

**CAUSE NO. EV 110562**

<b>WELLS FARGO BANK</b>	<b>§</b>	<b>IN THE JUSTICE OF THE PEACE COURT</b>
<b>BARRETT DAFFIN ET AL</b>	<b>§</b>	
<b>15000 SURVEYOR BLVD #100</b>	<b>§</b>	
<b>ADDISON, TEXAS 75001</b>	<b>§</b>	
<b>Plaintiff,</b>	<b>§</b>	<b>PRECINCT NO. 4</b>
	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	<b>WILLIAMSON COUNTY, TEXAS</b>
<b>ALVIE CAMPBELL AND ALL OTHER</b>	<b>§</b>	
<b>OCCUPANTS OF 250 PR 947, TAYLOR</b>	<b>§</b>	
<b>TEXAS 76574</b>	<b>§</b>	
<b>Defendants.</b>	<b>§</b>	

**ANSWER AND AFFIRMATIVE DEFENSES**

Defendants, Alvie Campbell and all other occupants of 250 PR 947, Taylor, Texas 76574, named Defendants in the above-titled and numbered cause, and file this Original Answer, and in response to each numbered paragraph thereof, states:

- I. Denied
- II. Denied
- III. Denied
- IV. Denied

**NOTICE**

Defendants notice this Court; Plaintiff cannot prove a Landlord-tenant relationship with defendants without first proving plaintiff holds a lawful colorable claim to title which is currently being adjudicated in a court of proper jurisdiction. Until issues of title have been fully adjudicated this Court lacks jurisdiction to determine who has a colorable claim to immediate possession of the property.

An unlawful Assignment of Deed of Trust, which would not convey rights to the Deed of Trust is currently under review by the Third Court of Appeals, Travis County, Texas, No. 03-11-00524-CV

Plaintiff has filed this unlawful detainer action, subject of this suit. Plaintiff failed to provide to this court a copy of the Lis Pendens filed of record in Williamson County Real Property Records on September 27, 2010 in regards to Plaintiffs actions of unlawfully conveying defendants Property in an alleged Trustee Sale auction. This case is currently under review by the Third Court of Appeals, Travis County, Texas, No. 03-11-00429-CV.

An exception to the court's forcible detainer jurisdiction may occur, however, when the title issue is "so intertwined" with the possession issue that "possession may not be adjudicated without first determining title." Dormady, 61 S.W.3d at 557. Still, this exception to the justice court's jurisdiction occurs "only when the justice or county court must determine title issues. . . ." Rice, 51 S.W.3d at 713. (2)

#### **GENERAL DENIAL**

Defendants deny each and every allegation of Plaintiff's Original Petition for Forcible Detainer, and demand strict proof thereof as required by the Texas Rules of Civil Procedure, Texas Rules of Evidence and Texas laws and statutes.

#### **AFFIRMATIVE DEFENSES**

Further the defendants asserts the following defenses and states:

1. Plaintiff failed to name the all parties in this claim.
2. Plaintiff conducted an unlawful sale of defendants real property as plaintiff are not nor have never been a contractual party with defendants.

3. Plaintiff actions are barred by the applicable statutes of the State of Texas. Plaintiff are not a proper party to bring this suit against defendants.
4. Plaintiff provided no lawful proof of their claim.
5. Plaintiff holds no superior right to defendants Property.
6. Plaintiff holds no landlord-tenant relationship with defendants.
7. The Trustee Sale/Auction did not comply with both Texas law and the Deed of Trust.

### **ARGUMENT**

Defendant assert to this Court, that Plaintiff has failed to name the proper parties to this instant suit.

Plaintiff wrongfully sold the subject property, and without lawful right filed a Substitute Trustee's Deed of record in Williamson County Public Records. Using a void Substitute Trustee's Deed, that did not comply with both Texas Law and the Deed of Trust bring forth this frivolous suit against the defendants.

Plaintiff is an unknown party to the originally filed Deed of Trust and apparently is under the mistaken impression that it was in possession of a perfected assigned Deed of Trust. If the Court of Appeals opines that the first Assignment of the Deed of Trust is void ab initio, any subsequent Assignments of the Deed of Trust would also be void ab initio. With the subsequent Assignments of the Deed of Trust being void ab initio, the Substitute Trustee's Deed would also be void ab initio. With the Substitute Trustee's Deed being void ab initio, Plaintiff would not have had standing to file a Forcible Detainer action. Until and unless the Court of Appeal rules upon the preceding assignment in "Plaintiff's favor," the Plaintiff is without standing to invoke

the jurisdiction of this court. Until validity to title is fully adjudicated in favor of Plaintiff, Plaintiff has no right to evict Defendants from the premises.

In The Court of Appeals, Sixth Appellate District of Texas at Texarkana, No. 06-06-00045-CV, ROBERT M. GELDARD, SR., Appellant V. KAY WATSON, Appellee, On Appeal from the County Court at Law No. 2 Gregg County, Texas, Trial Court No. 2006-021-C:

Where determination of the right to immediate possession requires adjudication or resolution of a title dispute, the justice court has no jurisdiction to enter judgment in the forcible (entry and) detainer action. *See* Tex. R. Civ. P. 746 (in forcible entry or forcible detainer actions in justice courts, "the only issue shall be as to the right to actual possession; and the merits of the title shall not be adjudicated"); Tex. Gov't Code Ann. ? 27.031(b)(4); *Rice v. Pinney*, 51 S.W.3d 705, 708-09 (Tex. App.--Dallas 2001, no pet.). This Court has noted that, when the question of possession in a forcible entry and detainer action is "so integrally linked" to the question of title, the justice courts lack jurisdiction over the matter. *See Tuncle v. Jackson*, No. 06-05-00021-CV, 2005 Tex. App. LEXIS 7557, at \*5 (Tex. App.--Texarkana Sept. 14, 2005, no pet.) (mem. op.).

