

JUDGMENT

Court of Appeals

First District of Texas

NO. 01-13-00220-CV

WINONA FLIPPON VAZQUEZ, Appellant

V.

DEUTSCHE BANK NATIONAL TRUST COMPANY, N.A., Appellee

Appeal from the 281st District Court of Harris County. (Tr. Ct. No. 2012-21582).

This case is an appeal from the final order signed by the trial court on February 18, 2013. After submitting the case on the appellate record and the arguments properly raised by the parties, the Court holds that there was reversible error in the portion of the trial court's order granting summary judgment for the appellee, Deutsche Bank National Trust Company, N.A., as to the quiet-title claim of the appellant, Winona Flippon Vazquez. Accordingly, the Court **reverses** this portion of the trial court's order and **remands** the quiet-title claim.

The Court **orders** that the appellee, Deutsche Bank National Trust Company, N.A., pay all appellate costs.

The Court **orders** that this decision be certified below for observance.

Judgment rendered July 24, 2014.

Panel consists of Chief Justice Radack, Justice Massengale, and Justice Huddle. Opinion delivered by Justice Massengale.

No. 01-13-00220-CV

IN THE COURT OF APPEALS
FOR THE FIRST JUDICIAL DISTRICT OF TEXAS

FILED IN
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HOUSTON, TEXAS

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CHRISTOPHER A. PRINE
Clerk

WINONA FLIPPON VASQUEZ,
Appellant

V.

DEUTSCHE BANK NATIONAL TRUST COMPANY N.A.,
Appellee

APPELLANT'S BRIEF

On Appeal from Cause 2012-21582
In the 281st Judicial District Court
Of Harris County, Texas
Hon. Sylvia A. Matthews, Judge Presiding

RICARDO GUERRA
Lead Counsel for Appellant
State Bar No. 24074331
ERIC DAYS
State Bar No. 24082907
Law Offices of Rick Guerra
2211 Rayford Rd. Ste. 111 #134
Spring, TX 77386
Direct: 832-788-7120
Fax: 866-325-0341

Oral Argument Requested

IDENTITY OF PARTIES & COUNSEL

Below is the complete list required by Texas Rule of Appellate Procedure 38.1(a) of all the parties to the trial court's judgment and the names and addresses of all trial counsel and appellate counsel:

1. Plaintiff in the trial court (Appellant in this Court):

Winona Flippon Vasquez

2. Defendant in the trial court (Appellee in this Court):

Deutsche Bank National Trust Company N.A.

3. Trial and Appellate Counsel for Plaintiff/Appellant:

Ricardo Guerra (Lead Counsel)
Eric Days
2211 Rayford Rd. Ste. 111 #134
Spring, TX 77386
832-788-7120

4. Trial and Appellate Counsel for Defendant/Appellee:

Kurt Lance Krolikowski (Lead Counsel)
John B. Hall
2800 JP Morgan Chase Tower
600 Travis Street
Houston, TX 77002
713-226-1200

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STATEMENT OF THE CASE

Nature of the Case: Plaintiff Winona Vasquez (“Vasquez”) initially filed suit on April 12, 2012, against Deutsche Bank National Trust Company N.A. (“Deutsche”) (CR 4). Vasquez asserted claims for Quiet Title and Violation of Texas Government Code 51.901. (CR 6-10). Without providing any evidence, Deutsche moved for Summary Judgment on Vasquez’s pleadings based on her alleged lack of standing. (CR 182-191). The trial court signed Orders granting the Appellee’s motion for summary judgment on February 18, 2013. (CR 425). Less than thirty days later, Vasquez filed her notice of appeal. (CR 430)

Requested Disposition from This Court: Winona Vasquez seeks a reversal of the trial court’s judgment and orders granting summary judgment in favor of the Appellee and a remand of her claims to the trial court for further proceedings.

STATEMENT ON ORAL ARGUMENT

Oral argument would provide meaningful assistance in deciding this appeal. The outcome of the standing issue has broader implications than this single case, and could assist in similar litigation currently pending in courts across the state. Oral argument may assist in fashioning a rule that assists trial courts in determining whether standing in such actions exists.

ISSUES PRESENTED

1. Was the finding that Winona Vasquez did not have standing to challenge the alleged assignment to Deutsche Bank error?
2. Was the granting of a traditional summary judgment motion in favor of Deutsche Bank based solely on the pleadings error?
3. Was an assignment of the deed of trust to Deutsche Bank a cloud on title not a trespass to try title claim?

STATEMENT OF FACTS

Winona Vasquez offers the following statement of facts in support of her argument that the summary judgment signed by the trial court is erroneous.

