



JENNA FULLERTON  
jenna@hopkinswilliams.com

June 17, 2011

*Via U.S. First Class Mail*

Lisa David  
Williamson County District Clerk  
P.O. Box 24  
Georgetown, Texas 78627

RE: MOTION TO DISMISS and NOTICE OF HEARING  
**Cause No. 10-1093-C368**; *Alvie Campbell and Julie Campbell v. MERS, et al*; In  
the 368<sup>th</sup> Judicial District Court of Williamson County, Texas

Dear Ms. David:

Enclosed for filing in the above-referenced cause please find the following:

1. Defendants Stephen C. Porter, David Seybold, Ryan Bourgeois, and Matthew Cunningham's Motion to Dismiss; and
2. Notice of Hearing on Defendants' Motion to Dismiss.

I have included the originals and one copy of each to be file-stamped and returned in the envelope provided.

Thank you for your usual courtesy. Please feel free to contact me if you have any questions or concerns.

Sincerely,



Jenna Fullerton, Legal Assistant to  
MARK D. HOPKINS

Enclosures

Cc: *Via Certified Mail: # 70110470000160423244* *Via Facsimile: (214) 999-6170*  
*And Regular U.S. Mail*  
Alvie Campbell Richard A. Illmer  
Julie Campbell John C. Pegram  
250 Private Road 947 Brown McCarroll, LLP  
Taylor, Texas 76574 2001 Ross Avenue, Suite 2000  
Dallas, Texas 75201

CAUSE NO. 10-1093-C368

ALVIE CAMPBELL AND JULIE	§	IN THE DISTRICT COURT
CAMPBELL	§	
Plaintiffs,	§	
	§	
v.	§	368 <sup>th</sup> JUDICIAL DISTRICT
	§	
MORTGAGE ELECTRONIC	§	
REGISTRATION SYSTEMS, INC., AS	§	
NOMINEE FOR LENDER AND LENDER'S	§	
SUCCESSORS AND ASSIGNS, AND WELLS	§	
FARGO BANK, N.A., AND STEPHEN C.	§	
PORTER, AND DAVID SEYBOLD, AND	§	
RYAN BOURGEOIS, AND MATTHEW	§	
CUNNINGHAM, AND JOHN DOE 1-100	§	
Defendants.	§	WILLIAMSON COUNTY, TEXAS

**DEFENDANTS STEPHEN C. PORTER, DAVID SEYBOLD, RYAN BOURGEOIS, AND  
MATTHEW CUNNINGHAM'S MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Stephen C. Porter, Ryan Bourgeois, David Seybold, and Mathew Cunningham (referred to collectively as "Attorney Defendants"), Defendants in the above-styled and numbered cause, and file this their Motion to Dismiss Plaintiffs' Verified Original Petition for lack of standing. In support of the foregoing, Attorney Defendants would respectfully show unto the court as follows:

**I.  
INTRODUCTION**

1. Defendant, Wells Fargo Bank, N.A. ("Wells Fargo") is a lending institution doing business in the State of Texas.

2. Barrett Daffin Frappier Turner & Engel, LLP ("BDFTE") was retained by Defendant Wells Fargo to assist in the foreclosure of certain real property owned by Plaintiffs Alvie Campbell and Julie Campbell ("Plaintiffs") due to Plaintiffs' failure to pay their residential

mortgage as contractually agreed. *See, Affidavit of Stephen C. Porter*, attached hereto as **Exhibit “A”** and incorporated as if fully set out herein.

3. Attorney Defendants are licensed attorneys in the State of Texas and are employed by BDFTE to provide legal services on behalf of the firm to its clients. *Id.*

4. Plaintiffs have failed and refused to pay their mortgage as contractually agreed and have brought this suit in an effort to delay their eviction.

5. No claims have been asserted against Attorney Defendants that arise out of any conduct other than the Attorney Defendants’ legal representation of their client, Wells Fargo, in protecting Wells Fargo’s interests vis-à-vis the Plaintiffs.

## **II. ARGUMENT AND AUTHORITIES**

6. Plaintiffs’ suit against Attorney Defendants should be dismissed as a result of Plaintiffs’ lack of standing to sue Attorney Defendants. As an element of subject-matter jurisdiction, standing is an issue that can be raised at any time. *See, In re H.C.S.*, 219 S.W.3d 33, 34 (Tex. App. – San Antonio 2006, no pet.). Standing is a question of law for determination by the court. *See, Doncer v. Dickerson*, 81 S.W.3d 349, 358 (Tex. App. – El Paso 2002, no pet.).

