

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

JUDGMENT RENDERED MAY 18, 2012

NO. 03-11-00429-CV

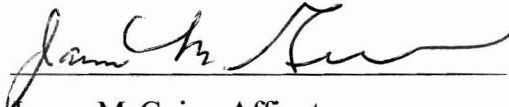
Alvie Campbell and Julie Campbell, Appellants

v.

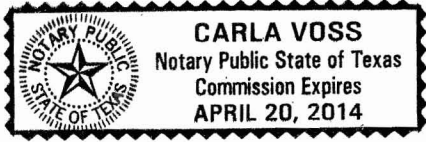
Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lender's Successors and Assigns; Wells Fargo Bank, N.A.; Stephen C. Porter; David Seybold; Ryan Bourgeois; Matthew Cunningham, and John Doe 1-100, Appellees


APPEAL FROM THE 368TH DISTRICT COURT OF WILLIAMSON COUNTY
BEFORE CHIEF JUSTICE JONES, JUSTICES PEMBERTON AND ROSE
AFFIRMED -- OPINION BY CHIEF JUSTICE JONES

THIS CAUSE came on to be heard on the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error requiring reversal in the trial court's judgment: **IT IS THEREFORE** considered, adjudged and ordered that the judgment of the trial court is in all things affirmed. It is **FURTHER** ordered that the appellants pay all costs relating to this appeal, both in this Court and the court below; and that this decision be certified below for observance.


James McGuire, Affiant

SIGNED under oath before me on this 9 day of June, 2011.




Notary Public, State of Texas

Affidavit of James McGuire 06-08-11

SUMMARY OF ARGUMENT

1. This case concerns a lender's right to enforce by the power of sale certain indebtedness owed by borrowers, Alvie and Julie Campbell, the Plaintiffs herein (collectively, the "Campbells" or "Plaintiffs") and secured by a deed of trust lien on real property located at 250 Private Road 947 in Taylor, Williamson County, Texas (the "Property"). On September 7, 2010, Wells Fargo foreclosed on the Property. The Campbells subsequently filed this suit in an effort to set the foreclosure aside and/or stall eviction. In their Original Petition, Plaintiffs assert a single claim—that the foreclosure was wrongful because Wells Fargo was not the holder of the subject note or the note and deed of trust were "bifurcated." Plaintiffs' claim fails as a matter of law. The summary judgment evidence establishes that (1) Plaintiffs' claim is barred by res judicata and (2) at all relevant times, Wells Fargo was the holder of the note and had authority to foreclose under the deed of trust. Because there is no genuine issue of material fact as to Plaintiffs' claim against the Defendants, and Plaintiffs have no evidence to support their wrongful foreclosure claim, summary judgment is proper.

SUMMARY JUDGMENT EVIDENCE

2. Defendants refer to and incorporate by reference the following summary judgment evidence:

Exhibit 1: Affidavit of Kyle N. Campbell, and the following exhibits attached thereto:

Exhibit A: Fixed Rate Note (the "Note") executed October 29, 2004;

Exhibit B: Deed of Trust (the "Deed of Trust") executed October 29, 2004;

Exhibit 2: Certified copy of Plaintiffs' Notice of Felony filed on June 30, 2009, *Alvie Campbell and Julia Campbell v. Wells Fargo Home Mortgage, et al*, Cause No. 09-636-277, 277th Judicial District Court, Williamson County, Texas;

- Exhibit 3: Certified copy of Plaintiffs' Response to Defendant Wells Fargo's Motion for Summary Judgment, *Alvie Campbell and Julia Campbell v. Wells Fargo Home Mortgage, et al*, Cause No. 09-636-277, 277th Judicial District Court, Williamson County, Texas;
- Exhibit 4: Certified copy of Order Granting Defendant's Traditional Motion for Summary Judgment signed on April 6, 2010, *Alvie Campbell and Julia Campbell v. Wells Fargo Home Mortgage, et al*, Cause No. 09-636-277, 277th Judicial District Court, Williamson County, Texas;
- Exhibit 5: Certified copy of Order Granting Defendant's No-Evidence Motion for Summary Judgment signed on April 6, 2010, *Alvie Campbell and Julia Campbell v. Wells Fargo Home Mortgage, et al*, Cause No. 09-636-277, 277th Judicial District Court, Williamson County, Texas;
- Exhibit 6: Certified copy of Substitute Trustee's Deed filed September 7, 2010 in the Official Public Records of Williamson County, Texas.

UNDISPUTED FACTS

3. On October 29, 2004, the Plaintiffs entered into a loan with American Mortgage Network, Inc. ("AMNET" or "Original Lender") in the original principal amount of \$137,837.00, which is evidenced by the Note of even date (the "Note").¹ The Note is payable to the order of "Lender," who is identified as AMNET, and AMNET's "successors and assigns."² The Plaintiffs signed the Note, a copy of which is attached to Plaintiffs' Original Petition.³

4. The Note was secured by a Deed of Trust dated October 29, 2004, recorded as document number 2004086763 in the Official Public Records of Williamson County, Texas.⁴ The beneficiary under the Deed of Trust was MERS, a separate corporation acting solely as "a

¹ Exhibit A.

² *Id.*

³ *Id.*

⁴ Exhibit B.

nominee for Lender and Lender's successors and assigns."⁵ The Deed of Trust identified the role of MERS in securing the rights of the Lender, including the prospect of foreclosure, as follows:

Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.⁶

5. On December 9, 2004, Wells Fargo became the holder and servicer of the Note.⁷ Since that time, Wells Fargo has remained the holder and servicer of the Note.⁸ The Note is endorsed to Wells Fargo and Wells Fargo is in possession of the Original Note.⁹

6. On August 22, 2008, MERS, as nominee for Lender (which, at the time was Wells Fargo), assigned its beneficial interest in the Deed of Trust to Wells Fargo ("Transfer of Lien").¹⁰

7. On June 30, 2009, Plaintiffs filed a lawsuit against Wells Fargo, styled *Alvie Campbell and Julia Campbell v. Wells Fargo Home Mortgage, et al*, Cause No. 09-636-277, 277th Judicial District Court, Williamson County, Texas (the "First Lawsuit").¹¹ In the First Lawsuit, Plaintiffs alleged that Wells Fargo lacked the authority to enforce the Deed of Trust on the same bases in the instant lawsuit, including, Wells Fargo was not the holder of the Note and

⁵ Exhibit B.

⁶ Exhibit B, p. 2.

⁷ Exhibit 1, ¶ 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Original Petition, Exhibit H.

¹¹ Exhibit 2.

the Note and Deed of Trust were bifurcated.¹² On April 6, 2010, the court granted Wells Fargo's traditional and no evidence motions for summary judgment and dismissed Plaintiffs' claims with prejudice.¹³

8. After disposing of the meritless claims in the First Lawsuit, Wells Fargo sold the Property at a non-judicial foreclosure sale on September 7, 2010.¹⁴ On September 27, 2010, Plaintiffs filed the instant lawsuit bringing the same claim(s) they asserted in the First Lawsuit. Specifically, Plaintiffs contend that Wells Fargo lacked authority to foreclose under the Deed of Trust because Wells Fargo was not the holder of the Note and/or because the Note and Deed of Trust were "bifurcated."

TRADITIONAL MOTION FOR SUMMARY JUDGMENT

I. Traditional summary judgment standard.

9. A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, move, with or without supporting affidavits, for a summary judgment in its favor.¹⁵ A motion for summary judgment and its supporting evidence must demonstrate that there is no genuine issue of material fact and must also show that the movant is entitled to judgment as a matter of law.¹⁶ A defendant who conclusively negates at least one of the essential elements of a plaintiff's causes of action or who conclusively establishes all of the elements of an affirmative defense is entitled to summary judgment.¹⁷

¹² See Plaintiffs' Response to Wells Fargo's Motion for Summary Judgment, attached hereto as Exhibit 3, pp. 6-12.

¹³ Exhibit 4; Exhibit 5.

¹⁴ Exhibit 6.

¹⁵ TEX. R. CIV. P. 166a(b).

¹⁶ TEX. R. CIV. P. 166a(c); see also *Lear Seigler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991).

¹⁷ *Cathey v. Booth*, 900 S.W.3d 339, 341 (Tex. 1995).

II. Plaintiffs' claims are barred by res judicata.

10. Plaintiffs' claims are barred by res judicata because they were brought, or should have been brought, in the First Lawsuit.

Res judicata is designed to promote judicial efficiency, maintain stability of court decisions, prevent vexatious litigation, and protect litigants from multiple lawsuits.¹⁸ Res judicata, or claim preclusion, prevents the re-litigation of a claim or cause of action that was adjudicated and resolved by a final judgment, as well as related matters that with the use of diligence should have been litigated in the earlier suit.¹⁹ In determining whether two claims involve the same cause of action for res judicata purposes, the critical issue is whether the two claims arise from the same transaction and are based on the same "nucleus of operative facts."²⁰

11. The elements of res judicata are as follows: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of the parties or those in privity with them; and (3) the second suit is based on the same claims that were raised or that could have been raised in the first suit.²¹

A. A final judgment was entered in favor of Wells Fargo.

12. Res judicata requires that a court of competent jurisdiction sign a final judgment on the merits in the first suit.²² In the First Lawsuit, the the 277th Judicial District Court of Williamson County, Texas granted Wells Fargo's No Evidence Motion for Summary Judgment

¹⁸ *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 652 (Tex. 1996); *Hernandez v. Del Ray Chem. Int'l*, 56 S.W.3d 112, 115 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

¹⁹ *Hallco Tex., Inc. v. McMullen Cty.*, 221 S.W.3d 50, 58 (Tex. 2006); *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 628 (Tex. 1992); *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 631 (Tex. 1992) ("[A] subsequent suit will be barred if it arises out of the same subject matter of a previous suit and which through the exercise of diligence, could have been litigated in a prior suit.").

²⁰ *Musgrave v. Owen*, 67 S.W.3d 513, 519-20 (Tex. App.—Texarkana 2002, no pet.).

²¹ *Id.* at 519; *Amstadt*, 919 S.W.2d at 652.

²² *Id.*

and Wells Fargo's Traditional Motion for Summary Judgment which dismissed Plaintiffs' claims with prejudice.²³ Therefore, the first element of res judicata is satisfied.

B. Wells Fargo was a party in both the First Lawsuit and the Second Lawsuit, and MERS is in privity with Wells Fargo.

Res judicata requires mutuality of interests — the party invoking it and the party to be bound must have been parties in the earlier suit or, if not the same, in privity with them.²⁴ Under Texas law, parties can be in privity in at least three ways: (1) they can control an action even if they are not parties to it; (2) their interest can be represented by a party to the action; or (3) they can be successors in interest, deriving their claims through a party to the prior action.²⁵ Here, it is undisputed that Plaintiffs and Wells Fargo were parties to the First Lawsuit and the instant lawsuit.²⁶ With regard to MERS, although it was not a party to the First Lawsuit, it was in privity with Wells Fargo. When Wells Fargo became the holder of the Note, MERS became Wells Fargo's agent as the beneficiary under the Deed of Trust as nominee of Wells Fargo, the principal.²⁷ As beneficiary of the Deed of Trust, MERS was Wells Fargo's agent in the county land records. By executing the Deed of Trust, Plaintiffs gave MERS the authority to, among other things, exercise the power of sale and take any action required of Wells Fargo in connection with the security instrument.²⁸ Thus, Wells Fargo and MERS were in privity due to the nature of their principal-agent relationship and interests arising from the Deed of Trust,

²³ Exhibits 3 and 4.

