

Clerk, U.S. District Court
Southern District of Texas
FILED

DEC 04 2015

David J. Bradley, Clerk of Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JOE O. RODRIGUEZ
Plaintiff,

V.

**COUNTRYWIDE HOME LOANS
SERVICING, LP OR BANK OF
AMERICA, N.A., AS SUCCESSOR
BY MERGER TO BAC HOME
LOANS SERVICING, LP,
RECONTRUST COMPANY, N.A.**
Defendants

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Case No. 2:13-CV-133
“JURY”

PLAINTIFF’S MOTION IN OPPOSITION TO
DEFENDANTS’ RESPONSE TO PLAINTIFF’S MOTION FOR
INJUNCTION AND RESTRAINING ORDER

1. Without waiving any right to object, Plaintiff shall respond to Defendants Response to Plaintiff’s motion for Injunction and Restraining Order.

2. Defendants Bank of America N.A., as successor by merger to BAC Home Loan Servicing, LP fka Countrywide Home Loans Servicing, LP filed Response to Plaintiff’s motion for Permanent Injunction and Temporary Restraining Order, (D.E. 64). Defendants stated in their Response, in number “12. *However Defendants do dispute Plaintiff’s characterization of the facts. Plaintiff appears to completely ignore that this matter has already*

been adjudicated and that the Court's judgment in favor of Defendants was final."

3. *Plaintiff cites to a year 2010 SCOTUS opinion: "Finality obtained by fraud is a nullity, A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed. 1933); see also id., at 1709 (9th ed.2009). Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. See Restatement (Second) of Judgments 22 (1980)", UNITED STUDENT AID FUNDS, INC. v. ESPINOSA SCOTUS No. 08-1134, March 23, 2010.*
4. Plaintiff stipulates that a collateral attack is being made upon an order by virtue of fraud committed by Defendant. For Defendants to maintain lying and providing untruth statements goes to the heart of a "Crime of Moral Turpitude."
5. Defendant further stated in number 13 of D.E. 63:
"13. The fact that Plaintiff has now filed a meritless Motion for Relief from Judgment under Rule 60 does not somehow counteract the effect of the

finality of this Court's judgment unless and until a intervening ruling is issued."

6. To satisfy curiosity, Plaintiff would not seek to redress a court's order, lawfully obtained, final or otherwise, therefore in opposite of Defendants' claims, the Motion for Relief of Judgment is with merit and must be granted for the interest of the public.
7. Looking to Defendant's excerpt from Response to Motion for Relief from Judgment one finds the following verbiage in number 12 of D.E.
63: "12. The 1998 Assignment is, at best, some evidence that the deed of trust to the Property was transferred to GNMA in 1998..."
8. Defendants continue to undermine the integrity of this Court, Plaintiff again will direct to: Texas Property Code 51.008 and Texas Local Government Code 192.007, which are both statutory law(s) of the State of Texas.
9. The "Deed of Trust" clearly states in Covenant 14 that all applicable Federal and State law will be complied with and with Defendants already admitting clearly states non-compliance with Covenant 14, whereas the 1998 Assignment transferring rights to GNMA was never legally recorded as required by Texas Property Code 51.008 and Texas Local Government Code 192.007, thus a "Breach of Contract" rending the "Deed of Trust a nullity.

10. Where a Deed of Trust is a nullity by operation of law, any action presented to a court of law by Defendants claiming right(s) to a null deed of trust is illegal and to claim a right not entitled allows for fraud upon the court to be perpetrated.

11. Covenant 14 of the Deed of Trust states:

“... this security instrument and the note are to be declared severable” is in violation of common law precedence established in:

Carpenter v. Longan, 83 U.S. 16 Wall. 271 271 (1872) “The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.” Where it may be possible to have a note not secured: applicable law must be followed for the note to be secured.

