

NO. _____

In the
Supreme Court of Texas

Alvie Campbell and Julie Campbell

Plaintiff

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,
Defendant

PLAINTIFF'S ORIGINAL PETITION FOR
BILL OF REVIEW & REQUEST FOR
DISCLOSURE

From Cause No. 12-0549
In the Texas Supreme Court
From Cause No. 03-11-00429-CV
In the 3rd Court of Appeals at Austin Texas
From Cause No. 10-1093-C368, 368th District, Williamson County, Texas

Alvie Campbell
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Julie Campbell
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TO THE HONORABLE JUSTICES OF THE SUPREME COURT

Comes now pro se plaintiff's, Alvie Campbell and Julia Campbell, (herein "Campbell's) and files this Original Petition for Bill of Review in cause number 12-0549.¹, and will show such judgment was obtained by fraud and misrepresentation in the following;

This court has stated; "While this court has always upheld the sanctity of final judgments, we have also always recognized that showing the former judgment was obtained by fraud will justify a bill of review to set it aside." [*Montgomery v. Kennedy*](#), 669 SW 2d 309 - Tex: Supreme Court 1984

This court has also stated; "Extrinsic fraud is fraud that denies a losing party the opportunity to fully litigate at trial all the rights or defenses that could have been asserted." See [*Browning v. Prostock*](#), 165 SW 3d 336 - Tex: Supreme Court 2005

A U.S. District Court has stated; "The Where jurisdiction depends upon domicile that question is always open to re-examination, even upon contradictory evidence... Moreover, fraud destroys the validity of everything into which it enters. It affects fatally even the most solemn judgments and decrees", [*Diehl v. United States*](#), 438 F. 2d 705 - Court of Appeals, 5th Circuit 1971.

In 1952, the Texas Supreme Court stated; "Rule 166-A, Rules of Civil Procedure, provides for summary judgment "(c) * * The judgment sought shall be rendered forthwith

¹ See [*Transworld Fin. Serv. Corp. v. Briscoe*](#), 722 S.W.2d 407, 407 (Tex. 1987); see also, [*Law v. Law*](#), 792 S.W. 2d 150, 153 (Tex.App.–Houston [1st Dist.] 1990, writ denied) (a bill of review is a separate suit in equity, brought to set aside a judgment in the same court in an earlier suit, when the judgment in the earlier suit is final, not reviewable by appeal or by writ of error, and does not appear to be void on the face of the record).

if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See [*Gulbenkian v. Penn*](#), 252 SW 2d 929 - Tex: Supreme Court 1952

The honorable court went on to state; "We adopted this rule from Federal Rules of Civil Procedure rule 56, 28 U.S.C.A., and that rule has been construed as allowing summary judgments only when there is no disputed fact issue." Id

The honorable court also cited from *Kaufman v. Blackman*² that stated "The underlying purpose of Rule 166-A was elimination of patently unmeritorious claims or untenable defenses; not being intended to deprive litigants of their right to a full hearing on the merits of any real issue of fact." Id.

Plaintiffs' will provide a prima facie meritorious defense and show the court defendants acted fraudulently to deprive plaintiffs'; and an agent [judge] of the court did not understand nor comprehend the matter before him to be qualified to decide whether defendants were entitled to a judgment as a matter of law. By Affidavit of Joseph R. Esquivel, Jr., the court will see how the courts were misled, and the Campbell's were deprived of equal due process of law. This court should grant plaintiffs Petition for Bill of Review.

² [*Kaufman v. Blackman*](#), 239 SW 2d 422 - Tex: Court of Civil Appeals, 5th Dist. 1951

This is not an attempt to re-litigation, this addresses constitutional violations seemingly caused from deception and misrepresentation by defendants; and judgments based on lack of understanding or comprehension of the laws that apply; and non-disclosure of an electronic agent governed by E-SIGN and Texas UETA, defined as a book entry system in section 51.0001(1), Texas Property Code.

“The MERS eRegistry is the legal system of record that identifies the owner (Controller) and custodian (Location) for registered eNotes and that provides greater liquidity, transferability and security for lenders.” See [MERS website](#) MERS is not a legal system of recordation such as the recordation system of the Clerk of the county.

eNotes are governed by E-SIGN, Texas UETA; and neither law governs real property transactions, nor does E-SIGN or UETA include chapter 3, negotiable instruments; or chapter 9, secured transactions, Texas Business and Commerce Code. See section §[322.003](#); and §[322.016](#)(a)(2), Texas UETA; See [chapter 322](#), Texas UETA.

A. Discovery-Control Plan

1. Plaintiffs initially provides partial discovery information obtained by a Texas licensed private investigator which will show defendants misled the courts and deprived plaintiffs equal due process. Had the courts honestly understood the function of Mortgage Electronic Registration Systems, Inc., a computer program³, also known as an electronic agent⁴ plaintiffs could have proven defendants were not entitled to the judgment opinions they received utilizing unclean hands and an information

³ See [§322.002](#)(3)

⁴ See [§322.002](#)(6)

processing system⁵ which violates the Campbell's right provide by the constitution and Texas rules of discovery. In support, Plaintiffs provides Affidavit of Joseph R. Esquivel, Jr., a Texas licensed investigator whom conducted an investigation analysis for the Campbell's and is attached as Exhibit A, and incorporated by reference, (herein "affidavit"); Also in support, Plaintiffs provides his verified memorandum in support and incorporates by reference (herein "memorandum") to the constitutionality of book entry system; and attorney defendants counsel's manipulation of previous court opinions.

2. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 to show the court that defendants have no evidence whatsoever to prove defendants could as a matter of law obtain such favorable opinions as defendants received by this court and other courts.
3. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 to show the court that defendants previously violated plaintiff's right to trial by jury by filing false and misleading motions to manipulate and mislead the courts to opine in defendants favor.
4. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 to show the court that defendants utilized a personal property, intangible obligation that bears no direct interest in the Campbell's purported residential mortgage loan obligation, and that Defendants do not as a matter of law have a legal

⁵ See [§322.002](#)(11)

right; or a lawful claim to title to real property without lawful proof of ownership.

Defendants were not entitled to the opinions favored by this court or other courts.

5. Plaintiffs' intends to conduct discovery under Level 2 to show the court that Defendants the MERS eRegistry is a system not related to real estate mortgage loan obligations, but separate intangible obligations between MERS members.
6. Plaintiffs' intends to conduct discovery under Level 2 to show that Mortgage Electronic Registration Systems, Inc. , is an electronic agent, and is defined as a "book entry system" which violates Plaintiffs Constitution rights, and depriving access through Texas Discovery rules, all of which appear seemingly flawed by section § 51.0001(1) in the Texas Property Code; and show that Mortgage Electronic Registration Systems, Inc. was never disclosed as an electronic agent by MERS members or MERS itself. Defendants provided a legal impossibility to the courts by misapplying the law of agency.
7. Plaintiffs' intends to conduct discovery un Level 2 to show the court that Attorney defendants past actions were without lawful authority or authorization from a real party in interest related to the Campbell's tangible real estate mortgage loan.

B. Parties

8. Plaintiffs', Alvie Campbell and Julie Campbell are individuals whose mailing address is 250 Private Road 947, Taylor, Texas, 76574. The last three digits of Alvie Campbell's driver's license number are 578, and the last three digits of his social security number are 180. The last three digits of Julie Campbell's driver's license number are 933, and the last three digits of her social security number are 938.

9. Defendant Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lender's Successors and Assigns is a Foreign For-Profit Corporation and may be served through its counsel, Elizabeth G. Bloch, Brown & McCarroll, at 111 Congress Ave. Suite 1400, Austin, Texas 78701. Service on this defendant may be effected by electronic service via ProDoc eFiling services. [hereinafter "Bank" defendant]
10. Defendant Wells Fargo Bank, N.A., is a National Banking company who may be served by and through its counsel, Elizabeth Bloch, Brown & McCarroll, 111 Congress Ave. Suite 1400, Austin, Texas 78701. Service on this defendant may be effected by electronic service via ProDoc eFiling services. [hereinafter "Bank" defendant]
11. Defendant Stephen C. Porter, is an individual who may be served through his counsel, Mark D. Hopkins, Hopkins & Williams, PLLC, at 12117 FM 2244, Bldg 3, Suite 260, Austin, Texas 78738. Service on this defendant may be effected by electronic service via ProDoc eFiling services. [hereinafter "Attorney" defendant]
12. Defendant David Seybold, is an individual who may be served through his counsel, Mark D. Hopkins, Hopkins & Williams, PLLC, at 12117 FM 2244, Bldg 3, Suite 260, Austin, Texas 78738. Service on this defendant may be effected by electronic service via ProDoc eFiling services. [hereinafter "Attorney" defendant]
13. Defendant Ryan Bourgeois, is an individual who may be served through his counsel, Mark D. Hopkins, Hopkins & Williams, PLLC, at 12117 FM 2244, Bldg 3, Suite 260, Austin, Texas 78738. Service on this defendant may be effected by electronic service via ProDoc eFiling services. [hereinafter "Attorney" defendant]

14. Defendant Matthew Cunningham, is an individual who may be served through his counsel, Mark D. Hopkins, Hopkins & Williams, PLLC, at 12117 FM 2244, Bldg 3, Suite 260, Austin, Texas 78738. Service on this defendant may be effected by electronic service via ProDoc eFiling services. [hereinafter “Attorney” defendant]

C. Jurisdiction

15. This court has jurisdiction pursuant to Chapter 22; pursuant to sections §22.001(a)(3); §22.001(a)(6); §22.001(d); §22.004; §22.007

16. This bill of review is filed in the court of jurisdiction that denied a challenge of the fraudulently obtained judgment now being challenged by this bill of review, and is within the residual four-year statute of limitations. Tex. Civ. Prac. & Rem. Code §16.051

17. This Court has original jurisdiction authorized by Texas Constitution, Article V, §5.

18. This Court has jurisdiction pursuant to section § 22.221 Texas Government Code.

D. Facts

19. It is not a lack of law or evidence or lack of merit that supports the Campbell’s past efforts to raise this issue, but a lack of comprehension and understanding of the laws that apply; seemingly by individuals acting as agents [judge] for the principal [court] whom cannot deprive the Campbell’s their rights guaranteed by the Constitutions. It is not the court erring, it is the individual acting as agent for the court.

