

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION**

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IN THE MATTER OF

CHAPTER 13

**CARLOS MOTA,
DEBTOR**

CASE NO: 10-13989(shl)

-----X

CARLOS MOTA,

Plaintiff

v.

AP # _____

WELLS FARGO BANK, NA, and

**HSBC BANK USA NATIONAL
ASSOCIATION AS TRUSTEE FOR
WELLS FARGO ASSET SECURITIES
CORPORATION, MORTGAGE
PASS-THROUGH CERTIFICATES
SERIES 2006-8**

COMPLAINT

Defendants.

-----X

**COMPLAINT OF THE PLAINTIFF PURSUANT TO 11 U.S.C. SECTION 506(A) AND
BANKRUPTCY RULE 3012 TO DETERMINE THE VALUE OF
SECURITY AND CREDITOR'S ALLOWED SECURED CLAIM
AND COMPLAINT FOR DAMAGES, SANCTIONS AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1.1 This is an action for actual and punitive damages filed by the Plaintiff Mr. Carlos Mota, (hereinafter "Plaintiff") pursuant to Sections 105, 362, 501, 502, 503 and 506 of the Bankruptcy Code, and Rules 2016(a), 3001, 7001(1), 7001(2), 7001(7), 7001(8) and 7001(9) of the Federal Rules of Bankruptcy Procedure to determine the interest of the Defendants in the residential real

estate of the Plaintiff and determine the amount of the allowed secured claim, if any, of the Defendants.

1.2 This Complaint focuses on the improper accounting of escrow, fees, charges and misapplication of payments by Defendant Wells Fargo Bank, NA, (hereinafter “Wells Fargo”) the purported servicer to Defendant “HSBC Bank USA National Association As Trustee For Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-8” (hereinafter “HSBC”) in the proof of claim filed against the Plaintiff’s estate for improper amounts owed as certified by employees of Wells Fargo and its attorneys, acting as agents of Defendant HSBC.

1.3 This Complaint focuses on the fraud perpetrated on the Court and the Plaintiff by the Defendants filing a false proof of claim together with fraudulent documents in support thereof and the Defendants’ fraudulent misrepresentation of the owner of the Plaintiff’ Mortgage Loan and the identity of the real party in interest.

1.4 This Complaint focuses on the fraud perpetrated by the Defendant Wells Fargo by way of its fabrication of documents and unauthorized rubber stamp endorsements.

1.5 This Complaint seeks declaratory judgment as to the precise nature and extent of any lien and debt held by either the Defendant Wells Fargo or the Defendant HSBC.

II. PARTIES

2.1 The Plaintiff in this case is a Debtor under Chapter 13 of Title 11 of the United States Code in case number **10-16336(shl)** which case was filed on November 29, 2010 and is presently pending before this Court.

2.2 Defendant Wells Fargo Bank, NA (“Wells Fargo”) is a financial institution and/or is a mortgage servicer and/or is an insured depository institute as defined in section 3 of the Federal Deposit Insurance Act and has appeared through counsel in the instant bankruptcy case.

Wells Fargo is headquartered in San Francisco, CA and may be served by mailing a copy of the Summons and Complaint, via first class U.S. Mail, to 420 Montgomery Street, San Francisco, CA 94132. Wells Fargo may also be served by mailing a copy of the Summons and Complaint, via First Class U.S. Mail, to its principal place of business at 101 North Phillips Avenue, Sioux Falls, SD 57104. Wells Fargo's CEO is John Stumpf who is an officer suitable for purposes of service of process..

2.3 The Defendant, HSBC Bank USA National Association As Trustee For Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-8 is a securitized trust personified by its named Trustee, "HSBC Bank USA National Association" (hereinafter Defendant "HSBC"), is a financial institution and/or is an insured depository institute as defined in section 3 of the Federal Deposit Insurance Act, HSBC Bank USA National Association can be served at its headquarters as listed with the FDIC at 1800 Tysons Blvd., Mc Lean, VA 22102. HSBC's Chairman of the Board, President and Chief Executive Officer is Irene Dorner who is an officer suitable for purposes of service of process.

III. COMPLAINT

A. JURISDICTION

3.1 Jurisdiction is conferred on this Court pursuant to the provisions of Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 13 case under Title 11 and concerns property of the Debtor in that case.