²⁴ *Amstadt* at 652-53.

²⁵ *Id.* at 653.

²⁶ Exhibit 2.

²⁷ Exhibit B, p. 1.

²⁸ Exhibit B, p. 2.

which Plaintiffs called into question in the First Lawsuit. Accordingly, there is identity of the parties and the second element of res judicata is satisfied.

C. Plaintiffs' claims in the Second Lawsuit all relate to matters which were previously adjudicated and/or could have been raised in the First Lawsuit.

13. The third element of a res judicata requires "a second action based on the same claims as were raised or could have been raised in the first action."²⁹ Plaintiffs premise their claims and allegations in the instant lawsuit on the same factual background and legal theories in the First Lawsuit. In both cases Plaintiffs deny that Wells Fargo has the right to utilize the power of sale clause in the Deed of Trust because Wells Fargo allegedly is not the note holder and/or because the Note and Deed of Trust were bifurcated.³⁰ Indeed, Plaintiffs' Original Petition in the instant case is nearly identical to Plaintiffs' Response to Wells Fargo's Motion for Summary Judgment filed in the First Lawsuit.³¹ Because Plaintiffs' allegations in the instant lawsuit are the same claims that were raised or that could have been raised in the First Lawsuit, Plaintiffs' claims are barred by res judicata.³²

III. Defendants are entitled to judgment as a matter of law as to Plaintiffs' Wrongful Foreclosure cause of action.

14. In order to succeed on a wrongful foreclosure cause of action, Plaintiffs must establish the following: (1) a defect in the foreclosure sale proceedings, (2) a grossly inadequate selling price, and (3) a causal connection between the defect and the grossly inadequate selling price.³³ Plaintiffs complain that the foreclosure was wrongful because Wells Fargo lacked

²⁹ *Amstadt* at 652.

³⁰ *See* Plaintiffs' Original Petition; Exhibit 3, pp. 6-12.

³¹ *See* Plaintiffs' Original Petition; Exhibit 3, pp. 6-12.

³² *See Compania Financiară*, 53 S.W.3d at 367.

³³ *Charter Nat'l Bank-Houston v. Stevens*, 781 S.W.2d 368, 371 (Tex. App.—Houston [14th Dist.] 1989, writ denied).

standing to enforce the Note and/or because the Note and Deed of Trust were “bifurcated.”³⁴ The summary judgment evidence and applicable law conclusively establish that Wells Fargo had the right to enforce the Deed of Trust and the Plaintiffs’ complaint about the role of MERS lacks merit. Therefore, Plaintiffs’ claim fails as a matter of law and Defendants’ Traditional Motion for Summary Judgment should be granted.

A. Wells Fargo was entitled to enforce the Note.

15. Plaintiffs’ contention that Wells Fargo was not entitled to enforce the Note and/or Deed of Trust is misplaced. Defendants’ summary judgment evidence provides indisputable proof that, at all relevant times leading up to and including the September 7, 2010 foreclosure sale, Wells Fargo was the holder of the Note with all the rights and remedies that were available to American Mortgage Network, Inc., as the original lender. Wells Fargo became the holder and servicer of the Note in December 2004.³⁵ Indeed, the Note is endorsed to Wells Fargo and, at all relevant times, Wells Fargo was in possession of the original Note.³⁶ Under the Texas Business and Commerce Code, Wells Fargo, as the holder of the Note payable to itself, is/was entitled to enforce the Note.³⁷ Further, the transfer of the Note to Wells Fargo made Wells Fargo a “successor and assign” of the “Lender,” as those terms are defined in the Note.³⁸ Therefore, by virtue of the Note and applicable law, Wells Fargo had authority to enforce the Note and the

³⁴ See Petition at p. 10, ¶ 41.

³⁵ Exhibit 1, ¶ 5.

³⁶ *Id.*

³⁷ TEX. BUS. & COMM. CODE §§ 1.201(b)(21), 3.201, 3.205 and 3.301.

³⁸ Exhibit A, ¶ 1.

Deed of Trust with the power of sale.³⁹ Accordingly, Plaintiffs' wrongful foreclosure claim, based on the premise that Wells Fargo was not the holder of the Note, fails as a matter of law.

B. Plaintiffs' contention that the Note was separated from the Deed of Trust fails as a matter of law.

16. When a mortgage note is transferred, the mortgage is also automatically transferred to the mortgage note transferee pursuant to the general common law rule that "the mortgage follows the note."⁴⁰ The rule that "the mortgage follows the note" has been codified in the Texas Business and Commerce Code. As stated in the official comments to Texas Business and Commerce Code § 9.203(g), the section "codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien."⁴¹ As a result, the note transferee need not record an assignment of mortgage in order to perfect its rights in the mortgage.⁴² Indeed, Texas courts have affirmed and applied the "mortgage follows the note" rule in cases where the mortgage assignment was not recorded by the transferee and even where there was no actual separate written assignment of the mortgage.⁴³ Here, the summary judgment evidence conclusively establishes that Wells Fargo was the holder of the Note when it foreclosed on the Property. When the Note was transferred to Wells Fargo, the Deed of Trust followed the Note as a matter of law. To this end, there is no evidence or authority to support Plaintiffs' contention that the Note and Deed of Trust were

³⁹ See Exhibit B, ¶ 12 (the covenants and agreements of the Deed of Trust shall bind and benefit the successors and assigns of the Lender); *J.W.D., Inc. v. Federal Ins. Co.*, 806 S.W.2d 327, 329-30 (Tex. App.—Austin 1991, no writ) (citing cases that stand for the proposition that the mortgage follows the note).

⁴⁰ *J.W.D., Inc. v. Federal Ins. Co.*, 806 S.W.2d 327, 329-30 (Tex. App.—Austin 1991, no writ).

⁴¹ Tex. Bus. & Comm. Code § 9.203, cmt. 9.

⁴² See McDonnell and J. Smith, Secured Transactions Under the Uniform Commercial Code, § 16.09[3][b] ("Article 9 [of the U.C.C.] makes it as plain as possible that the secured party need not record an assignment of mortgage, or anything else, in the real property records in order to perfect its rights in the mortgage.").

⁴³ *Kirby Lumber Corp. v. Williams*, 230 F.2d 330, 333 (5th Cir. 1956) ("The rule is fully recognized . . . that a mortgage to a secure a negotiable promissory note is merely an incident to the debt, and passes by assignment of the note.") *J.W.D., Inc. v. Federal Ins. Co.*, 806 S.W.2d 327, 329-30 (Tex. App.—Austin 1991, no writ).

“bifurcated” or “split” in some manner. Accordingly, Defendants are entitled to summary judgment on Plaintiffs’ wrongful foreclosure claim.

C. Wells Fargo acquired whatever interest MERS had in the Deed of Trust.

17. As the foregoing demonstrates, Wells Fargo became the holder and servicer of the Note in December 2004. Under the Deed of Trust, MERS remained a beneficiary of record as “nominee for Lender and Lender’s successors and assigns;” therefore, MERS became the nominee for Wells Fargo once the Note was transferred to Wells Fargo.⁴⁴ By virtue of the Transfer of Lien, dated effective August 22, 2008, Wells Fargo obtained any right and interest of MERS in the Deed of Trust.⁴⁵

18. As the named beneficiary, MERS could assign its interest in the Deed of Trust to Wells Fargo.⁴⁶ Indeed, by executing the Deed of Trust, Plaintiffs agreed to the role of MERS:

Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender’s successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.⁴⁷

Under Texas law, where a deed of trust, as here, expressly provides for MERS to have the power of sale, MERS has the power of sale.⁴⁸ Wells Fargo therefore possessed the right to

⁴⁴ Exhibit B, p. 1.

⁴⁵ Original Petition, Exhibit H.

⁴⁶ A good explanation of MERS and Texas law can be found in *Richardson v. CitiMortgage, Inc.*, 2010 U.S. Dist. LEXIS 123445 at *5 (E.D. Tex. Nov. 22, 2010).

⁴⁷ Exhibit B, p. 2.

⁴⁸ *Athey v. Mortgage Electronic Registration Systems, Inc.*, 314 S.W.3d 161166 (Tex. App.—Eastland 2010, no pet. h.) (holding that MERS, who was not the owner and holder of the note but who was named as a beneficiary under the deed of trust, was entitled to foreclose).

foreclose on the Property when MERS transferred its rights and interest in the Deed of Trust to Wells Fargo.

19. Not only is the authority of MERS to execute assignments of its deed of trust interests in the Property expressly authorized by the loan documents, the authority of lenders to use recording entities such as MERS is expressly permitted by statute. The Texas Property Code includes in its definition of mortgagees “book entry systems” to act as the grantee of security instruments such as deeds of trust and to transfer interests under the corresponding security instrument to assignee lenders.⁴⁹ MERS constitutes such a “book entry system” where lenders may reference their beneficial interests under deeds of trust securing loans and designate MERS as their nominee for the subject loan.⁵⁰ The Property Code expressly recognizes “book entry systems” as a mortgagee to the same extent as the traditional method of identifying a mortgagee on a deed of trust and any subsequent assignments.⁵¹

20. Accordingly, there is no genuine issue of material fact as to Wells Fargo’s authority as holder of the Note to enforce the Note and Deed of Trust and foreclose on the Property, and therefore, Defendants are entitled to judgment as a matter of law.

⁴⁹ TEX. PROP. CODE § 51.001(1) (4), (6)

⁵⁰ *Richardson v. CitiMortgage, Inc.*, 2010 U.S. Dist. LEXIS 123445 at *5 (E.D. Tex. Nov. 22, 2010); Tex. Prop. Code § 51.0001(1).

⁵¹ TEX. PROP. CODE § 51.0001(4)(A)-(C).

NO EVIDENCE MOTION FOR SUMMARY JUDGMENT

I. No evidence summary judgment standard.

21. Texas Rule of Civil Procedure 166a(i) expressly provides for a “no evidence” motion for summary judgment. More specifically, Rule 166a(i) provides as follows:⁵²

After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

An adequate time for discovery has passed in this matter. Plaintiffs filed this lawsuit on September 27, 2010. Plaintiffs served written discovery to which the Defendants responded. Accordingly, an adequate amount of time has passed to conduct discovery and this no-evidence motion for summary judgment is ripe.

22. To survive summary judgment under this Rule, the non-movant must bring forth more than a scintilla of probative evidence to raise a genuine issue of material fact.⁵³ In other words, the non-movant must bring forth evidence that “rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.”⁵⁴ Thus, the party with the burden of proof at trial has the burden of proof in the summary judgment proceeding.⁵⁵ The no-

⁵² TEX. R. CIV. P. 166a(i).

⁵³ *Moore v. K-Mart Corp.*, 981 S.W.2d 266,269 (Tex. App.–San Antonio 1998, pet. denied).