20. When agents of the principal are not comprehensible of the true electronic commerce function of Mortgage Electronic Registration Systems, Inc., a court cannot opine constitutionally correct. Ignorance caused by an agent is no excuse for violations of constitutional rights guaranteed by the constitutions, and the agent's principal cannot uphold such violation, otherwise, it too violates the constitution's?
21. The Law holds that even sinners are provided the chance to repent, or turn from their unlawful ways. The Campbell's only ask for protection from the sinners of the law guaranteed by the constitution's.
22. In September, 2010, Plaintiffs' filed their original petition against named defendants in suit, and also included John Doe 1-100 because Plaintiff's knew there would be additional parties named later.⁶ Through the individual(s), acting as agent(s) for the state, and the agent's lack or failure of understanding the laws that apply to the case, the agent granted defendants judgments without taking into accord laws that govern defendants documents, thus depriving plaintiffs due process of law, and the right to trial by jury. Plaintiff can prove all assertions.
23. Again, in May, 2012 Defendants fraudulent actions caused the appellate court to enter a judgment in favor of Mortgage Electronic Registration Systems, Inc., As Nominee For Lender And Lender's Successors And Assigns, And Wells Fargo Bank, N.A., (Bank defendants) And Stephen C. Porter, And David Seybold, And Ryan Bourgeois, And Matthew Cunningham (Attorney defendants). Plaintiffs furthered their remedies to this honorable Court, which denied Plaintiffs petition for review,

⁶ Cause No. 10-1098-C368, Williamson County District Court No. 368.

thus furthering deprivation of the Campbell's constitutionally protect rights to due process of law.

24. Through no fault of their own plaintiffs' were deprived of their constitutional right to trial by jury when in fact Plaintiffs can factually prove defendants acts not only deprived the Campbell's of their constitutional rights, but also show how many other Texas citizens have fallen victim to these "MERS" entities seemingly conducting non-judicial foreclosures with transferable records instead of original real estate mortgage loan documentation.
25. The Campbell's feel certain that if the agent or the courts had understood the functions of Mortgage Electronic Registration Systems, Inc.; and what its members do with transferable records governed by E-SIGN and Texas UETA, the Campbell's would not have been denied their rights protected by both Texas and U.S. Constitutions.
26. Defendants deprived Plaintiffs from proving Defendants were not an interested party due to defendants use of evasive tactics to deprive the Campbell's from introducing discovery evidence produced by defendants that would show defendants were acting as anything but a real party in interest, a lawful party with standing.
27. The Campbell's were deprived of due course of law rights when the agents [judge] of the courts failed to understand the functionality of Mortgage Electronic Registration Systems, Inc.

28. Plaintiffs due process rights were violated by an obscure definition of book entry system in the Texas Property Code, section §51.0001(1). In support, reference plaintiffs memorandum.
29. MERS is an electronic agent defined in section §322.002(6), Texas Business and Commerce Code. MERS is a computer program as defined in section § 322.002(3), Texas Business and Commerce Code.
30. Defendants are utilizing a personal property debt obligation registered in the MERS eRegistry which is not the alleged real estate mortgage loan obligation of the Campbell's. In support, reference plaintiffs analysis attached as Exhibit A.
31. Defendants could be seen as exposing their fraud against Ginnie Mae for its interest in an intangible obligation registered in the MERS eRegistry that is unrelated to the Campbell's alleged real estate mortgage loan. Would this be misleading Ginnie Mae to believe it was a holder of a secured debt, when Wells Fargo Bank, N. A. made the same deceptive claim?

E. Standing

32. Defendants have engaged in fraud and standing requires clean hands, which defendant do not have and defendants nor can defendants prove they have legal standing. See [*Truly v. Austin*](#), 744 SW 2d 934 - Tex: Supreme Court 1988
33. Subject matter jurisdiction is an issue that may be raised for the first time on appeal; it may not be waived by the parties. See [*Tex. Ass'n of Business v. Air Control Bd.*](#), 852 SW 2d 440 - Tex: Supreme Court 1993

34. In sum, a court deciding a plea to the jurisdiction is not required to look solely to the pleadings but may consider evidence and must do so when necessary to resolve the jurisdictional issues raised. See [Bland Independent School Dist. v. Blue](#), 34 SW 3d 547 - Tex: Supreme Court 2000

F. Fraud, Misrepresentation, Wrongful Acts

35. Through defendants acts of deception, defendants misapplied Texas laws to repossess real property using a personal property obligation of a MERS member for summary judgment purposes against the Campbell's. See [Lighthouse Church of Cloverleaf v. Texas Bank](#), 889 SW 2d 595 - Tex: Court of Appeals 1994. Through the ignorance of the individual acting as agent [judge] for the principal, the agent violated the Campbell's right to due process of law; and right to trial by jury. To this day defendants still cannot prove it was entitled to summary judgment or a motion to dismiss as a matter of law and when this Court grants this Petition for Bill of Review, discovery will prove it.

36. Defendants provided false information to the court to purport defendants were a holder of the Campbell's alleged promissory Note where investigation shows Ginnie Mae purportedly holds an interest in the intangible since October, 2004 according to an investigation conducted by a licensed Texas Private Investigator. Wells Fargo Bank N.A. was never a lawful holder of a deed of trust securing a paper promissory Note purportedly being that of the Campbell's. In support, reference plaintiffs analysis attached as Exhibit A.

37. The judgments deriving from in cause number 03-11-00429-CV was rendered against plaintiffs as the result of fraud and wrongful acts by defendants, specifically, fraud, misrepresentation, unclean hands, contempt of court and Constitutional violations and depriving plaintiff's a right to trial by jury. [*Vela v Marywood*](#) 17 S.W. 3d 750, review denied with per curiam opinion 53 S.W. 3d 684, rehearing of petition for review denied (Tex. App. – Austin 2000).
38. Defendants use of unprofessional tactics deprived plaintiffs' a trial for equal justice in a court of law caused by all defendants and their respective counsels whom entered into the courts and misled the courts to believe all defendants were proper parties with a direct interest to file a motion to dismiss or file either motion for summary judgment, or motion for no evidence summary judgment (hereinafter motions). [*Montgomery v. Kennedy*](#), 669 S.W. 2d 309, 312 (Tex. 1984).
39. Defendants wrongful actions deprived the Campbell's from producing discovery evidence to reflect Defendants were not a legal party to the Campbell's real estate mortgage loan obligation or deed of trust lien. Ginnie Mae has owned an interest in an eNote allegedly reflecting the Campbell's information registered in the MERS eRegistry since October 29, 2004. In support, reference plaintiffs memorandum.
40. Defendants, by their wrongful acts, have deprived the Campbell's a right to protect their real property, and the court was misled by Defendants wrongful acts.
41. Defendants have misled the courts by manipulation of previous Texas court opinion wording which plaintiffs directs the courts attention to. In support, reference plaintiffs memorandum.

42. This court must realize the implications of the definition of “book entry system” which has abridged Plaintiffs right to obtain redress for injuries caused by wrongful acts of another. See [Sax v. Votteler](#), 648 SW 2d 661 - Tex: Supreme Court 1983
43. Plaintiff’s original complaint and additional pleadings contained enough factual information to allow a reasonable inference that Attorney defendants acted knowingly as a “debt collector” without lawful authority to conduct such unlawful actions against the Campbell’s. 7,8

G. Meritorious Defense

44. Plaintiff’s have a meritorious defense to claims in plaintiffs’ cause no. 10-1098-C368 against defendants attempted wrongful actions. In support, reference plaintiffs analysis attached as Exhibit A.
45. Plaintiff’s have a meritorious defense to claims in plaintiffs’ suit against defendants attempted wrongful actions. In support, reference plaintiffs memorandum.
46. Ignorance of the law, by individuals acting as agents [judge] for the principal [Texas Court system] have deprived individuals their rights guaranteed by the several constitutions.
47. Lack of comprehension and understanding combined with the failure to apply law to the fact was an error by the individual acting as an agent. Error occurred when the agent [judge] failed to apply law; thus violating the law by not allowing evidence to be lawfully introduced into law; thus failing to apply the laws of Texas.

⁷ [Conklin v. WELLS FARGO BANK, NA](#), Dist. Court, MD Florida 2013

⁸ [Reese v. Ellis, Painter, Ratterree & Adams, LLP](#), 678 F. 3d 1211 - Court of Appeals, 11th Circuit

48. Why was the agent refusing Texas law to take its rightful course? Was it intentional to deprive a citizen of its given rights? Was it motivated by other mercenary measures? Why, is best left to law enforcement, not plaintiff's.
49. Laws separate from secured real estate mortgage loans cannot replace existing Texas laws that govern such. Such use of intangible laws ie, E-SIGN and Texas UETA by defendants cannot violate an individual's rights protected by the constitution. Fraudulent misrepresentations cannot be favored with an ill-faded court opinion originating from 10-1093-C368⁹ and furthered in the Appellate Court.

Issues Presented

Plaintiffs' provide only a partial list of issues that are presented to show this honorable Court the grave importance to grant this Petition for Bill of Review.

- Can the Texas Legislature enact a law that deprives an individual of its rights protected by the Constitution?
- If a law impairing the obligation of contracts is created, does this violate section 16, Article 1, Texas Bill of Rights?
- If an individual is deprived of constitutionally protected rights by an individual acting as an agent for the state, did the court err or did the individual acting as an agent of the court err?
- If the individual, acting as an agent of the court erred, how can a litigant describe how the court erred, when it was the individual acting as agent for the court?
- If an individual represents himself in litigation, does that deprive him or her of his or her individual Constitutional rights to do so because they chose to represent themselves?

