

Superior Court
Chancery Division
General Equity Part
210 South Broad Street
Trenton, New Jersey 08625

In The Matter of Residential Mortgage Foreclosure
Pleading and Document Irregularities

Honorable Mary C. Jacobson, P.J. Ch.

Amicus Curiae
(Friend of the Court)

Please Take Notice

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December 25, 2010

Honorable Court
Superior Court, Chancery Division, General Equity Part
210 South Broad Street
Trenton, New Jersey 08625

Re: In The Matter of Residential Mortgage Foreclosure Pleading and Document
Irregularities
Honorable Mary C. Jacobson, P.J. Ch.

James McGuire respectfully submits this Amicus Curiae Letter to aid in providing a clear understanding of some of the hidden facts so elusively avoided by the financial sector.

Background

I retired from nearly 40 years in Mechanical Engineering and Design. Approximately a decade and a half has passed since my first becoming involved in understanding the homeowner's Mortgage Note and Security Instrument being used in securitization governed by the Uniform Commercial Code or the states equivalence, ESIGN (Electronic Signatures in Global and National Commerce Act, 2000), UETA (Uniform Electronic Transaction Act, 1999), state recordation statutes (specifically for Texas and a general understanding in other states). I have no graduate degree in either the legal or financial field and such a degree is not necessary or required to comprehend the fraud committed; further, I do not desire to have such accreditation.

What is possessed: an engineer's mentality to comprehend and apply present day facts to current laws as written. The last number of years I operated under the oversight of several legal counselors in researching the depth of the deception. My conversations with

others regarding this subject are with very learned persons in the academic area and with multiple legal counselors.

I have posted on <http://www.scribd.com/alviec> over a hundred documents that explain in great detail the faults within the current securitization process. A recent article by Neil Garfield stated that what was “fringe”¹ only a couple of months ago is here today. Others skilled in law have commented that my writings are so far out on the front edge of the curve that only a few academics can fully comprehend them. The information presented in this Amicus Curiae is in this front edge of the curve; the “fringe” today may at first look like an iceberg, but it is more like an ice cube in a punch bowl.

1. The Creation of the Mortgage Note and Security Instrument

Uniform Commercial Code and state recordation requirements

The Homeowner (Obligor) signs a Mortgage Note and a Security Instrument. Upon signing of the Security Instrument and by operation of law, the Security Instrument is automatically attached to the Mortgage Note and temporary perfection is established. The Security Instrument when filed in public records transforms a temporary perfection into a permanent perfection and is notice to the world. Regardless of whether the Mortgage Note is sold to a subsequent purchaser, recordation of the Security Instrument is required to permanently perfect the lien. The Security Instrument affects title to Real Property, and as such, the laws of local jurisdiction govern and such requirement to comply with local laws of jurisdiction is contained within the Security Instrument itself. The filing of record serves a second and distinctive purpose: it creates the priority of perfection among subsequent

¹ <http://livinglies.wordpress.com/2010/12/19/the-pools-are-empty-and-the-sec-is-coming/>

purchasers of the Mortgage Note and is not addressed further in this document. Upon attachment and perfection of the Security Instrument to the Mortgage Note, the Mortgage Note becomes an indebtedness that is “Secured.”

2. Tangible – Personal Property versus Real Property

Failure to Maintain Continuous Perfection

The Mortgage Note and the Security Instrument are Tangibles and Personal Property and we shall consider the two items in tandem to be called the “Mortgage” and such “Mortgage” is Tangible and Personal Property. One must not forget the terms contained within the Security Instrument affect an interest in Real Property and these terms require compliance with all applicable, federal, state and local laws and the language contained within the Security Instrument itself. Failure to comply with the laws governing the contents of the Security Instrument or language within the Security Instrument would render the Security Instrument a nullity. If such Security Instrument becomes a nullity, then the classification of the Mortgage Note is reduced in status from “Secured” to “Unsecured” and as a result of the Security Instrument becoming a nullity the “Power of Sale Clause” contained within the Security Instrument would also be nullity.