⁵⁴ *Id.*

⁵⁵ *Flameout Design & Fabrication, Inc. v. Pennzoil Caspian Corp.*, 994 S.W.2d 830, 834 (Tex. App.–Houston [1st Dist.] 1999, no pet.).

evidence rule “shifts the focus of the summary judgment from the pleadings to the actual evidence.”⁵⁶

II. There is no evidence to support Plaintiffs’ wrongful foreclosure claim against Wells Fargo.

23. Plaintiffs’ wrongful foreclosure claim against Wells Fargo must fail as a matter of law because there is no evidence to support one or more of the essential elements of a wrongful foreclosure claim. To prevail on a wrongful foreclosure cause of action, a plaintiff must prove the following elements: (1) a defect in the foreclosure sale proceedings, (2) a grossly inadequate selling price, and (3) a causal connection between the defect and the grossly inadequate selling price.⁵⁷ Here, Plaintiffs have no evidence of any element necessary to prevail upon their wrongful foreclosure claim. Therefore, summary judgment should be granted.

III. There is no evidence to support Plaintiffs’ wrongful foreclosure claim against MERS.

24. Plaintiffs’ wrongful foreclosure claim against MERS must fail as a matter of law because there is no evidence to support one or more of the essential elements of a wrongful foreclosure claim. To prevail on a wrongful foreclosure cause of action, a plaintiff must prove the following elements: (1) a defect in the foreclosure sale proceedings, (2) a grossly inadequate selling price, and (3) a causal connection between the defect and the grossly inadequate selling price.⁵⁸ Here, there is no evidence to support Plaintiffs’ wrongful foreclosure claim against MERS. MERS never foreclosed on the Property. Without evidence that MERS foreclosed on the Property, Plaintiffs’ wrongful foreclosure claim fails as a matter of law.

⁵⁶ *Lampasas v. Spring Ctr., Inc.*, 988 S.W.2d 428, 436 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

⁵⁷ *Charter Nat’l Bank-Houston v. Stevens*, 781 S.W.2d 368, 371 (Tex. App.—Houston [14th Dist.] 1989, writ denied).

⁵⁸ *Id.*

CONCLUSION AND PRAYER

25. There is indisputable evidence before the Court that proves Wells Fargo was the holder of the Note at the time of foreclosure. Further, under well established Texas law, the deed of trust lien followed the Note when it was assigned to Wells Fargo and Defendants were not required to record the Note assignment. Accordingly, there is no genuine issue of material fact with respect to Plaintiffs' claim that the foreclosure sale was defective, and therefore, summary judgment is proper. Further, Plaintiffs' wrongful foreclosure claim against Wells Fargo and MERS fails as a matter of law because there is no evidence to support one or more of the essential elements of their cause of action.

WHEREFORE, PREMISES CONSIDERED, Wells Fargo and MERS respectfully request that this Court grant their Motion(s) for Summary Judgment pursuant to Texas Rules of Civil Procedure 166a(c) and or 166a(i) against Alvie Campbell and Julie Campbell on all grounds stated herein, dismiss Plaintiffs' claims with prejudice to refiling same, and grant them any and all further relief to which they may be justly entitled.

Respectfully submitted,

BROWN MCCARROLL, L.L.P.

By:



Richard A. Illmer
State Bar No. 10388350
John C. Pegram
State Bar No. 24056116

2001 Ross Avenue, Suite 2000
Dallas, Texas 75201
(214) 999-6100
(214) 999-6170 *facsimile*

**ATTORNEYS FOR WELLS FARGO BANK,
N.A. AND MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.**

FIAT

A hearing on Defendants' Traditional and No-Evidence Motion for Summary Judgment will be held on the _____ day of _____, 2011 at _____ o'clock __.m. in the 368th Judicial District Court.

SIGNED this _____ day of _____, 2011.

JUDGE PRESIDING



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 368th 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
Julie Campbell
250 Private Road 947
Taylor, Texas 76574
Richard A. Illmer
John C. Pegram
Brown McCarroll, LLP
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 th 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 [1st 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 17th day of June 2011 as follows:

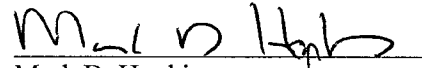
Via Certified Mail: # 70110470000160423244

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,

v.

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.

§ IN THE DISTRICT COURT
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§ 368th JUDICIAL DISTRICT
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§
§ WILLIAMSON COUNTY, TEXAS

AFFIDAVIT OF STEPHEN C. PORTER

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 BDTFE or its attorneys or representatives had contact or communication with Alvie

Affidavit of Stephen C. Porter



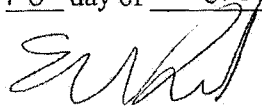
Campbell and Julie Campbell other than in the capacity as 'legal counsel for Wells Fargo in an adverse relationship with Alvie Campbell and Julie Campbell.' ”

Further affiant sayeth not.

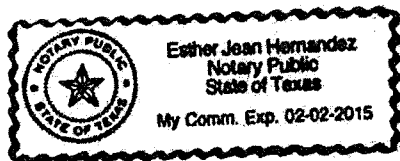


Stephen C. Porter

SWORN AND SUBSCRIBED before me this the 16 day of June 2011.



Notary Public In and For The State of Texas



CAUSE NO. 10-1093-C368

ALVIE CAMPBELL AND JULIE
CAMPBELL
Plaintiffs,

v.

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.

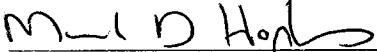
§ IN THE DISTRICT COURT
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§ WILLIAMSON COUNTY, TEXAS

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

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

Exhibit 2

Chain of Negotiation of Plaintiffs alleged Note

From Discovery Request with references to filename.

Investor

Reference WF-000723

05/29/09 10:31:40 KZV INVESTOR: GNMA II WELLS FARGO BANK
INVESTOR #: 550-854

Note

MultiState

NOTE

2961237
FHA Case No.
495-7111138-703

MIN: 1001310-2040769205-0

OCTOBER 29, 2004
[Date]

250 PR 947, TAYLOR, TX 76574

[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means AMERICAN MORTGAGE NETWORK, INC. DBA AMNET MORTGAGE

Reference WF-000171

Note – No Indorsements

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.


Julia Campbell (Set)
Julia Campbell (Set)

(Sign Original Only)

Reference WF-000173

WELLS FARGO BANK, N.A. Form 1004-UR
Loan Number: 204-783203 Page 3 of 3 08/06/05

Allonge - Indorsement 1

Pay to the order of: 

Wells Fargo Bank, N.A.
without recourse,
American Mortgage Network, Inc. dba
AmNet Mortgage

By: Irish Oliver

Name: Irish Oliver

Title: Closer

Reference WF-000826

Allonge - Indorsement 2 (In Blank)

WITHOUT RECOURSE
PAY TO THE ORDER OF
Wells Fargo Bank, N.A.
By: Angela R. Dodson
Angela R. Dodson
Vice President Loan Documentation

Reference WF-000826

CAUSE NO. 10-1093-C368

ALVIE CAMPBELL AND JULIE
CAMPBELL,

Plaintiff

V.

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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IN THE DISTRICT COURT

WILLIAMSON COUNTY, TEXAS

368th JUDICIAL DISTRICT

**MEMORANDUM OF JAMES MCGUIRE IN SUPPORT OF PLAINTIFF'S OBJECTION
TO DEFENDANTS' MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF THIS 368th DISTRICT COURT OF WILLIAMSON COUNTY:

James McGuire offers his knowledge and expertise in this Memorandum to Plaintiffs Alvie Campbell and Julie Campbell.

I

INTRODUCTION

1. James McGuire in his professional capacity is the Managing Member of Hedgerow Consulting Services, LLC located in Memphis, Tennessee. Hedgerow offers private consulting to a distinct list of clients.

2. James McGuire in his personal capacity is providing research and consulting to Plaintiffs Alvie Campbell and Julie Campbell.
3. James McGuire has authored hundreds of writings and is known to academia and others.

II

POINTS OF CRITIQUE OF DEFENDANTS MOTION TO DISMISS

4. Defendants properly identified Wells Fargo Bank, N.A.
5. Defendants correctly identified Wells Fargo Bank, N.A. as the party that executed a foreclosure action and Wells Fargo Bank, N. A. attempts to state it is the correct party with rights to enforce the Mortgage Note.
6. Discovery reply from the Defendants to Plaintiff has shown that Wells Fargo Bank, N.A. was not the owner/holder of the Mortgage Note with rights to enforce.

[The Porter Affidavit]

7. The Defendant hereto refers to the Affidavit of Stephen C. Porter as proof that payments were not made on the mortgage. (Under hearsay rule 802, the Porter affidavit is made without personal knowledge and therefore should be inadmissible.)
 - a. The affidavit correctly identifies Stephen C. Porter as Chief Litigation Counsel for Barrett Daffin Frappier Turner and Engel, LLP (BDFTE).
 - b. The affidavit does not address payments under any Mortgage Note.
 - c. The affidavit notes that BDFTE was representing Wells Fargo Bank, N.A.
 - d. The affidavit also states that the Mortgage Note is securing the Mortgagee's Lien, "*enforce the mortgagee's lien against the Property secured by the Note.*"
 - A. The affidavit's statement of "*enforce the mortgagee's lien against the Property secured by the Note,*" violates the principle that the Security

follows the Note as far back as CARPENTER V. LONGAN, 83 U. S. 271 (1872)

B. Therefore, to “enforce the mortgagee’s lien against the Property secured by the Note,” would allow Wells Fargo Bank, N.A. in essence to steal secured property from a secured creditor.

8. Applying Texas Law: Texas Local Government Code § 192.007

a. The security would to have been perfected in the correct secured party’s name and Wells Fargo Bank, N.A. was not the correct secured party.

9. Upon a search and review of public land records throughout the State of Texas, BDFTE and Stephen C. Porter can be found of record in numerous instances where they represent Wells Fargo Bank, N.A. in a non attorney client relationship; such arrangement is present in this instant case.

III

CONCLUSION

10. Based upon the facts in this case and the lack of recorded facts in public land records, it is of opinion that the Defendants Motion to Dismiss should be denied by the court.

IV

JUDICIAL NOTICE

11. Upon researching Alvie Campbell and Julie Campbell property records in Williamson County Public Land Records, a cursory review of additional lien filings by BDFTE and others, suggest that Williamson County has been deprived of hundreds of thousands of dollars, if not millions in just due recording fees by numerous parties.

12. This court should consider engaging law enforcement to determine the coordination required to masquerade such a fraud upon Williamson County and the State of Texas as a whole.

James McGuire

SIGNED under oath before me on this _____ day of June, 2011.

Notary Public, State of Texas



ASSN

2007037657

2 PGS

ASSIGNMENT OF NOTE
AND DEED OF TRUST

Loan No.: 0181992561
BBWCDF No.: 20060169801558
Investor/Loan Type: FHA

Date of Assignment: Effective June 1, 2002

Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
AS NOMINEE FOR LENDER AND LENDERS SUCCESSORS AND ASSIGNS

Assignee: FIRST MAGNUS FINANCIAL CORP.

Assignee's Mailing Address: 3476 STATEVIEW BLVD.
(including county) MAC# X7801-014
FT. MILL, SC 29715
YORK

NOTE and DEED OF TRUST--

Maker/Grantor: CLAUDIA R. MONTGOMERY

Date: April 24, 2002

Original Amount: \$ 88,203.00

Payee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
AS NOMINEE FOR LENDER AND LENDERS SUCCESSORS AND ASSIGNS

Trustee: EVERETT L. ANSCHUTZ, JR.

