

DISCOVERY CONTROL PLAN LEVEL

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs' intends to conduct discovery in this case under Level 3.

PARTIES AND SERVICE

2. Plaintiffs' Alvie Campbell and Julie Campbell are individuals whose mailing address is 250 Private Road 947, Taylor, Texas, 76574. The last three digits of Alvie Campbell's driver's license number are 578, and the last three digits of his social security number are 180. The last three digits of Julie Campbell's driver's license number are 933, and the last three digits of her social security number are 938.
3. Defendant Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lender's Successors and Assigns is a Foreign For-Profit Corporation and may be served at 3300 S.W. 34th Avenue, Suite #101, Ocala Florida, 34474-7448. Service on this defendant may be effected by personal service or Certified Mail Return Receipt Requested.
4. Defendant Wells Fargo Bank, N.A., is a National Banking company who may be served by and through its registered agent, CT Corporation System, at 211 E. 7th St. Suite 620, Austin, Texas 78701 USA. Service on this defendant may be effected by personal service or Certified Mail Return Receipt Requested.
5. Defendant Stephen C. Porter, is an individual who may be served at 15000 Surveyor Blvd, Suite 100, Addison, Texas 75001. Service on this defendant may be effected by personal service or Certified Mail Return Receipt Requested.
6. Defendant David Seybold, is an individual who may be served at 15000 Surveyor Blvd, Suite 100, Addison, Texas 75001. Service on this defendant may be effected by personal service or Certified Mail Return Receipt Requested.

7. Defendant Ryan Bourgeois, is an individual who may be served at 15000 Surveyor Blvd, Suite 100, Addison, Texas 75001. Service on this defendant may be effected by personal service or Certified Mail Return Receipt Requested.
8. Defendant Matthew Cunningham, is an individual who may be served at 15000 Surveyor Blvd, Suite 100, Addison, Texas 75001. Service on this defendant may be effected by personal service or Certified Mail Return Receipt Requested.

JURISDICTION AND VENUE

9. The subject matter in controversy is within the jurisdictional limits of this Court.
10. This Court has personal jurisdiction because the property which is the subject of this litigation is located in Texas and Defendants are doing business within this state.
11. Venue in this cause is proper in Williamson County, Texas pursuant to Section 17.56 of the Texas Business and Commerce Code and under Section 15.001 of the Texas Civil Practice and Remedies Code because this action involves real property, and the property is located in Williamson County, Texas.

FACTS

12. Plaintiffs' were the record owner of the property is located at 250 Private Road 947, Taylor, Texas, 76574, more specifically described as LOT 3, DOVE MEADOW NORTH ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN CABINET X, SLIDE 293 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS.
13. Plaintiffs' allegedly signed a Promissory Note in order to purchase the property located at 250 Private Road 947. Taylor, Texas, 76574 on October 29, 2004 with American Mortgage Network, Inc. "AMNET" with loan number # 204-796205. Attached as Exhibit "A"

14. Plaintiffs' allegedly signed a Deed of Trust as security for the note on October 29, 2004, with American Mortgage Network, Inc. "AMNET", which was allegedly recorded in the office of the County Clerk of the Deed of Trust Records of Williamson County, Texas. Attached as Exhibit "B"
15. In December, 2004, "Wells Fargo Home Mortgage" provided the "borrowers" with a new loan number, that being 708-0195808399 and said "borrowers" were to now pay them. Wells Fargo Home Mortgage said they were the new mortgage servicer. Wells Fargo Home Mortgage was not an "original party" to the "original negotiable instrument" which "borrowers" negotiated. Wells Fargo was a 3rd party debt collector, pretending to be the Lender. Wells Fargo failed to adhere to the Fair Debt Collection Practice Act, as all 3rd party debt collectors are required to do.
16. Barrett, Daffin, Frappier, Turner & Engel, LLP, ("BDTFE")agents for Defendants, whose address is 15000 Surveyor Blvd, Suite 100, Addison, Texas, 75001, sent Plaintiff a Notice of Substitute Trustee's Sale (the "Notice") dated July 9, 2010, attached as Exhibit "C" hereto and incorporated as if stated fully herein, stating that a foreclosure sale was scheduled for September 7, 2010 in Williamson County, Texas. That sale occurred as scheduled, by John Latham, whose address is 15000 Surveyor Blvd, Suite 100, Addison, Texas, 75001, and whereupon Wells Fargo Bank, N.A. ("WFBNA") purchased the subject property at said Substitute Trustee's Non-Judicial Sale.
17. On July 26, 2010 Plaintiff's sent via Certified mail requesting, in writing, that the Defendants produce lawful documents showing a valid perfected security instrument existed. There never was such a production and per public records no such document could have been produced. The fact is, no such lawful document (valid perfected security instrument) in this instance

could have been offered up to prove rights of enforcement by a foreclosure action by the Defendants. Attached as Exhibit “D”