⁹ See attached Exhibit B. Plaintiffs' previously submitted Supplemental Appendix previously filed in this court for all documents required for filing.

- If a litigant presents evidence to reflect deprivation and an individual acting as an agent of a court cannot comprehend or apply correct statutory laws, does that deprive the individual his or her Constitutional rights of due course of law protected by Article 1, section 19, Texas Bill of Rights?
- If a litigant could prove beyond a reasonable doubt the opposing party was not eligible to file for any order, and where such agent [judge] granted summary judgment motions as an individual, acting as an agent of the state, has that agent deprived an individual its rights to trial by jury guaranteed by the Texas Bill of Rights?
- If an individual deprives another individual of his or her guaranteed and protected rights according to the Constitution, would this Constitution protect only the individual who is depriving another individual?
- If an electronic promissory Note is governed by 15 USC 7001; 15 USC 7021 and Chapter 322, Texas Business and Commerce Code [Texas UETA], does such electronic promissory Note replace a paper promissory Note possibly governed by Chapter 3, Negotiable Instruments, Texas Business and Commerce Code?
- If an electronic promissory Note is created, generated, registered, sent, received as a separate electronic obligation; can that separate electronic obligation replace an original paper promissory Note obligation without a parties consent?
- Can a “book entry system”, defined in Chapter 51, Texas Property Code deprive an individual of the right to discovery?
- If an electronic agent defined in section 322.002, Texas UETA, is used as a “book entry system” as defined in Chapter 51, is this electronic agent required to disclose that it is an electronic agent?
- Can an individual acting as an agent, of a court of the state, who fails to provide due diligence in understanding the difference between party’s presenting documents governed by E-SIGN, and Texas UETA; and not documents and contracts governed by statute of frauds, contract law, law of agency, be considered

to have correctly issued a non void opinion supported by statutory laws of this state?

- If half of the estimated 26,059,203 population of Texas were being deprived by a single definition in the Texas property code, would this violate the several individuals rights guaranteed by the Constitution?
- Can a citizen of this state be deprived of the rights guaranteed by Article 1, section 19 of the Texas Bill of Rights by individuals who do not understand existing laws and make lawful decisions based on their lack of knowledge?
- Can a software program, such as an electronic agent, called a book entry system be considered a payee of a paper promissory Note possibly governed by Chapter 3, Negotiable Instruments, Texas Business and Commerce Code?
- When the agent [judge] fails to permit the Constitution to work as designed, does the agent deprive an individual of its Constitutionally protected rights?
- Does the deprivation of an individual's rights by a state agency deprive the individual of his or her federal Constitutional rights?

H. Request for Disclosure

50. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant disclose, within 50 days of the service of this request, MERS agency relationship with Wells Fargo Bank, N.A.; and power of attorney from MERS, the electronic agent, to each of its counsels; and MERS power of attorney to Wells Fargo Bank, N.A.; power of attorney to defendants attorneys from MERS electronic agent to respective counsels.

I. Prayer

For these reasons, plaintiffs' asks the Court to do the following:

1. After a hearing, if needed or required, render a judgment in cause number 03-11-00429-CV that defendant take nothing.

2. Vacate the summary judgment in cause number 10-1093-C368, Alvie Campbell And Julie Campbell 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
3. Vacate the Order of Dismissal in cause number 10-1093-C368, Alvie Campbell and Julie Campbell 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.
4. Reopen cause number 10-1093-C368 and grant a new trial
5. Assess costs against defendants.
6. Award plaintiff all other relief to which plaintiff is entitled.

Respectfully submitted,

By: /s/ Julie Campbell
Julie Campbell, pro se
c/o 250 PR 947, Taylor Texas 76574
(512) 791-2295
Jgc1983@hotmail.com

By: /s/ Alvie Campbell
Alvie Campbell, pro se
c/o 250 PR 947, Taylor Texas 76574
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J. Certificate of Service

I hereby certify that on December 31, 2013, a true and correct copy of Plaintiffs Petition for Bill of Review and Request for Disclosure was delivered to representing counsel of this case listed below by U.S. Mail.

Mark D. Hopkins, Hopkins & Williams Law, P.L.L.C., 12117 FM 2244, Bldg 3, Suite 260, Austin, Texas 78738

Counsel for: Stephen C. Porter, David Seybold, Ryan Bourgeois, Matthew Cunningham, John Doe 1-100

Elizabeth G. Bloch, Brown and McCarroll, LLP, 111 Congress Avenue, Suite 1400, Austin, Texas 78701

Counsel for: Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lender's Successors and Assigns; Wells Fargo Bank, N.A., John Doe 1-100

By: /s/ Alvie Campbell
Alvie Campbell
c/o 250 PR 947
Taylor, Texas 76574

K. Certificate of Compliance

I hereby certify that according to the word-count feature of the Microsoft Word 2007, which has been applied specifically to include all text, including headings, footnotes, quotations, and verification in Plaintiffs Petition for Bill of Review consists of a cumulative total of 4616 words.

By: /s/ Alvie Campbell
Alvie Campbell
c/o 250 PR 947, Taylor, Texas 76574

L. VERIFICATION

STATE OF TEXAS

COUNTY OF WILLIAMSON

BEFORE ME personally appeared Alvie Campbell who, being by me first duly sworn and identified in accordance with Texas law, deposes and says:

My name is Alvie Campbell, Plaintiff/Petitioner herein.

I have read and understood the attached foregoing Verified Plaintiffs’ Original Petition for Bill of Review and each fact alleged therein is true and correct of my own personal knowledge.

I have read and understood the attached foregoing Affidavit of Joseph R. Esquivel Jr., a chain of title analysis and Joseph R. Esquivel Jr. alleged each fact therein as true and correct. And through my own personal knowledge Mr. Esquivel delivered such chain of title analysis to me, Alvie Campbell.

FURTHER THE AFFIANT SAYETH NAUGHT.

Alvie Campbell, Affiant

SWORN TO and subscribed before me this 31th day of December, 2013.

Notary Public

My commission expires:_____

L. VERIFICATION

STATE OF TEXAS

COUNTY OF WILLIAMSON

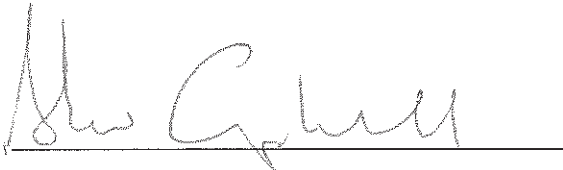
BEFORE ME personally appeared Alvie Campbell who, being by me first duly sworn and identified in accordance with Texas law, deposes and says:

My name is Alvie Campbell, Plaintiff/Petitioner herein.

I have read and understood the attached foregoing Verified Plaintiffs' Original Petition for Bill of Review and each fact alleged therein is true and correct of my own personal knowledge.

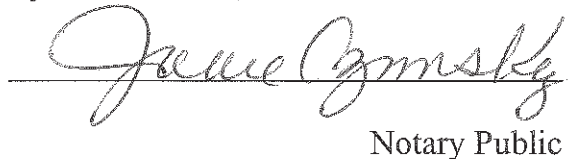
I have read and understood the attached foregoing Affidavit of Joseph R. Esquivel Jr., a chain of title analysis and Joseph R. Esquivel Jr. alleged each fact therein as true and correct. And through my own personal knowledge Mr. Esquivel delivered such chain of title analysis to me, Alvie Campbell.

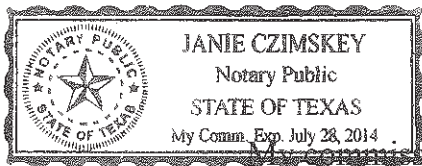
FURTHER THE AFFIANT SAYETH NAUGHT.



Alvie Campbell, Affiant

SWORN TO and subscribed before me this 31th day of December, 2013.


Notary Public



My commission expires: 7-28-2014

1 Alvie and Julia Campbell

2 **Real Property Located:**
3 250 PR 947, Taylor
4 Taylor, TX 76574
5)
6)
7)
8)
9)

AFFIDAVIT OF
JOSEPH R.ESQUIVEL JR

6 I, Joseph R. Esquivel Jr., declare as follows:

7 1. I am over the age of 18 years and qualified to make this Affidavit. I am a licensed private
8 investigator of the State of Texas, License #A18306, and make this affidavit based on my own
9 personal knowledge. I have no direct or indirect interest in the outcome of this case for which I
10 am offering observations, analysis, opinions and testimony.

11
12 2. I perform my research through the viewing of actual business records and
13 Corporate/Trust Documents. I use specialty licensed software ABS Net and other professional
14 resources to view these records and documents. I have the training, knowledge and experience to
15 perform these searches and understand the meaning of these records and documents with very
16 reliable accuracy. I am available for court appearances, in person or via telephone for further
17 clarification or explanation of the information provided herein, or for cross examination if
18 necessary. I have examined the following documents;

- 19 A. Complaint filed into District Court Williamson County, Texas on Case NO. 10-11093-
20 C368
- 21 B. Copy of document purporting to be the Note of Alvie and Julia Campbell in the amount
22 of \$137,837
- 23 C. Deed of Trust pertaining to the Note of Alvie and Julia Campbell in the amount of
24 \$137,837 made payable to American Mortgage Network, Inc. DBA Amnet Mortgage
- 25 D. A document purported to be an "Assignment of Note and Deed of Trust " dated
26 September 20, 2008 pertaining to Alvie and Julia Campbell
- 27 E. Documents filed into court record pertaining to Security Instrument that is detached from
28 Note in the amount of \$137,837 pertaining to Alvie and Julia Campbell

1 F. Voluntary Lien Search pertaining to the Transaction Details for 250 PR 947, Taylor, TX
2 76574 which includes all publicly recorded documents filed at the Williamson County
3 Recorder Office.