Recording Information: CLERK'S FILE NO. 2002036430
(including county) (WILLIAMSON)

Property (including any improvements) Subject to Deed of Trust:

LOT THIRTY (30), BLOCK D, VALLEY VISTA, A SUBDIVISION IN WILLIAMSON COUNTY, TEXAS,
ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN CABINET P. SLIDE 18-20, PLAT RECORDS OF
WILLIAMSON COUNTY, TEXAS.



ASSG20060169801558

CAUSE NO. 10-1093-C368

ALVIE CAMPBELL AND JULIE
CAMPBELL
Plaintiffs,

§ IN THE DISTRICT COURT
§
§
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§
§ 368th JUDICIAL DISTRICT
§

v.

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

ORDER GRANTING MOTION TO DISMISS DEFENDANT-SUBSTITUTE TRUSTEE

On the 23rd day of June 2011, came on to be heard Defendants Stephen C. Porter, David Seybold, Ryan Bourgeois and Matthew Cunningham's Motion to Dismiss. The Court, having reviewed the Motion, is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants Stephen C. Porter, David Seybold, Ryan Bourgeois and Matthew Cunningham's Motion to Dismiss is in all things GRANTED.


IT IS FURTHER ORDERED that Plaintiffs Alvie Campbell and Julia Campbell's claims against Defendants Stephen C. Porter, David Seybold, Ryan Bourgeois and Matthew Cunningham are dismissed without prejudice.

SIGNED ON this the 23 day of June 2011.



JUDGE PRESIDING

Order Submitted By: **FILED**
at 9:45 o'clock PM

JUN 23 2011

District Clerk, Williamson Co., TX.

PAGE 1

ALVIE CAMPBELL AND
JULIE CAMPBELL,
PLAINTIFF,

V.

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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IN THE DISTRICT COURT OF

WILLIAMSON COUNTY, TEXAS

368th JUDICIAL DISTRICT

**PLAINTIFF'S RESPONSE TO DEFENDANT WELLS FARGO BANK N.A. AND
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
NO EVIDENCE MOTION FOR SUMMARY JUDGMENT AND MOTION FOR
SUMMARY JUDGMENT**

NOW COMES Plaintiffs, Alvie Campbell and Julie Campbell, and moves this Court to DENY Defendants Motion for Summary Judgment of Wells Fargo Bank, N.A. and Mortgage Electronic Registration Systems, Inc. (“MERS”) as follows:

INTRODUCTION

I.General Denial - Plaintiffs hereby enters a general denial as permitted by Rule 92 of the Texas Rules of Civil Procedure, and requests that Defendants be required to prove by sworn affidavit and by a preponderance of evidence: **a.)** that their allegations are truthful representations; **b.)** that their action has merit; **c.)** that they are the true and lawful party in interest - the holder in due course of a valid debt obligation signed by Plaintiffs Alvie Campbell and Julie Campbell; **d.)** that

their alleged evidence is not a product of or prelude to fraud, e.) and that they have legal standing to lawfully invoke the jurisdiction of this honorable court.

- A. When a movant files a motion for summary judgment based on summary judgment evidence, the court can grant the motion only when the movant's evidence proves, as a matter of law, all the elements of the movant's cause of action or defense, or disproves the facts of at least one element in the non-movant's cause or defense. *Casso v. Brand*, 776 S.W. 2d 551, 556 (Tex. 1989).
- B. When evaluating a motion for summary judgment, the court must:
 1. Assume all the non-movant's proof is true¹;
 2. Indulge every reasonable inference in favor of the non-movant²; and
 3. Resolve all doubts about the existence of a genuine issue of material fact against the movant.³

SUMMARY OF ARGUMENT

1. This case concerns a borrowers rights to protect their real property from unidentified parties that have sold the borrower's real property unlawfully in a trustee sale on September 7, 2010 in Williamson County, Texas. Defendants Wells Fargo Bank, N.A., Mortgage Electronic Registration Systems, Inc, David Seybold, Stephen C. Porter, Matthew Cunningham, Ryan Bourgeois, are unknown parties to Plaintiff's secured debt

¹*Science Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997); *Specialty Retailers, Inc. v. DeMoranville*, 933 S.W.2d 490, 491 (Tex. 1996).

² *Specialty Retailers*, 933 S.W.2d at 491; *Nixon v. Mr. Property Mgmt. Co., Inc.*, 690 S.W.2d 546, 549 (Tex. 1985).

³ *Science Spectrum*, 941 S.W. 2d at 911; *Walker v. Harris*, 924 S.W2d 375,377 (Tex. 1996).

negotiated between Plaintiff's Alvie Campbell and Julie Campbell and American Mortgage Network, Inc. D/B/A/ AMNET Mortgage, whose address as listed on Plaintiff's Deed of Trust and recorded in Williamson County, Texas land records is P.O. Box 85463, San Diego CA., 92186. Plaintiff's Alvie Campbell and Julie Campbell filed this lawsuit that is based on a wrongful foreclosure by the Defendants who had no lawful authority to do so. Plaintiff's claims do uphold as a matter of law. Plaintiff's claims are not barred by res judicata as Defendants claim. Plaintiffs have at no time brought a lawsuit against Wells Fargo Bank, N.A. Defendants are trying to use a case that was brought against Wells Fargo Home Mortgage, the alleged mortgage servicer that involved pre-foreclosure debt validation and verification of borrower's alleged default. However, the mortgage servicer never provided proof in that court of their rights they alleged to continue an acceleration of their claim. Claims made by Defendants counsel Mark Hopkins Esquire, in a non related action, MISC Docket # 11-341-c26 hearing on Tuesday June 7, 2011, clearly stated in that court hearing that there could be an impact upon this Motion for Summary Judgment brought forth by the Defendants. There is a genuine issue of material fact of Plaintiff's claims against Defendants wrongful foreclosure and summary judgment is not proper.

SUMMARY JUDGMENT EVIDENCE

2. Plaintiff's refer to and incorporate by reference the following to dispute Defendants summary judgment evidence.

Exhibit 1: Kyle N. Campbell – Bank of America v. Melissa Limato

Exhibit 2: Chain of Negotiation of Plaintiffs alleged Note.

Exhibit 3: Affidavit of James McGuire

UNDISPUTED FACTS

3. 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.
4. Plaintiffs' allegedly signed a Promissory Note 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.
5. 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.
6. As with all electronic mortgages registered in MERS database, Mortgage Electronic Registrations Systems, Inc. (MERS) was listed as a beneficiary within the Deed of Trust allegedly acting as nominee for Lender and Lenders successors and assigns.
7. Wells Fargo Bank, N.A. sold the Plaintiff's real property on September 7, 2010.

DISPUTED FACTS

8. Defendant, Wells Fargo Bank, N.A. claims of becoming holder and servicer of the note has not been proved to be sufficient to make such a claim.
9. Wells Fargo Bank, N.A. claims to be the Lender at all times and being a member of the MERS electronic registration system assigned MERS beneficial interest in the Deed of Trust to Wells Fargo.

10. On June 30, 2009, Plaintiff's did not file a lawsuit against Wells Fargo Bank, N.A. Plaintiff's filed a debt validation lawsuit against Wells Fargo Home Mortgage, the mortgage servicer.
11. Wells Fargo Bank, N.A. was not awarded a final judgment.
12. The business affidavit made by Kyle N. Campbell of Wells Fargo Bank, N.A. is questionable as to his ability to have personal knowledge of facts. On March 28, 2011, Kyle N. Campbell provided a certification to the Superior Court in New Jersey that he was a litigation specialist for Wells Fargo Bank N.A., not a Vice President of Loan Documentation. With the enormous amount of questionable information being provided by robo-signers across the United States, this court should take a serious look at the business affidavit provided by the Defendants Wells Fargo Bank, N.A. Kyle N. Campbell to determine just exactly who Mr. Campbell really is. (Exhibit 1 – page 8, 1st paragraph)
13. Defendants clearly state there was no agency relationship between the loan originator, American Mortgage Network and Mortgage Electronic Registration Systems Inc. in Defendants Motion for Summary Judgment. The only agency relationship was between Wells Fargo Bank, N.A. and MERS as stated in Defendants Motion for Summary Judgment.
14. MERS agency relationship with American Mortgage Network, Inc. (AMNET), MERS as nominee would not give MERS the lawful authority to assign the interest in the note.
15. Discovery offered by defendants in this suit has revealed the Note may have resided within one of the agencies of the Federal Housing Administration (Ginnie Mae). (Exhibit #2).

16. Wells Fargo Bank, N.A. contends to be entitled to enforce the note. This has not been proven, however, enforcement of the note is not an action that provides Wells Fargo Bank, N.A. with the ability to enforce an invalid transfer of lien or deed of trust.
17. Defendants clearly state in item 5, page 4 of Defendants Motion for Summary Judgment, Wells Fargo Bank, N.A. became holder of the note. Wells Fargo Bank, N.A. provided this court with an electronic copy of the alleged note that does not provide any indication of the date of that alleged negotiation. It appears in the electronic copy of the note that Wells Fargo Bank, N.A. provided is a copy of an allonge that was later added to the note without any indication of the date of negotiation or indorsement. The copy of the electronic note provided by the Defendants is the same type of electronic copy Defendants have provided to Plaintiff's ever since the Borrower's have requested validation of their debt dating back to 2007.
18. Defendants clearly state in item 6, page 4 of Defendants Motion for Summary Judgment, that MERS as nominee for Wells Fargo Bank, N.A. transferred the beneficial interest in the Deed of Trust to Wells Fargo Bank, N.A. This court should notice that Wells Fargo Bank, N.A. has admitted that Wells Fargo Bank, N.A. as a member of MERS unlawfully transferred the American Mortgage Network, Inc. secured debt to themselves.
19. Defendants have admitted that the transfer of the lien was not recorded into land records in Williamson County Texas, until almost four years after the alleged negotiation of the note. Defendants should have known that perfection was lost in the chain of title by not conforming to recordation laws of Texas.
20. Defendants have provided enough proof within their own Motion for Summary Judgment to show this court there is a genuine issue of material fact.

21. Defendants have no standing to bring this Motion for Summary Judgment against the Plaintiff's as Defendants have unlawfully sold Plaintiff's real property without a valid security instrument to enforce their actions.
22. Defendants have provided this court with misleading information that could be reviewed as providing fraudulent documents and information in an attempt to sway the court in their favor.
23. Defendants counsel Mark Hopkins Esquire, in a non related action, MISC Docket # 11-341-c26 hearing on Tuesday June 7, 2011, clearly stated before that court that there could be an impact upon this Motion for Summary Judgment brought forth by the Defendants (Exhibit 3), as noted in McGuire's affidavit and on the courts record in the Misc. Docket # 11-341-c26 hearing.

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 Defendant, it is clear why it is necessary for both summary judgments be denied as the Note "Holder" who had authority to enforce collection of the Note has not been identified and the defendants are clearly not the Holder of the ink-signed Original Note or a proper agent of the Holder. This court should allow proceedings to continue so that the truth be known and thus the court then could rule upon facts.

PRAYER

WHEREFORE, PREMISES CONSIDERED, this Court should deny Defendant's No Evidence Motion for Summary Judgment and Motion for Summary Judgment.