3.2 This Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 28 of the United States Code.

3.3 This Court has supplemental jurisdiction to hear all state law claims, if any, pursuant to Section 1367 of Title 28 of the United States Code.

3.4 The Plaintiff is informed and believes that this matter is primarily a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event this case is determined to be a non-core proceeding then and in that event the Plaintiff consents to the entry of a final order by the presiding United States Bankruptcy Judge.

B. VENUE

3.5 Venue lies in this District pursuant to Section 1391(b) of Title 28 of the United States Code.

C. RELEVANT FACTS

3.6 On or about September 25, 2006 non-party "MLD Mortgage, Inc.," (hereinafter "MLD" or "Originating Lender") made a mortgage loan to Plaintiff pertaining to his primary residence located at 2564 Pearsall Avenue, Bronx, NY 10469 (the "Property"), referred to in this Complaint as the "First Mortgage Loan" or "Mortgage Loan".

3.7 In connection with the First Mortgage Loan the Plaintiff, based on information and belief, executed a promissory note (the "First Mortgage Note") in the original principal amount of \$461,600.00 payable to MLD.

3.8 The First Mortgage Note was secured by a Mortgage on the Property dated April 13, 2006 and based upon information and belief, is recorded in the City Register for the City of New York, (the "First Mortgage"), which names MLD Mortgage Inc. as the Lender.

3.9 On or about July 24, 2010 the Plaintiff filed a petition for Chapter 13 Bankruptcy in the Southern District of New York, Manhattan Division and was assigned case number 10-13989

(hereinafter the Plaintiff's Bankruptcy Case).

3.10 On or about July 19, 2010, Proof of Claim Number 3-1 was filed in the Plaintiff's bankruptcy case identifying the Defendant HSBC as the creditor and further identifying Defendant Wells Fargo, as the party to contact for notice purposes. (Hereinafter the "Proof of Claim 3-1" or "Claim Number 3-1")

3.11 The Plaintiff believe and therefore allege that at the time of filing the proof of claim 3-1 the law firm of Steven J. Baum, P.C. represented both the Defendant Wells Fargo and Defendant HSBC.

3.12 The Proof of Claim 3-1 was signed by Michelle Marans, Esq. of the law firm of Steven J. Baum, P.C. as attorney for the named purported Creditor, Defendant HSBC.

3.13 Attached to Proof of Claim 3-1 was a copy of a promissory note as between Plaintiff Carlos Mota and MLD bearing a specific endorsement payable to "Wells Fargo Bank, NA" and not the purported creditor, HSBC.

3.14 Proof if Claim 3-1 Further attached a copy of a mortgage as between Plaintiff Carlos Mota and MLD.

3.15 Proof of Claim 3-1 further attached a post-petition Assignment of Mortgage signed by Mr. John Kennerty ("Kennerty") as a MERS officer acting as "nominee" for "MLD Mortgage, Inc." on August 13, 2010 which purports to assign both the promissory Note and Mortgage from MLD to the Defendant HSBC.

3.16 Mr. Kennerty does not identify himself as a Wells Fargo employee on the Assignment of Mortgage.

3.17 As set forth more completely herein below, the Plaintiff avers that the Kennerty Assignment is a bogus assignment manufactured by Wells Fargo for the purpose of enticing reliance by the court and the parties in interest.

3.18 Kennerty lacked any personal knowledge regarding the Plaintiff's mortgage loan and further lacked any personal knowledge to determine that MLD Mortgage, Inc., the entity for which Kennerty was acting as nominee, had any ownership or control over the debtor's mortgage loan or had the right to transfer the loan.

3.19 The Proof of Claim 3-1 included fees and charges not supported by any documentation attached to the proof of claim.

3.20 The Proof of Claim 3-1 includes claims a "double-dip" of escrow funds.

3.21 Proof of Claim 3-1 includes claims for line items not permitted under the terms of the Promissory Note.

3.22 The Promissory Note at issue incorporates terms and conditions of the Mortgage document, beyond mere reference.

3.23 The Promissory Note at issue is not a negotiable instrument.

3.24 On or about December 8, 2010 the Plaintiff filed a Motion Objecting to Claim 3-1 with this court which appears as Document Number 18 on the court's ECF system. The Objection to Proof of Claim 3-1 is based in part on the questionable authenticity, origin, purpose and effectiveness of the assignment of mortgage.

