

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

IN THE MATTER OF:

RICHARD P. LOTFY
SHARI D. LOTFY,
Debtors

CHAPTER 13
CASE NO. 08-40106

RICHARD P. LOTFY
SHARI D. LOTFY,
Plaintiffs

v.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

and

INDYMAC BANK, FSB
Defendant

ADVERSARY PROCEEDING
CASE NO. 08-04071

**OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE
TO TRANSFER PURSUANT TO THE MANDATORY VENUE STATUTE**

NOW COME the Plaintiffs, Richard P. Lotfy and Shari D. Lotfy, and respectfully request that this Honorable Court deny the Defendant's Motion to Dismiss.

In support of their Opposition, Plaintiffs state the following:

1. The complaint in this action was filed on May 13, 2008.
2. On July 11, 2008, the FDIC was named as conservator of IndyMac Bank, FSB.
3. On August 8, 2008, Plaintiffs' counsel received "notice to creditor – proof of claim" forms from the FDIC with a bar date of October 14, 2008.
4. Plaintiffs' counsel timely filed proof of claims with the FDIC with respect to the claims against IndyMac Bank, FSB.
5. On January 12, 2009, Plaintiffs' counsel received a "Notice of Disallowance of Claim" for the reason that the "claim was not fixed and certain at the time the FDIC was appointed Receiver".

6. The January 12, 2009 letter went on to state that "Pursuant to 12 U.S.C. Section 1821 (d)(6)...you have the right to file a lawsuit on your claim or continue any lawsuit commenced before the appointment o the Receiver".
7. On April 8, 2009, a Joint Motion to Substitute was filed with this Court requesting that the FDIC as Receiver for IndyMac Bank, FSB be substituted for IndyMac Bank, FSB.
8. On May 5, 2009, the FDIC as Receiver for IndyMac Bank, FSB filed the within Motion to Dismiss based upon wrong venue relying upon 12 U.S.C. Section 1821(d)(6)(A).
9. The First Circuit has previously ruled on this issue in Lloyd v. Federal Deposit Insurance Corporation, 22 F.3d 335 (1994).
10. Lloyd held that "Section 1821(d)(6)(A) does not extend jurisdiction beyond the two specified courts-but, by the same token, it does not deprive a court of jurisdiction where, as in Vinton, that jurisdiction has a source independent of section 1821(d)(6)(A).

WHEREFORE, Plaintiffs request that the Court deny Defendant's Motion to Dismiss or Transfer pursuant to Mandatory Venue Statute.

Respectfully submitted,
The Debtors/Plaintiffs
By their Attorney
Rosaleen J. Clayton

/s/ Rosaleen J. Clayton
BBO 652132
319A Southbridge Street
Auburn, MA 01501
(508) 832-9006
(508) 832-9112 (facsimile)