Respectfully submitted,
ALVIE CAMPBELL and JULIE CAMPBELL

By: _____

Alvie Campbell - Pro se
c/o 250 PR 947
Taylor, Texas 76574
(512) 796-6397

CERTIFICATE OF SERVICE

I certify that on the _____ day of June, 2011 a true and correct copy of Plaintiff's Response to Defendants Motion for Summary Judgment was served opposing counsel in accordance with the rules.

Via Certified Mail # 7007 0220 0000 1159 3687
Mark D. Hopkins
Hopkins & Williams Law, P.L.L.C.
12117 FM 2244, Bldg 3, Suite 260
Austin, Texas 78738

Via Certified Mail # 7007 0220 0000 1159 3489
John C. Pegram
Brown McCarroll, L.L.P.
2001 Ross Avenue, Suite 2000
Dallas, Texas 75201-2995

Aaron Campbell

Aaron Campbell
c/o 250 PR 947
Taylor, Texas 76574
(512) 589-2739

CASE NO. 10-1093-C368

**ALVIE CAMPBELL AND
JULIE CAMPBELL,
PLAINTIFF,**

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IN THE DISTRICT COURT OF

V.

WILLIAMSON COUNTY, TEXAS

**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,**

368th JUDICIAL DISTRICT

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

NOW COMES Plaintiffs, Alvie Campbell and Julie Campbell, and moves this Court to DENY Defendants Motion To Dismiss of Stephen C. Porter, David Seybold, Ryan Bourgeois And Matthew Cunningham as well as all other Defendants in this lawsuit as follows:

BACKGROUND

Defendants, Stephen C. Porter, David Seybold, Ryan Bourgeois And Matthew Cunningham have requested to dismiss this action on the five grounds; (1) The Plaintiff’s alleged lack of standing.(2) Barrett Daffin Frappier Turner & Engel, LLP (“BDTE”) were retained by Wells Fargo.(3) Barrett Daffin Frappier Turner & Engel, LLP (“BDTE”) are licensed attorneys in the State of Texas and employed by BDFTE.(4) Plaintiffs allegedly have failed and refused to pay their mortgage as contractually agreed. (5) No claims have arised out of Attorney Defendants conduct other than legal representation of their client, Wells Fargo.

PLAINTIFF’S HAVE STANDING

The test for constitutional standing in Texas "requires that there `(a) shall be a real controversy between the parties, which (b) will be actually determined by the judicial declaration sought.'" Tex. Ass'n of Bus., 852 S.W.2d at 446 (quoting Bd. of Water Eng'rs v. City of San Antonio, 155 Tex. 111, 283 S.W.2d 722, 724 (1955)). Standing requires the claimant to demonstrate a particularized injury distinct from that suffered by the general public—there must be an actual grievance, not a hypothetical or generalized grievance. Glover v. Union Pac. R.R., 187 S.W.3d 201, 209 (Tex.App.-Texarkana 2006, pet. denied); see Brown v. Todd, 53 S.W.3d 297, 302 (Tex.2001); see also In re H.C.S., 219 S.W.3d 33, 34 (Tex. App.-San Antonio 2006, no pet.).

Standing is determined at the time suit is filed in the trial court Carr, 931 F.2d at 1061[1]" Texas Association of Business v. Texas Air Control Board, 852 S.W.2d 440 at 446 n 9; 1993 Tex. LEXIS 22; 36 Tex. Sup. J. 607 (Tex. 1993).

In Texas, the standing doctrine requires that there be (1) 'a real controversy between the parties,' that (2) 'will be actually determined by the judicial declaration sought.' Nootsie, 925 S.W.2d at 662 (quoting Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 443-44, 36 Tex. Sup. Ct. J. 607 (Tex. 1993)). Implicit in these requirements is that litigants are 'properly situated to be entitled to [a] judicial determination.' Without standing, a court lacks subject matter jurisdiction to hear the case. Tex. Ass'n of Bus., 852 S.W.2d at 443. Thus, the issue of standing may be raised for the first time on appeal. Id. at 445." Austin Nursing Center v. Lovato, 171 S.W.3d 845 at 849; 2005 Tex. LEXIS 386; 48 Tex. Sup. J. 624 (Tex. 2005).

Defendants, Stephen C. Porter, David Seybold, Ryan Bourgeois and Matthew Cunningham have operated in an alleged capacity for Wells Fargo. This claim of Wells Fargo is not definitive as it does not identify with specifics, Wells Fargo Bank N.A., Wells Fargo Home Mortgage or Wells Fargo Stagecoach.

Plaintiff's suit against Attorney Defendants should not be dismissed for lack of standing as Attorney Defendants were not proper representation parties to the Plaintiff's alleged indebtedness.

Attorney Defendants may have been retained by Wells Fargo, but Attorney Defendants and Wells Fargo were not proper parties to Plaintiff's alleged indebtedness. Counsel for Attorney

defendants alleges protection of rights under a certain note and deed of trust which counsel alleges Wells Fargo to be holder of a deed of trust secured by a note according to an Affidavit of Stephen C. Porter, attached to Defendants Motion to Dismiss. Attorney Defendants claim no relationship to Plaintiff's, which is true. (This note follows the lien is in opposite dating back to Carpenter v Longam which clearly noted that the lien follows the note) However, this would not allow Attorney Defendants to claim lack of standing

Attorney Defendants may be correct in stating that an opposing party "does not have a right to recovery, under any cause of action, against another attorney arising from the discharge of his duties in representing a party", however, this does not exclude an attorney who is representing a party that is not a lawful party to the alleged original obligation. Attorney Defendants are correct in stating "Attorneys have an absolute right to practice their profession, however this does not explain why the Attorney Defendants got involved in an action to unlawfully sell the Plaintiff's real property.

Attorney Defendants are correct when stating Attorneys are immune from certain claims against them, however claims made against the Attorney Defendants are valid as Attorney Defendants are not proper parties to Plaintiff's alleged indebtedness.

ELIGIBILITY OF AFFIDAVIT OF STEPHEN C. PORTER

Defendants counsel refers to the Affidavit of Stephen C. Porter ("Porter") to support proof of alleged payments. Plaintiff's object as the Affidavit of Stephen C. Porter is made without personal knowledge.

The Affidavit of Stephen C. Porter is correct in stating "Porter" is chief litigation counsel for Barrett Daffin Frappier Turner & Engel, LLP, ("BDFTE") according to the Texas Bar.

The Affidavit of Stephen C. Porter has not addressed payments of his alleged claims in regards to a Mortgage Note.

The Affidavit of Stephen C. Porter has made the claim that BDFTE was only representing Wells Fargo Bank, N.A, and not the lawful owner of the Mortgage Note and Deed of Trust.

The Affidavit of Stephen C. Porter has clearly provided that his misunderstanding of the factions of a secured debt, is an attempt to mislead the court into believing a Mortgage Note follows the Security Instrument. This is the other way around. Texas and other states across the United States understand that the Security Instrument follows the Note, or as more clearly understood, the security follows the debt, also noted in the Memorandum Of James McGuire In Support Of Plaintiff's Objection To Defendants' Motion To Dismiss.

The Affidavit of Stephen C. Porter is an attempt to mislead this court to believe that Wells Fargo Bank, N.A. had the lawful right to transfer a mortgage lien and then take possession of a mortgage note whether it be lawful or unlawful.

Defendants are claiming a defense based upon an illusion that the unlawful ownership of a lien takes a superior position to an owner of a Note.

CONCLUSION

As Plaintiff's arguments are based on facts in this case and due to the lack of supportive recorded facts in Williamson County public land records, this court should deny the Attorney Defendants Motion to Dismiss.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court deny Defendant's Motion to Dismiss.

Respectfully submitted,
ALVIE CAMPBELL and JULIE CAMPBELL

By: _____

Alvie Campbell - Pro se
c/o 250 PR 947
Taylor, Texas 76574
(512) 796-6397

CERTIFICATE OF SERVICE

I certify that on the 20th day of June, 2011 a true and correct copy of Plaintiff's Response to Defendants Motion to Dismiss was served opposing counsel in accordance with the rules.

Via Certified Mail # 7007 0220 0000 1159 3502
Mark D. Hopkins
Hopkins & Williams Law, P.L.L.C.
12117 FM 2244, Bldg 3, Suite 260
Austin, Texas 78738

Via Certified Mail # 7007 0220 0000 1159 3496
John C. Pegram
Brown McCarroll, L.L.P.
2001 Ross Avenue, Suite 2000
Dallas, Texas 75201

Alvie Campbell

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

Plaintiff's Oral argument to Defendant's Motion to Dismiss

Defendants, Stephen C. Porter, David Seybold, Ryan Bourgeois And Matthew Cunningham have requested to dismiss this action on the five grounds; (1) The Plaintiff's alleged lack of standing.(2) Barrett Daffin Frappier Turner & Engel, LLP ("BDTE") were retained by Wells Fargo.(3) Barrett Daffin Frappier Turner & Engel, LLP ("BDTE") are licensed attorneys in the State of Texas and employed by BDFTE.(4) Plaintiffs allegedly have failed and refused to pay their mortgage as contractually agreed. (5) No claims have arised out of Attorney Defendants conduct other than legal representation of their client, Wells Fargo.

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Plaintiff's Oral argument to Defendant's Motion to Dismiss

Carpenter v Longam which clearly noted that the lien follows the note) However, this would not allow Attorney Defendants to claim lack of standing.

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Plaintiff's disputes the validity of the signature of Stephen C. Porter in the Affidavit of Stephen C. Porter. Research of public land records and a verification signed by Porter on March 4, 2011 do not resemble each other and the same notary notarized both instruments.

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This is the other way around. Texas and other states across the United States understand that the Security Instrument follows the Note, or as more clearly understood, the security follows the debt, also noted in the Memorandum Of James McGuire In Support Of Plaintiff's Objection To Defendants' Motion To Dismiss.

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Defendants are claiming a defense based upon an illusion that the unlawful ownership of a lien takes a superior position to an owner of a Note.

Plaintiff's Oral argument to Defendant's Motion to Dismiss

As Plaintiff's arguments are based on facts in this case and due to the lack of supportive recorded facts in Williamson County public land records, this court should deny the Attorney Defendants Motion to Dismiss.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court deny Defendant's Motion to Dismiss.

Plaintiff's MSJ Oral Argument

This case concerns a borrower's rights to protect their real property from unidentified parties that have sold the borrower's real property unlawfully in a trustee sale on September 7, 2010 in Williamson County, Texas. Defendants Wells Fargo Bank, N.A., Mortgage Electronic Registration Systems, Inc, David Seybold, Stephen C. Porter, Matthew Cunningham, Ryan Bourgeois, are unknown parties to Plaintiff's secured debt negotiated between Plaintiff's Alvie Campbell and Julie Campbell and American Mortgage Network, Inc. D/B/A/ AMNET Mortgage, whose address as listed on Plaintiff's Deed of Trust and recorded in Williamson County, Texas land records is P.O. Box 85463, San Diego CA., 92186.

Plaintiff's Alvie Campbell and Julie Campbell filed this lawsuit that is based on a wrongful foreclosure by the Defendants who had no lawful authority to do so.

Plaintiff's claims do uphold as a matter of law. Plaintiff's claims are not barred by res judicata as Defendants claim.