3.25 Based upon information and belief, the Plaintiff aver that John Kennerty was actually employed by Defendant Wells Fargo and that the Assignment is not valid, it is a false and/or otherwise fraudulent document.

3.26 The Assignment of Mortgage was notarized by Carolyn M. Evans, Notary Public in York County, South Carolina.

3.27 Based upon information and belief, the Plaintiff avers that John Kennerty did not execute the Assignment of Mortgage in the presence of the Notary, Carolyn Evans.

3.28 Based upon information and belief, at the time of the assignment Carolyn Evans was employed by Defendant Wells Fargo and that the notary acknowledgement as well as the Assignment of Mortgage, is not valid, it is a false and/or otherwise fraudulent notarization and fraudulent document.

3.29 The Plaintiff aver that the Assignment presented in this case at the direction of one or more of the Defendants and/or at the request and direction of agents and/or attorneys for Defendant Wells Fargo and/or the Defendant HSBC was manufactured and/or fabricated by the Defendant Wells Fargo at the direction of and with the knowledge and consent of the Defendant HSBC.

3.30 The Defendant Wells Fargo and Defendant HSBC and their attorney of record at all times relevant, knew or should have known the Assignment of Mortgage is a false document.

3.31 One or more of the Defendants and its/their respective attorneys and agents submitted the Assignment of Mortgage, a false document, for the purpose of enticing the reliance of the Court, the Plaintiff, the Chapter 13 Trustee and all interested parties.

3.32 One or more of the Defendants and its/their respective attorneys and agents submitted the Assignment, a false document, for the purpose of filing a false Proof of Claim in the Plaintiff Bankruptcy case.

3.33 One or more of the Defendants and its/their respective attorneys and agents submitted the Assignment, a false document, for the purpose of violating 11 U.S.C. 362(a) in seeking to collect a debt not owed to the named Creditor, i.e., Defendant HSBC.

3.34 Despite passage of time, extensive discovery in the instant case and knowledge of an Assignment of John Kennerty being judicially determined to be a fraudulent document in another case pending this district, the Defendant Wells Fargo, Defendant HSBC and their attorneys of record continue to advocate for the Kennerty Assignment of Mortgage in this instant case without regard to due diligence requirements and mandates of FRBP 9011.

3.35 The Note affixed to the proof of claim as per FRBP 3001(c) and FRBP 9011 is required to be a true copy of the original. The Note attached to the proof of claim in this case is not endorsed to the named Creditor, the Defendant HSBC.

3.36 The Defendants omitted to advise the court, the Plaintiff, the Chapter 13 Trustee and other creditors who rely on the integrity of the documents filed by Defendant Wells Fargo and Defendant HSBC and their attorneys, in the Plaintiff's bankruptcy case, that the purported Assignment of Mortgage submitted in support of the Proof of Claim is a bogus document.

3.37 On or about January 21, 2011 Attorney Natalie Grigg of the law firm of Steven J Baum attempted to amend Proof of Claim 3-1 by filing Claim 3-2 which included a copy of the Note bearing an additional endorsement in blank which did not exist on the promissory note at the time the proof of claim 3-1 was filed.

3.38 Based upon testimony of Wells Fargo's own employee obtained during the course of litigating the Objection to Claim, Wells Fargo maintains an "endorsement team" to conveniently endorse promissory notes using robo signers and rubber stamp endorsements.

3.39 On February 11, 2011, Attorney Natalie Grigg of the law firm of Steven J Baum PC withdrew amended claim 3-2 via Notice of Withdrawal of Claim which appears as Document Number 33 on the court's ECF System.

3.40 Defendant HSBC at the time Proof of Claim 3-1 was filed and at all times relevant did not hold a note bearing a valid endorsement.

3.41 Defendant HSBC at the time Proof of Claim 3-1 was filed and at all times relevant was not assignee of a valid assignment of Note.

3.42 The Defendants omitted to advise the court, the Plaintiff, the Chapter 13 Trustee and other creditors who rely on the integrity of the documents filed in the Plaintiff's bankruptcy case that there is no valid endorsement or assignment available at the time Proof of Claim 3-1 was filed to support Proof of Claim Number 3-1.