This appeal arises from a case brought by Winona Vasquez against Deutsche Bank National Trust Company, N.A. for claims of quiet title and violation of Texas Government Code 51.901.

On or about June 25, 2003, Winona Vasquez refinanced residential property located at 4401 Walker, Houston, Texas 77023. (CR 5). Vasquez executed a Note and Deed of Trust for the benefit of Argent Mortgage Company, LLC for \$88,000.00. (CR 5).

A corporate assignment of the Deed of Trust from Argent Mortgage Company, LLC to Deutsche was executed and filed in the Harris County property records on or about February 11, 2009. (CR 5). The assignment of the aforementioned Deed of Trust was allegedly signed by Brian Bly as Vice President

of Citi Residential with an effective date of February 11, 2009 and notarized on February 13, 2009. (CR 5).

Bryan Bly has admitted in deposition testimony to signing millions of loan assignments as Vice President of numerous banks. (CR 5). He has also admitted that his signature has been widely used without his knowledge or consent. (CR 5).

On September 6, 2011, Jerel Twyman, substitute trustee for Deutsche, executed a foreclosure sale deed to Deutsche. (CR 5).

On April 12, 2012, Vasquez filed suit against Deutsche Bank National Trust Company N.A. (CR 4). Vasquez asserted claims for Quiet Title and Violation of Texas Government Code 51.901 based on a void deed. (CR 6-10).

On January 9, 2013, Deutsche filed a motion for summary judgment asserting that Vasquez lacked standing to challenge the assignment. (CR 182).

On February 18, 2013 the trial court signed Orders granting the Appellee's motion for summary judgment. (CR 425).

SUMMARY OF THE ARGUMENT

The trial courts judgment should be overturned, and arguments in Deutsche's motion for summary judgment rejected because Deutsche's arguments misinterpret the law and the evidence in this case. First, the rule of law argued by Deutsche over simplifies the mortgagor's standing requirement and leaves the

debtor with no means to protect against invalid or void assignments. Texas law has recognized that a secured party is afforded more than one means to prove its status and right to enforce an obligation. Inherent in that ability to prove its rights is the debtor's ability to challenge those rights. Moreover, in every instance, Texas law is clear that a mortgagor has a right to challenge a void assignment.

Second, Texas law regarding summary judgments and the standard of review is well established. Specifically, Deutsche's moving for summary judgment based only on Vasquez's pleadings without providing any evidence required the trial court to take all of Vasquez's pleadings as true and make all inferences in her favor. Vasquez provided competent evidence in both her pleadings and her response to Deutsche's motion for summary judgment to demonstrate that the assignment from Argent to Deutsche was void. Taken as true, with no evidence to the contrary, the trial court could not grant a summary judgment in Deutsche's favor.

Lastly, Deutsche's void deed assignment places a cloud on Vasquez's title. That cloud does not require Vasquez to establish the superiority of her claim despite Deutsche's contention. Rather the law requires her to establish her interest in the property, that her title to the property is affected by a claim by the defendant, and the claim, although facially valid, is invalid or unenforceable. Vasquez has

established such a claim, and provided sufficient evidence to survive a motion for summary judgment.

ARGUMENT AND AUTHORITY

Texas Rule of Civil Procedure 166a(c) governs traditional motions for summary judgment, and the standard of review is well-established:

The movant for summary judgment has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law;

In deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant will be taken as true; and

Every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor.

Nixon v. Mr. Property Mgmt. Co., 690 S.W.2d 546, 548-59 (Tex. 1985).

Initially, the movant bears the burden to show that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 675 (Tex. 1979). Thus, summary judgment is appropriate only when issues are resolvable as a legal matter. *See IKB Industries v. Pro-Line Corp.*, 938 S.W.2d 440, 441 (Tex. 1997) (“for summary judgment to be rendered, there cannot be a ‘genuine issue as to any material fact’”).

If, and only if, the movant has made such showing, the burden then shifts to the non-movant to produce summary judgment evidence sufficient to show a

material issue of fact or law exists. *See, e.g., Crawford v. Hanover Ins. Co.*, 582 S.W.2d 240, 241 (Tex.Civ.App. -- Waco 1979, no writ). Summary judgment is not available to deprive a litigant of its right to a full hearing on the merits of any real issue of fact but rather to eliminate patently unmeritorious claims and untenable defenses. *Schlager v. Clements*, 939 S.W.2d 183, 186 (Tex. App. -- Houston [14th Dist.] 1996, writ denied). Its sole purpose is to provide a method of summarily terminating a case when it clearly appears that only a question of law is involved and no genuine issue of material fact remains. *Id.* Keeping these standards in mind, Vasquez turns to the summary-judgment motion filed below.