The Mortgage being a Payment Intangible can be negotiated by possession and the security for this Payment Intangible is the right to collect monies from the (Mortgage Note secured by the Security Instrument as collateral). Thus, the (Mortgage Note and Security Instrument as collateral) is security for the Payment Intangible and it is this security that follows the Mortgage (Payment Intangible) where the Mortgage is the owner of the

Mortgage Note and what should be a valid perfected Security Instrument. Again, the Mortgage is nothing more than a Payment Intangible (Personal Property) and the security for this Payment Intangible is the right to collect monies noted in the Payment Intangible's security, the Mortgage Note. The Payment Intangible's security also consists of a valid perfected Security Instrument along with any valid Assignment of Mortgage filed of record to transfer lien rights in accordance with laws that govern the Security Instrument.

Regardless of the hierarchy of ownership of the Payment Intangible, Mortgage, Mortgage Note or Security Instrument, the terms contained within the Security Instrument must be complied with, and this author has not seen a Security Instrument that does not itself require compliance with federal, state or local laws. Failure to comply with the laws of local jurisdiction that govern the terms within the Security Instrument would render the Security Instrument a nullity and the Mortgage Note would then be reduced to "Unsecured" and the Mortgage (Payment Intangible) would then be left without a valid perfected lien to allow foreclosure of the Real Property. Additionally, if the Security Instrument was rendered a nullity by failure to comply with the laws or the terms contained within the Security Instrument, the secondary market has not purchased a "Secured" indebtedness and any claim made by a subsequent purchaser including Trusts are without rights to enforce the "Power of Sale Clause" and no foreclosure is possible. This failure to provide a complete Mortgage to the secondary market is the real fraud that the financial institutions are trying to conceal.

Even with a nullified Security Instrument, if a valid Mortgage Note with a complete Chain of Indorsement is proved, the Holder/Owner with right as Holder in Due Course could sue for equity in a court of jurisdiction.

So when it is said the Mortgage follows the Note, one must remember that the Security for the Payment Intangible follows the Payment Intangible without filing of record, and therefore, the underlying Mortgage Note would be followed by a valid continuous perfected Security Instrument if there were compliance with applicable laws to maintain perfection of the Security Instrument.

3. Original Obligee (Lender) Takes Possession of the Secured Mortgage

Note

Proper Parties

Original Obligee takes possession of the Mortgage Note and permanently perfects the Security Instrument by filing of record in the Original Obligee's name. Failure to name the correct parties could possibly be a fatal to the enforcement of the terms in the Mortgage Note or Security Instrument.

4. Original Obligee (Lender) Sells The Secured Mortgage Note

Obligee Indorses Mortgage Note to "In Blank" Indorsee

The Original Obligee sells the Mortgage to a subsequent purchaser. Proper procedure **is** to negotiate the Mortgage Note under cover of a Bailee's Letter to the subsequent purchaser and then transfer the rights to the Security Instrument by filing of

record the name of the subsequent purchaser who purchased the Mortgage Note and completing the Mortgage Note negotiation by noting the owner name in the blank.

Original Obligee indorses the Mortgage Note and delivers the same to the subsequent purchaser (Second Obligee). Second Obligee then completes the negotiation by filling in the blank, if negotiated in blank, then files of record an assignment of the mortgage to transfer and perfect the Security Instrument's lien into the Second Obligee's name. If the Second Obligee fails to complete the negotiation by noting ownership in the "blank," then the Second Obligee may have become the holder of the note but has not become the owner of the note and has not achieved holder in due course with rights to enforce the Mortgage Notes terms or the terms within the Security Instrument. Additionally, failure to file of record the Assignment of the Security Instrument fails to transfer lien rights and this failure to transfer lien rights has rendered a once secured Mortgage Note to "Unsecured."