4 G. Ginnie Mae May 2012 Selling Guide

5 H. Ginnie Mae Manual Requirements For Document Custodians Version 6.0

6 3. I have personal knowledge in the topic areas related to the securitization of mortgage
7 loans, derivative securities, the securities industry, real property law, Uniform Commercial
8 Code practices, predatory lending practices, Truth in Lending Act requirements, loan
9 origination and underwriting, accounting in the context of securitization and pooling and
10 servicing of securitized loans, assignment and assumption of securitized loans, creation of trusts
11 under deeds of trust, pooling and agreements, and issuance of asset backed securities and
12 specifically mortgage-backed securities by special purpose vehicles in which an entity is named
13 as trustee for holders of certificates of mortgage backed securities, the economics of securitized
14 residential mortgages during the period of 2001-2008, appraisal fraud, and its effect on APR
15 disclosure, usury, exceeding the legal limit for interest charged, foreclosure of securitized, non-
16 securitized residential mortgages.

17 4. From many hours of study and research and formal training and reviewing thousands of
18 mortgage documents, I learned that one procedure for funding is via mortgage securitization
19 where such pools solicit funds from investors by means of a Prospectus which was used to
20 explain the Mortgage Backed Security (MBS). The Pooling and Servicing Agreement, (PSA) is
21 the governing document for the MBS pool which was typically established as a Trust. State
22 trust laws uniformly demand that the governing documents of the Trust be strictly adhered to
23 compliance with the United States Internal Revenue Service (IRS) taxing guidelines.

24 **A General Overview of Secured Transactions of**
25 **a Note and a Deed of Trust**

26
27 5. Of the three transferable linked parts of every Mortgage Loan, the Intangible Obligation,
28 the Note and the Deed of Trust, two of those transferable parts are tangible instruments, the

1 Note and the Deed of Trust. The Note is a negotiable instrument that evidences the Tangible
2 Obligation. The Deed of Trust, seen as a Real Property Lien, is a contract listing alternatives for
3 collecting payment due under the Tangible Obligation evidenced by the Note. The third part,
4 the Intangible Obligation is dependent upon the Tangible Note properly secured by a Deed of
5 Trust,

6 Transfer of an Intangible Obligation

7
8 6. Ownership of the intangible payment stream created and collected from a Mortgage
9 Loan can be bought, sold and transferred. This transfer of the rights to the Intangible Obligation
10 is evidenced through the swap for the certificate funded by payment stream(s) received from
11 payments made upon **what will be defined within this document as the “Intangible**
12 **Obligation”**. Ownership of the Intangible Obligation via buying and selling the certificates
13 (intangible payment stream) is allowable under the governance of Uniform Commercial Code
14 (UCC) Article 9, as a Transferable Record. Transferred ownership can be seen though the
15 financial record of the distributed payment stream. Transfer of ownership through certificates is
16 an actual transfer of a partial ownership of a beneficial interest in the intangible payment stream
17 of the Intangible Obligation.

18 Separation of an Intangible Obligation

19
20 7. In Commercial Money Ctr., Inc. bankruptcy, the Ninth Circuit Appellate Court had no
21 difficulty concluding that the rights to intangible payment stream can be stripped from the
22 records that evidence them.

23 From Commercial Money Ctr., Inc., 350 B.R. 465, 473-79 (B.A.P. 9th Cir.
24 2006), rev’g, 56 U.C.C. Rep. Serv. (West) 54 (Bankr. S.D. Cal. Jan. 27, 2005).
25 *“This language on its face defines chattel paper to mean the records that*
26 *“evidence” certain things, including monetary obligations. Payment streams*
27 *stripped from the underlying leases are not records that evidence monetary*
28 *obligations they are monetary obligations. Therefore, we agree with NetBank that*
the payment streams are not chattel paper.”

1 8. The initial and subsequent certificate transactions involving divided intangible payment
2 stream of the Intangible Obligation do not transfer the rights to the Tangible Note or the Deed
3 of Trust to the owners of the intangible payment stream. To be compliant with laws of
4 negotiation, transfer of ownership and rights to enforce the Tangible Note secured by a Deed of
5 Trust require that a true sale of Note and the Deed of Trust be executed prior to the stripping of
6 partial interest in the tangible instruments. A true sale of Note and the Deed of Trust to all and
7 each of the potential multiple owners of the certificates must be compliant with the local laws of
8 jurisdiction and such division is a legal impossibility. That described transfer lacks supporting
9 tangible law thus would be impossible, as the rights to the Note and Deed of Trust can only be
10 to one party. To create the appearance that the transfer of the tangible has been accomplished in
11 accordance to law, the transfer of the Intangible Obligation (partial interest derived from the
12 tangible instruments) is made to a common Trustee and the tangible instruments are conveyed
13 to same Trustee as a simple mechanical act which does not transfer tangible rights. Any owner
14 of the Intangible Obligation as a transferable record of the payment stream which has stripped
15 the Tangible value away from the Note prior to tangible Note negotiation may obtain simple
16 possession of the Note less rights by a simple conveyance of personal property which is not in
17 compliance to the trust documents.

18 Transfer of a Note

19 9. Each Note associated with a Deed of Trust is created to be a negotiable instrument to
20 allow for future sale. When a Note is treated as a negotiable instrument, such Note falls under the
21 governance of UCC Article 3 or a states adopted equivalence. Enforcement rights to the Note can
22 be transferred by indorsing in blank to create a bearer Note or by means of special indorsement.
23 A blank indorsement is defined by the UCC as being a signature by Indorser alone, with nothing
24 else creating a bearer instrument payable to bearer. A special indorsement requires the payee as
25 Indorsee to be identified. The UCC allows any party to complete an incomplete special
26 indorsement, making that party entitled to enforcement rights upon that negotiable instrument.
27 However, a subsequent owner of a Note, while negotiating rights to a Note must also use caution
28 involving the security securing a Note, care must be exercised so as to avoid loss of secured

1 party status in the negotiation of a Note by becoming an unidentified party whose unknown
2 identity cannot be perfected of record as a tangible secured creditor.

3
4 10. When a subsequent owner of a Note fails to permanently perfect (whether required by
5 law or not) the rights to the associated Deed of Trust into their name, in purchasing a Note and
6 rights to the security securing, such lack of action renders a Secured Note into an Unsecured
7 Note. Ownership of Note, not joined with ownership of a Real Property Lien (the Deed of Trust
8) in accordance to law, negates the Tangible Obligation from reaching and enforcing the Power
9 of Sale. The UCC and no state law provide statutory means to retroactively to re-establish an
10 unsecured negotiable instrument back into a secured negotiable instrument. Secured status and
11 Unsecured status is dependent upon ownership of a rights properly negotiated and possession of
12 a Note properly secured by a Deed of Trust in compliance with local laws of jurisdiction.

13 Transfer of a Deed of Trust

14
15 11. A Note transferred in interstate commerce is a negotiable instrument and therefore falls
16 under the governance of UCC Article 3 and states adopted equivalence. Any party who possesses
17 a valid ownership in a Note can only transfer that interest by way of negotiation through
18 indorsement. Whereas an intangible ownership interest in the payment stream being a
19 transferable record can be bought and sold under governance of UCC Article 9 and a states
20 adopted equivalence. However, because real estate ownership rights are concerned, perfection of
21 transfer of the Deed of Trust, a contract involving real estate, securing the Note, falls within
22 governance of Laws of Jurisdiction where the real property resides. Even, within its own
23 language, the Deed of Trust contains notice that Federal Statutes and/or the Laws of Local
24 Jurisdiction are governing law, therefore attempts to apply UCC Article 9 as governing the
25 transfer of the Deed of Trust would be misplaced. Subsequently, any party who possesses a valid
26 beneficial interest in a Deed of Trust can only transfer that interest by way of properly recorded
27 assignment of that interest noting identity to be a secured party of record. Transfer of beneficial
28 interest in a Mortgage, without properly recorded assignment, would place anyone doing so in
jeopardy of violating Federal Statutes and/or Local Laws of the applicable Jurisdiction and
potentially the common law Statutes of Fraud. Where a subsequent purchaser of a Note elects to

1 not file of record oneself as a secured creditor, such action must be seen as intentional and such
2 party in failure must assume the responsibility for their own choice of action.

3 4 Separation of a Note and a Deed of Trust

5
6 12. A properly recorded assignment of the Deed of Trust memorializes the Note's
7 negotiation, but does not cause the Note's transfer. For a Note to change ownership and remain
8 secured through the Deed of Trust each and every transfer of the Note, by indorsement or
9 negotiation, must be performed with a parallel assignment to remain as a secured party of
10 record. If a Note is indorsed and negotiated to one party while the Deed of Trust is assigned to
11 another party, a separation between the Ownership of the Note evidencing the Tangible
12 Obligation and the Ownership of the Conditions which secure the Intangible Obligation to Real
13 Property occurs and such is a legal impossibility. As such bifurcation is impossible, there is no
14 lawful mechanism to allow for a security securing a Note to follow an Intangible Payment
Stream to allow an Intangible owner to be a party perfected of record to the Note.

15
16 13. For a Party with ownership of a Note to be a Holder in Due Course with the rights and
17 power of foreclosure, the "Power of Sale", the Note must remain secured to real property. When
18 a separation of ownership of the Intangible Obligation and the rights to the Note which secure
19 the Intangible Obligation occurs by failing to follow mandated law, the Intangible is no longer
20 secured by a security secured by real property. When the Mortgage Loan is no longer secured
21 by real property, there can be no Holder in Due Course of a Secured Note. Such Holder of the
22 Note has lost the right to seek alternate payment through the use of a now invalid security
23 instrument. Therefore, any Party seeking to bring a claim, against real estate title in a
24 foreclosure, as Holder in Due Course of a Secured Mortgage Loan, must demonstrate an
25 unbroken chain of properly recorded assignments of the Deed of Trust and a parallel unbroken
26 chain of completed Note indorsements. Making a claim of beneficial interest in a Mortgage
27 Loan without an unbroken chain of properly recorded assignments of the Deed of Trust and a
28 parallel unbroken chain of completed Note indorsements would place anyone doing so in
jeopardy of violating Federal Statutes and/or Local Laws of Jurisdiction. Where such alternate
collection method has been dissolved by failure to follow law, the owner of the Note does (did)

1 have equitable remedy by seeking recovery of the debt by filing suit in a jurisdictional court of
2 equity. The paradox, is, where such a holder has pledged a Mortgage Loan (Secured Package)
3 as collateral, knowing that such was not a Secured Package, would present such a pledgor with
4 unclean hands.

