

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

vs.

No. 3:06CV61-D-D

FIRST NATIONAL BANK
OF PONTOTOC; et al.

DEFENDANTS

ORDER DENYING MOTION TO DISMISS

Presently before the court is the Defendants' motion to dismiss the Plaintiff's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Upon due consideration, the court finds that the motion should be denied.

Excluding all outside matters and considering only the pleadings in this action, and taking the facts alleged in the complaint as true, the court finds that the Defendants have failed to show that "it appears certain that the plaintiff cannot prove any set of facts that would entitle [it] to the relief [it] seeks." See C.C. Port, Ltd. v. Davis-Penn Mortgage Co., 61 F.3d 288, 289 (5th Cir. 1995). The Defendants' motion to dismiss pursuant to Rule 12(b)(6) shall therefore be denied.

THEREFORE, it is hereby ORDERED that the Defendants' motion to dismiss (docket entries 13 and 16) is DENIED.

SO ORDERED, this the 2nd day of November 2006.

/s/ Glen H. Davidson
Chief Judge