18. On July 30, 2010, Defendants agents, Ryan Bourgeois of Barrett Daffin Frappier Turner & Engel, LLP, responded to Plaintiffs request for validation with a package consisting of scanned copies of an assignment of deed of trust, a note, deed of trust, appointment of substitute trustee, and a letter to Mr. Grisham. Ryan Bourgeois then stated in the response *“Our dispute is now over and we will proceed with the scheduled September 7, 2010 foreclosure sale”*. Attached as Exhibit “E”

VALIDITY OF FRAUDULENTLY CREATED DOCUMENTS

19. As noted in the transcript of the Meeting of the Task Force on Judicial Foreclosure Rules November 7, 2007, (note pages 27, 28 and 33), as found on the Supreme Court of Texas website (<http://www.supreme.courts.state.tx.us/jfrtf/pdf/110707transcript.pdf>), makes issue with, addresses and discloses the same fraudulent practices, Defendants produced as such fraudulent documents to accomplish their actions to wrongfully foreclose on Plaintiffs’ property . This was an unlawful foreclosure. Attached as Exhibit “F”
20. On page 27, lines 6-22, Mr. Mike Barrett of Barrett Daffin Frappier Turner & Engel stated; *“There really isn't such a document”* during the discussion about verification of application documents.
21. On page 27, Lines 10-20, Mr. Barrett continued to state; *“because the servicer usually acquired their position in the file through the purchase of MSRs. There is an organized market in MSRs that really makes up maybe as much as 40 to 50 percent of any mortgage company's assets, and they acquired this -- their status of being a servicer through the purchase of an MSR most of the time, or they did it themselves, they created their own loan.*

So finding a document that says, "I am the owner and holder, and I hereby grant to the servicer the right to foreclose in my name" is an impossibility in 90 percent of the cases."

22. On Page 28, lines 8-20, Honorable Judge Bruce Priddy stated: *"And what the -- happens is they just execute a document like Mr. Barrett say doesn't exist. They just create one for the most part sometimes, and the servicer signs it themselves saying that it's been transferred to whatever entity they name as applicant?"*
23. On pages Page 25, lines 16-25, page 26, lines 1-15, Mr. Tommy Bastian of Barrett Daffin Farppier Turner & Engle, LLP, explained MERS; *"MERS is going to be the mortgagee of record. In about 60 percent of all loans MERS is going to be the mortgagee of record, but all MERS is is a registration system. That's all it is. It really is a piggyback on what happened in the securities market back in the early Seventies when Wall Street was exploding, and back in those days whenever you bought and sold stocks or bonds you had to have a paper certificate. Well, the back rooms couldn't keep up with it, and Wall Street almost cratered, and they came up with a book entry system that everybody is familiar with today where loans are bought and sold, and that's basically what MERS is. It's just a listing of who has all the beneficial ownership interest in a mortgage, and that's going to be the investor, it's going to be the mortgage servicer, it's going to be the subservicers. It gives you four or five, six pieces of corroborating information about the borrower and that particular loan. I mean, it has the detail on their status sheet that says, "This is when the loan was made, here is the borrower, and here's the amount of the loan." I mean, all that information is right there so that if the loan is registered on MERS it's real easy to determine all the different parties in the transaction, and that's the way the world's going, so maybe that's kind of the place we need to be going."*
24. Plaintiffs have therefore been required to expend time and effort to defend an action that had no legal basis, in regards to the original lenders unsecured Debt.
25. A Broken Chain of Assignments, rendered the "Deed of Trust" void and unenforceable, under UCC 3-201, 3-204 & 3-302, therefore no activation of the "Power of Sale" clause in the "Deed of Trust" was allowed or was lawful according to Texas laws.

