



**SO ORDERED.**

**SIGNED this 20 day of April, 2011.**

  
JANICE MILLER KARLIN  
UNITED STATES BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**IN RE:**

**HEATH, GARY CHARLES  
and HEATH, DEBRA ANN**

**Case No. 11-40067-13**

**Debtors.**

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**HEATH, GARY CHARLES  
and HEATH, DEBRA ANN,**

**Plaintiffs,**

**vs.**

**Adv. No. 11-07017**

**US BANK, NA,**

**Defendant.**

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**ORDER DENYING PLAINTIFFS' MOTION FOR  
CONSOLIDATION OF ADVERSARY PROCEEDINGS  
FOR PURPOSE OF DETERMINING LEGAL ISSUE**

The matter before the Court is Plaintiffs' Motion for Consolidation of Adversary Proceedings for Purpose of Determining Legal Issue,<sup>1</sup> seeking consolidation of this adversary

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<sup>1</sup>Doc. 7.

proceeding with another pending adversary proceeding, *Martinez v. MERS and Countrywide Home Loan, Inc.*, Case No. 10-7027, for the purpose of considering a similar legal issue contained in both proceedings. The motion was filed April 15, 2011 and served only on the attorney for the Defendant, US Bank NA, in the *Heath* case. It was neither filed, nor served on the attorneys, in the *Martinez* case.

The *Heath* adversary proceeding was filed March 23, 2011, less than one month ago, and discovery has just commenced.<sup>2</sup> No party in the *Heath* case is a party in the *Martinez* matter. Conversely, the *Martinez* case has been on file almost a full year, since May 5, 2010. Lengthy discovery has been completed, a final pretrial order entered, and a decision rendered on joint motions for summary judgment. All that remained to be done in *Martinez* at the time this motion was filed was for this Court to rule on Plaintiff Graham's pending Motion to Reconsider. That decision has now been entered.

As the Court noted in footnote 33 of the *Martinez* decision:

The Court is aware that other cases presenting similar issues are currently pending before this Court, and that the attorneys in those cases may raise additional arguments on the issues presented in this case. In fact, the Court is advised that as this opinion was being finalized, plaintiffs in another case against a different defendant (*Heath v. US Bank, NA*, AP No. 11-7017) filed a motion to consolidate this case with that case "for purpose of determining legal issue." See Doc. 7, filed April 15, 2011 in the *Heath* case, only. Likewise, Plaintiff now suggests, on reconsideration, that this Court join this case with *In re Campoverde*, Case No. 10-41685, where the case trustee was making similar arguments to those Plaintiff now belatedly raises. At a recent hearing, the movant who sought a Motion for Relief in the *Campoverde* case has indicated it intends to withdraw that motion. Even if that was a live motion, it would not be appropriate at this stage of the proceedings to delay this decision because Plaintiff's counsel has recently become educated that new arguments exists that might have led to discovery that might today prove fruitful (but may not—counsel admits he is guessing at this point). In addition, in the *Heath* case, the answer was filed only days ago, and discovery will not be concluded for at least five months.

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<sup>2</sup>Doc. 6.

The Court will obviously be willing, as it is in any situation, to revisit these issues based on different facts or new arguments raised in those cases. The Court is required, however, to decide this case between these parties, and based on the facts and arguments timely raised by the parties in this case, alone. It declines to delay ruling merely because some issues may overlap with other cases.

Accordingly, for those reasons, the Court denies Plaintiffs' Motion to Consolidate.

**IT IS SO ORDERED.**<sup>3</sup>

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<sup>3</sup>The Court directs the Clerk to serve a copy of this order on counsel in the *Martinez* case, and note it has done so in its docketing, although it need not be docketed there since the motion was not docketed there.