7. Attorney Defendants were retained by Wells Fargo to assist Wells Fargo in the protection of its rights under a certain Note (of which Wells Fargo is the holder) and Deed of Trust (of which Wells Fargo is a beneficiary thereunder) to which Plaintiffs are the mortgagor. *See, Affidavit of Stephen C. Porter*, previously attached hereto as **Exhibit “A”**. Save and except through the legal representation of Wells Fargo, Attorney Defendants have had no contact or relationship with Plaintiffs. *Id.* The sole contact Attorney Defendants have had with Plaintiffs is in the capacity as legal counsel for Wells Fargo. *Id.* Plaintiffs are now attempting to bring claims against Attorney Defendants claiming wrongdoing by Attorney Defendants. However, given

that attorneys are immune from suit by a client's adversary for providing legal services to a client, Attorney Defendants move this court to dismiss with prejudice all of Plaintiffs' claims against them.

8. Based on an overriding public policy, Texas courts have consistently held that an opposing party "does not have a right of recovery, *under any cause of action*, against another attorney arising from the discharge of his duties in representing a party..." See, *Taco Bell Corp. v. Cracken*, 939 F.Supp. 528, 532 (N.D. Tex. 1996) (emphasis in original). Attorneys have an absolute right to "practice their profession, to advise their clients and interpose any defense or supposed defense, without making themselves liable for damages." See, *Kruegel v. Murphy*, 126 S.W. 343 (Tex. Civ. App.—Dallas 1910, writ ref'd). To have any other rule or standard would "act as a severe and crippling deterrent to the ends of justice for the reason that a litigant might be denied a full development of his case if his attorney were subject to the threat of liability for defending his client's position to the best and fullest extent allowed by law, and availing his client of all rights to which he is entitled." See, *Bradt v. West*, 892 S.W.2d 56, 71 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1994, writ denied).

9. Attorney immunity applies whether the attorney is providing his services within the context of litigation, or simply in a business transaction; the immunity extends to non-litigation conduct as well as litigation conduct. See, *Martin v. Trevino*, 578 S.W.2d 763, 771 (Tex. Civ. App.—Corpus Christi 1978, writ ref'd n.r.e.). As set out in *Martin*,

[A]n attorney is exempt from liability to any party other than his client for damages resulting in the performance of service which engages and requires the office or the professional training, skill and authority of an attorney because an attorney deals at arm's length with adverse parties, and that he is not liable to such adverse parties for his actions, as an attorney on behalf of his client. The primary duty the attorney owes is to his client so long as it is compatible with his professional responsibility. If he violates this responsibility, the remedy is public, not private. ... [T]hird parties should not be able to disturb the legal advice

rendered to adverse parties by filing lawsuits for fraud and conspiracy against their adversaries' lawyers regardless of the likelihood of litigation.

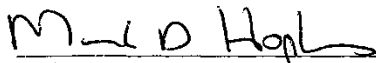
10. Texas law is clear; attorneys are immune from claims like those advanced by the Plaintiffs and must remain immune in the interest of the orderly administration of the civil justice system. *See, Lewis v. Am. Exploration Co.*, 4 F.Supp.2d 673 (S.D. Tex. 1998). Given the aforementioned immunity, Plaintiffs' claims against Attorney Defendants must fail for lack of standing and therefore be dismissed.

**III.**  
**CONCLUSION AND PRAYER**

11. WHEREFORE, Attorney Defendants pray that upon the hearing of this matter, Plaintiffs' claims against them be dismissed with prejudice, as Plaintiffs have no standing to pursue their claims against Attorney Defendants. Movants further pray for such other relief, at law or in equity, to which they may show themselves justly entitled.

Respectfully Submitted,

**HOPKINS & WILLIAMS, PLLC**

By:   
MARK D. HOPKINS  
State Bar No. 00793975  
12117 Bee Caves Rd., Suite 260  
Austin, Texas 78738  
(512) 600-4320  
(512) 600-4326 Fax

**ATTORNEYS FOR STEPHEN C. PORTER,  
DAVID SEYBOLD, RYAN BOURGEOIS AND  
MATTHEW CUNNINGHAM**

**CERTIFICATE OF SERVICE**

Pursuant to Texas Rules of Civil Procedure 21 and 21a, a true and correct copy of the foregoing has been served upon all parties as indicated below, on this the 12<sup>th</sup> day of June 2011 as follows:

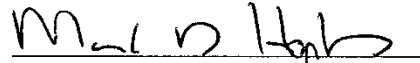
***Via Certified Mail: # 70110470000160423244***

***And Regular U.S. Mail***

Alvie Campbell  
Julie Campbell  
250 Private Road 947  
Taylor, Texas 76574

***Via Facsimile: (214) 999-6170***

Richard A. Illmer  
John C. Pegram  
Brown McCarroll, LLP  
2001 Ross Avenue, Suite 2000  
Dallas, Texas 75201

  
Mark D. Hopkins

CAUSE NO. 10-1093-C368

ALVIE CAMPBELL AND JULIE  
CAMPBELL  
Plaintiffs,

§ IN THE DISTRICT COURT

§

§

§

v.