3.43 The Mortgage affixed to the proof of claim is required to be a certified true copy of the original as per FRBP 3001(c) and 9011. The Mortgage is in favor of the lender, MLD Mortgage Inc., not the named creditor. There is no valid assignment of mortgage attached to the proof of claim except for what the Plaintiff avers to be a fraudulent, robo-signed assignment of mortgage. Despite passage of time and notice to the Defendants of the deficiencies of their claim, there has been no proof offered to substantiate a valid mortgage or note payable to Defendant HSBC.

3.44 The named creditor the Defendant HSBC does not maintain a valid lien on the Plaintiff's property.

3.45 The Plaintiff avers that the named Creditor, the Defendant HSBC is not a secured creditor to his real property.

3.46 The Plaintiff also aver that the named Creditor, the Defendant HSBC and the Defendant Wells Fargo have presented a false and fraudulent proof of claim where the creditor (Defendant

HSBC) is claiming a mortgage debt not owed to it.

3.47 The named Creditor, the Defendant HSBC, and the Defendant Wells Fargo have knowledge of the fact that the Note submitted in support of Proof of Claim Number 3-1 is not indorsed to the named Creditor, the Defendant HSBC and knowingly omitted to so advise the court, the Plaintiff, the Chapter 13 Trustee and other creditors.

3.48 The Plaintiff believe and therefore allege that the Defendants have presented a false and fraudulent proof of claim where the creditor is attempting to present to the court fabricated proof of a chain of transfers, created from whole cloth in their effort to claim a mortgage debt not owed to the named Creditor, the Defendant HSBC.

3.49 The named Creditor, Defendant HSBC and the Defendant Wells Fargo maintained at all times relevant, knowledge of the fact that the Assignment of Mortgage produced by way of attachment to proof of claim 3-1 is a device fabricated to perpetuate a fraud upon this Court, the Chapter 13 Trustee, the scheduled creditors in this case, and the Plaintiff in this proceeding.

3.50 The Plaintiff aver that the named Creditor, Defendant HSBC and the Defendant Wells Fargo are attempting by fraud, deceit and abuse of the bankruptcy process to receive disbursements from the property of the Debtor's/Plaintiff's estate in bankruptcy in order to increase their profits.

3.51 The Plaintiff believes and therefore alleges that the actions of the named Creditor, Defendant HSBC and the Defendant Wells Fargo in this case constitute an unlawful attempt to collect a debt from the Debtor in violation of the automatic stay and in a manner totally inconsistent with the Chapter 13 Plan, the Bankruptcy Code and the Rules of Bankruptcy Procedure.

3.52 The Plaintiff is informed and believes and therefore alleges that the named Creditor, Defendant HSBC and the Defendant Wells Fargo have intentionally filed a false and fraudulent Proof of Claim as a device to perpetuate a fraud upon this Court, the Chapter 13 Trustee, and the scheduled creditors in this case and the Plaintiff in this proceeding.

3.53 The Plaintiff is informed and believes and therefore alleges that the named Creditor, Defendant HSBC and the Defendant Wells Fargo cannot substantiate the line items of fees, charges, add on costs and the like set forth in Proof of claim 3-1 and that the Defendants have intentionally filed a false and fraudulent Proof of Claim as a device to perpetuate a fraud upon this Court, the Chapter 13 Trustee, the scheduled creditors in this case, and the Plaintiff in this proceeding.

3.54 The Plaintiff have been damaged by the actions of the named Creditor, Defendant HSBC and the Defendant Wells Fargo in that they have been and continue to be forced to expend their time and expenses toward the defense of this contested matter to protect their rights. The Plaintiff alleges that the actions of the named Creditor, Defendant HSBC and the Defendant Wells Fargo further constitute harassment.

COUNT 1

IV. OBJECTION TO PROOF OF CLAIM

A. Objection to the Accounting and Amounts Claimed

4.1 The allegations of paragraphs 1.1 through 3.54 of this Complaint are hereby re-alleged and incorporated by reference.

