



IT IS ORDERED as set forth below:

Date: May 10, 2012

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	Case No. 11-86981-MGD
	:	
ROBIN ANN SIMMS,	:	Chapter 13
	:	
Debtor,	:	Judge Diehl
	:	
ROBIN ANN SIMMS,	:	
	:	Adversary Proceeding
Plaintiff,	:	
	:	No. 12-05035-MGD
v.	:	
	:	
DEUTSCHE BANK NATIONAL	:	
TRUST COMPANY, AS TRUSTEE	:	
FOR CARRINGTON HOME EQUITY	:	
LOAN TRUST, SERIES 2005-NC4	:	
ASSET BACKED PASS-THROUGH	:	
CERTIFICATES	:	
AND	:	
NEW CENTURY MORTGAGE	:	
CORPORATION,	:	
	:	
Defendants.	:	

ORDER DENYING PLAINTIFF'S MOTION FOR RULE 2004 EXAMINATION

This matter is before the Court on Plaintiff Robin Ann Simms's ("Simms") Motion for Rule 2004 Examination. (Docket No. 20). Simms seeks an order authorizing an examination under Federal Rule of Bankruptcy Procedure 2004 ("Rule 2004") of various representatives of Defendant Deutsche Bank National Trust Company, as Trustee For Carrington Home Equity Loan Trust, Series 2005-NC4 Asset Backed Pass-Through Certificates ("Deutsche"). Simms's Motion for Rule 2004 Examination is DENIED for the reasons set forth below.

Simms initiated this adversary proceeding on January 19, 2012 by filing a complaint against Deutsche and two other defendants. (Docket No. 1). Simms's complaint seeks to determine the validity, priority, and extent of a lien, to disallow Deutsche's secured claim in the underlying bankruptcy case, and to obtain relief on various federal and state-law causes of action. Simms is proceeding *pro se*. Deutsche filed an answer on February 16, 2012 and a Motion to Dismiss on April 10, 2012. (Docket Nos. 12, 17). Simms responded to the Motion to Dismiss. (Docket No. 18). On April 30, 2012, Simms filed her Motion for Rule 2004 Examination ("Motion").

In accordance with the "pending proceeding" rule, Simms may not obtain a Rule 2004 examination in this adversary proceeding. A Rule 2004 examination allows a party in interest to conduct an examination of any entity for the purpose of discovering the estate's condition, whereabouts, and extent — thereby facilitating the recovery of estate assets for the benefit of creditors. *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991). But the use of Rule 2004 examinations is not without limits. *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr.

S.D.N.Y. 2002). Once an adversary proceeding is commenced, the Federal Rules of Civil Procedure, applicable to Bankruptcy Courts in accordance with the Federal Rules of Bankruptcy Procedure, govern the discovery process. Consequently, in adversary proceedings, Federal Rules of Bankruptcy Procedure 7026 through 7037 “supplant the applicability of Rule 2004 by triggering the discovery system found in the Federal Rules of Civil Procedure.” *In re M4 Enterprises, Inc.*, 190 B.R. 471, 475 (Bankr. N.D. Ga. 1995); *In re Washington Mutual, Inc.*, 408 B.R. 45, 49-51 (Bankr. D. Del. 2009). Prohibiting Rule 2004 examinations in adversary proceedings prevents parties from circumventing the procedural safeguards found in the Federal Rules of Civil Procedure. *Id.* at 50-51. In the case at hand, allowing Plaintiff to obtain a Rule 2004 examination of Deutsche would deprive Deutsche of these procedural safeguards. Accordingly, it is

ORDERED that Plaintiff’s Motion for Rule 2004 Examination is **DENIED**.

The Clerk’s Office is directed to serve a copy of this Order on Plaintiff, Defendants, counsel for Defendants, the Chapter 13 Trustee, and the United States Trustee.

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