**BIFURCATION OF ORIGINAL LENDERS SECURED DEBT - LOSS OF
PERFECTION OF THE SECURITY INSTRUMENT**

26. Plaintiff's as grantors originally recorded alleged Deed of Trust as Instrument # 2004086763 in Williamson County public records to the grantee, American Mortgage Network, Inc. ("AMNET") per the Texas Local Government Code, chapter 192, section 001, which states; *Sec. 192.001. GENERAL ITEMS. The county clerk shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded.* Attached as Exhibit "B"
27. Defendants attempted to gain control of the security instrument without the proper negotiation of the note to the Defendants and their claim of ownership of the security instrument is without merit. The true fact is that at the time MERS claimed ownership to the security instrument, perfection of the lien had been lost due to bifurcation.
28. Defendants attempt of an assignment of the mortgage that was already bifurcated by the original lender back to the note was not in compliance with lien perfection according to Texas Local Government Code, chapter 192, section.007 which states: *Sec. 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.* The fact is, there has been no legal filing transferring lien rights.
29. Defendants Vice President of Loan Documentation, Stephen C. Porter, who is also counsel for Barrett Daffin Frappier Turner & Engel, LLP, signed the Appointment of Substitute Trustee to John Latham c/o Barrett Daffin Frappier Turner & Engel, LLP on September 08, 2008 and recorded as Instrument # 2008071378 on September 16, 2008 in Williamson

County public records but lacked legal authority to execute such action as American Mortgage Network, Inc. per public records would still be the correct party to the recorded instrument. Attached as Exhibit “G”

30. Defendants Assistant Secretary, David Seybold, who is also counsel for Barrett Daffin Frappier Turner & Engel, LLP, recorded Instrument # 2008085222, “Assignment of Note and Deed of Trust” from MERS to Wells Fargo Bank, N.A on September 30, 2009, with an “effective date of assignment” in August 22, 2008 without legal authority to do so. Attached as Exhibit “H”

31. Through the actions of David Seybold, Assistant Secretary of MERS, the assignment of mortgage recorded as Instrument # 2008085222 in Williamson County public records, is the proof needed to show separation of the security instrument from the negotiable instrument had occurred, therefore the original lenders secured debt was rendered unsecured, the security instrument being a nullity and is out of reach of the negotiable instrument.

32. The bifurcation of the note and security instrument resulted in the original lenders security instrument being unenforceable and the power of sale clause contained within the nullified security instrument unenforceable. Therefore, the trustee sale of the Plaintiff’s property was not lawful.

33. The assignment of mortgage executed by MERS from MERS to Wells Fargo was not proper to the chain of title. MERS could not acknowledge an assignment of the mortgage. American Mortgage Network, Inc.(“AMNET”) as the holder of the note was the only proper party with authority to assign the note and if a valid perfected lien had existed such assignment of mortgage and upon filing in public records such assignment of mortgage

would have been perfected in a subsequent parties name at which the security instrument then would have followed the note.

34. Although American Mortgage Network, Inc. may claim recordation of the “assignment of the mortgage” which reflects the negotiation of the negotiable instrument, are not a required action in regards to the Texas Business and Commerce Code and the Texas Property Code, American Mortgage Network, Inc., MERS and Wells Fargo have failed to review the “security instrument”(Deed of Trust), Section 14. (Governing Laws; Severability),”This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the property is located”. MERS and/or Wells Fargo claims that compliance is not required is also misplaced.
35. According to Texas Local Government Code 192.007, American Mortgage Network, Inc. did have a duty to record an assignment of the mortgage in public records. If such assignment had occurred then MERS and Wells Fargo would have had a duty to record any subsequent assignment of the mortgage.
36. MERS, nor Wells Fargo Bank, N.A. had any legal authority to foreclose on “Borrower’s” real property due to the separation or bifurcation of the negotiable instrument and the security instrument.
37. The assignment of the mortgage by MERS was an unlawful attempt to assign the mortgage to an indebtedness in an attempt to unlawfully obtain real property. This action was an illegal action to try to reconnect the security instrument to the note to give appearance of a secured indebtedness, but in reality the indebtedness is unsecured.
38. Defendants’ have yet to produce such documents that show a valid security instrument exists much less the right to enforce their alleged indebtedness. It is Plaintiffs’ belief that the

Defendants did not have the authority to foreclose on the property and are in fact not the actual holders of the original note or a properly perfected security instrument, and therefore Defendants are not entitled to collect on a debt. Only the original creditor could achieve this.