4.2 The Plaintiff objects to the Proof of Claim Number 3-1 as follows:

a. The Proof of Claim is padded with unsubstantiated fees and charges, designed to extract additional and substantial profits from the servicing of Plaintiff's mortgage loan and

from the property of this bankruptcy estate to the detriment of Plaintiff and unsecured creditors.

b. The named Creditor, Defendant HSBC and its agent, the Defendant Wells Fargo, failed to attach any supporting documentation to support its claims for any of the charges and fees and add on expenses noted in the proof of claim. Counsel for the Debtor/Plaintiff specifically requested additional documentation of the amounts claimed but the same was not provided and Defendants did not at any time seek leave from the court or agreement by the Plaintiff to amend Proof of Claim Number 3-1 to include documentation substantiating the amounts sought. This failure to attach supporting documentation violated Bankruptcy Rule 3001(c)(1) and (2) and is therefore sanctionable in the manner prescribed by F.R.B.P. 3001(c) (2) (D)(i) and (ii)

c. The Plaintiff believes and therefore alleges that the claimed pre-petition inspection fees, BPO, late fees, NSF fees, Advanced Attorneys' fees and costs were neither reasonable nor necessary, are not supported by time and expense records, and have been claimed in violation of Section 506(b) of the code and Bankruptcy Rule 2016(a) and in violation of F.R.B.P. 3001(c)(1) and(2) and is therefore sanctionable in the manner prescribed by F.R.B.P. 3001(c) (2) (D)(i) and (ii)

d. The Defendants seek double payment on escrow advances in its proof of claim which despite passage of time has not been explained nor was leave to amend sought by the Defendants to correct their claimed amounts allegedly owed to Defendant HSBC.

e. The Plaintiff believes and therefore alleges that the named Creditor, the Defendant HSBC, does not have standing, and has not established that it ever acquired the note

and the mortgage as required by law and Claimant Defendant HSBC has further failed to satisfy its burden of proving the debt it alleges is owed to it.

B. Lack Of Standing / Failure to Bring Claim in the Name of the Real Party In Interest

4.3 The allegations in paragraphs 1.1 through 4.2 of this complaint are realleged and incorporated herein by this reference.

4.4 There is no documentation provided in Proof of Claim #3-1 proving a complete chain of title from the originating lender, MLD Mortgage Inc., to the named Creditor, the Defendant HSBC.

4.5 The named Creditor, the Defendant HSBC, must prove that it is the real party in interest as the rightful owner and holder of both the Note and the Mortgage and that it has the legal right to enforce the same; Defendant HSBC has failed to meet this burden.

4.6 No valid writing filed with the Proof of Claim demonstrates the named Creditor, Defendant HSBC's interest on the property securing such claim is in violation of F.R.B.P. 3001(c)(1) and(2) and is therefore sanctionable in the manner prescribed by F.R.B.P. 3001(c) (2) (D)(i) and (ii)

4.7 There is no apparent chain of transfers attached to the proof of claim to explain how or when the purported named Creditor, Defendant HSBC, came to allegedly own the Plaintiff's loan.

4.8 A federal Court cannot have jurisdiction unless a party has constitutional standing. The claimant fails to provide any credible evidence as to if and when a negotiation of the Note to the named Creditor, Defendant HSBC ever occurred.

4.9 The named Creditor, Defendant HSBC, is therefore, neither a creditor nor the real party in interest and lacks standing to file the instant claim.

4.10 Defendants have no constitutional standing to file its sworn proof of claim in the Plaintiff's Chapter 13 case.

4.11 In the bankruptcy courts, procedure is governed by the Federal Rules of Bankruptcy and Civil Procedure. Procedure has an undeniable impact on the issue of who can assert a claim as a holder, because pleading *and* standing issues which arise in the context of our federal court system. According F.R.Civ. Pro. 17, “[a]n action must be prosecuted in the name of the *real party in interest*.” (Emphasis added)

4.12 A Proof of Claim is subject to Fed.Rules Bankr. Pro. 7017 which is a restatement of F. R. Civ. P. 17.

4.13 The Plaintiff avers that the *real party in interest* in a federal action to enforce a note, whether in bankruptcy court or federal district court, is the *owner* of a note. Because the actual name of the actual note owner is not stated and there is no connection between the named creditor, Defendant HSBC, and the copy of the Note provided, the named Creditor, Defendant HSBC's very claim is defective.