The Finding that Winona Vasquez did not have Standing to Challenge the Alleged Assignment to Deutsche Bank was Error

“The Standing doctrine is meant to be a shield to protect the court from any role in the adjudication of disputes that do not measure up to a minimum set of adversarial requirements. There is no principled basis for employing standing doctrine as a sword to deprive mortgagors of legal protection conferred upon them under state law.” *Culhane v. Aurora Loan Servs. of Neb.* 708 F.3d 282, 291 (1st Cir. Mass. 2013).

A. Texas Law Provides a Means for Secured Parties to Prove their Rights

The Texas Supreme Court has set out a clear guideline for the enforcement of instruments against debtor obligations.

“With certain exceptions, a transferee of an instrument receives whatever rights his transferor has. Act 1, 1967 Tex. Gen. Laws 2343, 2416 (formerly TEX. BUS. & COM. CODE § 3.201(a), now § 3.203(b)). If the transferee is a holder, he is entitled to recover on the instrument when the signatures are admitted or established unless the defendant establishes a defense. *Id.* at 2422 (formerly TEX. BUS. & COM. CODE § 3.307, now § 3.308) If the transferee is not a holder, he is not aided by the statute and must prove the rights of his transferor and, of course, any prior transferors. A transferee cannot be a holder unless the instrument is negotiable. *Id.* at 2417 (formerly TEX. BUS. & COM. CODE § 3.202(a), now § 3.201(a)). For an instrument to be negotiable, former section 3.202(b) required that any indorsements must be written “on the instrument or on a paper so firmly affixed thereto as to become a part thereof.”

Southwestern Resolution Corp. v. Watson, 964 S.W.2d 262, 263 (Tex. 1997).

Furthermore, despite claims by many to the contrary, the enforcement of the mortgage or deed of trust is no more than a method of extinguishing the ability to enforce the underlying note. A mortgage, or a deed of trust in the nature of a mortgage, on land to secure the payment of a debt is merely a lien. *See Financial Freedom Sr. Funding Corp. v. Horrocks*, 294 S.W.3d 749 (Tex. App.—Houston[14th Dist.] 2009, no pet.) (deed of trust creates only lien on property); *Vanderbilt Mortg. and Finance, Inc. v. Flores*, 746 F. Supp. 2d 819 (S.D. Tex. 2010) under Texas law, deed of trust has no legal effect apart from debt or obligation that is designed to secure).

Courts in Texas have routinely allowed a homeowner to challenge the chain of assignments by which a party claims the right to foreclose. *See Martin v. New*

Century Mortgage Co., 377 S.W.3d 79, 2012 Tex. App. LEXIS 4705 (Tex. App. Houston [1st Dist.] 2012); *Austin v. Countrywide Home Loans*, 261 S.W.3d 68 (Tex. App.—Houston [1st Dist.] 2008); *Leavings v. Mills*, 175 S.W.3d 301 (Tex. App.—Houston [1st Dist.] 2004, no pet.)

Vasquez is not bringing some “show me the note” claim in which she is stating that Deutsche is required to prove its holder status. (CR 4-13). Rather she is claiming that the assignment is invalid and has no force or effect. (CR 6). She concedes that there are alternative methods for a transferee to prove its rights to recovery and stated as much in her response to Deutsche’s Motion for Summary Judgment. (CR 338) However, in *Southwestern Resolution*, it is clear that without establishing holder status that the transferee’s rights are not as easily established. *Southwestern Resolution*, at 263. The Supreme Court specifically allowed for defenses to recovery and required a transferee to prove its rights. *Id.* Finding that Vasquez or any other mortgagor does not have standing to challenge an assignment is in opposition to that ruling. Furthermore, it could provide a mortgage company with an unintended and dangerous ability to circumvent due process and deny a mortgagor’s day in court. Texas’s non-judicial foreclosure process severely limits a mortgagor’s ability to challenge errors in their loan and/or foreclosure. Deutsche essentially asks that the homeowner’s day in court be extinguished completely. The summary judgment should therefore be reversed.

B. Winona Vasquez has Standing to Challenge a Void Assignment

Texas follows the common law rule permitting a debtor to assert against an assignee any ground that renders the assignment void or invalid. *Miller v. Homecomings Fin., LLC*, 881 F. Supp. 2d 825, 831 (S.D. Tex. 2012); *Tri-Cities Constr., Inc. v. American Nat'l Ins. Co.*, 523 S.W.2d 426, 430 (Tex. Civ. App.—Houston [1st Dist.] 1975, no writ) In fact it is in the obligors interest to defend against a claim brought on any ground that renders the assignment void to insure that she will not pay the same claim twice. *Id.* Deutsche Bank ignored this well-established rule and moved for summary judgment based on Vasquez's lack of standing. (CR 184).