39. On information and belief, Plaintiffs' alleges that Defendants were never the actual Holder of the Original Note or the owner of a valid perfected security instrument; have never provided any proof they were the duly appointed representative(s) for the actual Holder of the Original Note; were not the actual Holder of the Original Note between the time the Notice was issued and the time that the Substitute Trustee's Sale occurred; and were not the duly appointed representative(s) for the actual Holder of the Original Note between the time the Notice was issued and the time that the Substitute Trustee's Sale occurred. In fact, American Mortgage Network, Inc. ("AMNET") has been the actual Holder of the Note since at least October 29, 2004, as indicated by Exhibit "A" attached hereto and incorporated as if stated fully herein. There is nothing in Defendants' documentation or in the public record indicating that Defendants are, or have been, acting with the authorization of American Mortgage Network, Inc. ("AMNET") in this matter. Accordingly, Defendants did not have authority to foreclose on the property and were not entitled to collect on the alleged debt.

COUNT I: WRONGFUL FORECLOSURE

40. Plaintiffs' re-alleges and incorporates by reference the foregoing allegations.

41. The Defendants foreclosure action was wrongful. The Deed of Trust is not enforceable due to that lack of ownership in the note by the Defendants and if such lawful owner of the indebtedness was to prove up a proper Note, bifurcation of the note and the security instrument has been proved by an assignment of the mortgage by an intrusive non-party that was not "Holder in Due Course".

42. A foreclosure action is merely a collection action on a negotiable instrument, namely the Original Promissory Note. A Deed of Trust acts as a security instrument for the Original Promissory Note. A foreclosure action is a collection on the Original Promissory Note, not on the Deed of Trust. The Texas Business and Commerce Code states that only a "Holder" of a negotiable instrument is entitled to enforce the negotiable instrument. But if such security instrument is invalid then the "holder" can only pursue the indebtedness of the "note".
43. All the documents relating to the foreclosure sale, which occurred on September 7, 2010, refer to the "Holder" of the Note, but Defendants have not shown themselves to be said Holder and/or the duly authorized representatives of the Holder, and even less so have not proved that there was a lawful right to enforce terms within the security instrument.
44. The Notice was defective and invalid because it describes the original mortgagee as MERS and the current mortgagee as "Wells Fargo Bank, N.A." On information and belief, American Mortgage Network, Inc. "(AMNET)" as lender should have been the beneficiary and mortgagee within the security instrument and filed of record which then such security instrument would have been properly perfected in public records. Therefore any notice, acceleration, default or any other notice by defendants is without merit and ineffective.
45. Despite Defendants' knowledge of the dispute regarding Defendants' right to foreclose, Defendants pursued the foreclosure sale of the subject property under the use of a nullified Deed of Trust.
46. To date, Defendants have failed to demonstrate, and cannot demonstrate, the proper allonges, transfers, and assignments affixed to the Note permanently and irremovably, as required by the Texas Business and Commerce Code, that are required to show a proper chain indorsements on the face of the Note which should be supported by the chain of title filed

with public records. In fact, the alleged assignment of the mortgage filed in the Williamson County, Texas property records and dated “effective August 22,, 2008” attach as Exhibit “G”, purports to assign the Deed of Trust from the assignor, Mortgage Electronic Registration Systems, Inc. as Nominee for Lender and Lenders Successors and Assigns, to the assignee, Wells Fargo Bank, N.A. On information and belief, American Mortgage Network, Inc. (“AMNET) held the Note at that time, making it impossible for said assignment to represent the actual state of ownership and impossible for said assignment to represent a true and correct filing in the public records.

47. Defendants have not demonstrated, and cannot demonstrate, either their status as the true and legal “Holder” of the Original Note, or their authority to conduct the foreclosure. Defendants never had a secured debt where terms within the security instrument was enforceable, as the invalid Deed of Trust they used was not enforceable.
48. All Defendants have purposefully, intentionally, and wrongfully instructed and carried out a collection action by way of the foreclosure and Substitute Trustee’s Non-Judicial Foreclosure Sale in violation of the Texas Finance Code sections 392.301(8) and 392.304 and other various State laws.
49. Upon review of Instrument # 2010062035, Substitute Trustee’s Deed, recorded in Williamson County Public Records on September 16, 2010, the affidavit contained within said Trustee’s Deed is written by Matthew Cunningham of National Default Exchange, whose address is 15000 Surveyor Blvd, Suite 100, Addison Texas, 75001 is questionable. Matthew Cunningham did not have actual knowledge of the information he swore to in his affidavit. Attached as Exhibit “T”