12. Plaintiff does agree in part with Defendant’s statement, in number 14 of (D.E. 64) Response to Plaintiff’s motion for Injunction and Restraining Order: *“a party must do equity before it may receive equity.”*

13. Defendant’s hands are unclean, have been unclean and remain unclean, Defendant has provided to this Court many filings without the right to present. Defendants have unclean hands by claiming rights to a Deed of Trust that is nullity by operation of law resulting from legally required statutory law not being followed and resulted in a breach of contract.

Defendants in bringing these illegal and shameful claims before the court causes a miscarried of justice causing injuring and harm to citizens of Texas, not to mention the American taxpayer and likewise injury to federal agency Government National Mortgage Association.

14. Pursuant to Federal Rule of Civil Procedure 11(b), the rule provides:

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

15. A Representation to the Court in a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. [emphasis by Plaintiff]

16. Defendants have breached Fed. R. Civ. P. 11 (b), for presenting to the Court their meritless claims for an improper purpose especially to harass the Plaintiff, and to cause an unnecessary delay, and a needlessly increase in cost of this litigation.
17. Defendants should be sanctioned as prescribe of Rule 11 (c), (1) *In General*. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
18. For the reason incorporated and cited above, Plaintiff respectfully request that the Court dismiss Defendants Response to Plaintiff's Motion for TRO and permanent injunction.
19. Plaintiff respectfully request that the Court, grant Plaintiff's Temporary Restraining Order and Permanent Injunction and any further relief he may show himself entitled.

/S/ Joe O. Rodriguez JR.
Joe O. Rodriguez JR.
13730 F.M. 620 N. Apt #810
Austin, Texas 78717
(512) 905-7477
joeyrodriguez5@yahoo.com

Pro Se- Litigant

VERIFICATION

Pursuant to Federal Rules of Civil Procedure, I, Joe O. Rodriguez JR., verify under penalty of perjury that the foregoing pleadings and claims are based on my personal knowledge and are true and correct.

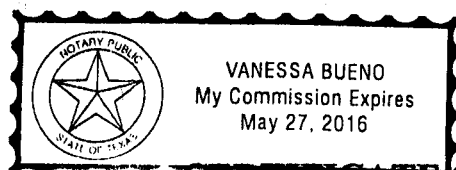
Executed on December 2, 2015.



Joe O. Rodriguez JR.

State of Texas §
County of TRAVIS §

SIGNED under oath before me on December 2, 2015





Notary Public, State of Texas

CERTIFICATE OF SERVICE

I, Joe O. Rodriguez JR., certify that on December 2, 2015, a correct copy of the foregoing was filed with the Clerk of the Court via certified mail and that a correct copy of same was forwarded to the following:

Via Certified Mail Return Receipt
Requested # 7015 0640 0002 8504 5010
Matt D. Manning
State Bar. No. 24070210
MCGLINCHEY STAFFORD
1001 McKinney, Suite 1500
Houston, Texas 77002
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/s/ Joe O. Rodriguez JR.

December 2, 2015

**Joe O. Rodriguez
13730 FM 620 N. Apt. 810
Austin, Texas 78717**

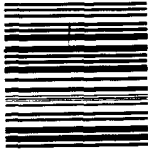
**Judge Nelva Gonzales Ramos
Clerk Brandy Cortez
United States District Court
Southern District of Texas
1133 North Shoreline
Corpus Christi, Texas 78401**

Re: Case No. 2:13-CV-133; Joe O. Rodriguez v. Bank of America N. A.,
L.P. et al.; in the Southern District of Texas, Corpus Christi Division

Dear Ms. Cortez:

Enclosed please find Plaintiff's Motion to Strike Defendant's response to Plaintiff's Temporary Restraining Order and Permanent Injunction and Plaintiff's motion in opposition to Defendant's response. I've sent a correct copy of same was forwarded to the following Defendant's Attorneys.

**Sincerely,
Joe O. Rodriguez JR
Pro Se
13730 F.M. 620 N. Apt# 810
Austin, Texas 78717
(512)905-7477**



78401

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Corpus Christi, TX 78401

