

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MELANIE CLARKE BPR OV TRUST,

Plaintiff,

-against-

DEUTSCHE BANK TRUST COMPANY
AMERICAS and ALDERMORE BANK PLC,

Defendants.

Case No. 1:26-cv-1904-JPC

**DEFENDANTS' REPLY MEMORANDUM OF LAW IN SUPPORT
OF THEIR MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
ARGUMENT	1
A. This Court Lacks Personal Jurisdiction Over Aldermore	1
B. The TIA Does Not Apply to The Facts Alleged in the Complaint	3
C. Leave to Amend would be Futile.....	5

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Cole v. Blackwell Fuller Music Publishing</i> , 2018 WL 4680989 (S.D.N.Y. 2018).....	4
<i>Doe I v. Gov't of United States Virgin Islands</i> , 771 F. Supp. 3d 379 (S.D.N.Y. 2025).....	2
<i>Fulton v. Goord</i> , 591 F.3d 37 (2d Cir. 2009).....	5
<i>Haber v. United States</i> , 823 F.3d 746 (2d Cir. 2016)	2
<i>Huelbig v. Aurora Loan Servs., LLC</i> , 2011 WL 4348281 (S.D.N.Y. May 18, 2011)	3
<i>La. Health Serv. & Indem. Co. v. Celgene Corp.</i> , 2024 WL 3342603 (S.D.N.Y. July 9, 2024).....	2
<i>Porina v. Marward Shipping Co., Ltd.</i> , 521 F.3d 122 (2d. Cir. 2008).....	2
<i>Upic & Co. v. Kinder-Care Learning Centers, Inc.</i> , 793 F. Supp. 448 (S.D.N.Y. 1992)	3

Statutes

15 U.S.C. §§ 77aaa et seq.	3
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Other Authorities

Federal Rule of Civil Procedure 12	1
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Defendants Deutsche Bank Trust Company Americas (“DBTCA”) and Aldermore Bank Plc (“Aldermore,” and together with DBTCA, “Defendants”) respectfully submit this reply memorandum of law in support of their motion to dismiss Plaintiff Melanie Clarke’s First Amended Complaint (Dkt. No. 49) (“FAC”), with prejudice, pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

PRELIMINARY STATEMENT

In Defendants’ Memorandum of Law in Support of their Motion to Dismiss the First Amended Complaint (the “Moving Memorandum”), Defendants detailed multiple fatal errors in the FAC, including that (1) Aldermore is not subject to the jurisdiction of this Court, (2) Clarke lacks the right to bring a claim for an alleged breach of the Trust Indenture Act of 1938 (“TIA”), (3) Aldermore, as a servicer, does not assume any duties under the TIA, (4) DBTCA has no relationship to her mortgage loan, and (5) Clarke pleads no trust-level contractually defined event of default that would give rise to any duties under the TIA.

Clarke’s opposition filings (Dkts. No. 57–58; 68–71; together, the “Opposition”) fail to rebut these errors and do not save her claims. Accordingly, Clarke’s claims should be dismissed with prejudice, as further leave to amend would be futile.

ARGUMENT

A. This Court Lacks Personal Jurisdiction Over Aldermore

As detailed in the Moving Memorandum, Aldermore is incorporated in the United Kingdom, has its principal place of business in England, and has virtually no ties to the United States, let alone New York. Moving Mem. at 4 (citing Declaration of Anita John dated April 28, 2026 (“John Decl.”) (Dkt. No. 28). Neither the New York nor the Federal long-arm statute confers jurisdiction. Moving Mem. at 4–6. Thus, Clarke may not sue Aldermore in this Court.