50. Mr. Cunningham clearly stated *“This affidavit is made with respect to that certain Deed of Trust dated, October 29, 2004 recorded in Clerk’s file 2004086763, Real Property records, Williamson County, Texas by: Alvie Campbell, Julie Campbell to George M. Shanks Jr., Trustee(s) to secure payment of a Note to Mortgage Electronic Registration Systems, Inc (“MERS”), as Nominee”*. Alvie Campbell and Julie Campbell (Borrower’s”) were never obligated to make payments to MERS. The Note clearly states the “Borrowers” Alvie Campbell and Julie Campbell and the “Lender” American Mortgage Network, Inc..
51. Mr. Cunningham’s affidavit clearly states Wells Fargo Bank, N.A. as the mortgage servicer in reference to an invalid assignment of mortgage. This is inaccurate. The servicer for the “borrower’s was Wells Fargo Home Mortgage from December, 2004 until the attempted assignment of mortgage with the original lenders unsecured debt in September, 2008 which was an attempt to reconnect the unsecured debt. If allegedly Wells Fargo Bank, N.A. is the current mortgage servicer, Wells Fargo Bank, N.A. failed to provide Alvie Campbell and Julie Campbell a Mortgage Servicing Agreement as required by RESPA and other various State laws. However, this was not an option, since the original lenders secured debt was destroyed in 2008.
52. It is Plaintiffs’ belief that Matthew Cunningham did not have actual knowledge of notice of default being served prior to acceleration of the alleged indebtedness. Matthew Cunningham did not have actual knowledge of the alleged mortgage servicers obligation or duties being performed and required by law per his acknowledgment in said affidavit.
53. It is Plaintiffs’ belief that Mr. Cunningham may have had actual knowledge of the “instructions” from the alleged mortgage servicer he swore to in his affidavit but not knowledge of information based on that of the True Holder.

54. Upon review of Instrument # 2010062035, Substitute Trustee's Deed, recorded in Williamson County Public Records on September 16, 2010, the affidavit contained within said Trustee's Deed sworn to by Matthew Cunningham of National Default Exchange, LLP, whose address is 15000 Surveyor Blvd, Suite 100, Addison Texas, 75001, Plaintiffs believe either a conflict of interest or a conspiracy has taken place due to all alleged parties residing within the same address, and all using the same misinformation.

MERS HAD NO AUTHORITY

§ 3-302. HOLDER IN DUE COURSE.

(a) Subject to subsection (c) and Section 3-106(d), "holder in due course" means the holder of an instrument if:

(1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity;

55. Defendants did produce a forgery or alteration of an electronic note that was effectuated by electronic means after scanning of the paper tangible into an intangible form that lack supporting laws. There is a forgery or alteration. The electronic note that was produced lacks any supporting law to exist. Therefore holder in due course/holder was never achieved by any subsequent purchaser.

56. Plaintiffs' never agreed to make payments to Mortgage Electronic Registration Systems, Inc. ("MERS").

57. Plaintiffs' never made payments to MERS.

58. Plaintiffs' original mortgage note was with American Mortgage Network, Inc., not MERS.

59. Mortgage Electronic Registration Systems, Inc. had no legal authority to assign Plaintiffs' mortgage.

60. MERS simply tried to connect the bifurcated mortgage to an electronic mortgage note that was purchased by subsequent purchasers.

Appellant Briefing MERS v. NEBRASKA DEPARTMENT OF BANKING
Attached as Exhibit "J"

61. Page 8, MERS stated; *"The Department and MERS agree that MERS does not underwrite, make, originate, service, negotiate, sell, arrange for or offer to make, originate, service, negotiate, sell or arrange for mortgage loans."*

62. Page 11, MERS stated; *"When a MERS member sells or transfers a mortgage loan or the servicing rights thereunder, MERS tracks such sale or transfer in the MERS® System and there is no need for filing anything in the real estate records because the mortgage lien remains with MERS."*

63. Page 11, MERS stated; *"MERS remains the mortgagee of record of the mortgage even when the beneficial ownership interest in the promissory note secured by the mortgage or the servicing rights are sold or transferred from one MERS member to another."*

64. Page 12, MERS stated; *"The beneficial interest in the mortgage (or the person or entity whose interest is secured by the mortgage) runs to the owner and holder of the promissory note. In essence, MERS immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur."*

65. Page 16, MERS stated; *"In effect, the mortgage lien becomes immobilized by MERS continuing to hold the mortgage lien when the note is sold from one investor to another via an endorsement and delivery of the note."*