5 A Deed of Trust as a Contract

6
7 14. It is an ancient and long held concept within United States Law, that when the rights to
8 the Note and the rights to the Deed of Trust are separated, the Deed of Trust, because it can
9 have no separate existence, can not survive and becomes a nullity.

10 *In Carpenter v. Longan 16 Wall 271,83 U.S. 271, 274, 21 L.Ed. 313 (1872), the*
11 *U.S. Supreme Court stated "The note and mortgage are inseparable; the former*
12 *as essential, the latter as an incident. An assignment of the note carries the*
13 *mortgage with it, while assignment of the latter alone is a nullity.. . . . The*
14 *mortgage can have no separate existence. When the note is paid the mortgage*
expires. It cannot survive for a moment the debt which the note represents. This
dependent and incidental relation is the controlling consideration"

15 In other words, just because a separation of the rights to an Intangible Obligation from the rights
16 to a Note and a separation of the rights to a Note from a Deed of Trust can occur, does not erase
17 or avoid the consequences of those separations. The major and central consequence of the rights
18 to an Intangible Obligation being stripped away from the beneficial interests of a Note is that
19 the rights to a Note no longer includes the rights to the Intangible Obligation. Ownership of a
20 Note without the rights to the Intangible Obligation leaves that Note without an obligation or
21 debt to represent or evidence. A Deed of Trust can only enforce its conditions over the debt
22 through the Note's representation or evidence of, specifically, the attached Intangible
23 Obligation. When ownership or possession of a Note does not include the rights to the specific
24 attached Intangible Obligation, a Deed of Trust can not survive a moment as an enforceable
25 contract.

26 15. The Deed of Trust is a contract between the borrower (Payor) and the parties spelled out
27 on the face of the document. A separation between the rights to the Note and the rights to the
28 Deed of Trust would be a violation of the terms of that contract. Under long existing contract

1 law, if the terms of a contract are violated, affecting the conditions under which the Payor is
2 obligated, without the properly evidenced consent of the Payor, that contract is void and cannot
3 be returned to without the consent of the Payor. Without this legal concept a contract would be
4 changeable at the will of the Payee, allowing an infinitely expandable obligation on the part of
5 the Payor.

6 MBS Trusts are Governed by Trust Documents

7
8 16. Sometimes a Mortgage Loan is sold into Mortgage Backed Securities (MBS) Trust. A
9 MBS Trust is governed by a Pooling and Servicing Agreement (PSA) filed with the United
10 States Securities and Exchange Commission (SEC). When a Mortgage Loan is sold into MBS
11 Trust all the well-established Real Estate and Contract Law explained above still applies. For a
12 MBS Trust to be Holder in Due Course of a Secured Mortgage Loan, properly recorded
13 assignments of the Deed of Trust, as well as completed parallel indorsements of the Note to
14 match, are required not only by well-established Real Estate and Contract Law, but also by the
15 PSA and or Real Estate Mortgage Instrument Conduit (REMIC) Master Trust Agreement which
16 governs the MBS Trust in question.

17 An Examination of the Alvie and Julia Campbell Mortgage 18 Loan

19 20 The Campbell Intangible Obligation was sold to 21 the Government National Mortgage Association 22 on Loan Date

23
24 17. On October 28, 2013 I researched Alvie and Julia Campbell whose property address is
25 250 PR 947, Taylor, TX 76574. Alvie and Julia Campbell had allegedly signed a Note in favor of
26 American Mortgage Network, Inc. DBA Amnet Mortgage on October 9, 2004. This loan was
27 identified in Government National Mortgage Association The loan is being serviced by Wells
28 Fargo, N.A.

1
2 18. The rights to the Campbell Intangible Obligation has been conveyed as a Transferable
3 Record to the Government National Mortgage Association. For rights to the Campbell Intangible
4 Obligation not to have been stripped away from the rights to the Campbell Note by that
5 conveyance, rights to the Campbell Note must have also been transferred to the Government
6 National Mortgage Association.

7 19. Even though the Campbell Intangible Obligation is owned by the Government National
8 Mortgage Association It can only be determined if the original Campbell Note had been
9 physically delivered to the Government National Mortgage Association Trust by checking with
10 the custodian of documents. Until then, there is no evidence the Government National Mortgage
11 Association possessed in any manner the Campbell Note before rights to the Campbell Intangible
12 Obligation was stripped away.

13 20. The rights to the Campbell Intangible Obligation has been conveyed as a Transferable
14 Record to the Government National Mortgage Association. For the conditions of Campbell Deed
15 of Trust over the Campbell Intangible Obligation not to have been stripped away by that
16 conveyance, rights to the Campbell Deed of Trust must have also been acquired to the
17 Government National Mortgage Association.

18 21. The beneficial interest (ownership) of the Campbell Deed of Trust has been recorded in
19 the Official records of Williamson County Registry as being in the name of American Mortgage
20 Network, Inc. DBA Amnet Mortgage of the loan on dated October 9, 2004. However, it is clear
21 that American Mortgage Network, Inc. DBA Amnet Mortgage as recorded as the original lender
22 on the Campbell Deed of Trust sold all ownership interest, in the Campbell Intangible Obligation
23 to the Government National Mortgage Association shortly after signing. Interest in the Campbell
24 Intangible Obligation is held in the Government National Mortgage Association and the
25 payments under the Campbell Intangible Obligation are disbursed to the investors of the
26 Government National Mortgage Association who hold certificates to the investment classes into
27 which payments under the Campbell Intangible Obligation are scheduled to flow. Therefore the
28 transfer of beneficial interest in the Campbell Deed of Trust by American Mortgage Network,
Inc. DBA Amnet Mortgage might be accomplished, but that beneficial interest is no longer
attached to rights to the Campbell Intangible Obligation.

1
2 As the Government National Mortgage Association have an Interest in
3 the Campbell Intangible Obligation
4 the Government National Mortgage Association
5 Are Required to Have Interest in the
6 Campbell Note and the Interest in the Campbell Deed of Trust
7

8 22. Ginnie Mae has purchased an interest in the Campbell Mortgage Loan and delivered that
9 interest in the Campbell Mortgage Loan into Government National Mortgage Association and
10 claims to have control of the Campbell Note and the Campbell Deed of Trust.

11 *Government National Mortgage Association Document Custodian Manual*
12 *Appendix V-1 Chapter 1 Page*

13 *The document custodian is required to certify to Ginnie Mae that the loans*
14 *constituting the pools of mortgages (as collateral for Ginnie Mae securities) are*
15 *represented by the documents placed in the document custodian's control. The*
16 *document custodian performs this function through a process of pool*
certifications and re certifications.

17 23 By the Government National Mortgage Association purchasing the Campbell Intangible
18 Obligation and doing with it whatever was done, the Government National Mortgage
19 Association was exercising rights of ownership over the Campbell Mortgage Loan and the
20 payment stream. By exercising rights of ownership over the Campbell Mortgage Loan multiple
21 classes the of Government National Mortgage Association made a claim of rights to all three
22 parts of the Campbell Mortgage Loan.

23 24. The Campbell Mortgage Loan only exists through the tangible instruments creating it, the
24 Campbell Note and the Campbell Deed of Trust . The sale of the Campbell Intangible Obligation
25 to the Government National Mortgage Association without stripping away the rights to the
26 Campbell Intangible Obligation from the rights to the Campbell Note, could only be
27 accomplished with the accompanying negotiation of the Campbell Note and the accompanying
28 assignment of the Campbell Deed of Trust .

1 25. the Government National Mortgage Association own the Campbell Intangible
2 Obligation, and exercises that claim. To exercise the claim of rights to the Campbell Intangible
3 Obligation, an assignment of the Campbell Deed of Trust should have to have been
4 accomplished. the Government National Mortgage Association are acting as if an assignment of
5 the Campbell Deed of Trust has been accomplished.

6 26. The negotiation of the Campbell Note to Government National Mortgage Association is
7 required both by Government National Mortgage Association 's own requirements Texas State
8 Law. From Ginnie Mae own document:

9
10 *CHAPTER 3: SINGLE-FAMILY POOLS page 3-2 3-3*

11 *(2) Document Custodian Procedures – Initial Certifications*

12 *(c) Promissory Note (or other evidence of indebtedness)*

13 *iii. Verify that a complete chain of endorsements exists from the loan originator to*
14 *the pooling issuer. Ginnie Mae requires that the chain of endorsements from the*
15 *loan originator to the pooling issuer be complete.*

16 The Government National Mortgage Association
17 Can Not Claim Interest in Either
18 the Campbell Note or the Campbell Deed of Trust

19
20 27. The Government National Mortgage Association own the Campbell Intangible
21 Obligation. However the transfer of rights to either of the two tangible parts of the security
22 instrument that evidence the Campbell Intangible Obligation from American Mortgage Network,
23 Inc. DBA Amnet Mortgage to the Government National Mortgage Association is not
24 memorialized in the Williamson County Record.

