

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

**IN RE RICHARD P. LOTFY AND
SHARI D. LOTFY,**

Debtors.

BANKRUPTCY NO. 08-40106

**RICHARD P. LOTFY & SHARI D.
LOTFY**

Plaintiff,

ADV. PRO. NO. 08-04071

v.

**INDYMAC BANK, FSB, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS**

Defendants.

**MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(b)(7) FOR FAILURE
TO JOIN AN INDISPENSABLE PARTY PURSUANT TO FED.R.CIV.P. 19**

Now comes the Defendant, IndyMac Bank, FSB, and respectfully requests that this Honorable Court grant the Defendant's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(7) for failure to Join an Indispensable Party pursuant to Fed.R.Civ.P. 19.

In support of its Motion the Defendant states the following:

1. On July 11, 2008, ("Closing Date"), the Office of Thrift Supervision ("OTS") closed IndyMac Bank, F.S.B. (the "failed institution") and appointed the FDIC-Receiver as the Receiver for the failed institution pursuant to 12 U.S.C. § 1464(d)(2)(A)

and § 1821(c)(5). The FDIC-Receiver is the successor-in-interest to the failed institution, assuming all rights, titles, powers, privileges, and operations of the failed institution. The FDIC-Receiver was appointed for the purpose of winding up the affairs of the failed institution by liquidating the assets and liabilities of the failed institution. This purpose also includes the administration of claims filed by creditors of the failed institution.

2. On the Closing Date, the OTS chartered a new institution, IndyMac Federal Bank, FSB. The OTS then appointed the FDIC-Conservator to operate the new institution, which opened for business on Monday July 14, 2008. The assets and liabilities of the failed institution went to the FDIC-Receiver upon appointment of it by the OTS. Through the use of the powers granted to the FDIC under federal law, and agreement was made whereby substantially all of the assets and some of the liabilities were transferred to the FDIC-Conservator. (Attached as Exhibit "A" is a true and accurate copy of the Order from the OTS appointing FDIC-Receiver for the failed institution and the FDIC-Conservator for IndyMac Federal Bank, FSB).

3. The Plaintiffs, Richard Lotfy and Shari Lotfy ("Plaintiffs") filed a Complaint (the "Complaint") against the Defendant IndyMac Bank, F.S.B. and assert that the Defendant did not comply with M.G.L. c. 244, § 14, and U.S.C. §548. Plaintiffs' causes of action implicate the FDIC in its dual capacity as Receiver and Conservator for the Bank.

4. The FDIC in its dual capacity as Receiver and Conservator for the Bank is an indispensable Party pursuant to Fed.R.Civ.P. 19 and the failure of the Plaintiffs to add the FDIC should result in the dismissal of this action pursuant to Fed.R.Civ.P. 12(b)(7).

WHEREFORE the Defendant, IndyMac Bank, FSB, respectfully requests that this Honorable Court grant the Defendant's Motion to Dismiss pursuant to Fed.R.Civ.P.

12(b)(7) for failure to Join an Indispensable Party pursuant to Fed.R.Civ.P. 19.

Respectfully submitted,
IndyMac Bank, FSB

By its attorney,

/s/ John T. Precobb _____
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