66. Page 19, MERS stated; *“The beneficial note interests are transferred by endorsement and delivery of the note which is also a non-recordable event. The mortgage lien remains with MERS so no assignment of the mortgage lien is needed when these non-recordable transfers occur and are tracked on the MERS® System.”* This is a violation of Texas Local Government Code 192.007.
67. In MERS v. Young (Texas Appellate Court) MERS stated; *“MERS has “no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans.”* Attached as Exhibit “K”
68. In the Superior Court Of New Jersey Chancery Division - Atlantic County, Docket No. F-10209-08, deposition of William Hultman, secretary and treasurer of MERS, Mr. Hultman stated; *What I said is MERS remains the mortgagee even though the note has been transferred from the original lender to subsequent purchasers, and each time that note moves by endorsement and delivery we become the agent of the new purchaser, and that's by virtue of the mortgage and by virtue of the membership agreements between MERS and its members.* Attached as Exhibit “L”(Page 141, line 5-11) The failure to records those transfers is in clear violation of Texas Local Government Code, chapter 192, section 007.
69. In the circuit court for Montgomery County, Alabama, a video deposition of R.K. Arnold, MERS president and CEO, during questioning, stated the following; Attached as Exhibit “M”
70. Page 30, line#8; A. *We were setting up a system to eliminate unnecessary assignments and track mortgage loans.*

71. Page 40, line #1 ; A. *It's one of the fundamental underpinnings of negotiable instruments and the entire mortgage industry. Notes have never been recorded, and assignments are not recorded in connection with notes.*
72. Page 72, # 20-23 & 73, #1; A. *I guess the problem is the word never. But as a matter of course, when the note moves, there's -- it's never been the case that there were generally assignments that reflected that.*
73. Page 74; 1-7; Q. And are you satisfied that there is no state that requires -- or that the purpose of the mortgage assignment is to provide notice to the world that the ownership of the debt is transferred between two different parties? A. *Yes.*
74. Page 86; line #6-7 A. *"We have to comply by the laws of the respective state".*
75. Page 91; line 15-2- & 22; Q. Is it fair to say that in every case of 63 -- 62 million loans that are recorded -- where mortgages are recorded MERS as mortgagee, that the lender in those loans has not recorded a lien solely in their name? A. *Yes.*
76. Page 112, line #12; A. *Well, we track the note.*
77. Page 120 line #19-23, page 121, line 1&2; A. *Well, you asked about the definition of the holder, and it depends on the state law, specifically the UCC, Article 3, in that state, cases. And then you're referring to a situation that's got documents, contracts, and those contracts would dictate within the confines of state law.*
78. Page 160, line #12-17; Q. Right. And the point being is, is that simply registering a transfer of an interest on your system does not mean that legally the transfer of that interest took place. That is dependent on the underlying documents; correct? A. *True.*

79. Page 179, line 20-23, page 181, line 5&6; Q. So while your system may indicate the intent to undertake a certain act, it is not proof that that act actually was undertaken, is it? A. *It's not the transaction.*

ARGUMENTS AND AUTHORITIES

80. We must first look at extremely basic law regarding “Negotiable Instruments” and “Security Instruments.” Everyone knows that a “Negotiable Instrument” may stand alone and does not have to be secured. It can be bought, sold, or transferred as long as it is done so properly. The “Security Instrument” (the “Deed of Trust”) is merely an instrument which if filed of record places everyone on notice that there is a lien on certain property (real estate) to enforce collection of monies to pay the indebtedness evidenced by the “Negotiable Instrument.” The filing in Public Record also is required to perpetuate lien perfection.

81. The “Security Instrument”(Deed of Trust) cannot be sold. It attaches to the property and only follows the “Negotiable Instrument.” It is of no matter of the status of the note in regards to the foreclosure sale, the power of sale was contained within a bifurcated security instrument and by Defendants own actions the Security Instrument was rendered a nullity. Even if Defendants could prove up the Note to enforceability, the power of sale is not available. Therefore the Defendants have abused the non-judicial process by executing an unlawful sale where in fact they should have filed suit in a court of equity for monies under a proved up note.

82. If the Original “Negotiable Instrument” does not exist, has not been sold or transferred properly, or is merely a copy, whether electronically or otherwise, the “Security Instrument” Deed of Trust, is invalid and cannot be enforced because it cannot exist without the “Negotiable Instrument.”