25
26 28. Under the Consumer Credit Protection Act Title 15 USC Chapter 41 § 1641(g) any
27 transfers of the Campbell Mortgage Loan to the Government National Mortgage Association
28 would be in violation of Federal Statute, if those transfers had not been recorded in the

1 Williamson County Record within 30 days along with notification of Alvie and Julia Campbell
2 that the transfers had occurred. As there are no recorded assignments of the Campbell Deed of
3 Trust to the Government National Mortgage Association within 30 days of October 9, 2004 ,
4 either there has been a violation of Federal Law or the Government National Mortgage
5 Association , who are the owners of the Campbell Intangible Obligation, are not the owners of
6 either the Campbell Note or the Campbell Deed of Trust .

7 Title 15 USC Chapter 41 § 1641(g)

8 *(g) Notice of new creditor*

9 *(1) In general*

10 *In addition to other disclosures required by this subchapter, not later than 30*
11 *days after the date on which a mortgage loan is sold or otherwise transferred or*
12 *assigned to a third party, the creditor that is the new owner or assignee of the*
13 *debt shall notify the borrower in writing of such transfer, including—*

14 *(A) the identity, address, telephone number of the new creditor;*

15 *(B) the date of transfer;*

16 *(C) how to reach an agent or party having authority to act on behalf of the new*
17 *creditor;*

18 *(D) the location of the place where transfer of interest in the debt is recorded;*
19 *and*

20 *(E) any other relevant information regarding the new creditor.*

21 29. Government National Mortgage Association certifies that an assignment of the Campbell
22 Deed of Trust has been accomplished by selling certificates of as shares of the Government
23 National Mortgage Association , to investors based on the placement of the Campbell Mortgage
24 Loan. There is no assignment of the Campbell Deed of Trust to Government National Mortgage
25 Association in the Williamson County Record. Government National Mortgage Association
26 appears to have violated Title 18 USC chapter 47 §1021.

27 *Ginnie Mae Document Custodian Manual 5500.3 Rev 1*

28 *Appendix V-1 Chapter 3: page 3*

If the issuer did not originate the loan, all recorded intervening assignment(s) in
the loan file must document a complete chain of title from the originating
mortgagee to the issuer.

Intervening assignments must be recorded if jurisdictional law requires such
recording.

1
2 30. Any electronic transfers of the Campbell Deed of Trust that may have been executed
3 without recording within the Williamson County Record are void under Uniform Electronic
4 Transactions Act (UETA) Title 15 USC Chapter 96 § 1-7003.
5

6 *Title 15 USC Chapter 96 § 1-7003*

7 *(a) Excepted requirements*

8 *The provisions of section 7001 of this title shall not apply to a contract or other
9 record to the extent it is governed by —*

10 *(3) the Uniform Commercial Code, as in effect in any State, other than
11 sections 1–107 and 1–206 and Articles 2 and 2A.*

12 31. The Government National Mortgage Association is the owner of the Campbell Intangible
13 Obligation, however, according to Texas State Law, the Government National Mortgage
14 Association can only be entitled to enforce the Campbell Deed of Trust if they took the
15 Campbell Deed of Trust by way of assignments pursuant to TEX BC. Code ANN § 192.007
16

17 *§ 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) To
18 release, transfer,*

19 *assign, or take another action relating to an instrument that is filed,
20 registered, or recorded in the office of the county clerk, a person must file,
21 register, or record another instrument relating to the action in the same manner
22 as the original instrument was required to be filed, registered, or recorded.*

23 *(b) An entry, including a marginal entry, may not be made on a previously
24 made record or index to indicate the new action.*

25 *TEX. PROP. CODE ANN. §13.001(a). The Recording Statute provides:
26 (a) A conveyance of real property or an interest in real property or a mortgage or
27 deed of trust is void as to a [lien] creditor or to a subsequent purchaser for
28 valuable consideration without notice unless the instrument has been
acknowledged, sworn to, or proved and filed of record as required by law.*

1 32. A duly recorded assignment of the Campbell Deed of Trust constitutes constructive
2 notice while an unrecorded assignment of the Campbell Deed of Trust is notice only to
3 immediate parties. With constructive notice, all persons attempting to acquire rights in the
4 Campbell Property are deemed to have notice of the recorded instrument. In this way, the
5 Recording Statute is intended to expose the chain of title of the Campbell Deed of Trust to
6 inspection by examination of real property records, protecting innocent junior purchasers and
7 lenders from secret titles and the subsequent fraud attendant to such titles.

8 33. As explained previously in ¶5 thru ¶12 assignments of the Campbell Deed of Trust must
9 be accompanied by parallel endorsements of the Campbell Note for the Campbell Mortgage
10 Loan to remain secured by the Campbell Property. No evidence is available to evidence
11 negotiations of the Campbell Note to the Government National Mortgage Association This
12 would have required indorsements and proper negotiations of the Campbell Note from American
13 Mortgage Network, Inc. DBA Amnet Mortgage to the Government National Mortgage
14 Association , including any intervening claims of ownership. Of course for the Campbell
15 Mortgage Loan to remain a secured loan, there would have been assignments and transfers of the
16 beneficial interest of the Campbell Deed of Trust , concurrent to negotiations of the Campbell
17 Note and those transfers of the Campbell Deed of Trust would have to be entered into public
18 record at the Williamson County Record.

19 34. Importantly, mere presentment of the Campbell Note (even if shown to be the original),
20 is not in itself proof of an equitable transfer of the Campbell Loan along with its Security
21 Instrument. This demonstration of possession may be sufficient to enforce the Campbell Note,
22 but carries no indicia of ownership or intent to transfer the Campbell Mortgage Loan. The
23 Uniform Commercial Code (“UCC”) consecrates a preference in commercial transactions for
24 simple possession of indorsed instruments over proof of actual ownership, an exception in the
25 law that was intended to foster free trade of commercial paper.

26 35. The concept that a noteholder, even one who is not legitimate, may nevertheless bring an
27 action on the Campbell Note, is entrenched in commercial law and commonly summarized by
28 the axiom “even a thief may enforce a note.” However, the taking of the Campbell Home by

1 foreclosure is an equitable remedy, and equity does not allow a “thief” to use a stolen Campbell
2 Note to foreclose on the Campbell Mortgage lien.

3
4 36. The claim that “the mortgage follows the note” is incorrect as under Texas Law the Lien
5 follows the Secured Party of record. That equitable right must be proven with evidence of a
6 delivery. Intention does not override the requirements of law.

7
8 37. the Government National Mortgage Association , who own the Campbell Intangible
9 Obligation, can not show that accompanied negotiations of the rights to the Campbell Note and
10 accompanied transfers of the rights to the Campbell Deed of Trust has occurred. The rights to the
11 Campbell Intangible Obligation has been stripped from the rights to the Campbell Note and the
12 rights to the Campbell Deed of Trust .

13
14 The document purporting to be an
15 “American Mortgage Network, Inc. DBA Amnet Mortgage ” dated Assignment
16 Date
17 is Invalid as an American Mortgage Network, Inc. DBA Amnet Mortgage

18
19 *Black’s Law Dictionary defines the term valid as “having legal strength or force,*
20 *executed with proper formalities, incapable of being rightfully overthrown or sent*
21 *aside... Founded on trust of fact; capable of being justified; supported, or*
22 *defended; not weak or defective... of binding force; legally sufficient or*
23 *efficacious; authorized by law... as distinguished from that which exists or took*
24 *place in fact or appearance, but has not the requisites to enable it to be*
recognized and enforced by law.”(See Black’s Law Dictionary, Sixth Edition,
1990, page 1550)

25 38. There is a document purporting to be a “Assignment of Note and Deed of Trust ” dated
26 September 10, 2008 recorded September 30, 2008 in the Official Records of Williamson
27 County, Texas as ins# 2008075222 signed by David Deybold, as Assistant Secretary and
28 notarized September 10, 2008 by Suzanne Stanley, TX where Mortgage Electronic Registration

1 Systems, Inc., as Nominee grants, assigns, and transfers to Wells Fargo Bank, N.A. all
2 beneficial interest under a Deed of Trust dated October 9, 2004

3
4 39. First and most importantly the original lender, American Mortgage Network, Inc. DBA
5 Amnet Mortgage gave up all rights to the Campbell Intangible Obligation to the Government
6 National Mortgage Association , shortly after signing . Once American Mortgage Network, Inc.
7 DBA Amnet Mortgage had given up the rights to **the** Campbell Intangible Obligation, the
8 rights to the Campbell Intangible Obligation was stripped away from the rights to the Campbell
9 Note and the rights to the Campbell Deed of Trust . American Mortgage Network, Inc. DBA
10 Amnet Mortgage could transfer beneficial rights to the Campbell Note or Deed of Trust ,
11 however, that beneficial interest would not include rights to the Campbell Intangible
12 Obligation.

13 40. The consequences of the rights to the Campbell Intangible Obligation being stripped
14 away from the beneficial interests of the Campbell Note and Deed of Trust means the Campbell
15 Note is without an Intangible Obligation to evidence and the Campbell Deed of Trust is without
16 an Intangible Obligation to enforce conditions against.

17 41. American Mortgage Network, Inc. DBA Amnet Mortgage or their nominee MERS can
18 assign beneficial interest in the Campbell Deed of Trust , albeit with no rights to the Campbell
19 Intangible Obligation, to whomever they please. In order for this document purporting to be an
20 “American Mortgage Network, Inc. DBA Amnet Mortgage ” to be valid as an American
21 Mortgage Network, Inc. DBA Amnet Mortgage however, it would have to be determined if a
22 transfer could be made to the assignee. I will explain how transfer to the assignee named could
23 not have been accomplished by this document purporting to be an “American Mortgage
24 Network, Inc. DBA Amnet Mortgage ”.

