

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
CHANCERY DIVISION**

DAVID L. WASHINGTON,  
individually, and on behalf of all  
others similarly situated,

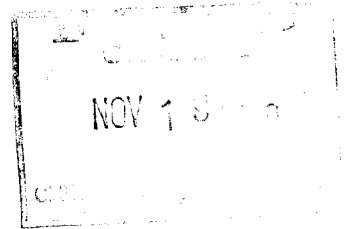
Plaintiffs,

v.

WELLS FARGO BANK, N.A., AS TRUSTEE )  
FOR OPTION ONE MORTGAGE LOAN )  
TRUST 2002-A, ASSET-BACKED CERT- )  
IFICATES, SERIES 2002-A, ASSIGNEE )  
OF OPTION ONE MORTGAGE CORP- )  
ORATION; WELLS FARGO BANK, N.A.; )  
BANK OF AMERICA, N.A.; )  
COUNTRYWIDE HOME LOANS, INC.; )  
TCF NATIONAL BANK; )  
INDYMAC FEDERAL BANK; and, )  
other UNKNOWN DEFENDANTS, )

Defendants.

Case No. **10CH49776**



**COMPLAINT**

Plaintiff, David L. Washington, individually and on behalf of all others similarly situated, by and through his attorneys, Edward T. Joyce & Associates, P.C. and Xinos and Xinos, Ltd., complains of Defendant Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2002-A, Asset-Backed Certificates, Series 2002-A, Assignee of Option One Mortgage Corporation; Wells Fargo Bank, N.A.; Bank of America, N.A.; Countrywide Home Loans, Inc.; TCF National Bank; IndyMac Federal Bank; and other Unknown Defendants (hereinafter the "Defendants") as follows:

## INTRODUCTION

1. This case concerns a misguided plan to change and simplify the procedure for serving process in Cook County foreclosure actions filed by major lenders, loan servicers and holders of mortgage liens ("lienholders") such as Defendants. That plan, hatched by those lienholders, and presented to the presiding judge of the Chancery Division of the Circuit Court of Cook County ("presiding judge"), went awry because it failed to respect the constitutionally required separation of powers between the Illinois legislature and the Illinois judiciary.

2. Simply stated, even though any change to the Illinois Code of Civil Procedure--which governs the procedure for serving process in all foreclosure actions--could only be effected by action of the Illinois legislature, the Defendants convinced the presiding judge to issue an Administrative Order which changed the service procedure solely for Cook County foreclosure cases. This improper change occurred on June 22, 2007. Accordingly: (a) every foreclosure borrower who was purportedly served with process through that improperly changed procedure (such as Plaintiff), and who thereafter did not consent to the Circuit Court's jurisdiction, was not properly served and should not have been subjected to any court orders at all, including but not limited to, the Judicial sale of their property, (b) the court orders entered following improper service are void, and (c) every lienholder who benefitted from such court-imposed relief following improper service has been unjustly enriched.

3. This action challenges the constitutionality and lawfulness of Defendant's taking of Plaintiff's (and the class members') property under color of state law. Through this action, Plaintiff--on his own behalf and on behalf of all other similarly situated foreclosed borrowers--seeks a judgment requiring Defendants who have used the improper procedure to cause the property taken from the Class to be deeded back to Plaintiff and other class members.

#### **THE PARTIES**

4. David L. Washington ("Plaintiff") is a resident of Cook County, Illinois, who borrowed money from Option One Mortgage Corporation to purchase a home in Broadview, Illinois.

5. Defendant Wells Fargo Bank, N.A. (hereinafter "Wells Fargo") claimed (in the foreclosure lawsuit it initiated against Washington) to be the Trustee for Option One Mortgage Loan Trust 2002-A, Asset-Backed Certificates Series 2002-A, Assignee of Option One Mortgage Corporation. Wells Fargo is being sued both individually and in its Trustee capacity for (a) the Trust it identified in its foreclosure lawsuit against Washington, and (b) other unknown Trusts for which it serves as Trustee, to the extent it filed foreclosure actions in the Circuit Court of Cook County, Illinois and used improper service procedures described herein. Wells Fargo regularly conducts business in Cook County, Illinois.

6. Defendants Bank of America, N.A. ("Bank of America"), Countrywide Home Loans, Inc. ("Countrywide"), TCF National Bank ("TCF"), and IndyMac Federal Bank ("IndyMac") are all banks who have used the

improper service procedure described herein to purportedly serve borrowers in foreclosure actions filed in the Circuit Court of Cook County, Illinois. Together with Wells Fargo, these named Defendants comprise a substantial portion of all foreclosure actions in Cook County, Illinois.