Clarke’s argument to the contrary is limited to an assertion that Aldermore “purposefully availed itself of . . . U.S. financial clearing and trust infrastructure.” Opp. at 3. That is untrue. As detailed in the John Declaration, Aldermore’s connection to the United States is limited to its acquisition, in spring 2026, of a portfolio of approximately 650 loans, five of which involve borrowers residing in the United States, one of whom resides in New York. John Decl., ¶¶ 4-5, 9. Aldermore conducts no other business in the United States, and Clarke cites no authority demonstrating that courts exercise jurisdiction over foreign corporations with such minimal contacts with the United States. In fact, Clarke relies on *Porina v. Marward Shipping Co., Ltd.*, 521 F.3d 122, 129 (2d. Cir. 2008) in support of her jurisdictional argument (*see* Dkt. No. 57, at 3), but the court in *Porina* affirmed a dismissal based on a lack of jurisdiction over the foreign corporation defendant.

Clarke concludes her jurisdictional argument by claiming entitlement to jurisdictional discovery. The Court should deny Clarke’s request. If a plaintiff seeks jurisdictional discovery, she bears “the burden of demonstrating to the court why jurisdictional discovery is needed.” *Doe I v. Gov’t of United States Virgin Islands*, 771 F. Supp. 3d 379, 398 (S.D.N.Y. 2025) (citing *Haber v. United States*, 823 F.3d 746, 754 (2d Cir. 2016)). “In this district, where a plaintiff has not made a prima facie case for personal jurisdiction, “jurisdictional discovery is generally not granted.” *Id.* at 397 (quoting *La. Health Serv. & Indem. Co. v. Celgene Corp.*, 2024 WL 3342603, at *2 (S.D.N.Y. July 9, 2024)). Clarke has not shown that she could overcome Aldermore’s demonstration through the John Declaration that Aldermore lacks sufficient contacts with the forum to conclude that jurisdiction exists. John Decl. ¶¶ 3–10. Allowing jurisdictional discovery would allow Clarke to engage in a purposeless fishing expedition, and the Court should dismiss Aldermore on this basis.

B. The TIA Does Not Apply to The Facts Alleged in the Complaint

In their Moving Memorandum, Defendants explained that both of Clarke’s claims alleging a breach of the TIA fail because TIA is not an applicable statute, and even if it was, Defendants owe her no duty under it. Clarke does not rebut those arguments in her Opposition. As a result, Clarke has failed to state a claim, and the FAC should be dismissed.

As detailed in Defendants’ Moving Memorandum, a borrower lacks standing to sue for breach of the TIA. Moving Mem. at 7–8; *Huelbig v. Aurora Loan Servs., LLC*, No. 10 CIV. 6215 RJH THK, 2011 WL 4348281, at *8 (S.D.N.Y. May 18, 2011), *report and recommendation adopted*, No. 10 CIV. 6215 RJH THK, 2011 WL 4348275 (S.D.N.Y. Sept. 16, 2011) (“The Trust Indenture Act has no bearing whatsoever on Plaintiff’s note and home mortgage, and Plaintiff—a borrower, not an investor—therefore lacks standing to pursue a claim under this Act.”). Clarke is a mortgage loan borrower who brings the FAC to pursue claims relating to an ongoing “property foreclosure in the United Kingdom[.]” FAC at 8. Clarke is not an investor. Her claims for breach of the TIA thus fail.

Defendants also demonstrated that the TIA applies only to debt securities that are registered under U.S. law. *See* 15 U.S.C. §§ 77aaa et seq.; *see also Upic & Co. v. Kinder-Care Learning Centers, Inc.*, 793 F. Supp. 448, 450 (S.D.N.Y. 1992) (“An indenture ‘qualified’ under the Trust Indenture Act of 1939 is an indenture which complies with the Act’s substantive requirements, *see* 15 U.S.C. §§ 77jjj–77rrr, and under which a security has been issued, concerning which the required registration statement has been filed and has become effective.”). Clarke’s FAC alleges—and her Opposition confirms—that her mortgage was securitized into the “Oak No. 5 PLC residential mortgage-backed securitization pool” (FAC at 1), which is a United Kingdom securitization comprised of “domestic UK mortgage tranches.” Compl. at 3; Opp. (Dkt. No. 57) at 2. She cannot establish that the TIA applies to that transaction or that DBTCA is the

indenture trustee for that securitization, and therefore her claims for violation of that statute necessarily fail.