If an assignment is void, then the assignee was assigned nothing and has nothing to convey to the purchaser at the foreclosure sale. A void contract is "invalid or unlawful from its inception" and cannot be enforced. *Calderon v. Bank of Am. N.A.*, 2013 U.S. Dist. LEXIS 57887 at *27 (W.D. Tex. 2013)(Quoting 17A C.J.S. Contracts § 169). There is no means by which one of the parties to the contract has the ability by election to enforce the legal relation. *Id.* at *28. Therefore, a mortgagor not party to an assignment between mortgagees may challenge enforcement of an assignment if the assignment is void. *Id.*

A deed that is forged is void. *Lighthouse Church v. Tex. Bank*, 889 S.W.2d 595, 603 (Tex. App.—Houston [14th Dist.] 1994, writ denied) “Forgery” is defined as “the act of fraudulently making a false document or altering a real one to be used as if genuine. BLACKSLAW DICTIONARY (9TH ed. 2009). Central to forgery under Texas law is that there be deception as to the identity of the signer. *Great Am. Ins. Co. v. AFS/IBEX Fin. Servs, Inc.*, 612 F.3d 800, 806 (5th Cir. 2010) A person who signs purportedly acting as another, including all other persons, real or fictitious, has committed forgery. *Nobles v. Marcus*, 533 S.W.2d 923, 926 (Tex. 1976).

Vasquez pled that the Corporate Assignment of the Deed of Trust from Argent to Deutsche Bank was void. (CR 6). She further pled that the signature on the transfer was not Bryan Bly’s personal signature. (CR 7). Vasquez provided a copy of Bryan Bly’s Deposition where he states that there are documents including assignments bearing his purported signature that he has never seen or approved, to support her claim. (CR 85-87, 102-103). She also provided copies of documents purportedly bearing Bryan Bly’s signatures that reflect the existence of material different versions of his signature. (CR 44, 47, 48). As previously stated, a forged deed is void. *Lighthouse Church* at 603. Vasquez has standing to challenge a void or invalid assignment. *Miller v. Homecomings Fin., LLC* at 831. The summary judgment should therefore be reversed.

The Granting of a Traditional Summary-Judgment Motion in Favor of Deutsche Bank Based Solely on the Pleadings was Error

The court can only grant a summary judgment motion when the movant's evidence, as a matter of law, either proves all the elements of the movant's claim or defense or disproves the facts of at least one element of the nonmovant's claim or defense. e.g., *Park Place Hosp. v. Estate of Milo*, 909 S.W.2d 508, 511 (Tex. 1995) (doctor proved affirmative defense that patient had less than 50% chance of survival, in spite of malpractice). In the present case Deutsche Bank did not provide a single piece of evidence in support of its motion. (CR 182-191, 418-423). Rather, Deutsche Bank moved for summary judgment based entirely on Appellant's pleadings.

A movant may file a motion for summary judgment showing the nonmovant has no viable cause of action or defense based on the nonmovant's pleadings. *See, e.g., National Un. Fire Ins. Co. v. Merchants Fast Motor Lines, Inc.*, 923 S.W.2d 139, 141 (Tex. 1997) (no duty to defend insurance claim based on allegations in pleadings of policy). When deciding a motion for summary judgment based on the nonmovant's pleadings, the trial court must do the following:

Assume all allegations and facts in the nonmovant's pleadings are true. *Natividad v. Alexsis, Inc.*, 875 S.W.2d 695, 699 (Tex. 1994).

Make all inferences in the nonmovant's pleadings in the light most favorable to the nonmovant. *Medina v. Herrera*, 927 S.W.2d 597, 602 (Tex. 1996).

Ensure that any defects in the pleadings cannot be cured by amendment. *In re B.I.V.*, 870 S.W.2d 12, 13 (Tex. 1994).

When the signatures are admitted the transferee is entitled to recover unless the defendant establishes a defense. *Southwestern Resolution Corp. v. Watson*, 964 S.W.2d 262, 263 (Tex. 1997). As previously stated, Vasquez specifically pled that the signature on the purported Corporate Assignment of the Deed of Trust from Argent to Deutsche Bank was not Bryan Bly's personal signature. (CR 7). Furthermore, in support of her pleadings Vasquez provided a copy of Bryan Bly's Deposition where he states that there are documents including assignments bearing his purported signature that he has never seen or approved that could have been assigned to additional parties. (CR 85-87, 102-103). Vasquez also provided copies of documents purportedly bearing Bryan Bly's signatures that reflect the existence of material different versions of his signature. (CR 44, 47, 48). Assuming all of Vasquez's allegations and pleadings are true and making all inferences in the light most favorable to her, as previously stated the assignment is void. The summary judgment should therefore be reversed.