7. The Unknown Defendants are residents of unknown states, which may or may not include Illinois, who have used improper service procedures as described herein in Cook County, Illinois, to purportedly serve borrowers in foreclosure actions.

8. Because this action attacks judgments entered by the Circuit Court of Cook County, no federal court has jurisdiction over this action (pursuant to the so-called Rooker-Feldman doctrine.)

#### **FACTS**

9. Illinois Statute 735 ILCS 5/2-202 ("Section 202") identifies the methods for serving process in Illinois lawsuits. Section 202 requires process to either either (a) be served by the sheriff, or (b) on "motion," by a special process server appointed by the court. A "motion" cannot be filed until after an action has been initiated, and thus a special process server cannot be appointed in any particular case until after that case is actually filed.

10. Sometime before June 22, 2007, Defendants (either directly or through their agents) met with the presiding judge of the Circuit Court of Cook County's Chancery Division and expressed concern about: (a) the Cook County Sheriff's ability to effect service in mortgage foreclosure actions<sup>1</sup>; and, (b) the

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<sup>1</sup> Typically, all Circuit Court of Cook County actions are placed first with the sheriff for service.

length of time it was taking the Circuit Court to process motions for appointment of Special Process Servers. Plaintiff's counsel attempted to learn more about such meetings by contacting the Circuit Court of Cook County, which declined to provide any information. Plaintiff's counsel also contacted the authors of a recent Bar Journal article who cited to something published and presented by the presiding judge, but those authors claimed not to have the source material they cited in their published work. The presiding judge and the Circuit Court declined to provide the source material. The Circuit Court is exempt from Freedom of Information Act requests. *Copley Press, Inc. v. Administrative Office of the Courts*, 271 Ill.App.3d 568 (1<sup>st</sup> Dist. 1995), *appeal denied*, 163 Ill.2d 551 (1995). When foreclosure litigants began challenging service in cases where the new procedure in the Administrative Order was used, the foreclosure judges met and worked out an agreed-upon response to the issue being raised.

11. Because service of process in Cook County foreclosure actions is governed by State statute, if Defendants wanted to change the procedure, they were required to seek that change from the Illinois General Assembly.

12. In order to avoid the uncertainties and delays associated with the legislative amendment process, Defendants conspired to convince the presiding judge to issue an Administrative Order circumventing the Illinois service statute by changing the service procedure for cases filed in the Circuit Court of Cook County, Chancery Division's foreclosure section.

13. On June 22, 2007, the presiding judge entered General Administrative Order No. 2007-03 (the "Administrative Order".) A copy of the Administrative Order is attached at Tab 1. The Administrative Order entered by the presiding judge exceeded her authority and constituted unconstitutional judicial overreach.

14. The Administrative Order purports to grant Defendants' agents practicing in the Chancery foreclosure section the authority to request (before any case is filed) blanket appointments of Special Process Servers lasting a quarter of a year. Stated another way, pursuant to the Administrative Order, special process servers are appointed without defendants ever filing a motion in a pending foreclosure action.

15. On July 1, 2008, Wells Fargo filed a mortgage foreclosure action against Plaintiff in the Circuit Court of Cook County, Illinois, which was assigned Case No. 2008 CH 26152 (the "Mortgage Foreclosure Action").

16. On August 1, 2008, Wells Fargo caused to be filed an Affidavit of Special Process Server, wherein it claimed to have personally served Plaintiff by a Special Process Server. The Affidavit of Special Process Server asserted that he had been appointed by the Court to serve process in the Mortgage Foreclosure Action.

17. Wells Fargo never filed any motion in the Mortgage Foreclosure Action to appoint the Special Process Server.

18. Defendant never placed process in the Mortgage Foreclosure Action for service with the Cook County Sheriff.

19. The Special Process Server in the Mortgage Foreclosure Action was purportedly appointed pursuant to the Administrative Order. The purported appointment took place *before* Defendant initiated the Mortgage Foreclosure Action. The purported appointment violated Section 202 and was, therefore, ineffective, unlawful and void.

20. On November 20, 2008, Wells Fargo obtained a Judgment of Foreclosure and Order of Sale against Plaintiff and his property.

