

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

U.S. BANK PORTFOLIO SERVICES : CIVIL ACTION  
: :  
v. : :  
: :  
THE MRI CENTERS OF NEW ENGLAND :  
INC., FRANCIS D. HUSSEY and :  
ROBERT J. SWANSON :  
: :  
-----  
THE MRI CENTERS OF NEW ENGLAND :  
INC., FRANCIS D. HUSSEY and :  
ROBERT J. SWANSON :  
: :  
v. : :  
: :  
DVI RECEIVABLES CORP. XV, DVI :  
RECEIVABLES XV, LLC, JOHN DOES :  
1-10, STEVEN GARFINKLE and :  
STEVEN GIRSHEK : NO. 04-00865-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 17, 2005

All of the pleadings in this case state that the plaintiff is "U.S. Bank Portfolio Services, a Division of Lyon Financial Services, Inc., as Master Servicer for U.S. Bank, N.A., as Trustee, 1310 Market Street, Marshall, MN 56258." The defendants have filed a counterclaim against, *inter alia*, U.S. Bank, N.A. U.S. Bank has filed a motion to dismiss the counterclaim, on the theory that it is not a party to this action and has not yet been joined as a third-party defendant.

Obviously, counsel should clarify the situation. Is "U.S. Bank Portfolio Services" a legal entity, capable of suing

and being sued? (It is described as "a Division of Lyon Financial Services, Inc.") Is Lyon Financial Services, Inc. a party plaintiff? Is the action brought on behalf of "U.S. Bank, N.A."?

If U.S. Bank is not a party, then defendants' counterclaim should, as to that entity, be treated as a third-party complaint. No useful purpose would be served by requiring re-pleading. The parties will be afforded a brief period in which to clarify the precise legal situation.

In the brief filed on behalf of U.S. Bank, its counsel have stated that they have principally focused on Pennsylvania law, but they purport to "reserve the right" to contend otherwise at some future stage of the proceeding. Obviously, this is a no-no. Unless counsel for that entity promptly cites to the law of some other jurisdiction, and briefs the conflicts issue, this case will be decided under Pennsylvania law, and the conflicts issue, if any, will be deemed waived.

An order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

U.S. BANK PORTFOLIO SERVICES : CIVIL ACTION  
: :  
v. : :  
: :  
THE MRI CENTERS OF NEW ENGLAND :  
INC., FRANCIS D. HUSSEY and :  
ROBERT J. SWANSON :  
: :  
-----  
THE MRI CENTERS OF NEW ENGLAND :  
INC., FRANCIS D. HUSSEY and :  
ROBERT J. SWANSON :  
: :  
v. : :  
: :  
DVI RECEIVABLES CORP. XV, DVI :  
RECEIVABLES XV, LLC, JOHN DOES :  
1-10, STEVEN GARFINKLE and :  
STEVEN GIRSHEK : NO. 04-00865-JF

ORDER

AND NOW, this 17th day of February 2005, IT IS ORDERED:

1. Counsel for the parties shall, within 10 days, clarify the identities and legal existence of the party or parties who are plaintiffs in this action.

2. Within 10 days, counsel for U.S. Bank, N.A. shall brief the conflict of laws issue, or will be deemed to have waived any claim that the law of any state other than Pennsylvania is applicable.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.