEREST IN THE PROPERTY AT ALL

Standing is a critically important jurisdictional limitation. It is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife ("Lujan")*, 504 U.S. 555, 560 (1992). As such, it is not subject to waiver; like subject matter jurisdiction, standing must be considered by federal courts even if the parties fail to raise it. *United States v. Hays*, 515 U.S. 737, 742

(1995).

Standing is gauged by the specific common law, statutory or constitutional claims that a party presents; i.e., "whether the particular plaintiff is entitled to an adjudication of the particular claims asserted." *Allen v. Wright*, 468 U.S. 737, 752 (1984). To establish "a case or controversy" within the meaning of Article III, plaintiff must show the following as an "irreducible minimum": (1) Injury in fact: An "injury in fact" which is concrete and not conjectural; (2) Causation: A causal connection between the injury and defendant's conduct or omissions; and (3) Redressability: A likelihood that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-61. Moreover, it is the Plaintiffs' burden to show they have standing since it was they that invoked federal jurisdiction by filing in the Central District of California. *Id.* at 561.

Here, Plaintiffs cannot show injury in fact because the mortgage upon which they rely to assert their claims – that a defect in title exists and Defendants were obligated to make a claim with the title insurance companies – was extinguished and Plaintiffs have no further rights or interest in the Property (or rights under the mortgage) since the Affidavit has been filed and recorded. *Pelosi v. Hoopai (In re Hoopai)*, 2005 U.S. Dist. LEXIS 42760 (D. Haw. Oct. 14, 2005) (Bankruptcy court did not abuse its discretion in determining that a non-judicial foreclosure did not extinguish a mortgagor's interest in property until the statutory affidavit was filed, pursuant to Haw. Rev. Stat. § 667-5.) The Affidavit is evidence of preclusive and final effect on any claims Plaintiffs raise to essentially challenge the foreclosure. *See Lee v. HSBC Bank USA*, 121 Haw. 287, 292, 218 P.3d 775 (2009) (Hawaii Supreme Court discussed importance of filing Affidavit of Foreclosure Sale Under Power of Sale, "The statute requires the mortgagee to file an affidavit setting forth the mortgagee's acts in the premises fully and particularly. *See* HRS § 667-5(d). That the affidavit shall be admitted as evidence that the power of sale was duly executed

demonstrates the legislature's intent to promote the finality of properly conducted sales.")

Once the Affidavit was filed and recorded, pursuant to Hawaii law, Plaintiffs (as mortgagors) have no further interest, legal or equitable, in the Property. Thus, Plaintiff's belated claim of a defect in title *after* the foreclosure to try to challenge and, in effect, reverse it, is insufficient to show an injury in fact since the defect in title had no bearing on the Plaintiffs default or the foreclosure. Plaintiffs only injury was their default in payments, not some manufactured title defect arising from correspondence between President Grover Cleveland and Queen Liliuokalani.

Even assuming Plaintiffs can show an "injury in fact" as an element of standing (which they cannot), Plaintiffs still fail to show a causal connection between that injury and the Defendants' conduct. There must be a causal connection between that injury and the conduct complained of, i.e, Plaintiffs' claimed injury (presumably, the foreclosure) must be "traceable" to Defendants' acts or omissions (here, failing to file a title claim). *Lujan*, 504 U.S. 559–560. Assuming Defendants did not file a title claim based upon Plaintiffs' erroneous Kingdom of Hawaii theory, that is not what caused the foreclosure: Plaintiffs default on their loan payments caused the foreclosure.

Here, because the foreclosure and filing of the Affidavit cut off any interest Plaintiffs may have had, Plaintiffs cannot show either injury in fact or the requisite causation between that injury and Defendants' alleged conduct in order to confer the unwaiveable requirement of standing under Article III. The entire action should be dismissed because Plaintiffs lack standing.

A. <u>The 9th Circuit and the Hawaiian Supreme Court Have Expressly Rejected the Argument of Hawaiian Sovereignty</u>

Boiled down to its most basic element, Plaintiffs' Complaint essentially contends that a defect in title exists because Hawaii is a sovereign nation and the transfers of title complied with the State of Hawaii law but not with the sovereign

Kingdom of Hawaii's legal requirements, including notarization. Therefore, goes the theory, the Plaintiffs do not have title to the Property; thus, the mortgage, which has now been foreclosed, was invalid because the Plaintiffs were not vested with title to the Property that secured the Note that the Plaintiffs executed.