Plaintiffs have at no time brought a lawsuit against Wells Fargo Bank, N.A.

Defendants are trying to use a case that was brought against Wells Fargo Home Mortgage, the alleged mortgage servicer that involved pre-foreclosure debt validation and verification of borrower's alleged default

Claims made by Defendants counsel Mark Hopkins Esquire, in a non related action, MISC Docket # 11-341-c26 hearing on Tuesday June 7, 2011, clearly stated in that court hearing that there could be an impact upon this Motion for Summary Judgment brought forth by the Defendants. There is a genuine issue of material fact of Plaintiff's claims against Defendants wrongful foreclosure and summary judgment is not proper.

Plaintiff's MSJ Oral Argument

Defendant, Wells Fargo Bank, N.A. claims of becoming holder and servicer of the note has not been proved to be sufficient to make such a claim.

Wells Fargo Bank, N.A. claims to be the Lender at all times and being a member of the MERS electronic registration system assigned MERS beneficial interest in the Deed of Trust to Wells Fargo.

However, MERS acts solely as nominee for the holder of the mortgage, MERS did not meet the required burden of proof, since it does not act as agent for the holder of the note.

1. MERS, if it had an agency relationship with American Mortgage Network, Inc. (AMNET), MERS as nominee would not give MERS the lawful authority to assign the interest in the note.

Counsel is misleading this court, as Plaintiff's did not file a lawsuit against Wells Fargo Bank, N.A. Plaintiff's filed a debt validation lawsuit against Wells Fargo Home Mortgage, the mortgage servicer. Wells Fargo Bank, N.A. was not awarded a final judgment

The business affidavit made by Kyle N. Campbell of Wells Fargo Bank, N.A. is questionable as to his ability to have personal knowledge of facts. On March 28, 2011, Kyle N. Campbell provided a certification to the Superior Court in New Jersey that he was a litigation specialist for Wells Fargo Bank N.A., not a Vice President of Loan Documentation.

Defendants clearly state there was no agency relationship between the loan originator, American Mortgage Network and Mortgage Electronic Registration Systems Inc. in Defendants Motion for Summary Judgment. The only agency relationship was between

Plaintiff's MSJ Oral Argument

Wells Fargo Bank, N.A. and MERS as stated in Defendants Motion for Summary Judgment.

This court should take a serious look at the business affidavit provided by the Defendants Wells Fargo Bank, N.A. Kyle N. Campbell to determine just exactly who Mr. Campbell really is.

Discovery offered by defendants in this suit has revealed the Note may have resided within one of the agencies of the Federal Housing Administration (Ginnie Mae).

1. Wells Fargo Bank, N.A. contends to be entitled to enforce the note. This has not been proven, however, enforcement of the note is not an action that provides Wells Fargo Bank, N.A. with the ability to enforce an invalid transfer of lien or deed of trust.
2. Defendants clearly state in item 5, page 4 of Defendants Motion for Summary Judgment, Wells Fargo Bank, N.A. became holder of the note. Wells Fargo Bank, N.A. provided this court with an electronic copy of the alleged note that does not provide any indication of the date of that alleged negotiation. It appears in the electronic copy of the note that Wells Fargo Bank, N.A. provided is a copy of an allonge that was later added to the note without any indication of the date of negotiation or indorsement. The copy of the electronic note provided by the Defendants is the same type of electronic copy Defendants have provided to Plaintiff's ever since the Borrower's have requested validation of their debt dating back to 2007.

Defendants clearly state in item 6, page 4 of Defendants Motion for Summary Judgment, that MERS as nominee for Wells Fargo Bank, N.A. transferred the beneficial interest in the Deed of Trust to Wells Fargo Bank, N.A. This court should notice that Wells Fargo Bank, N.A. has

Plaintiff's MSJ Oral Argument

admitted that Wells Fargo Bank, N.A. as a member of MERS unlawfully transferred the American Mortgage Network, Inc. secured debt to themselves.

1. Defendants have admitted that the transfer of the lien was not recorded into land records in Williamson County Texas, until almost four years after the alleged negotiation of the note. Defendants should have known that perfection was lost in the chain of title by not conforming to recordation laws of Texas.
2. Defendants have provided enough proof within their own Motion for Summary Judgment to show this court there is a genuine issue of material fact.
2. Defendants have no standing to bring this Motion for Summary Judgment against the Plaintiff's as Defendants have unlawfully sold Plaintiff's real property without a valid security instrument to enforce their actions.
3. Defendants have provided this court with misleading information that could be reviewed as providing fraudulent documents and information in an attempt to sway the court in their favor.

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 Defendant, it is clear why it is necessary for both summary judgments be denied as the Note "Holder" who had authority to enforce collection of the Note has not been identified and the defendants are clearly not the Holder of the ink-signed Original Note or a proper agent of the Holder. This court should allow proceedings to continue so that the truth be known and thus the court then could rule upon facts.

Plaintiff's MSJ Oral Argument

WHEREFORE, PREMISES CONSIDERED, this Court should deny Defendant's No Evidence Motion for Summary Judgment and Motion for Summary Judgment.

SIGNED this 23 day of June, 2011.



JUDGE PRESIDING

ORDER GRANTING DEFENDANTS WELLS FARGO BANK, N.A. AND MORTGAGE ELECTRONIC REGISTRATION
SYSTEM, INC.'S NO EVIDENCE MOTION FOR SUMMARY JUDGMENT PAGE 2
4572581.1
11000.58314

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 10-1093-C368

ALVIE CAMPBELL AND } IN THE DISTRICT COURT OF
 JULIE CAMPBELL

VS.

MORTGAGE ELECTRONIC
 REGISTRATION SYSTEM, INC.,
 AS NOMINEE FOR LENDER AND } WILLIAMSON COUNTY, TEXAS
 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 } 368TH JUDICIAL DISTRICT

 HEARING ON MOTION TO DISMISS
 AND
 MOTION FOR SUMMARY JUDGMENT

On the 23rd day of June, 2011, the following proceedings
 came on to be heard in the above-entitled and numbered cause
 before the Honorable Burt Carnes, Judge presiding, held in the
 City of Georgetown, Williamson County, Texas.

Proceedings reported by computerized stenotype machine;
 Reporter's Record produced by computer-assisted transcription.

1 A P P E A R A N C E S :

2 Mr. Alvie Campbell, Pro Se
3 c/o 250 PR 947
4 Taylor, Texas 76574
5 Telephone No. (512) 796-6397
6 Email: alvie@eccwireless.com

7 Mr. Mark D. Hopkins
8 Attorney at Law
9 State Bar No. 00793975
10 12117 Bee Caves Rd., Suite 3-260
11 Austin, Texas 78738
12 Telephone No. (512) 600-4320
13 Fax No.: (512) 600-4326

14
15
16
17
18 Mr. Chase Hamilton
19 Attorney at Law
20 State Bar No. 24059881
21 111 Congress, Suite 1400
22 Austin, Texas 78701-4093
23 Telephone No. (512) 472-5456
24 Fax No.: (512) 479-1101
25

HEARING ON MOTION TO DISMISS AND
MOTION FOR SUMMARY JUDGMENT

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P R O C E E D I N G S :

(June 23, 2011)

THE COURT: 10-1093-C368, Alvie Campbell and Julie Campbell vs. Mortgage Electronic Registration Systems, Inc., Et Al.

Mr. Hopkins.

MR. HOPKINS: Yes, Judge.

THE COURT: Are you representing all the defendants?

MR. HOPKINS: No. I'm in for the attorney defendants. We have Wells Fargo and MERS represented by co-counsel.

MR. HAMILTON: Your Honor, I'm Chase Hamilton. I'm representing Wells Fargo and MERS in this. We've got two motions, our motion for summary judgment and then Mr. Hopkin's motion to dismiss.

THE COURT: Okay. Mr. Hopkins, let's go ahead and take up your motion to dismiss first.

MR. HOPKINS: Certainly, Judge. Mark Hopkins here on behalf of Attorney Stephen Porter, Attorney David Seybold, Attorney Ryan Bourgeois, and Mr. Matthew Cunningham.

Your Honor, the background and facts are that my defendants are employed by the law firm of Barrett Daffin Frappier Turner & Engel. That law firm was hired by Wells Fargo to assist Wells Fargo in protecting its interest against

1 the Campbells with respect to the Campbells' default on a home
2 mortgage. Specifically, the law firm of Barrett Daffin was
3 retained to assist with the foreclosure of the Campbells'
4 loan. That lawsuit was actually litigated in Judge Anderson's
5 court, and we had a judgment in our favor.

6 This is Mr. Campbells' second lawsuit, and this
7 time around he has sued the attorney defendants as well. And
8 I have brought a motion to dismiss on behalf of my clients, as
9 Mr. Campbell and Mrs. Campbell have no standing to sue the
10 attorney defendants, and standing is an element of subject
11 matter jurisdiction which is a question of law for the Court.

12 Attached to my motion is the affidavit of Mr.
13 Stephen Porter. He's the chief litigation counsel at Barrett
14 Daffin, and his affidavit provides that the only contact the
15 attorney defendants have had with the Campbells is in
16 connection with the attorney defendants' representation of
17 Wells Fargo in litigation. And there has been no other
18 contact with the Campbells.

19 Texas case law is clear, your Honor. From the
20 Northern District of Texas in 1996, the Taco Bell vs. Cracken
21 case, the Federal Court held, "Based on overriding public
22 policy, Texas courts have consistently held that an opposing
23 party does not have a right of recovery under any cause of
24 action against another attorney arising from the discharge of
25 his duties in representing that party."

1 Also from the Corpus Christi Court of Appeals,
2 Martin vs. Trevino, I'll read from that opinion. "An attorney
3 is exempt from liability to any party other than his client
4 for damages resulting in the performance of service which
5 engages and requires the office or the professional training
6 skill and authority of an attorney because an attorney deals
7 at arm's length with adverse parties, and that he is not
8 liable to such adverse parties for his actions, as an attorney
9 on behalf of his client."

10 Your Honor, the Campbells have only sued my
11 clients in connection with their representation of Wells
12 Fargo. And based on the affidavit of Mr. Stephen Porter,
13 there is no evidence before this Court or allegations that my
14 clients have had any contact with the Campbells outside that
15 representation. I would request that the motion be -- motion
16 for the attorney defendants to be dismissed be granted.

17 THE COURT: Thank you, sir.

18 I'll tell you what. I'd like to go ahead and
19 hear Mr. Hamilton, your argument. And then I'll allow Mr.
20 Campbell to respond to both of them rather than break yours
21 into two arguments.

22 MR. CAMPBELL: Thank you.

23 MR. HAMILTON: Thank you, your Honor. Actually,
24 that may change what I was going to -- what I was planning.
25 What we've got before you is a motion for summary judgment on

1 no-evidence grounds and on traditional grounds. I don't think
2 the Court will need to look farther than the no-evidence
3 motion. So what I was going to propose is that I walk through
4 the no-evidence motion and then allow Mr. Campbell to respond.
5 And if you still want to hear the traditional grounds --

6 THE COURT: I think I'll decide the order of
7 argument. If you'd just go ahead and give me your arguments,
8 then I'll let Mr. Campbell respond. Thank you.