21. Plaintiff's home was offered for sale on May 22, 2009. Wells Fargo was the highest bidder.

22. On September 2, 2009, Wells Fargo obtained an Order Confirming Sale. The Order Confirming Sale granted Wells Fargo possession of Plaintiff's home. Wells Fargo further obtained a Judicial Sales Deed for Plaintiff's property.

#### **CLASS ALLEGATIONS**

23. Plaintiff brings this action individually and on behalf of a class of others similarly situated.

24. The Class consists of all persons who satisfy the following criteria:

- a. They were defendants in a mortgage foreclosure action initiated in the Circuit Court of Cook County, Illinois, on or after June 22, 2007;
- b. They were "served" by a Special Process Server who had not been appointed upon "motion" in their individual case;
- c. They did not consent to the court's jurisdiction; and,
- d. They lost their property through court-imposed relief.

25. Class members are so numerous that individual joinder of all members is impracticable. The Administrative Order has been used in tens of thousands of cases to purportedly authorize the appointment of Special Process Servers.

26. Common questions of law or fact exist as to all class members and predominate over any questions that affect only individual class members.

27. Plaintiff will fairly and adequately protect the interests of the class in that Plaintiff's claim is typical of those of the class as a whole, and Plaintiff has no interest which is adverse to the other class members.

28. Plaintiff has retained competent counsel experienced in handling class actions. Neither Plaintiff nor his counsel has any interests which might cause them not to vigorously prosecute this action.

29. Plaintiff's claims are based on the same facts and legal theories as those of the class members.

30. As more fully described above, Wells Fargo filed the Mortgage Foreclosure Action which resulted in the taking of Plaintiff's property from him, without due process of law. Defendants filed tens of thousands of similar mortgage foreclosure actions in the Circuit Court of Cook County, Illinois, Chancery Division, foreclosure section, which similarly resulted in the taking of the Class' property without due process of law.

31. As more fully described above, Wells Fargo never filed a motion in the Mortgage Foreclosure Action to appoint a special process server. Wells Fargo never placed process for service with the Sheriff. Defendants similarly



routinely failed to file motions to appoint special process servers in each of their cases, and failed to place process for service with the sheriff.

32. Instead, Defendants and their agents routinely utilized and acted upon the Administrative Order for the purported appointment of Special Process Servers.

33. Defendants and their agents then used the improper service procedure they had caused to be created in concert with the Circuit Court to expedite their mortgage foreclosure cases and to take Plaintiff and the Class' property.

34. Defendants use of the procedure they caused to be implemented violated Section 202. But Defendants: (a) nonetheless used that procedure to expedite their foreclosure cases and, (b) routinely secured judgments against Plaintiff and the Class under color of State law, which ultimately resulted in Plaintiff's and the Class' loss of their property.

35. Service on Plaintiff and the Class was unlawful and void because it violated Section 202. Consequently, the Circuit Court never had personal jurisdiction over Plaintiff and the Class, and the judgments against Plaintiff and the Class were entered without due process of law and are void.

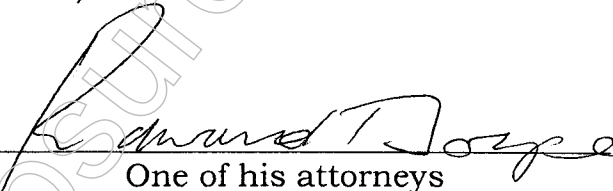
**WHEREFORE**, Plaintiff, individually, and on behalf of all others similarly situated, respectfully requests this Court to:

- a. certify the Class described above;
- b. appoint the named Plaintiff as class representative;
- c. appoint Edward T. Joyce & Associates, P.C. and Xinos and Xinos, Ltd. as class counsel;

- d. enter judgment for Plaintiff and the Class against Defendants for depriving them of their property without due process of law;
- e. order Defendants to cause Plaintiff and the Class to be deeded their properties back; and,
- f. award attorneys' fees, litigation expenses and costs.

Respectfully submitted,

DAVID L. WASHINGTON, individually  
and on behalf of all others similarly  
situated,

By:   
One of his attorneys

Edward T. Joyce  
Arthur W. Aufmann  
Kenneth D. Flaxman  
Edward T. Joyce & Associates, P.C.  
135 S. LaSalle Street, Suite 2200  
Chicago, Illinois 60603  
Telephone (312) 641-2600

Constantine P. Xinos  
Xinos and Xinos, Ltd.  
134 N LaSalle St, Suite 444  
Chicago, IL 60602-1049  
Telephone (312) 263-6167