4.14 The named Creditor, Defendant HSBC establishes only that it is neither the holder nor the owner of the note. The named Creditor, Defendant HSBC fails to establish that it has a beneficial interest in the copy of the Note, or that it ever had a beneficial interest in the copy of the Note affixed to its proof of claim 3-1.

4.15 The United States Constitution Article III §2 specifically limits the jurisdiction of the federal courts to “Cases or Controversies.” Justice Powell delivered the Opinion of the Supreme

Court in the case of Warth v. Seldin addressing the question of standing in a federal court as follows:

In essence, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of the particular issues. This query involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise. In its constitutional dimension, standing imports judiciability: whether the Plaintiff has made out a —case or controversy|| between himself and the Defendants within the meaning of Art.III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of judiciability, the standing question is whether the Plaintiff has —alleged such a personal stake in the outcome of the controversy|| as to warrant *his* invocation of federal —court jurisdiction and to justify exercise of the court’s remedial powers on his behalf. Baker v. Carr 369 U.S.186,204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663(1962). The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party...A Federal court’s jurisdiction therefore can be invoked only when the Plaintiff himself has suffered —some threat or actual injury resulting from the putatively illegal action...|| Linda R.S. v. Richard D., 410 U.S. 614, 617, 93 S.Ct. 1146,1148, 35 L.Ed.2d 536 (1973).|| Warth v. Seldin 422U.S.490, 498 (1975)

Apart from this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the courts’ decisional and remedial powers. ... even when the Plaintiff has alleged injury sufficient to meet the —case or controversy|| requirement, this Court has held that the **Plaintiff generally must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties.** E.g., Tileston v. Ullman, 318 U.S. 44, 63 S.Ct. 493, 87 L.Ed. 603 (1943).|| Warth v. Seldin 422U.S.490, 499 (1975) (**emphasis added**)

4.16 The Plaintiff in the instant case reiterates that a party seeking relief in any Federal Court “bears the burden of demonstrating standing and must plead its components with specificity.”

Coyne v American Tobacco Company, 183 F.3d 488, 494 (6th Cir. 1999). Again, the minimum constitutional requirements for standing are: proof of injury in fact, causation, and redressability.

Valley Forge Christian College v Americans United for Separation of Church & State, Inc., 454 U.S. 464, 473 (1982). Furthermore, in order to satisfy the requirements of Article III of the United States Constitution, any claimant asserting rights in a Federal Court must show he has

personally suffered some actual injury as a result of the conduct of the adverse party. *Coyne*, 183 F.3d at 494; *Valley Forge*, 454 U.S. at 472.

4.17 As set forth hereinabove, the named Creditor, Defendant HSBC can make no assertions as to its own interest in the outcome of the instant claim it is making. The named Creditor, Defendant HSBC further fails to establish any clear, documented, perceived injury to itself.

4.18 Defendants have not shown that the named Creditor, Defendant HSBC has any stake in the ownership of the Note and Mortgage as either a holder or owner. Any attempt to indicate the named Creditor, Defendant HSBC as an owner of the Plaintiff's loan has been by way of fraudulent and misleading documents fabricated by employees of the Defendant Wells Fargo by persons who lack any personal knowledge as to the Plaintiff's mortgage loan.

4.19 Defendants must demonstrate *how, when and from whom* it derived their alleged rights. In re Tandala Mims, 10- 14030(mg/scc), the Hon. Judge Martin Glenn denied Wells Fargo's first attempted Motion for Relief from Stay on the Court's own motion in a written opinion dated October 27, 2010. Thereafter, Wells Fargo renewed its motion a second time, claiming, in part, possession of the original note endorsed in blank. The court was not convinced, stating in its December 9, 2010 Order denying Wells Fargo's Renewed Motion for Relief From Stay as follows:

“With respect to the assignment of the note and mortgage, the October 27 Opinion stated: ‘An assignment in anticipation of bringing a lift-stay motion does not in and of itself indicate bad faith. However, in the absence of a credible explanation, *describing how, when and from whom Wells Fargo derived its rights, relief from the stay will not be granted.*’ *Mims*, 438 B.R. at 57 (emphasis added). The Renewed Motion provides some but not all of this information.”

A copy of Judge Glenn's order denying Wells Fargo's Renewed Motion for Relief from Stay appears in the Mims ECF Docket as Document #42.