25 42. Wells Fargo Bank, N.A. , the assignee, is the servicer of the Campbell Intangible
26 Obligation for the Government National Mortgage Association . Under the Consumer Credit
27 Protection Act Title 15 USC Chapter 41 § 1641(f) any treatment of the Servicer of the Campbell
28 Intangible Obligation as an Owner of the Campbell Intangible Obligation would be in violation
of Federal Statute. As this assignment to Wells Fargo Bank, N.A. would be in violation of
Federal Statute, if Wells Fargo Bank, N.A. was not the Owner of the Campbell Intangible

1 Obligation Wells Fargo Bank, N.A. claim of rights to the Campbell Intangible Obligation is
2 either a fraudulent claim or the Wells Fargo Bank, N.A. actions under the claim of ownership
3 are in violation of Federal Law.

4 15 USC Chapter 41 § 1641(f) ***Treatment of servicer***

5 ***(1) In general***

6 *A servicer of a consumer obligation arising from a consumer credit transaction shall*
7 *not be treated as an assignee of such obligation for purposes of this section unless*
8 *the servicer is or was the owner of the obligation.*

9 ***(2) Servicer not treated as owner***

10 ***on basis of assignment for administrative convenience***

11 *A servicer of a consumer obligation arising from a consumer credit transaction shall*
12 *not be treated as the owner of the obligation for purposes of this section on the basis*
13 *of an assignment of the obligation from the creditor or another assignee to the*
14 *servicer solely for the administrative convenience of the servicer in servicing the*
15 *obligation. Upon written request by the obligor, the servicer shall provide the*
16 *obligor, to the best knowledge of the servicer, with the name, address, and telephone*
17 *number of the owner of the obligation or the master servicer of the obligation.*

18 43. In the document purporting to be an “American Mortgage Network, Inc. DBA Amnet
19 Mortgage ” dated Assignment Date MERS is the entity granting, assigning, and transferring all
20 beneficial interest in the Campbell Deed of Trust to Wells Fargo, N.A.

21 44. As explained earlier the beneficial interest of American Mortgage Network, Inc. DBA
22 Amnet Mortgage did not include rights to the Campbell Intangible Obligation shortly after Loan
23 Date. Certainly MERS as nominee for American Mortgage Network, Inc. DBA Amnet Mortgage
24 can only assign the beneficial interest of American Mortgage Network, Inc. DBA Amnet
25 Mortgage and no more.

26 45. MERS can not act on its own behalf as party of rights to the Campbell Deed of Trust .

27 46. MERS is named completely contradictorily on the Campbell Deed of Trust as both solely
28 nominee and as beneficiary on the face of the Campbell Deed of Trust .

47. MERS never had any interest at all in the Campbell Note evidencing the Campbell
Intangible Obligation. MERS has no financial or other rights to whether or not the loan is repaid.

1 48. MERS is not the owner of the Campbell Note secured by the Campbell Deed of Trust and
2 has no rights to the payments made by Alvie and Julia Campbell on the Campbell Note....
3 MERS is not the owner of the servicing rights relating to the Campbell Intangible Obligation and
4 MERS does not service any loans, ever. The beneficial interest in the mortgage (or the person or
5 entity whose interest is secured by the mortgage) runs to the owner and holder of the Campbell
6 Note which must evidence the Campbell Intangible Obligation. In essence, MERS merely and
7 only immobilizes the mortgage lien while transfers of the promissory notes and servicing rights
8 continue to occur.

9 49. As explained previously, any electronic transfers of the Campbell Deed of Trust that may
10 have been executed without recording within the Official records of Williamson County Record
11 are void under Uniform Electronic Transactions Act (UETA) USC § 15-96-1-7003.

12 *USC § 15-96-1-7003*

13 *(a) Excepted requirements*

14 *The provisions of section 7001 of this title shall not apply to a contract or other*
15 *record to the extent it is governed by—*

16 *(3) the Uniform Commercial Code, as in effect in any State, other than*
17 *sections 1-107 and 1-206 and Articles 2 and 2A.*

18 Additionally, United States Code considers that anyone certifying that a real estate instrument
19 has been assigned when in fact it has not, is guilty of a felonious criminal act.

20 *Title 18 USC chapter 47 § 1021*

21 *Whoever, being an officer or other person authorized by any law of the*
22 *United States to record a conveyance of real property or any other*
23 *instrument which by such law may be recorded, knowingly certifies falsely*
24 *that such conveyance or instrument has or has not been recorded, shall be*
25 *fined under this title or imprisoned not more than five years, or both.*

26 50. MERS has emphatically stated under its own agreement with its mortgage- lender
27 members, that MERS "cannot exercise, and is contractually prohibited from exercising, any of
28 the rights or interests in the mortgages or other security documents" and that MERS has "no
rights whatsoever to any payments made on account of such mortgage loans, to any servicing
rights related to such mortgage loans, or to any mortgaged properties securing such mortgage

1 loans *Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Bnkng and Fin.*, 704
2 N.W.2d 784 (Neb. 2005), Brief of Appellant at 11-12.

3
4
5 Interest in the Campbell Intangible Obligation
6 Can Not be Rejoined to Interest in the
7 Campbell Note or the Campbell Deed of Trust

8
9 51. Government National Mortgage Association have rights to the Campbell Intangible
10 Obligation. the Government National Mortgage Association have yet to all and each be named
11 as payee on the Campbell Note and do not now have rights to the Campbell Note. For the
12 Government National Mortgage Association to gain rights to the Campbell Note, the
13 Government National Mortgage Association would have to all and each be named payee.

14 52. There is no possible way for the Campbell Note to be transfered to all and each multiple
15 class of the Government National Mortgage Association for the partial rights to the Campbell
16 Intangible Obligation that each owns. Interest in the Campbell Intangible Obligation and rights to
17 the Campbell Note will remain separate.

18 53. Because rights to the Campbell Deed of Trust was separated from rights to the Campbell
19 Intangible Obligation, and will remain separate the Campbell Deed of Trust , is left with no way
20 to enforce its conditions over the obligation which should be evidenced by the Campbell Note,
21 making the Campbell Deed of Trust an unenforceable contract.

22
23 No One Can Claim the Right to Enforce
24 the Campbell Note

25
26 54. The Campbell Note has been indorsed by Original Lender the original lender. The
27 indorsement states “Pay to the Order of Wells Fargo Bank, N.A. without Recourse”. This
28 constitutes a negotiation under UCC concerning negotiable instruments. With the payee named,
clearly Original Lender, has released all interest in the Campbell Note to Payee #1.

1
2 *V.T.C.A., Bus. & C. § 7.501*

3 *§ 7.501. Form of Negotiation and Requirements of Due Negotiation*

4 *(a) The following rules apply to a negotiable tangible document of title:*

5 *(1) If the document's original terms run to the order of a named person, the*
6 *document is negotiated by the named person's indorsement and delivery. After the*
7 *named person's indorsement in blank or to bearer, any person may negotiate the*
8 *document by delivery alone.*

9 55. The Campbell Note has also been signed by Wells Fargo Bank, N.A. The instructions
10 preceding the signature states "Pay to the Order of _____ without Recourse". With the
11 instructions of the signer incomplete, this signature does not constitute a negotiation under UCC
12 Article 3 and is not an indorsement in blank. With no payee is yet named, no transfer has
13 occurred through which rights could be acquired.

14 56. Wells Fargo Bank, N.A. along with signing away all rights to the Campbell Note wrote
15 instructions that made its intention of negotiation of the Campbell Note clear. The clear intention
16 was the Wells Fargo Bank, N.A. negotiation of the Campbell Note will only be complete when
17 the payee is named. The Campbell Note with an as of yet unnamed payee is not and can not be
18 treated as, a "bearer" instrument as no person will acquire any right to the Campbell Note until a
19 payee is named.

20 UCC article § 3-110. *Identification of person to whom instrument is payable.*

21 *(a) The person to whom an instrument is initially payable is determined by the*
22 *intent of the person, whether or not authorized, signing as, or in the name or*
23 *behalf of, the issuer of the instrument. The instrument is payable to the person*
24 *intended by the signer even if that person is identified in the instrument by a name*
or other identification that is not that of the intended person.....

25 57. Under UCC article 3 § 203(a) a transfer of the Campbell Note through which rights can
26 be acquired by a transferee is defined as a delivery from one person to another person.

27
28 UCC article 3 § 203(a) *Transfer of instrument; rights acquired by transfer.*

1 *(a)An instrument is transferred when it is delivered by a person other than its*
2 *issuer for the purpose of giving to the person receiving delivery the right to enforce*
3 *the instrument.*

4 58. When Wells Fargo Bank, N.A. signed away all rights to the Campbell Note to an as of
5 yet to be named payee, Wells Fargo Bank, N.A. did not deliver the Campbell Note to another
6 person as required of a transfer through which rights can be acquired.

7 59. Ignoring that all rights were released upon signature, or that the signing away of all rights
8 did not accomplish a negotiation of the Campbell Note, Wells Fargo Bank, N.A. no longer has
9 the entire rights to the Campbell Note. Wells Fargo Bank, N.A. must have an entire interest in
10 the Campbell Note for a negotiation to occur. The intangible interest in the Campbell Note has
11 been transferred to multiple classes of the MBS Name Trust Agency Trust Name. Wells Fargo
12 Bank, N.A. 3 can no longer claim the entire rights to the Campbell Note. Wells Fargo Bank,
13 N.A. can not accomplish a negotiation of the Campbell Note.

14 60 Under V.T.C.A., Bus. & C. § 7.501 , Wells Fargo Bank, N.A. is now the only party that
15 can accomplish a negotiation of the Campbell Note. Under V.T.C.A., Bus. & C. § 3.203 (d) a
16 negotiation of the Campbell Note can not occur until Wells Fargo Bank, N.A. regains an entire
17 interest in the Campbell Note. Wells Fargo Bank, N.A. can not accomplish a negotiation of the
18 Campbell Note because Wells Fargo Bank, N.A. can no longer claim the entire rights to the
19 Campbell Note . MBS Name Trust Agency Trust Name a negotiation of the Campbell Note can
20 not occur until Wells Fargo Bank, N.A. regains the entire rights to the Campbell Note.