83. Texas Business and Commerce Code Section 3.301 states that a Person entitled to enforce the Instrument (Negotiable Instrument) is either the Holder of the Instrument or a non holder in possession of the instrument who has the rights of a holder. These Promissory Notes are leveraged, bought, sold, and placed in public offerings as part of a pool of thousands of loans, and each one is sold in fractionalized parts to hundreds of investors on Wall Street, sometimes all of the above. So, the “obligor” has a right to see the ink-signed Original Note in its current state so as to determine who the actual Holder is (or is not).
84. Texas case law supports the requirement to produce the ink-signed Original Note. It is well established Texas Law that in order to recover on the Original Note, four requirements must be established: (1) the existence of the note in question; (2) that the borrower signed the note; (3) that the person or entity who wants to enforce the note is the legal owner and holder of the note; and (4) that a certain balance is due and owing under the note. Scott v. Commercial Services of Perry, Inc., 121 S.W.3d 26 (Tex. App. - Tyler, 2003).
85. In Geiselman v. Cramer Financial Group, Inc., 965 S.W.2d 532 (Tex. App. - Houston [14th Dist.] 1997), the court held that the plaintiff was not the “Holder” of the note where the Plaintiff did not have possession of the Original Note. Also in Western Nat. Bank v. Rives, 927 S.W.2d 681 (Tex. App. - Amarillo, 1996), *reh'g denied*, 1996 Tex. App. LEXIS 3651 (1996), the court held that if the plaintiff does not possess the note, then the plaintiff is not the holder and cannot enforce the obligation. In Gar-Dal, Inc. v. Life Ins. Co. of Virginia, 557 S.W.2d. 565 (Tex. Civ. App. Beaumont 1977), the court said that any number of persons may possess photocopies of a note complete with photocopied signature; however, only the person (or entity, emphasis added) who is the present owner and holder who is in possession of the original can be entitled to enforce it.

86. Texas courts have thus explained the inseparability of ownership of a mortgage note and the deed of trust securing that note:

The executed contract of mortgage . . . is an incident of the instrument assured; and if that is negotiable and is transferred according to the law merchant, the mortgage passes with it, *ipso facto*, without assignment in words); Perkins v. Sterne, 23 Tex. 561, 563 (1859) ("Even in the case of a note made payable to A., or bearer, and transferable by delivery, without endorsement, any holder of such note could avail himself of the security afforded by a mortgage executed to secure its payment, because the mortgage, as an incident, would follow the note into the hands of every holder."); Lawson v. Gibbs, 591 S.W.2d 292, 294 (Tex. Civ. App. 1979), writ ref'd n.r.e.) ("The mortgage of the property is an incident of the debt; and as long as the debt exists, the security will follow the debt.")

87. J.W.D., Inc. v. Federal Ins. Co., 806 S.W.2d 327, 330 (Tex. App.–Austin 1991). Consistent with those principles, the Eastland Court of Appeals set out the standards very plainly for making findings regarding a mortgage note:

The "holder" of a negotiable instrument is defined in TEX. BUS. & COM. CODE ANN. § 1.201(20) (Vernon Supp.2003) as:

[T]he person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession.

88. TEX. BUS. & COM. CODE ANN. § 3.201 (Vernon 2002) provides in part:

- (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.
- (b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder.

89. In Jernigan v. Bank One, Texas, N.A., 803 S.W.2d 774, 777 (Tex.App. -Houston [14th Dist.] 1991, no writ), the court recognized that, under certain circumstances, a promissory note can be transferred without a written assignment or proper endorsement. The court held:

Promissory notes can be transferred lawfully without a written assignment or an endorsement by the legal owner or holder. Waters v. Waters, 498 S.W.2d 236, 241 (Tex.Civ.App.-Tyler 1973, writ ref'd n.r.e.); see also Christian v. University Federal Savings Association, 792 S.W.2d at 534. Absent an endorsement, however, possession must be accounted for by proving the transaction through which the note was acquired. Tex. Bus. & Com.Code Ann. § 3.201(c), Comment 8 (Vernon 1968); Lawson v. Finance America Private Brands, Inc., 537 S.W.2d at 485. Appellee has presented no proof of any transfer that would vest in it ownership rights sufficient to enforce payment of the note. See Northwestern National Insurance Company v. Crockett, 857 S.W.2d 757, 758 (Tex.App.-Beaumont 1993, no writ).

90. Shepard v. Boone, 99 S.W.3d 263, 265-266 (Tex.App. - Eastland 2003).

Producing Cause. Plaintiff would show that the acts, practices, and/or omissions complained of were the producing causes of Plaintiff's damages more fully described herein.