4.20 In the instant case as in the Mims case, there is a complete lack of any credible explanation describing how, when and from whom the named Creditor, Defendant HSBC derived any rights. There is a clear question of fact as to the issue of Defendants' standing to file a Proof of Claim in the Plaintiff's bankruptcy case.

4.21 In the instant case as in the Mims case, the court is left to decipher the legitimacy of a John Kennerty Assignment of Mortgage presented under oath by the law firm of Steven J Baum and on behalf of the same mortgage servicer, Defendant Wells Fargo. This court should maintain the same standard and follow the precedence that both Hon. Judge Martin Glenn and Hon. Judge Shelley Chapman maintained in the series of denials of Motions for Relief from Stay and Proofs of Claims objected to and decided in favor of Debtor Ms. Tandala Mims. This Court may recall, the Mims case started as a series of two (2) successive Motions of Relief from Stay denied by the Hon Judge Martin Glenn, followed by a Proof of Claim denied after the case converted to a Chapter 13 case by the Hon. Judge Shelley Chapman before the case was ultimately resolved by the parties via stipulated order.

4.22 To the extent the Defendant Wells Fargo and/or the named Creditor, Defendant HSBC filed the Proof of Claim, it constitutes a gross and willful violation of the Automatic Stay pursuant to 11 U.S.C. section 362(a)(3) by the Defendants.

4.23 As a result of the violation of the automatic stay as described herein, all Defendants are liable to the Plaintiff for actual damages, punitive damages and legal fees under 362(k)(1) of the Bankruptcy Code.

COUNT II

V. CLAIM FOR RELIEF: DECLARATORY JUDGMENT

5.1 The allegations in paragraphs 1.1 through 4.22 of this complaint are realleged and incorporated herein by this reference.

5.2 At no time relevant to the allegations herein was the named Creditor, Defendant HSBC identified in the proof of claim the actual holder and the lawful owner of the mortgage note believed to be originally signed by the Plaintiff.

5.3 Therefore, the Defendants' acting individually or together, have no constitutional standing to file a claim or otherwise participate in this Chapter 13 proceeding.

5.4 Because the named Creditor, Defendant HSBC is not the actual holder and lawful owner or assignee of the mortgage, it has no security interest, and thusly no right to seek to collect money from Plaintiff's or their bankruptcy estate.

5.5 As a result thereof, the Defendants should be ordered to pay back to the Chapter 13 Trustee all funds received on the arrearage claim and all funds received from the Plaintiff in the form of direct mortgage payments, pre and post-petition.

5.6 Plaintiff seeks a declaratory judgment holding that neither Defendant Wells Fargo nor Defendant HSBC has an enforceable secured or unsecured claim against the property of the estate in bankruptcy; and

5.7 Plaintiff also seeks a judgment declaring Defendants' claimed security interest void pursuant to 11 U.S.C. § 506(d).

COUNT III

**VI. CLAIM FOR RELIEF: FRAUD ON THE COURT INCLUDING FALSE
AND FRAUDULENT PROOF OF CLAIM**

6.1 The allegations in paragraphs 1.1 through 5.7 of this complaint are realleged and incorporated herein by this reference.

6.2 The proof of claim number 3-1 filed by Defendant Wells Fargo and/or by the named Creditor, Defendant HSBC is a false and fraudulent claim constituting fraud on the Court, the Chapter 13 Trustee, the Plaintiff and other named creditors for the following reasons:

a. Defendant Wells Fargo and/or the named Creditor, Defendant HSBC filed Proof of Claim Number 3-1 which included a copy of a Note the Defendants at all times knew was not payable to the named Creditor, Defendant HSBC and which bears no endorsement to the named Creditor, Defendant HSBC, a fact the Defendants knowingly omitted to disclose to the court, the Plaintiff, the Chapter 13 Trustee and the other creditors.

b. Defendant Wells Fargo and/or the named Creditor, Defendant HSBC filed Proof of Claim Number 3-1 which included a copy of a Note, the defective condition of which the Defendants omitted disclose. Specifically, the original note is defective and fails to support Proof of Claim 3-1 because in reality, it is not payable to the named Creditor, Defendant HSBC and it does not bear an endorsement in blank or a specific endorsement to the named Creditor, Defendant HSBC. The Defendants purposefully and knowingly omitted to disclose the material fact of the lack of proper endorsement to the court, the Plaintiff, the Chapter 13 Trustee and the other creditors.