In *State v. Lorenzo*, 77 Haw. 219 (Ct. App. 1994), the defendant was convicted of certain state crimes. *Id.* at 220. The defendant argued in his motion to dismiss that the laws of the State of Hawaii did not apply to him because the Kingdom of Hawaii was a sovereign nation. *Id.* at 221. The court affirmed the defendant's conviction after finding that, "Lorenzo presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *Id.* *See also State v. French*, 77 Haw. 222, 228 (Ct. App. 1994) (reaffirming *Lorenzo* and finding that "this particular kind of claim was rejected in *State v. Lorenzo* [citation omitted] which held presently there is no 'factual or legal basis for concluding that the [Hawaiian] Kingdom exists as a state…..")

Whether it is Plaintiffs' claim, through Dr. Sai's "expert report" that the mortgage is not valid because the Plaintiffs did not have clear title in order to encumber it due to the illegality of all land transactions since 1893 in Hawaii; or whether the foreclosure was purportedly invalid due to the assignments of the security instrument because Kingdom of Hawaii law was not followed regarding notarization and land transfer, each of these claims is supported by the same fallacious assumption: that Kingdom of Hawaii law, and not State of Hawaii law, governs.

Plaintiffs' invocation of Kingdom of Hawaii law, whether or not a deeply held belief, is merely a vehicle by which Plaintiffs seek to get title back to the Property while not paying back the nearly $300,000 they borrowed in 2005. *See* Complaint, Ex. 1, Enclosure 1, Exhibit D. This Court should reject Plaintiffs' claims based upon

the erroneous "Kingdom of Hawaii" theory.

B. Hawaiian Law Bars Plaintiffs' Challenge to the Foreclosure Since the Affidavit Has Been Filed and Recorded

Plaintiffs seek to challenge the foreclosure by power of sale *after* the Affidavit has been recorded (RJN, Ex. 6) and a new certificate of title was issued. *See* Complaint, Ex. 4, Mortgagee's Quitclaim Deed. Any challenge Plaintiffs may have had (which they have none based upon the theory of Hawaiian Kingdom law supremacy) was extinguished once the Mortgagee's Quitclaim Deed was recorded.

HRS 501-118 states that "After a new certificate of title has been entered, no judgment recovered on the mortgage note for any balance due thereon shall operate to open the foreclosure *or affect the title to registered land*." (Emphasis added.) In *Aames v. Moore Funding ("Aames")*, 107 Haw. 95 (2005), the Supreme Court of Hawaii specifically held that, in the context of HRS 501-118, a mortgagor's challenge to the foreclosure is "expressly limited to the period before entry of a new certificate of title." *Id.* at 101. In fact, the court went on to state that this conclusion is further supported by HRS 501-88, which provides that the matters stated in the certificate are to be given conclusive effect in the courts. *Id.*

Hawaii is a lien theory state; because this particular piece of property is Land Court property, once a new TCT is issued (which occurred when the Mortgagee's Quitclaim Deed was recorded) any challenges to the underlying foreclosure are extinguished. *See Aames*, 107 Haw. at 101-2. Therefore, Plaintiffs have, pursuant to the laws of the State of Hawaii, lost any ability to challenge the propriety of the foreclosure and the exercise of the power of sale.

VIII. EACH CLAIM ALLEGED IN THE COMPLAINT FAILS.

A. The Declaratory Relief Claim Fails.

Plaintiffs' first cause of action is for declaratory relief to require Defendants to forward a title claim to Stewart Title based upon their specious theories concerning the Kingdom of Hawaii as detailed above. Plaintiffs have no legally cognizable

interest in a policy of title insurance that was between Stewart Title and its insured, the mortgagee of the mortgage that has now been extinguished by foreclosure. *See* Complaint Exh. E. "Declaratory relief is appropriate '(1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'" *Macris v. Bank of Am., N.A.*, 2012 U.S. Dist. LEXIS 10633, *18 (E.D. Cal. Jan. 27, 2012.) Neither of the aims of the Declaratory Judgment Act would be furthered by an Order requiring Defendants to submit a title claim to their insurance company. If Defendants did submit a title claim, the title company would be free to deny the claim because Plaintiffs' claims of a title defect are facially devoid of merit. Plaintiffs have presented no justiciable controversy that could form the basis of any declaratory judgment. Plaintiffs' request for declaratory relief should be dismissed with prejudice.