5. Original Obligee (Lender) Sells an Unsecured Mortgage Note

(MERS as Nominee)

MERS Hides the Fraud

Where MERS is filed of record as the Mortgagee as Nominee for a lender and lender's assigns, and where the first negotiation of the Mortgage Note is executed "In Blank," one has to inquire how MERS would represent an unidentified Indorsee. In most cases this unidentified Indorsee ceases to exist after the creation of the security trust and may not have existed upon the closing of the loan. This unidentified Indorsee and

subsequent unidentified Indorsees would constitute a break in the “Chains.” There are two distinct Chains. One chain is that of indorsements noted on the face of the Mortgage Note and the publicly recorded chain of title that transfers lien perfection. This Paper will not dwell into to the details of the “Chains.” As MERS claims to be the Mortgagee of record for lender and lender’s assigns and as the Mortgage Note is negotiated in blank through a number of unidentified indorsees, it is clearly observable from the facts that continuous perfection of the Security Instrument has not been in compliance with the laws of local jurisdiction which govern the Security Instrument. The chain of indorsements use of “In Blank” is also fatal as an “IN BLANK” unidentified party cannot negotiate the Mortgage Note.

6. CONFUSION

Hiding the Fraud

Wall Street is buying a Payment Intangible (Personal Property) and as such is the owner and holder of that Payment Intangible and the laws that govern the Payment Intangible allow for negotiation by possession. The Payment Intangible’s security is the Mortgages (Personal Property) contained within the collateral pool. Remember, the Mortgage actually consists of two parts, the Mortgage Note and a lawfully continuously perfected Security Instrument. So it is now safe to say the security follows the note, yep, but the security that follows the note may in fact be a nullity by the hierarchy ownership’s failure to comply with laws that govern the Security Instrument. Bottom line, the Mortgage Note maybe proved up with a proper chain of indorsements years after the trust creation but loss of perfection can never be proved up once lost and therefore Wall Street may have

only bought an unsecured Mortgage Note. The author will not comment on REMIC IRS tax issues. To further complicate the issue, multiple purchases by Wall Street may have not been that of the Mortgage Notes but that of a Transferable Record which is registered within the MERS system.

7. Why the Investor

Does Not Own the Mortgage Note and Security Instrument

*The Mortgage Note Does Not Identify the Subsequent
Owner & Holder of the Mortgage Note or the Security Instrument*

As stated, the Mortgage Note and the Security Instrument is Personal Property and is commonly called the "Mortgage." This Mortgage which is personal property is offered up as collateral to the Payment Intangible in the formation of the Trust. To explain, we must present the Trust in reverse order. Investors purchase a beneficial interest in Trust Certificates. The Trust owns the right to the monies collected from the Payment Intangible. The Payment Intangible owns the right to collect monies owed under the Mortgage Note(s). The Certificates and Payment Intangibles are personal property; the local laws of jurisdiction that affect real estate do not apply in a direct manner. The Trust documents provide a precise mechanism for negotiating the Mortgage Note and Security Instrument into the Mortgage (Payment Tangible) Pool. The majority of notes this author has reviewed reflect a single indorsement in blank from the Original Obligee, which raises severe concerns that a chain of indorsements is missing from the Mortgage Note to show a complete chain of negotiation that is required by law to be within public records to show a true "Chain of Title". The "Chain of Title," an Assignment of Mortgage (The Security

Instrument)) that is properly filed of record would be notice of a perfected lien and the priority of those subsequent purchasers of the Mortgage Note. Filing for transferring perfection of the lien (Security Instrument) and filing for notice of priority to subsequent purchasers of the Mortgage Note to establish who has priority lien rights is not one in the same. Failure to properly negotiate does not transfer “Holder in Due Course” (ownership/status/rank/qualification/legal status etc., according to the UCC governing law) to a subsequent party not named on the Mortgage Note.