An Assignment of the Deed of Trust to Deutsche Bank is a Cloud on Appellant's Property Title not a Trespass to Try Title Claim

The principal issue in a suit to quiet title is the "existence of a cloud on the title that equity will remove." *Florey v. Estate of McConnell*, 212 S.W.3d 439, 448 (Tex. App.—Austin 2006, pet. denied). When an outstanding claim or

encumbrance is shown, which on its face, if valid would impair the title of the property owner, a cloud on title exists. *Gordon v. West Houston Trees, Ltd.*, 352 S.W.3d 32, 42 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The action to remove a cloud from title exists so that the holder of the feeblest equity may remove from his way to legal title any unlawful hindrance having the appearance of a better right. *Hahn v. Love*, 321 S.W.3d 517, 531 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). This action is different than a trespass-to-try-title. *Mort. Elec. Registration Sys. v. Groves*, 2011 Tex. App. LEXIS 2696 at *5-8 (Tex. App.—Houston [14th Dist.] April 12, 2011, no writ).

Success in a trespass-to-try-title action depends on the strength of the petitioner's title, not the weakness of the adversary's claim [*Martin v. Amerman*, 133 S.W.3d 262, 265 (Tex. 2004); *Land v. Turner*, 377 S.W.2d 181, 183 (Tex. 1964); *Hejl v. Wirth*, 161 Tex. 609, 343 S.W.2d 226, 226 (1961)]. In essence, the plaintiff must claim an ownership interest in real property and can prevail only by establishing that interest as a valid and superior one. An action in trespass to try title is purely statutory [Tex. Prop. Code § 22.001-22.004; see *Martin v. Amerman*, 133 S.W.3d 262, 264-265 (Tex. 2004)] Deutsche Bank did not dispute that Vasquez held title to the property subject to the deed of trust. (CR 178-180).

“The goal of an action to quiet title is not to establish the superiority of the petitioner's title or declare the invalidity or correct the irregularity of some

instrument the petitioner was unlawfully induced to sign; rather, its purpose is to nullify the effect of the disputed claim or encumbrance (the "cloud") that affects or impairs the title to the property when no other means exist to establish that the claim is invalid or unenforceable [*see Sadler v. Duvall*, 815 S.W.2d 285, 293 n.2 (Tex. App.--Texarkana 1991, den.); *Vanguard Equities, Inc. v. Sellers*, 587 S.W.2d 521, 525 (Civ. App.--Corpus Christi 1979, no writ) An assertion that would cast a cloud on the owner's enjoyment of the property is sufficiently adverse to create a claim. *Katz v. Rodriguez*, 563 S.W.2d 627, 629 (Tex. Civ. App.—Corpus Christi 1977, writ ref'd n.r.e.).

To quiet title, the Plaintiff must prove (1) an interest in a specific property, (2) title to the property is affected by a claim by the defendant, and (3) the claim, although facially valid, is invalid or unenforceable. *U.S. Nat'l Bank Ass'n v. Johnson*, 2011 Tex. App. LEXIS 10253 at *7 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Here, Deutsche wrongfully contends that Homeowner must prove the strength of her title. (CR 187). Vasquez filed a suit to quiet title and not trespass-to-try-title. (CR 8-10). Decades of well settled law leave no ambiguity as to the difference between a suit to quiet title and trespass to try title. Vasquez alleged in her pleadings that she is the owner of the property by virtue of her recorded deed. (CR 6). Vasquez further alleged that the assignment by Bryan Bly was ineffective and void for multiple reasons, including an invalid or forged

signature. (CR 6-8). This is enough to satisfy the requirement that she alleges right, title, or ownership sufficiently to warrant judicial interference. *Mort. Elec. Registration Sys. v. Groves*, at 11. The summary judgment should therefore be reversed.

PRAYER

The trial court erred in granting Deutsche's motion for summary judgment. Vasquez properly plead a cause of action for which the court can grant relief and provided evidence supporting the requested relief. Deutsche offered no evidence of any type, instead they relied on the singular argument that countless mortgage service providers employ to deprive mortgagor's their day in court, that Vasquez did not have standing to challenge the assignment or lack there of from Argent to Deutsche. Deutsche's summary judgment claim was improperly argued, because a mortgagor does have standing to challenge assignments in Texas. Accordingly, the summary judgment entered against Vasquez should be reversed, and the action should be remanded to the 281st Judicial District, Harris County, for further consideration.