*The validity of a lien on real property is a question of law. Florey v. Estate of McConnell, 212 S.W.3d 439 (Tex.App.-Austin 2006, pet. denied)*

*"It is well-settled that "the terms set out in a deed of trust must be strictly followed." University Savings, 644 S.W.2d at 706."*

Plaintiff claims on page 3 of 6, section III, that *"The Property was purchased at a non-judicial foreclosure sale as evidenced by a Deed (the "Trustee Deed"), which is recorded in the Real Property Records of this County, a True and Correct copy of which is attached hereto in "Exhibit "B"."* Defendants object to this evidence of an alleged Deed which had no law to support plaintiff actions. Plaintiff alleged Deed does not reference proper parties of the original Deed of Trust that is recorded in Williamson County Real Property Records. Additionally, such Trustee Deed was not lawfully filed and as being unlawfully filed does not create a colorable claim to title.

Plaintiff claims on page 3 of 6, section III, that *“Plaintiff is the owner of the Property and is the grantee of said Trustees Deed, or a successor in title said grantee.”* Plaintiff are attempting to mislead this court in to believing Plaintiff holds a valid “Trustee Deed”, which in fact and by operation of law is not a valid Trustee Deed.

Plaintiff claims on page 3 of 6, section III, that *“The Trustees Deed set for the sale of the Property occurred after the declaration of default and the giving of notices, all in the manner provided by law, and pursuant to a Deed of Trust described therein conveying the Property to secure payment of a promissory note.”*

Plaintiff claims appear to be misleading the Court to believe the Plaintiff was the Grantee of the defendants Deed of Trust. Defendants notice this Court that Plaintiff name is nowhere listed on the grantors Deed of Trust. Plaintiff claims are made without proof of such a Deed of Trust that was signed by both the defendant and the plaintiff.

Plaintiff have provided no proof of legal ownership to anything pertaining to defendants alleged Property lien. The original deed of trust will have named a trustee. That individual may not be available to actually conduct the foreclosure, however, and the lender must appoint a substitute trustee. All such requirements regarding the substitute trustee must be met before posting.

*If the sale is conducted by anyone other than the trustee named in the deed of trust or a properly appointed substitute trustee, the sale is void. Burnett v. Manufacturer's Hanover Trust Co., 593 S.W.2d 755, 757 (Tex. Civ. App. – Dallas 1979, writ ref'd n.r.e.); Sullivan v. Hardin, 102 S.W.2d 1110 (Tex. Civ. App. -- Amarillo 1937, no writ).*

Plaintiff claims are not valid claims as the Lender American Mortgage Network, Inc. DBA AMNET does not appear in Williamson County public records as recording a filing or notice to substitute a Trustee from the Original Trustee listed on the Deed of Trust recorded in Williamson County Real Property Records, as such appointment must be made in strict compliance with the deed of trust terms. Failure to do so will make the attempted appointment invalid. Johnson v. Koenig, 353 S.W.2d 478 (Tex. Civ. App. – Austin 1962, writ ref'd n.r.e.).

The presumption that a Substitute Trustee's Deed is valid is dependent upon all condition precedents being accomplished properly, herein the Plaintiff's counsel failed to follow the principles Plaintiff's counsel acts upon. If Plaintiff's counsel had conducted a search of public records, Plaintiff's counsel would have discovered a break in the chain of title. The break in the chain of title would render the break in the chain of title "mute", as under the principle of "nemo dat", a subsequent assignment of the lien after the first break in the chain would not be possible as the assignor of the lien did not have a valid perfected lien to assign to a subsequent assignee. Therefore, any further subsequent assignors would also not have a valid perfected lien and would lack legal authority to file of record a Substitution of Trustee or a Trustee Deed. Whereas there is a break in the chain of title, the Substitution of Trustee, Trustee Deed and the Forcible Detainer would all be void ab inito.

Plaintiff failed to state in its claims that plaintiff is currently involved in a lawsuit brought by defendants in the upper courts to determine validity of plaintiffs unlawful sale of defendants Property.

Defendant asserts that plaintiff conducted an auction that did not comply with both Texas law and the Deed of Trust to unlawfully sell defendants Property.

### CONCLUSION AND PRAYER

In this instant case, the defendant acknowledges that this court cannot rule upon issues of title, but as such title issues are before a court of proper jurisdiction, it was only prudent to make this court aware of this title issue. Issues of title must be fully adjudicated, then and only then can the jurisdiction of this court be invoked by a correct party with standing to determined immediate possession.

Respectfully submitted,

By: \_\_\_\_\_  
Alvie Campbell  
c/o 250 PR 947  
Taylor, Texas 76574  
(512) 796-6397

**CERTIFICATE OF SERVICE**

I certify that on September 15, 2011 a true and correct copy of Defendants' Original Answer was served by Certified Mail to plaintiffs' counsel;

U.S. Certified Mail: **7007 0220 0000 1159 3663\_**

Lauren Christoffel, Bar I.D. # 24065045,

15000 Surveyor Blvd, Suite #100

Addison, Texas 75001.

By: \_\_\_\_\_

Alvie Campbell

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