8. The First Negotiation in Blank

Or How Not To

Where the Mortgage Note was being used as collateral in a Mortgage Backed Security (MBS), and an unknown “Indorsee in Blank” would need to be the first entity in the MBS creation, thus the “In Blank” should contain the identity of that party to allow additional negotiation of the Mortgage Note to further the creation of the Trust. Additionally, we must question the means and the methods employed by MERS to be a Mortgagee of record as “Nominee” for an unidentified “In Blank” or any type of agency relationship to an unidentifiable “In Blank.” Currently, one example, the only means offered to identify an unidentified “In Blank” is contained within a Pooling and Servicing Agreement (PSA). The PSA identifies all the parties that would need to appear in the chain of indorsements and chain of title, this required chain of indorsement is not what is usually found on the face of the Mortgage Note. The Mortgage Note being negotiated by a single “In Blank” through multiple unidentified indorsees is not in compliance with the PSA, the UCC or the states equivalence of the UCC, and the failure to file of record the named party

Indorsee , “In Blank” party also creates a break in the chain of title in public records. The frog’s bottom: the parties that can be identified on the face of the Mortgage Note, chain of indorsements, does not match the chain of title filed of record. “Rivet, Rivet,” add an allonge and affix it.

9. WHY THE CHAINS DO NOT MATCH

“MERS”

How would one record of record an unidentified Indorsee “In Blank”? The unidentified Indorsee “In Blank” is not a real person, not a company; in fact, the unidentified Indorsee “In Blank” is a non-existent party, or is it? As the author has noted, the evidence offered to identify the Indorsee “In Blank” appears in third party contracts used in the creation of the investment vehicle and this unidentified “In Blank” Indorsee by admission of MERS can be located within the MERS system and would appear in a MERS’ Audit Trail. As it can be seen, MERS can track an unidentified Indorsee “In Blank;” but can an unidentified Indorsee “In Blank” be named as a party and filed of record? This is one reason the Chain of Indorsements on the face of the Mortgage Note does not match the Chain of Title filed in public records which filing of record would note the legal party entitled to a continuous perfected lien. The Security Instrument filed of record converts a temporary perfection and attachment into a permanent perfected lien, while the filing of record of an unidentified Indorsee “In Blank” transfers nothing. In the author’s opinion, MERS alludes that they are the Mortgagee of Record as a means to avoid the problems with filing of record an unidentified Indorsee “In Blank.” The process of indorsing in blank raises one serious question, how does an unidentified Indorsee “In Blank” indorse a note in blank

to a subsequent unidentified Indorsee “In Blank” and comply with local laws of jurisdiction governing the Security Instrument that was to secure the Mortgage Note? Failure to follow the terms within the Security Instrument would breach the Security Instrument contract and render the Mortgage Note unsecured. Not only was the Mortgage Note not properly negotiated to the Wall Street trusts through multiple unidentified “In Blank” Indorsees, but there was also a failure to transfer a perfected lien to the Wall Street trust. Note: these conditions also apply to Fannie Mae, Freddie Mac and certain private investments and also affect Commercial Mortgage Backed Securities.

10. The Second Negotiation in Blank

Unidentified Indorsee “In Blank” Indorses “In Blank”

Still Using the First “In Blank” Indorsement-Failure to Negotiate

The second negotiation in the Mortgage Note negotiation would be from the creator of the trust to the depositor of the trust, but in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.” This negotiation is usually indorsed “In Blank” utilizing the “In Blank” from the Original Indorser and no record is filed of record to transfer lien rights to the second “In Blank” Indorsee.

11. MERS and Transferable Records

15 USC 7003, Excludes Negotiable Instruments When UCC Governs

For a moment we have to step back to the “Original Obligee” to understand the movement of the Mortgage Note. This author has noted some commentators are adamant that the Mortgage Notes are not destroyed at any step in the process and we shall follow that reasoning for the moment. In concession of conversation it is somewhat agreed that the Mortgage Notes are placed within custody of a Document Custodian. With that said, we have to address many court filings of copies of the Mortgage Notes submitted by the financial institutions where the originals cannot be found and it is common to only see an “Indorsement in Blank” from the Original Obligee. One has to ask why and how this possibly occurred. Simply, if the Original Obligee placed the Mortgage Loan package within the custody of a custodian and the MERS system tracked a “Transferable Record” alleging to be the lawful negotiation of the Mortgage Note and if a need was required for proof, the current entity claiming rights would retrieve whatever documents resided with the original custodian.