Respectfully submitted,

Law Offices of Rick Guerra

By: /s/ Ricardo Guerra

RICARDO GUERRA

State Bar No. 24074331

Email: rick@rickguerra.com

ERIC DAYS

State Bar No. 24082907

Email: eric@rickguerra.com

2211 Rayford Rd. Ste 111 #134

Spring, TX 77386

Direct: 832-788-7120

Fax: 866-325-0341

Attorneys for Plaintiff,

Winona Flippen Vazquez

Appendix

Appendix A

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CAUSE NO. 2012-21582

WINONA FLIPPEN VAZQUEZ,

Plaintiff,

v.

DEUTSCHE BANK NATIONAL
TRUST COMPANY, N.A.,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

281ST JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On this day came on to be heard the Motion for Summary Judgment filed by Defendant Deutsche Bank National Trust Company, N.A. ("Deutsche"). After considering the Motion, any and all responses or replies thereto, and the summary judgment evidence, the Court is of the opinion that the Motion should be **GRANTED** and that Deutsche is entitled to summary judgment on all claims asserted by Plaintiff Winona Flippen Vazquez ("Plaintiff"). It is, therefore,

ORDERED that, the Motion for Summary Judgment filed by Deutsche is **GRANTED**;

IT IS FURTHER ORDERED that Plaintiff take nothing on any of her claims against Deutsche;

IT IS FURTHER ORDERED that all costs of Court are taxed against Plaintiff; and

IT IS FURTHER ORDERED that all of the claims asserted by Plaintiff against Deutsche are hereby **DISMISSED**.

SIGNED this 18th day of February, 2013.

2-18-13


JUDGE PRESIDING

1-1
PC

APPROVED:

LOCKE LORD LLP



John B. Hall
State Bar No. 08759900
Kurt Lance Krolikowski
State Bar No. 24074548
2800 JP Morgan Chase Tower
600 Travis Street
Houston, Texas 77002
(713) 226-1200
(713) 223-3717 (facsimile)

Robert T. Mowrey
State Bar No. 14607500
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
(214) 740-8000
(214) 740-8800 (facsimile)

**ATTORNEYS FOR DEFENDANT
DEUTSCHE BANK NATIONAL TRUST COMPANY, N.A.**

Appendix B

NO. _____

WINONA FLIPPEN VAZQUEZ,
PLAINTIFF

V.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, N.A. AS TRUSTEE FOR
ARGENT MORTGAGE,
DEFENDANTS

§
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IN THE DISTRICT COURT

_____JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

A. Discovery-Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.4. Aggregated damages exceed \$50,000.

B. Parties

2. Plaintiff, Winona Flippen Vazquez ("Plaintiff"), an individual, is a resident of Harris County, Texas.
3. Defendant Deutsche Bank National Trust Company, N.A. ("Deutsche"), is a foreign corporate fiduciary that is located at 60 Wall Street, New York, NY 10005. Defendant regularly does business in Texas. Defendant may be served with their registered agent CT Corporation System at 350 N. St. Paul St., Ste. 2900, Dallas, TX 75201-4234.

C. Jurisdiction

4. The court has jurisdiction over Deutsche because it regularly conducts business within the State of Texas.

D. Venue

5. Venue is mandatory in Harris County under Texas Civil Practice & Remedies Code section 15.011 because this is a suit for damages to real property, and this is the county where all of the property is located. The real property is located at 4401 Walker, Houston, Texas 77023, Harris County.

E. Facts

6. On or about June 25, 2003, Plaintiff refinanced residential property, the subject of this suit, located at 4401 Walker, Houston, Texas 77023. The original deed of trust lists Argent Mortgage Company, LLC (“Argent”) as Original Lender with a purchase amount of \$88,000.00. [Exhibit A]
7. On or about February 11, 2009, a Corporate Assignment of the Deed of Trust was executed and publicly filed in the Harris County property records, purportedly assigning the note from Argent to Deutsche. [Exhibit B] A title search on the property did not reveal the underlying promissory note in the public record.
8. The assignment, signed by Brian Bly (Bly) as Vice President of Citi Residential Lending Inc. (“Citi”) acting as agent in fact for Argent, shows an effective date of February 11, 2009. Curiously, the document was notarized on February 13, 2009.
9. Bly has been deposed in other jurisdictions as an alleged robo-signer during the ongoing mortgage crisis. Bly has admitted, through deposition, to signing millions of loan assignments as Vice President of numerous banks throughout his employment with Nationwide Title Clearing; he has also admitted that his signature has been widely used without his knowledge or consent.
10. On September 6, 2011, Jerel Twyman, substitute trustee for Deutsche, executed a foreclosure sale deed to Deutsche. The sale amount is listed as \$92,925.00.

