

No. 13-3026

**In the United States Court of Appeals
for the Eighth Circuit**

The County of Ramsey; The County of Hennepin, on behalf of themselves and all
other Minnesota counties,

Plaintiffs-Appellants

v.

MERSCORP Holdings, Inc.; Mortgage Electronic Registration Systems, Inc.;
Bank of America Corporation; Bank of America, N.A.; Citigroup, Inc.; CitiBank,
N.A.; CitiMortgage, Inc.; Deutsche Bank National Trust Company; EverBank;
Goldman Sachs Mortgage Company; GS Mortgage Securities Corp.; HSBC Bank
USA, N.A.; JP Morgan Chase Bank, N.A.; Morgan Stanley ABS Capital I, Inc.;
SunTrust Mortgage, Inc.; TCF National Bank; The Bank of New York Mellon;
United Guaranty Corporation; US Bank N.A.; Wells Fargo Bank N.A.; Does
Corporation I-MMM,

Defendants-Appellees

**On Appeal from the United States District Court
for the District of Minnesota – Minneapolis**

BRIEF OF PLAINTIFFS-APPELLANTS

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SUMMARY OF THE CASE

On February 14, 2013, Plaintiffs-Appellants, the County of Ramsey and the County of Hennepin, filed a class action complaint (the “Complaint”) on behalf of all Minnesota counties against Defendants-Appellees for failing to record mortgage assignments in Minnesota county recorders’ offices, as required by Minnesota law. Appellants appeal from the order of the United States District Court for the District of Minnesota granting Appellees’ joint motion to dismiss the Complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The Complaint alleges that Appellees, through their use of the Mortgage Electronic Registration System (“MERS”), violated Minnesota’s Recording Act, M.S.A. § 507.34 (the “Recording Act”), by failing to record mortgage assignments in county recorders’ offices and failing to pay the associated recording fees. The district court granted Appellees’ motion to dismiss the Complaint, finding that the Recording Act — which states that “[e]very conveyance of real estate shall be recorded in the office of the county recorder of the county where such real estate is situated” — does not require that all real estate conveyances be recorded, but rather directs where to record if a mortgagee chooses to do so.

The district court erred by failing to interpret the Recording Act according to long-standing rules of statutory construction. Appellants bring this appeal seeking

reversal of the district court's decision below. While the issues on appeal are straightforward in that they can be resolved by a proper reading of the Recording Act, Appellants believe oral argument would be helpful to understanding the construction of the Recording Act's language. Accordingly, Appellants request that the parties be given a total of 40 minutes for oral argument.

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STATEMENT OF JURISDICTION

Appellants filed the Complaint on February 14, 2013 in Minnesota state court. On February 27, 2013, Appellees removed the action to the United States District Court for the District of Minnesota, which had subject matter jurisdiction pursuant to 28 U.S.C. § 1332, because the parties reside in different states and because the amount in controversy exceeds \$75,000.

This Court has jurisdiction pursuant to 28 U.S.C. § 1291 because this appeal is from a final and appealable order of the district court.

This appeal is timely. The district court's order dismissing the Complaint was entered on August 26, 2013, and Appellants filed their notice of appeal on September 11, 2013.

STATEMENT OF THE ISSUES PRESENTED

1. Whether the district court erred by failing to interpret Minnesota's recording statute, M.S.A. § 507.34, according to its clear and unambiguous language.

- *Hennepin Cnty., Minn. v. Federal Nat'l Mortg. Ass'n*, 933 F. Supp. 2d 1173 (D. Minn. 2013)
- *St. Clair Cnty., Ill. v. MERS*, No. 12-L-267 (Ill. July 12, 2013)
- *Montgomery Cnty., Pa. v. MERSCORP, Inc.*, No. 11-cv-6968, 2012 WL 5199361 (E.D. Pa. Oct. 19, 2012)

The balance of the brief has been eliminated for this sample. For a copy of the complete brief please call our office. Thank you.