12. The Third and Fourth Negotiation in Blank

*Subsequent Negotiation by an Unidentified Subsequent Indorsee “In Blank” to additional
Subsequent Purchasers “In Blank”*

The third step in the Mortgage Note negotiation would be from the depositor of the trust to the Trustee of the Trust, but again, in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.”

The fourth step in the Mortgage Note negotiation would be from the trustee of the trust to the Trust, but again, in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.”

13. Holder, Owner and Holder in Due Course, Innocent Purchaser

(A) One can be the holder of the Mortgage Note

and not be the owner or have rights as holder in due course.

Servicers and trustees possibly could become the holder of the note and claim they represent the owner and the holder in due course, however, if proper negotiation of the Mortgage Note was not followed as required, the trusts that these trustees represent do not hold sufficient legal rights to enforce the terms in the Mortgage Notes, much less enforce the terms in a nullified Security Instruments.

(B) One can be the owner of the note

and not be the holder or have rights as holder in due course.

The trust may claim to own the Mortgage Note but this would be a misconception. The trust where MERS is involved owns the rights to a “Transferable Record” where that record reflects who has control over a custodian that holds the Mortgage Note, if and when a vaulted copy does exist, and control over MERS as a so called mortgagee of record.

(C) Holder in Due Course

Holder in Due course where proper negotiation was not followed would still reside with the Original Obligee, but issues still exist as to a continuous perfected Security Instrument.

Under the Uniform Commercial Code a subsequent purchaser could not achieve "Holder In Due Course" where fraud was committed by one of the Unidentified "In Blank" Indorsees as it affected the Mortgage Note.

(D) Innocent Purchaser

As to an innocent purchaser, a party to the creation of the trust where MERS is involved and named in the PSA or other documents of incorporation has actual notice of MERS's involvement and therefore cannot claim to be an innocent purchaser.

14. Closing Statement

One has to consider under Title 15 USC, 77nnn, the filing of compliance reports is not in compliance based on the procedural actions that were implemented in the creation of secondary market trusts by the financial institutions. Fannie Mae's and Freddie Mac's role in creating securitized trusts as additional fraud creation practices are not addressed in this writing.

With all the failure of compliance with law in the creation of the secondary market trusts, this writer is alarmed that the "Robo-Signing" and "Robo-Verification" will only serve the financial institutions with a diversionary method to conceal a greater fraud. The "Robo" actions and accounting for all previous failure to comply with laws of governance

show proof the financial institution will commit any number of frauds to protect their Friday Paycheck and Crystal Tower Bonuses.

It may be, just may be possible to prove up the Mortgage Note but you can "NEVER" prove up a lost "Perfection of Lien." Regardless of the number of Affidavits filed with the courts and regardless of the number of Assignment of Mortgages filed of record, none of these actions will perfect a lien once perfection has been lost. Proper procedure for default recovery of an unsecured note--suit for monies: "but you cannot foreclose." "THEY ARE SUING UNDER A CAUSE OF ACTION THAT IS NOT AVAILABLE," if filing for foreclosure. Nobody will have gotten anything for free, the home is without a lien secured to the Mortgage Note and the bank can still sue under the default on the Mortgage Note if such note has not been discharged by willful intentional act as noted in the UCC.

Over 2000 years ago, Jesus began this fight with the money changers and today, God has set forth the stampede of Pale horses to fight this evil and the riders' names are "The People."

This country is the greatest country on the planet and has laws of justice unparalleled by any other country; the financial institutions have made a mockery of America's judicial system by use of slickery trickery wording, lies, fraud and deceit and manipulation of lawmakers to create laws to help conceal the fraud. Sufficient laws do exist and they are just laws, but just not followed by the financial institutions.

Final words: the "Robo" actions are just the tip of the iceberg but the "Robo" actions allowed part of the iceberg to be seen.

GOD BLESS THIS COUNTRY

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