B. <u>The Breach of Contract Claim Fails.</u>

Plaintiffs' second cause of action is for breach of contract. Plaintiffs claim that the Defendants breached their contract with them by not submitting a title claim to Stewart Title. Complaint ¶95. Plaintiffs claim that this was a breach of both their own mortgage and of the Pooling Agreement. Complaint ¶ ¶96, 97. Plaintiffs lack standing to assert either theory because Plaintiffs are not parties to either the title insurance policy or the Pooling Agreement, and their mortgage has now been foreclosed and extinguished. *See, e.g., Abubo v. Bank of N.Y. Mellon*, 2011 U.S. Dist. LEXIS 138408, *22 (D. Haw. Nov. 30, 2011)(collecting cases).

Moreover, Plaintiffs have misinterpreted the section of their mortgage which they claim requires a title claim to be submitted to the mortgagee's title insurance company. The cited section of Exhibit D to the Complaint (the Mortgage) deals with hazard insurance, not title insurance. *See* Complaint Exhibit D, p. 5. Plaintiffs have pled no breach of any contract between Defendants and themselves.

C. The Deceptive Trade Practice Claim Fails.

Plaintiffs' third cause of action is for Deceptive Trade Practices under H.R.S. § 480, *et seq*. Plaintiffs claim that because of Defendants' actions as alleged elsewhere in the Complaint, they are entitled to an order voiding the mortgage quitclaim deed and a permanent injunction preventing Plaintiffs from ever being evicted from the Property. Complaint ¶ 99. Plaintiffs also claim that Defendants' acts in proceeding with the foreclosure, despite the title defect, is a basis for the deceptive trade practice claim. Complaint ¶ 102. Plaintiffs claim that Defendant Argent Mortgage required them to purchase title insurance, but then refused to make a title claim to Stewart Title. Plaintiffs claim that "Defendants' practice of requiring borrowers . . . to purchase lender title insurance in order to receive a mortgage, and then Defendants not making a claim . . . is an unfair and deceptive trade practice. . . ." Complaint ¶ 106.

The Complaint pleads that Defendant Argent Mortgage was the original lender and Exhibit D to the Complaint confirms that fact. Complaint ¶ 25. Plaintiffs plead that the Deutsche Bank entities securitized their loan "after December 19, 2005. . . " when their loan was originated. Complaint ¶33. Therefore, it is clear that the Deutsche Bank entities (moving Defendants) had nothing to do with any requirement to purchase title insurance. "Plaintiff recognizes that neither [defendant] was the originating lender. [ ] Thus, neither [defendant] can be liable for unfair or deceptive acts that may have occurred when the loan was consummated." *Young v. Bank of N.Y. Mellon*, 2012 U.S. Dist. LEXIS 10489, 25-26 (D. Haw. Jan. 30, 2012).

Plaintiffs' Deceptive trade Practice claim fails because liability under the statute does not attach merely because one is an assignee. *Id*. Plaintiffs' deceptive trade practices claim fails as to these moving Defendants and their motion to dismiss this claim should be granted with prejudice.

IX. CONCLUSION

Whether Plaintiffs' beliefs in Hawaii sovereignty are deeply held or not, the legal theory that their entire Complaint is based on is without merit. Hawaii is a state of the United States, not a sovereign nation; therefore, Plaintiffs' claim that any transfer of land since the 19th century is invalid or that the assignment of Plaintiffs' mortgage is invalid because Kingdom of Hawaii law was not followed, thereby creating a "defect in title" is wholly without support in law. Plaintiffs' Complaint should be dismissed and leave to amend denied.

Dated: February 8, 2012

SMITH DOLLAR PC

/s/ Sherrill A. Oates

By _____
Sherrill A. Oates
Richard R. Sutherland
Attorneys for Defendants Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2006-W2 and Deutsche Bank National Trust Company, LLC