F. Causes of Action

Count 1 – Quiet Title

11. Plaintiff is the owner of residential real estate located at 4401 Walker, Houston, Texas 77023 a certain tract of land located in Harris County, Texas, as more particularly described in a deed to the Plaintiffs dated November 10, 2000.
12. The foreclosure deed under which Deutsche asserts an interest in Plaintiff's property is defective. Although appearing valid on its face, it is in fact invalid and has no force or effect. [Exhibit C]
13. The corporate assignment from Argent to Deutsche signed on February 13, 2009, by Bly was ineffective and void for multiple reasons; preserving the right to amend/add additional defects, Plaintiff asks the Court to consider the following issues:

i. Corporate Assignment took place 6 years after the Pooling and Servicing Agreement cutoff date.

14. The corporate assignment from Argent to Deutsche dated February 13, 2009 is in violation of the 2003 Trust Pooling and Servicing Agreement that govern the pool into which it was purportedly transferred. As stated in its name, the 2003 Trust that allegedly held the beneficiary status of Plaintiff's loan had a cutoff date of December 01, 2003. [Exhibit D] Plaintiff's loan underwent an attempted conveyance six years after the pool was closed. This transfer violated the terms and conditions of the pooling and servicing agreement and legally is null and void. All activity including subsequent assignments and transfers are therefore legally ineffective.

ii. No transfer of the note as required by Texas law- Invalid Signature

15. In Sw. Resolution Corp. v. Watson, 964 S.W.2d 262, 263 (Tex. 1997), the Texas Supreme Court stated "If the transferee is a holder, he is entitled to recover on the instrument when

the signatures are admitted or established unless the defendant establishes a defense. *Id.* at 2422 (formerly Tex. Bus. & Com.Code § 3.307, now §3.308); see *Norwood v. Chase Home Fin. LLC, Report and Recommendation of the United States Magistrate Judge, 2011 U.S. Dist. LEXIS 5147 (W.D. Tex. 2011.)* If the transferee is not a holder, he is not aided by the statute and must prove the rights of his transferor and, of course, any prior transferors. A transferee cannot be a holder unless the instrument is negotiable. *Id.* at 2417 (formerly Tex. Bus. & Com.Code § 3.202(a), now § 3.201(a)).

16. In the present case, the signature on the purported transfer is not Bly's personal signature. Bly, who has been an employee of Nationwide Title for several years, has personally admitted through legal deposition that his signatures are electronically scanned and used by others without his supervision, approval, or personal knowledge. There are materially different versions of Bly's signature found throughout public records, which raise doubts as to the integrity of the assignments. [Exhibit E] The following are excerpts from Bly's deposition testimony: [Exhibit F]

Q: (By Mrs. Einstein) We are back on the record. Okay, Mr. Bly, right before we took a break you were telling me that you had never seen Exhibit 5 before and that your signature on there was done by an electronic process, that you had given an exemplar to an NTC employee named Thomas McKinnon; is that correct?

A: That's correct [pg. 35 end].

Q: Okay. So you don't know the actual person who pushes a button, clicks a mouse, does something, and suddenly your signature gets on the piece of paper?

A: No.

Q: Okay. So you don't supervise these people that apply your signature to documents; is that [pg. 36 end] correct?

A: That's correct.

Q: Do you know who supervises them?

A: No.

Q: Okay. Do you have any communication with them about what documents they are applying your signature to?

A: No.

Q: Okay. Does anyone ever come to ask you about a particular document, should you – you know, should your signature go on it?

A: No [pg. 37 end]. (*Go to pg. 52*)

Q: Okay. Now, in this loan, which you sign the assignment of, did you see the original note or mortgage change hands?

A: No.

Q: Okay. Do you know where the original note and mortgage are now?

A: No.

Q: Do you know where they were, excuse me, when you signed the assignment?

Q: (By Ms. Einstein) Okay. If you had physically signed it, would you know where those documents were?

A: No.

Q: Okay. Do you know anything at all about the [pg. 52 end] original mortgage in this case?

A: No.