Clarke attempts to resuscitate her claims with new, confusing allegations that appear to suggest that the domestic UK mortgage tranches of the Oak No. 5 PLC securitization were “linked to a USD 300 million Senior Unsecured Note issued by the FirstRand Group” for which DBTCA acted as indenture trustee. Compl. at 3. These allegations, even if true, do not affect this analysis for two reasons. The mere fact that tranches of a trust that purportedly hold her loan were linked to a *different* trust for which DBTCA acted as indenture trustee would not establish a duty on the part of DBTCA in connection with her loan. Moreover, the TIA only imposes duties on parties to securitizations that are registered in the United States, and Clarke does not allege that either the Oak No. 5 PLC securitization or the referenced “FirstRand Bank Limited international bond series” were registered in the United States.

Additionally, in the Moving Memorandum, Defendants demonstrated that servicers such as Aldermore do not assume TIA duties. Moving Mem. at 8. Clarke does not cite law (nor could she) holding otherwise. Accordingly, she concedes the point. *See, e.g., Cole v. Blackwell Fuller Music Publishing*, 2018 WL 4680989, at *6 (S.D.N.Y. 2018) (collecting cases).

Finally, Defendants showed that Clarke’s claims were insufficiently plead because she did not allege a contractually defined, trust-level event of default necessary to impose prudent person duties on an indenture trustee. Moving Memo. at 9. Clarke attempts to overcome this flaw by advancing multiple theories as to why DBTCA had “actual knowledge of a fundamental title defect or conversion of the trust res” and therefore owed Clarke (as opposed to the trust’s investors) prudent person duties. Opp. (Dkt. No. 57) at 9. But again, Clarke fails to demonstrate that the “notice of adverse claim” she allegedly served upon DBTCA constituted a trust-level

event of default defined in the Oak No. 5 PLC's governing agreements or gave DBTCA actual knowledge of such a default. Nor could Clarke make such allegations, because Clarke concedes that DBTCA is not the trustee of the Oak No. 5 PLC securitization (*id.* at 10), precluding the possibility that DBTCA could owe prudent person duties related to an event of default in that trust. Dkt. 34 at 42-43.

C. Leave to Amend would be Futile

Clarke's Opposition is her second inadequate attempt to state claims that survive a motion to dismiss. Recognizing the risk of dismissal with prejudice, Clarke asserts that she can cure defects in her complaint by adding allegations about: (i) DBTCA's alleged role in the FirstRand bond series, (ii) "Aldermore's agency relationship with DBTCA within the New York trust architecture," (iii) "clarifying the distinction between Plaintiff's borrower capacity and her HDC capacity as beneficiary of the 98-series trust," and (iv) "adding the Williman Kimball ERO affidavit." Opp. (Dkt. No. 57, at 11).

None of those allegations would cure the defects of the FAC. Among other failures, those allegations would not permit this Court to exercise personal jurisdiction over Aldermore, render the TIA applicable to the transaction that allegedly holds her loan, or make her a party with rights to enforce TIA claims.

Accordingly, repleading would be futile and should not be permitted. *See Fulton v. Goord*, 591 F.3d 37, 45 (2d Cir. 2009) ("We are normally accommodating to motions for leave to amend pro se complaints but may deny them "when amendment would be futile.").

Dated: New York, NY
August 24, 2026

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CERTIFICATE OF COMPLIANCE

Pursuant to the Individual Practices of Magistrate Judge Barbara Moses, I, Matthew E. Cooper, hereby certify that this Memorandum of Law in Support of Defendants Motion to Dismiss does not exceed the page limit set forth in Rule 2(h), and otherwise complies with the formatting rules set out in Local Civ. R. 11.1(b).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 24th day of August, 2026, at New York, New York.

/s/ Matthew E. Cooper
Matthew E. Cooper