21 V.T.C.A., Bus. & C. § 3.203(d)

22 *(d) If a transferor purports to transfer less than the entire instrument, negotiation of*
23 *the instrument does not occur. The transferee obtains no rights under this article*
24 *and has only the rights of a partial assignee.*

25 61. Wells Fargo Bank, N.A. transferred the rights to the Campbell Intangible Obligation to
26 multiple classes of the MBS Name Trust Agency Trust Name and released the rights to the
27 Campbell Note without naming a transferee. The rights to the Campbell Obligation were
28 transferred to Government National Mortgage Association so the Campbell Note will travel on

1 without the rights to the Campbell Obligation. Whoever becomes the transferee of the Campbell
2 Note, through being named payee, will not acquire the right to enforce the Campbell Note .

3
4 The Terms of the Campbell Deed of Trust have been Violated
5 and the Campbell Deed of Trust is Unenforceable

6
7 62. Wells Fargo Bank, N.A. has released all interest in the Campbell Note to an as of yet
8 unnamed payee. The Campbell Deed of Trust as a contract can only enforce its contractual
9 terms against the Campbell Intangible Obligation while the Campbell Intangible Obligation
10 evidenced by the Campbell Note..

11 63. The Campbell Deed of Trust is governed by Texas State Law and Federal Law
12 recognizes and requires properly recordation of assignment to transfer the rights to the Campbell
13 Deed of Trust .

14
15 It has been explained earlier, how it is not possible for ownership of the Campbell Deed of Trust
16 to have been assigned to Assignee.

17 64. There is an assignment of the Campbell Deed of Trust recorded in the Williamson
18 County Record, with Original Lender releasing the rights to the Campbell Deed of Trust
19 intending that transfer to be to Assignee. However, Wells Fargo Bank, N.A. released, through
20 signature, the rights to the Campbell Note, evidencing the obligation, to however wishes to fill in
21 the payee line. Assignee, may now attempt to claim rights to the Campbell Deed of Trust but
22 those rights would have nothing to enforce the Campbell Deed of Trust contractual terms
23 against. The Campbell Deed of Trust is an unenforceable contract.

24
25 65. The rights to the Campbell Deed of Trust are no longer with Original Lender, yet no one
26 else has any authority to enforce its terms, while the Campbell Note is waiting for someone to
27 acquire rights. The Campbell Deed of Trust is an unenforceable contract, no longer being tied to
28 an obligation to enforce its contractual terms over.

1 66. Under long existing contract law, if the terms of a contract are violated, affecting the
2 conditions under which the Payor is obligated, without the properly evidenced consent of the
3 Payor, that contract is void and cannot be returned to without the consent of the Payor. Even if
4 the rights to the Campbell Note and the Campbell Deed of Trust , could be rejoined, the
5 Campbell Mortgage, as a now unenforceable contract, no longer being tied to an obligation to
6 enforce its contractual terms over, can not be returned to being an enforceable contract without

7 With Interest in the Campbell Intangible Obligation
8 Stripped Away and No Way to Enforce the Conditions
9 Under the Campbell Deed of Trust
10 the Campbell Mortgage Contract is a Nullity

11 67.. The ownership Campbell Intangible Obligation was separated from the rights to the
12 Campbell Note and the rights to the Campbell Deed of Trust , leaving the Campbell Note no
13 Intangible Obligation to evidence and Campbell Deed of Trust no Intangible Obligation to
14 enforce conditions over.

15 68. American Mortgage Network, Inc. DBA Amnet Mortgage retained no beneficial interest
16 in the Campbell Intangible Obligation after selling the Campbell Intangible Obligation to the
17 Government National Mortgage Association shortly after signing. No acceptable assignments of
18 the Campbell Deed of Trust to all and each multiple class of the Government National Mortgage
19 Association have been recorded into the Williamson County Recorder's Office. There is no
20 evidence of negotiations of the Campbell Note to all and each multiple class of the Government
21 National Mortgage Association . With no properly recorded owner of the Campbell Deed of
22 Trust there is no one to enforce the conditions over the Campbell Intangible Obligation which is
23 no longer evidenced by the Campbell Note. The Campbell Intangible Obligation is no longer
24 secured by the Campbell Property.

24 //
25 //
26 //
27 //
28 //

1 56. With no specific properly secured owner of the limited beneficial interest of the
2 Campbell Note there is no way to enforce the stripped away Campbell Intangible Obligation
3 through the Campbell Note.
4

5 I, Joseph R. Esquivel Jr., am not an Attorney and nothing within this Affidavit should be
6 construed as Legal Opinion or Legal Advice as it is not.

7 I, Joseph R. Esquivel Jr., declare, verify and state under penalty of perjury that the foregoing is
8 true and correct.
9

10 By _____ Executed on _____

11 Joseph R Esquivel, Jr.
12 Private Investigator License # A18306
13 Mortgage Compliance Investigators

14 STATE OF TEXAS)
15)
16 COUNTY OF TRAVIS)

17 Subscribed and sworn to (or affirmed) before me, _____,

18 Notary Public, on this _____ day of _____, 2013 by

19 _____, Proved to me on the basis of satisfactory evidence
20 To be the person(s) who appeared before me. WITNESS my hand and official seal.
21

22 _____
23 Notary Public
24
25
26
27
28

NO. 12-0549

In the
Supreme Court of Texas

ALVIE CAMPBELL AND JULIE CAMPBELL,

Petitioner,

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,

Respondent,

On appeal from cause No. 03-11-00429-CV
Third District Court of Appeals
Austin, Texas

Petitioner's Trial Court

SUPPLEMENTAL APPENDIX - COURT RECORDS

Respectfully submitted,

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Email: Alvie@Ourlemon.com

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TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

JUDGMENT RENDERED MAY 18, 2012

NO. 03-11-00429-CV

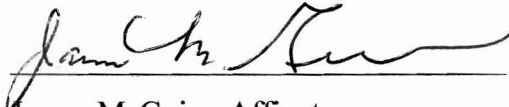
Alvie Campbell and Julie Campbell, Appellants

v.

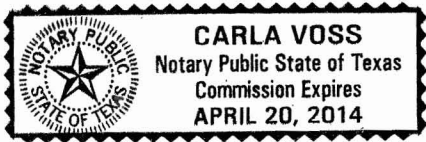
Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lender's
Successors and Assigns; Wells Fargo Bank, N.A.; Stephen C. Porter; David Seybold;
Ryan Bourgeois; Matthew Cunningham, and John Doe 1-100, Appellees


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 Financiara*, 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 Richard A. Illmer
Julie Campbell John C. Pegram
250 Private Road 947 Brown McCarroll, LLP
Taylor, Texas 76574 2001 Ross Avenue, Suite 2000
Dallas, Texas 75201

CAUSE NO. 10-1093-C368

ALVIE CAMPBELL AND JULIE	§	IN THE DISTRICT COURT
CAMPBELL	§	
Plaintiffs,	§	
	§	
v.	§	368 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:

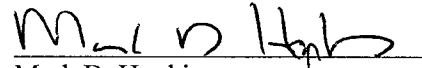
Via Certified Mail: # 70110470000160423244

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,

§ IN THE DISTRICT COURT
§
§
§
§ 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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§
§
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§
§
§ WILLIAMSON COUNTY, TEXAS

AFFIDAVIT OF STEPHEN C. PORTER

STATE OF TEXAS

§

COUNTY OF DALLAS

§

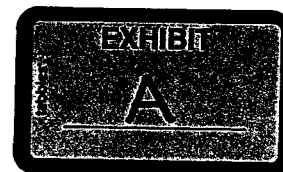
§

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.

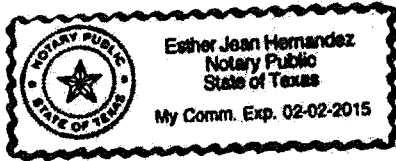


Stephen C. Porter

SWORN AND SUBSCRIBED before me this the 16th 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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§ 368th JUDICIAL DISTRICT
§
§
§
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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

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

Reference WF-000171

"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

Note – No Indorsements

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

Julia Campbell (Said)


JULIA CAMPBELL (Said)
Julia Campbell (Said)

(Sign Original Only)

Reference WF-000173

WELLS FARGO BANK, N.A. Form 1004-UR
Loan Number 204-769205 Page 3 of 3 08/08/05

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

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

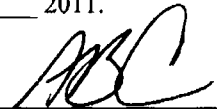
ORDER GRANTING MOTION TO DISMISS DEFENDANT-SUBSTITUTE TRUSTEE

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

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

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 ("BDFTE") were retained by Wells Fargo.(3) Barrett Daffin Frappier Turner & Engel, LLP ("BDFTE") 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 arisen out of Attorney Defendants conduct other than legal representation of their client, Wells Fargo.

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."

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

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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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.

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.

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.

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

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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.

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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.

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.

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IN THE DISTRICT COURT OF

WILLIAMSON COUNTY, TEXAS

368TH JUDICIAL DISTRICT

FILED
at 9:45 o'clock *AM*
JUN 23 2011

Lisa David
District Clerk, Williamson Co., TX.

**ORDER GRANTING DEFENDANTS WELLS FARGO BANK, N.A. AND MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.'S NO EVIDENCE MOTION FOR SUMMARY JUDGMENT**

On the 23rd day of June, 2011, the Court considered Defendants Wells Fargo Bank, N.A. and Mortgage Electronic Registration Systems, Inc.'s No Evidence Motion for Summary Judgment ("Motion"). After considering the Motion, Plaintiffs' response thereto and the arguments of the parties, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that Defendants Wells Fargo Bank, N.A. and Mortgage Electronic Registration Systems, Inc.'s No Evidence Motion for Summary Judgment is hereby GRANTED.

IT IS FURTHER ORDERED that Plaintiffs' claims against Defendants Wells Fargo Bank, N.A. and Mortgage Electronic Registration Systems, Inc. are hereby dismissed with prejudice.

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
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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.

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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

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