Written Notice Not Given. Plaintiff's have not timely notified Defendants of such complaint pursuant to Section 17.505(a) of the Texas Business and Commerce Code. However, pursuant to Section 17.505(b) of the Texas Business and Commerce Code, the giving of 60 days' written notice is impracticable by reason of the necessity of filing suit in order to prevent irreparable damage to Plaintiffs', and because a consumer's claim is asserted as a response to actions taken by Defendants.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

91. Plaintiffs' requests this Honorable Court to restrain Defendants, or any of them, Defendants' officers, agents, servants, employees, and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying the subject property, reporting the subject

property for any other sale, or otherwise disturbing or attempting to disturb Plaintiff's peaceable possession and enjoyment of the subject property during the pendency of this cause. Unless this Honorable Court immediately restrains Defendants, or any of them, Defendants' officers, agents, servants, employees, and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying the subject property, reporting or listing the subject property for any other sale, or otherwise disturbing or attempting to disturb Plaintiff's peaceable possession and enjoyment of the subject property during the pendency of this cause, Plaintiff will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete and final relief. More specifically, Plaintiffs' will show unto this Court the following:

(a) The harm to Plaintiffs' is imminent because Plaintiffs' property is at immediate risk of re-sale, alteration, or destruction whereupon Plaintiffs' would lose the ability to recover her property should Plaintiffs' prevail in this action.

(b) There is no adequate remedy at law that will give Plaintiffs' complete and final relief if the Temporary Restraining Order is not granted, and any transfer, alteration, or destruction of the property is allowed to occur.

(c) Plaintiffs' are willing to post a reasonable temporary restraining order bond and hereby request this Honorable Court to set such bond at a reasonable amount.

(d) Plaintiffs' have met their burden by establishing each element that must be present before injunctive relief can be granted by this Court, and Plaintiff's therefore are entitled to the requested temporary restraining order.

92. Plaintiffs' are likely to succeed on the merits of this lawsuit.

CONCLUSION

When the Court takes into account the Statutes and Case Law and applies them to the facts of this case and the documents relied on by the Plaintiffs', it is clear why it is necessary for the "Holder" who is authorizing the collection of the Note be required to prove they are the Holder of the ink-signed Original Note with a valid perfected security interest. No such evidence exists.

Defendants through their actions of attempting an assignment of a non valid security instrument, and with reference to public records, there is proof of bifurcation or separation of the security instrument from the note. This action by 3rd parties or the lack of action thereof has rendered the security instrument a nullity, leaving only an unsecured indebtedness of the negotiable instrument that could only be enforced by the original Creditor through legal avenues.

PRAYER FOR RELIEF

WHEREFORE PLAINTIFF RESPECTFULLY REQUESTS:

1. That this Petition be filed and that a day be appointed for a hearing on this matter;
2. That a temporary restraining order will be issued, restraining Defendants, or any of them, Defendants' officers, agents, servants, employees, and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying the subject property, reporting or listing the subject property for any other sale, or otherwise disturbing or attempting to disturb Plaintiffs' peaceable possession and enjoyment of the subject property during the pendency of this cause;
3. That the Court sets a reasonable bond for the temporary restraining order;

4. That, after notice and hearing, the Court set aside the Substitute Trustee's Sale of the above-specified property and issue a temporary injunction enjoining and restraining Defendants, or any of them, Defendants' officers, agents, servants, employees, successors and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying the subject property, reporting the subject property for any other sale, or from otherwise disturbing or attempting to disturb Plaintiffs' peaceable possession and enjoyment of the subject property during the pendency of this cause;
5. That, after trial on the merits, the Court permanently enjoin Defendants, or any of them, Defendants' officers, agents, servants, employees, successors and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying the subject property of the subject property, reporting the subject property for any other sale, or otherwise disturbing or attempting to disturb Plaintiffs' peaceable possession and enjoyment of the property;
6. Damages in an amount not to exceed the jurisdictional limits of this Court;
7. Economic Damages;
8. Punitive Damages;
9. Additional Treble Damages for all intentional and knowing violations;
10. Exemplary Damages;
11. Equitable Relief;
12. Costs of Court; and
13. All other relief to which Plaintiffs' are entitled;
14. Plaintiffs' pray for general relief.

Respectfully submitted

By:
ALVIE CAMPBELL, Pro Se

By:
JULIE CAMPBELL, Pro Se

CERTIFICATE OF SERVICE

I certify that on _____, 2010 a true and correct copy of Plaintiff's Original Petition for Wrongful Foreclosure was served opposing counsel in accordance with the rules.

Name

Date: _____