9 MR. HAMILTON: Okay. So we've got a motion for
10 summary judgment on both grounds. What Mr. Campbell has done
11 here is he's filed a lawsuit. The only claim that he's
12 alleged is a wrongful foreclosure claim. The elements for
13 wrongful foreclosure are a defective foreclosure sale
14 proceedings, a grossly inadequate selling price, and a causal
15 connection between that defect and a grossly inadequate
16 selling price.

17 Mr. Campbell has no evidence of any of those
18 three elements. The only evidence that he's attached to his
19 response are an affidavit from a James McGuire that we've
20 actually -- I've got a written motion I can show you that we
21 are objecting to the evidence, but I can also present it
22 orally to you if you would prefer.

23 The affidavit of James Maguire, it's clearly
24 hearsay. It only speaks to a conversation that Mr. McGuire
25 heard with Mr. Campbell, between Mr. Campbell and Mr. Hopkins,

1 in another case proceeding. There's nothing -- there's
2 nothing in there that's substantively related, and there's
3 nothing in there that's admissible, on the grounds of hearsay,
4 anyway.

5 The second piece of evidence that Mr. Campbell
6 has submitted is a sort of copied and pasted set of
7 photocopies of a chain of negotiation of plaintiffs' alleged
8 note, none of which are proved up by an affidavit and none of
9 which were offered in discovery. Those are all hearsay as
10 well, and, frankly, they have nothing to do with any sort of
11 wrongful foreclosure claim.

12 The third piece of evidence that Mr. Campbell
13 provided the Court is a copy of an order from a New Jersey
14 Chancery Court case between Bank of America and Melissa
15 Limato. And that case, obviously, has nothing to do with any
16 facts that are alleged or could be alleged in this case. So
17 we would object to the admissibility of all three of the
18 pieces of evidence that Mr. Campbell has provided. Without
19 those, there is no evidence before this Court of any of his
20 claims.

21 I don't think the Court has to look any farther
22 than that. But if the Court wants to, we can walk through the
23 actual or traditional grounds which are: This suit arises
24 from a loan that was made on December -- excuse me --
25 October 29, 2004. The note was payable originally to AMNET

1 and its successors and assigns. The deed of trust beneficiary
2 associated with that note was MERS who is here. Wells Fargo
3 became the holder and servicer of the note on December 9,
4 2004. The note has been endorsed to them, and that's in our
5 traditional -- that's in our summary judgment evidence. MERS
6 assigned its interest in the deed of trust to Wells Fargo on
7 August 22, 2008.

8 The plaintiffs filed their first lawsuit in June
9 of 2009 after falling into default. They lost that lawsuit.
10 The grounds, it was a strange -- it was a strange pleading,
11 but the grounds claimed were identical to the grounds claimed
12 here which was that there's this -- there's a bifurcation, the
13 plaintiffs called it, between the note and the deed of trust.
14 In the first lawsuit, they lost that claim. They brought it
15 again here now after they've been foreclosed upon.

16 The house was sold at foreclosure in September
17 of 2010. They filed this suit in September, on September
18 27th. And I believe Exhibit 1, Paragraph 5, demonstrates that
19 Wells Fargo has been the holder and servicer of the note since
20 December of 2004. So the only claim that the pleadings seem
21 to say to base or support their claim for wrongful foreclosure
22 is this bifurcation between the note and the deed of trust.

23 It's clear as a matter of law that when a
24 secured note transfers ownership, the security interest
25 follows the note. And I've got case law that is -- I've got a

1 case here, if you want to look at it. It's the case of
2 Richardson vs. CitiMortgage. The cite is 2010 U.S. District
3 Court Lexis 123445.

4 But we -- there is no disruption in the chain of
5 title. There's no dispute. And there's no evidence that
6 Wells Fargo wasn't at all times relevant the holder and
7 servicer of the note.

8 There is no allegation even that Wells Fargo
9 improperly proceeded in the foreclosure. There is certainly
10 no allegation and no evidence that there was a gross or
11 inadequate sale price. And there is obviously no allegation
12 or evidence that there was a causal link between the
13 foreclosure process and that sale price.

14 And then as a final note, just as kind of belt
15 and suspenders, MERS -- there is no evidence that MERS did
16 anything in this. MERS did not foreclose on Mr. Campbell at
17 all. Only Wells Fargo was the actor. So for all of those
18 reasons we would ask that the Court grant either our
19 no-evidence motion or our traditional motion.

20 THE COURT: Thank you very much.

21 Mr. Campbell.

22 MR. CAMPBELL: Thank you, your Honor, my name is
23 Alvie Campbell. Due to the complexity --

24 THE COURT: Excuse me. It's a very minor thing,
25 but only one needs to stand at a time, ma'am.

1 MRS. CAMPBELL: Sorry.

2 MR. CAMPBELL: I'm sorry, your Honor.

3 Due to the complexity of this, basically I
4 needed to write my oral argument out, and I'd like to be able
5 to provide this to any of the parties --

6 THE COURT: Certainly.

7 MR. CAMPBELL: -- if they would like that.

8 May I approach?

9 THE COURT: Thank you.

10 MR. CAMPBELL: Thank you.

11 Start with the motion to dismiss. Defendants,
12 Stephen C. Porter, David Seybold, Ryan Bourgeois -- I --
13 pronounce his name right -- and Matthew Cunningham have
14 requested to dismiss this action on five grounds. The
15 plaintiffs allege a lack of standing.

16 Barrett Daffin Frappier Turner & Engel, LLP,
17 were retained by Wells Fargo. Barrett Daffin Frappier Turner
18 & Engel, LLP, are licensed attorneys in the State of Texas and
19 employed by BDFTE. The plaintiffs allegedly have failed and
20 refused to pay their mortgage as contractually agreed. No
21 claims have arised (sic) out of the attorney defendants'
22 conduct other than legal representation of their client, Wells
23 Fargo. The test for constitutional standing in Texas requires
24 that there be -- there shall be a controversy between the
25 parties which will be determined by judicial declaration

1 sought.

2 Attorney defendants, Stephen C. Porter, David
3 Seybold, Ryan Bourgeois, and Matthew Cunningham have operated
4 in an alleged capacity for Wells Fargo. This claim of Wells
5 Fargo is not definitive, as it does not define the specifics
6 as to Wells Fargo Bank, North America, Wells Fargo Home
7 Mortgage, or Wells Fargo Stagecoach.

8 Plaintiffs' suit against defendants should not
9 be dismissed for lack of standing as attorney defendants were
10 not proper representation parties to the plaintiffs' alleged
11 indebtedness. The attorney defendants have been retained by
12 Wells Fargo, but attorney defendants and Wells Fargo were not
13 proper parties to the plaintiffs' alleged indebtedness.

14 Counsel for attorney defendants allege
15 protection of rights under certain note and deed of trust
16 which counsel alleges Wells Fargo to be the holder of a deed
17 of trust secured by a note according to the affidavit of
18 Stephen C. Porter attached to the defendant's motion to
19 dismiss.

20 The attorney defendants claim no relationship to
21 plaintiffs, which is true. This note follows the lien is the
22 opposite. It's dating back to Carpenter and Longan which
23 clearly noted that the lien follows the note. However, this
24 would not allow attorney defendants to claim lack of standing.

25 The attorney defendants may be correct in

1 stating that the opposing party does not have a right to
2 recover under any cause of action against any other attorney
3 arising from the discharge of his duties in representing a
4 party. However, this does not exclude an attorney who is
5 representing a party that is not a lawful party to the alleged
6 original obligation.

7 Attorney defendants are correct in stating that
8 the attorneys have an absolute right to practice their
9 profession. However, this does not explain why the attorney
10 defendants got involved in an action to unlawfully sell the
11 plaintiffs' real property.

12 The defendants are correct in stating that
13 attorneys are immune from certain claims against them.
14 However, claims made against attorney defendants are valid as
15 attorney defendants are not proper parties to plaintiffs'
16 alleged indebtedness.

17 Your Honor, the plaintiffs dispute the validity
18 of the signature of Stephen C. Porter in the affidavit of
19 Stephen C. Porter. Research of public records, land records,
20 and a verification signed by Stephen C. Porter on March 4,
21 2011, do not resemble each other. And the same notary
22 notarized those instruments. And I would like to provide that
23 as an exhibit.

24 May I approach, your Honor?

25 THE COURT: Yes, sir.

1 MR. CAMPBELL: In looking through those, the
2 affidavit and the verification, both seem to be completely
3 different signatures, but it's the same notary.

4 THE COURT: Excuse me. Are you offering
5 Plaintiff's 1? Did you mean to offer this as an exhibit?

6 MR. CAMPBELL: Yes, sir.

7 THE COURT: Any objection?

8 MR. HOPKINS: Your Honor, I'll object. It
9 hasn't been properly authenticated.

10 MR. CAMPBELL: Your Honor, the plaintiffs are
11 trying to get across the point --

12 THE COURT: Excuse me. The objection is
13 sustained.

14 Go ahead, Mr. Campbell.

15 MR. CAMPBELL: The defense counsel refers to the
16 affidavit of Stephen C. Porter to support proof of alleged
17 payments. Plaintiffs object to affidavit of Stephen C.
18 Porter. It is made without personal knowledge. The affidavit
19 of Stephen C. Porter is correct in stating that Porter is
20 chief litigation counsel for Barrett Daffin Frappier Turner &
21 Engel, LLP, according to the Texas Bar.

22 The affidavit of Stephen C. Porter does not
23 address payments of his alleged claims in regards to the
24 mortgage note. The affidavit of Stephen C. Porter has made a
25 claim that BD -- Barrett Daffin Turner Frappier -- Barrett

1 Daffin Frappier Turner & Engel was only representing Wells
2 Fargo Bank, North America, and not the lawful owner of the
3 mortgage note and deed of trust.

4 The affidavit of Stephen C. Porter has clearly
5 provided that there is a misunderstanding of the factions of a
6 secured debt is an attempt to mislead this Court into
7 believing that the mortgage note follows the security
8 instrument. This is the other way around. Texas and other
9 states across the United States understand the security
10 instrument follows the note. And more clearly understood, the
11 security follows the debt, also noted in the memorandum of
12 James McGuire in support of plaintiffs' objection to
13 defendants' motion to dismiss.

14 The affidavit of Stephen C. Porter is an attempt
15 to mislead this Court into believing that Wells Fargo Bank,
16 North America, had the lawful right to transfer a lien and
17 then take possession of a mortgage note whether it be lawful
18 or unlawful. Plaintiffs dispute the validity of Stephen C.
19 Porter. Defendants are claiming that defense based upon an
20 illusion that an unlawful ownership of a lien takes superior
21 position of the owner of the note.

22 As plaintiffs' arguments are based on facts in
23 this case and due to lack of supported records, recorded facts
24 in Williamson County Public Land Records, this Court should
25 deny the defendants' motion to dismiss.

1 I'd like to add one more thing to this, your
2 Honor. If there are any objections about the hearsay of Mr.
3 McGuire, he is present here today.

4 Wherefore, premises considered, plaintiffs pray
5 that the Court denies the defendants' motion to dismiss.

6 Your Honor, may I move on to the motion to --

7 THE COURT: Yes, sir.

8 MR. CAMPBELL: -- for summary judgment?

9 Again, I have the oral -- may I approach?

10 THE COURT: Yes, sir. Thank you.

11 MR. CAMPBELL: Thank you, your Honor.

12 Okay. This case concerns a borrower's rights to
13 protect their real property from unidentified parties that
14 have sold the borrower's real property unlawfully in a trustee
15 sale on September 7, 2010, in Williamson County, Texas.