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368<sup>th</sup> JUDICIAL DISTRICT

§

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., AS  
NOMINEE FOR LENDER AND LENDER'S  
SUCCESSORS AND ASSIGNS, AND WELLS  
FARGO BANK, N.A., AND STEPHEN C.  
PORTER, AND DAVID SEYBOLD, AND  
RYAN BOURGEOIS, AND MATTHEW  
CUNNINGHAM, AND JOHN DOE 1-100  
Defendants.

§

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WILLIAMSON COUNTY, TEXAS

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AFFIDAVIT OF STEPHEN C. PORTER

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STATE OF TEXAS

§

§

COUNTY OF DALLAS

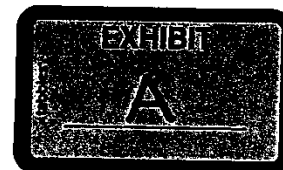
§

Before me, the undersigned Notary Public on this day personally appeared Stephen C. Porter, being duly sworn stated under oath, as follows:

"My name is Stephen C. Porter. I am over the age of eighteen years and competent to make this affidavit. I am an attorney licensed to practice law in the State of Texas, and I am Chief Litigation Counsel with the law firm of Barrett Daffin Frappier Turner & Engel, LLP ('BDFTE'). With respect to my work for BDFTE, I am familiar with the firm's client list, as well as the scope of work performed for the firm's clients. I am also personally familiar with BDFTE's past legal representation of Wells Fargo Bank, N.A. ('Wells Fargo') with respect to the foreclosure proceedings forming the basis of the above-styled suit.

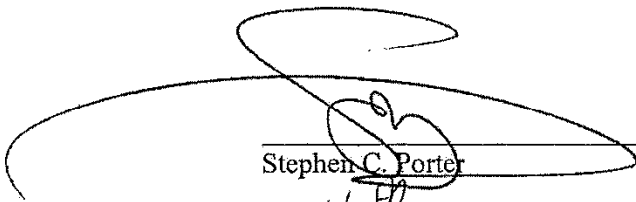
BDFTE, its attorneys, including myself and Defendants David Seybold, Ryan Bourgeois, and its representative Matthew Cunningham, were retained by Wells Fargo as foreclosure counsel to commence foreclosure proceedings to enforce the mortgagee's lien against the Property secured by the Note; and to provide Wells Fargo with legal representation in protecting its interests against those of Alvie Campbell and Julie Campbell. To the extent BDFTE or any of its attorneys or representatives mentioned herein had any contact or communication with Alvie Campbell and Julie Campbell, that contact or communication was conducted by BDFTE solely in our capacity as counsel for Wells Fargo. At no time has BDFTE or its attorneys or representatives had contact or communication with Alvie

*Affidavit of Stephen C. Porter*

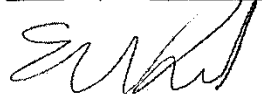


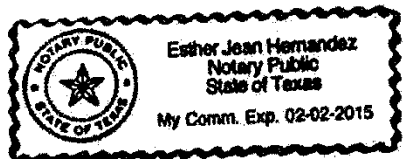
Campbell and Julie Campbell other than in the capacity as 'legal counsel for Wells Fargo in an adverse relationship with Alvie Campbell and Julie Campbell.' ”

Further affiant sayeth not.

  
\_\_\_\_\_  
Stephen C. Porter

SWORN AND SUBSCRIBED before me this the 16<sup>th</sup> day of June 2011.

  
\_\_\_\_\_  
Notary Public In and For The State of Texas





CAUSE NO. 10-1093-C368


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CAMPBELL	§	
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RYAN BOURGEOIS, AND MATTHEW	§	
CUNNINGHAM, AND JOHN DOE 1-100	§	
Defendants.	§	WILLIAMSON COUNTY, TEXAS

**NOTICE OF HEARING**

Please take notice that a hearing on Defendants Stephen C. Porter, David Seybold, Ryan Bourgeois, and Matthew Cunningham's Motion to Dismiss has been scheduled for Thursday, June 23, 2011 at 9:00 a.m. in the above-referenced Court.

Respectfully Submitted,

**HOPKINS & WILLIAMS, PLLC**

By: 

MARK D. HOPKINS

State Bar No. 00793975

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Austin, Texas 78738

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