c. Defendant Wells Fargo and/or the named Creditor, Defendant HSBC filed Proof of Claim Number 3-1 which included a document the Defendants held out to be an assignment of mortgage which at all times the defendant knew to be a false and

fabricated document manufactured by and signed by employees of the Defendant Wells Fargo.

d. Defendant Wells Fargo and/or the named Creditor, Defendant HSBC filed Proof of Claim Number 3-1 which included unsubstantiated fees and charges which the Defendants at all times knew to be false and knowingly asserted a claim to collect such false amounts for their own unjust enrichment and monetary gain.

6.3 The Defendants knowingly made a false misrepresentation to the court;

To Wit, the Defendants knowingly fabricated an assignment of mortgage to present to the court and such act of presenting a false fabricated document was committed for the purpose of enticing the reliance of the Court the Chapter 13 Trustee, the Plaintiff and the other creditors in the bankruptcy case;

6.4 The Defendants knowingly made a false misrepresentation to the court;

To Wit, the Defendants knowingly claimed unsubstantiated monies alleged to be owed by the Plaintiff and presented the same to the court. Such act was committed for the purpose of enticing the reliance of the Court, the Chapter 13 Trustee, the Plaintiff and the other creditors in the bankruptcy case and for the financial gain of the Defendants;

6.5 Defendants omitted material, crucial information and facts from the court regarding the Note and Assignment of Mortgage at issue;

To Wit, the Defendants knowingly submitted a Note to the Court which is neither indorsed to the Claim and Defendant HSBC nor is it validly assigned to the Defendant HSBC

6.6 The Plaintiff has been damaged by the actions and omissions of the named Creditor, Defendant HSBC and the Defendant Wells Fargo;

To Wit, in that he has been and continues to be forced to expend his time and expenses toward the defense of this contested matter to protect their rights.

6.7 All parties of interest in the Plaintiff bankruptcy case are harmed by the actions and omissions of the named Creditor, Defendant HSBC and the Defendant Wells Fargo;

To Wit, in that the integrity of the judicial process relied upon has been compromised by the fraudulent acts, fraudulent documents and omissions of the Defendants.

6.8 This Court has authority under 11 U.S.C. § 105(a) to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”

6.9 The Court should impose sanctions on Defendants for fraud as the defendants have filed false documents to support an improper claim in this case. Plaintiff therefore request that Court invoke the powers granted to it by 11 U.S.C. § 105(1) and issue such order, process or judgment necessary to address the fraud of the Defendants and to prevent any future fraud or abuse of process. In the alternative, the Plaintiff requests this Court to waive the pre-notice time requirements of Rule 9011 of the Bankruptcy Rules and to impose sanctions under that Rule.

WHEREFORE, Plaintiff prays:

- A. That the Court disallow, expunge and strike the Proof of Claim Number 3-1;
- B. That the Court direct the Chapter 13 Trustee to strike the Proof of Claim;
- C. That Wells Fargo and HSBC Bank USA National Association As Trustee For Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-8 be precluded from filing any amended, modified, or substitute claim in this case;
- D. That the alleged arrearages contained in the Proof of Claim be canceled

and forever discharged;

E. That Claimant be required to pay legal fees and expenses to the attorney for Plaintiff;

F. That the Claimant provide a complete accounting of the Plaintiff's mortgage loan account, forthwith;

G. That Defendants claimed security interest be declared void pursuant to 11 U.S.C. § 506(d);

H. That the Defendants be sanctioned pursuant to 11 U.S.C. 362(k) for having violated the automatic stay;

I. That the Defendants be precluded from presenting any omitted information, in any form, consistent with the sanctions provided by F.R.B.P. 3001(c)(2)(D)(i);

J. That the Plaintiff be awarded other appropriate relief, including reasonable expenses and attorney's fees consistent with the sanctions provided by F.R.B.P. 3001(c)(2)(D)(ii);

K. That Plaintiff have such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff pray that the Court grant the relief requested herein.

This the 15th Day of October, 2013

RESPECTFULLY SUBMITTED,
/S/ LINDA M. TIRELLI
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