16 Defendants, Wells Fargo Bank, North America,
17 Mortgage Electronic Registration Systems, Incorporated, David
18 Seybold, Stephen C. Porter, Matthew Cunningham, and Ryan
19 Bourgeois are unknown parties that plaintiffs' debt --
20 negotiated between the plaintiffs, Alvie Campbell and Julie
21 Campbell, and American Mortgage Network d/b/a/ AMNET Mortgage
22 whose address is listed on the plaintiffs' deed of trust and
23 recorded in Williamson County, Texas Land Records as P.O. Box
24 85463, San Diego, California, zip code, 92186.

25 Plaintiffs, Alvie and Julie Campbell, filed this

1 lawsuit that is based on wrongful foreclosure by the
2 defendants who had no lawful authority to do so. The
3 plaintiffs' claims do uphold as a matter of law. Plaintiffs'
4 claims are barred by -- are not barred by "res judicata," as
5 the defendants claim.

6 The case prior to that that they're trying to
7 mention and all was a debt validation suit at that time, your
8 Honor. The plaintiffs have no -- at no time brought a lawsuit
9 against Wells Fargo Bank, North America. Defendants are
10 trying to use a case that was brought against Wells Fargo Home
11 Mortgage, the alleged mortgage servicer, that involved
12 pre-foreclosure debt validation and verification of the
13 borrowers' alleged default.

14 The claims made by the defendant, Mark Hopkins,
15 Esquire, in a nonrelated case in miscellaneous docket
16 11-341-C26 hearing on Tuesday, June 7th, clearly stated in
17 that court hearing that there could be an impact upon this
18 motion for summary judgment brought forth by the defendants.
19 There is a genuine issue of material fact of plaintiffs'
20 claims against the defendants' wrongful foreclosure, and
21 summary judgment is not proper.

22 Defendant, Wells Fargo Bank, North America,
23 claims to become a holder and servicer of the note has not
24 been proved to be sufficient to make such a claim. Wells
25 Fargo Bank, North America, or N.A., national association,

1 claims to be the lender at all times and being a member of
2 MERS, electronic registration system, assigned MERS's
3 beneficial interest in the deed of trust to Wells Fargo.

4 However, MERS acts solely as nominee for the holder of the
5 mortgage. MERS did not meet the required burden of proof
6 since it does not act as agent for the holder of the note.

7 MERS, if it had any agency relationship with
8 American Mortgage Network, AMNET, MERS's nominee would not
9 give MERS the lawful authority to sign the interest in the
10 note. The counsel is misleading this Court, as plaintiffs did
11 not file a lawsuit against Wells Fargo Bank, N.A. Plaintiffs
12 filed a debt validation lawsuit against Wells Fargo Home
13 Mortgage, the mortgage servicer. Wells Fargo Bank, N.A., was
14 not awarded a final judgment.

15 The business affidavit of Kyle N. Campbell,
16 Wells Fargo, N.A., is questionable to his ability to have
17 personal knowledge of the facts. On March 28, 2011, Kyle N.
18 Campbell provided certification to the Superior Court in New
19 Jersey that he was a litigation specialist for Wells Fargo
20 Bank, N.A., and not a vice-president of loan documentation.

21 Defendants clearly state that there was no
22 agency relationship between the loan originator, American
23 Mortgage Network, and Mortgage Electronic Systems,
24 Incorporated. Defendants' motion for summary judgment -- in
25 the defendants' motion for summary judgment, the only agency

1 relationship between Wells Fargo Bank, N.A., and MERS was
2 stated in the defendants' motion for summary judgment.

3 This Court should take a serious look at the
4 business affidavits provided by the defendants, Wells Fargo
5 Bank, N.A., Al Campbell, to determine just exactly who Mr.
6 Campbell really is. Discovery offered by the defendants in
7 this suit has revealed the note has resided within one of the
8 agencies of the Federal Housing Administration, possibly
9 Gennie Mae.

10 THE COURT: May have. Is it "may have" or
11 "has"? You've written "may have," and you said "has."

12 MR. CAMPBELL: May have.

13 THE COURT: Okay. Thank you.

14 MR. CAMPBELL: Thank you, your Honor.

15 Wells Fargo Bank, N.A., contends to be entitled
16 to enforce the note. This has not been proven. However, the
17 enforcement of the note is not an action to provide Wells
18 Fargo Bank, N.A., with the ability to enforce an invalid
19 transfer of lien of the deed of trust.

20 Defendants clearly states (sic) in their motion
21 for summary judgment that Wells Fargo became the holder of the
22 note -- the holder of the note. Wells Fargo Bank, N.A.,
23 provided this Court with an electronic copy of an alleged note
24 that does not provide any indication of the date of the
25 alleged negotiation.

1 It appears in the electronic copy of the note
2 Wells Fargo Bank, N.A., provided a copy of an allonge that was
3 later added to the note without any indication of the date of
4 negotiation or endorsement. The copy of the electronic note
5 provided by the defendants is the same type of electronic copy
6 defendants have provided to plaintiffs ever since borrowers
7 have requested validation of their debt dating back to 2007.

8 Defendants clearly state in Item 6, Page 4 of
9 the defendants' motion for summary judgment that MERS's
10 nominee for Wells Fargo Bank, N.A., transferred the beneficial
11 interest in the deed of trust to Wells Fargo Bank, N.A.

12 This Court should notice that Wells Fargo Bank,
13 N.A., admitted that Wells Fargo Bank, N.A., as a member of
14 MERS, unlawfully transferred the American Mortgage Network,
15 Incorporated, debt to themselves. The defendants admitted
16 that the transfer of the lien was not recorded into land
17 records in Williamson County, Texas, until almost four years
18 after the alleged negotiation of the note. The defendant
19 should have known that perfection was lost in the chain of
20 title by not conforming to the recordation laws of Texas.

21 Defendants have provided enough proof within
22 their own motion for summary judgment to show this Court there
23 is a genuine issue of material fact. Defendants have no
24 standing to bring a motion for summary judgment against the
25 plaintiffs, as defendants have unlawfully sold the plaintiffs

1 real property with a valid -- without a valid security
2 instrument to enforce their actions. The defendants have
3 provided this Court with misleading information that would be
4 -- that could be reviewed as providing fraudulent documents
5 and information in an attempt to sway the Court in their
6 favor.

7 When the Court takes into account the statutes
8 and case law and applies them to the facts of this case and
9 the documents relied on by the defendant, it is clear why it
10 is necessary for both summary judgments be denied, as the
11 noteholder who had authority to enforce collection of the note
12 has not been identified, and the defendants are clearly not
13 the noteholder of the ink-signed original note or the proper
14 agent of the holder. This Court should allow proceedings to
15 continue so that truth be known, and, thus, the Court should
16 then rule upon the facts.

17 Wherefore premises considered, this Court should
18 deny defendants' no-evidence motion for summary judgment and
19 motion for summary judgment.

20 And, again, your Honor, for any of these, the
21 Exhibit 2 that the defendants are speaking of and all, if it's
22 looked at, there is a reference number. Those reference
23 numbers were put on there by Wells Fargo through Brown
24 McCarroll through discovery requests back prior to these
25 motions. So it is there. I did not bring that CD with me,

1 but I would be happy to produce it to the Court.

2 I do have -- I printed some out of that
3 discovery that would show where they -- it's the full page of
4 each one of those that are referenced there within that --
5 that exhibit. However, I only brought two copies. I'd be
6 happy, if you guys would like to share one, and take a look, I
7 can produce you one. I'd like to be able to provide this if
8 it's -- if it's okay.

9 THE COURT: If there is no objection, it's okay.

10 MR. CAMPBELL: Thank you, your Honor.

11 MR. HAMILTON: Your Honor, I'd object. We
12 haven't had notice for this.

13 MR. HOPKINS: Your Honor, if it's in response to
14 my motion to dismiss, I can see him trying to offer it. But
15 if it's summary judgment, it's not appropriate to take
16 evidence at this time.

17 THE COURT: That's correct.

18 MR. CAMPBELL: Thank you, your Honor.

19 THE COURT: And your objection to -- well, you
20 objected to an affidavit, and I cannot get my hands on that
21 affidavit from Mr. McGuire, I believe.

22 MR. HAMILTON: The affidavit, it's the -- again,
23 right after -- it's the first --

24 THE COURT: Well, do you have a copy I could
25 look at? This file is huge. I'm tired of flipping through

1 it.

2 MR. HAMILTON: You've got to forgive me. I
3 printed it out two-sided. Here is the first page, and this is
4 the second.

5 THE COURT: Thank you.

6 MR. CAMPBELL: Again, your Honor, Mr. McGuire is
7 present in the courtroom today.

8 THE COURT: Good. Did Mr. McGuire prepare ---

9 Oh, I'm sorry. Ms. Campbell, you're a plaintiff
10 in this also. You have a right to make your own arguments, or
11 you can join in Mr. Campbell's arguments.

12 MRS. CAMPBELL: I'm just joining with him.

13 THE COURT: Thank you.

14 Did Mr. McGuire prepare your oral argument?

15 MR. CAMPBELL: No, sir. No, sir, your Honor.

16 Mr. McGuire has only provided his affidavit and his memorandum
17 in support.

18 THE COURT: Did you pay Mr. McGuire money for
19 his assistance in this case?

20 MR. CAMPBELL: I have him as a consultant. Yes,
21 sir.

22 THE COURT: Did he help you prepare your
23 pleadings?

24 MR. CAMPBELL: No, sir.

25 THE COURT: All right. Thank you.

1 MR. CAMPBELL: Thank you, your Honor.

2 THE COURT: The individual defendants' motion to
3 dismiss is granted.

4 The objections to plaintiffs' summary judgment
5 evidence is granted.

6 And the no-evidence motion for summary judgment
7 is granted.

8 If you gentlemen will prepare an order and
9 circulate it, please. Thank you.

10 MR. HOPKINS: We have proposed orders. Would
11 you like us to make it into one joint order?

12 THE COURT: We'll see if there's any objection
13 to the form of the order. If not, it's fine with me.

14 (END OF PROCEEDINGS)

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1 THE STATE OF TEXAS

2 COUNTY OF WILLIAMSON

3

4 I, TERESA HALL, official court reporter in and for the
5 368th District Court of Williamson County, State of Texas,
6 do hereby certify that the above and foregoing contains a
7 true and correct transcription of all portions of evidence
8 and other proceedings requested in writing by counsel for the
9 parties to be included in the reporter's record in the above
10 styled and numbered cause, all of which occurred in open
11 court or in chambers and were reported by me.

12 I further certify that the total cost for the preparation
13 of this Reporter's Record is \$125.00 and was paid by Mr. Alvie
14 Campbell.

15 WITNESS MY OFFICIAL HAND this the 5th day of July, 2011

16

17

/s/ Teresa Hall

18

Teresa Hall

19

Official Court Reporter

20

Certification Number: 2725

21

Date of expiration: 12-31-2012

22

405 MLK, #8, Georgetown, Texas 78626

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Phone: (512) 943-1280

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