17. Plaintiff objects to the signatures of the purported assignment and the validity of the notarization, and therefore is entitled to the protection of the Tex. Bus. And Com. Code.
18. Because Plaintiff has raised genuine factual concerns regarding the untimely transfer of the note and the suspicious signatures, Plaintiff urges this Court to require that Deutsche

“prove the rights of [its] transferor and, of course, any prior transfers.” as statutorily required by Texas law. *Id.* at 2417

iii. Bryan Bly’s assignment violated the scope of the Limited Power of Attorney

19. The power of attorney that Bryan Bly relied on to sign as Vice President of Citi, authorized assignments only in connection with certain events such as repurchase, pay off, or refinancing of the note. None of those conditions took place in this case. Furthermore, the LPA does not allow the use of electronic signatures used by individuals other than Bly without his personal knowledge of its use. Plaintiff urges the Court to consider the almost indistinguishable facts and circumstances in the following bankruptcy case. *In re: Tarantola Bankruptcy Case No 4:09-bk-09703* [Exhibit G]
20. The Court stated, “But the LPA[limited power of attorney] only authorized assignments in specific circumstances not present here. The LPA is very similar to limited powers of attorney addressed in two other reported decisions. *In re Samuels*, 415 B.R., 17 (Bankr. D. Mass. 2009); *In re Hayes*, 393 B.R. 259, 264 (Bankr. D. Mass. 2008). Both cases also involved Deutsche Bank, Argent Mortgage and Citi Residential. In those cases, as here, the limited powers of attorney in question authorized assignments only in connection with certain events such as a repurchase (#6 of the LPA), pay off or refinancing of a note (#7 of LPA). In this case, as in *Samuels* and *Hayes*, the Allonge was not executed in connection with a repurchase or a refinancing of the Note or any other event set out in the LPA. Accordingly, the LPA did not authorize the transfer in the Allonge.” *Id.* pg. 9 Ln 1-13.
21. In addition, the Court admonished Deutsche’s attorneys for their misleading nature regarding fabricated documents. The Court stated, “ Given the deficient and misleading nature of Deutsche’s filings, the court seriously considered issuing an order to show cause as to why sanctions should not be imposed on Deutsche, its servicer, and its lawyers,

especially in light of the fact that sanctions were entered by another court, involving Deutsche, AHMSI and counsel, for conduct similar to the facts in this case.” *Id pg. 14 Ln2-7*.

22. In light of the various material defects, Plaintiff contends that the assignment from Argent to Deutsche never took legal affect and thus all subsequent transfers are void; rights that an entity does not have cannot be transferred or assigned. All assignments, transfers, and appointments subsequent to the transfer from Argent to Deutsche, including the appointment of Jerel Twyman as substitute trustee are ineffective and void. Under Texas law, where the substitute trustee is improperly appointed, a sale transaction is not merely voidable; it is void in the sense that the statute of limitation does not bar an attack on the trustee's deed. *Wilson v. Armstrong*, 236 S.W. 755 (*Tex. Civ. App. Beaumont 1921*). A sale made by a substitute trustee in a deed of trust appointed by one without authority is void. *Austin v. Carter*, 296 S.W. 649 (*Tex. Civ. App. 1927*), *writ dismiss'd*
15. Plaintiff asks the Court to rescind the foreclosure sale deed executed on September 6, 2011 that granted ownership rights to Deutsche and find that Deutsche does not have proper standing to conduct a non-judicial foreclosure in Texas.
23. Plaintiff has retained the law firm whose name is subscribed to this petition to represent Plaintiff in this action and have agreed to pay the firm a reasonable fee for necessary services. An award of attorney's fees to the plaintiffs would be equitable and just and authorized by Section 37.009 of the Civil Practice and Remedies Code.

COUNT 2 – Violation of Texas Government Code 51.901

24. Under Texas law, a document or instrument is presumed to be fraudulent if the document or instrument purports to create a lien or assert a claim against real or personal property,

or an interest in real or personal property, and is not a document or instrument provided for by the constitution or laws of this state or of the United States; is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property, or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States. *See Texas Government Code §51.901(c)(2).*

25. In the present case, the purported assignment and signature by Brian Bly is invalid for the aforementioned reasons. Thus, the lien and foreclosure by Deutsche were not by express or implied consent.
26. Plaintiff asks the Court to determine the lien and subsequent transfer of Plaintiff's property null and void and adjudicate the rights of the parties through the relief requested within this suit.

G. Declaratory Judgment

27. The Declaratory Judgment Act offers a procedure for the judicial determination of, among other things not pertinent here, "any question of construction or validity" arising under an instrument or contract. Of particular note is the statute's provision for use of the procedure by (1) a person "interested" under a deed or other writing constituting a contract or (2) a person whose rights or other legal relations are "affected" by a contract. *Tex. Civ. Prac. & Rem. Code § 37.004(a).*
28. Further, the Declaratory Judgment Act expressly states that this enumeration does not limit or restrict the general powers conferred by the act to declare rights, status, or other legal relations. *Tex. Civ. Prac. & Rem. Code § 37.003(c).* Accordingly, the Declaratory

Judgment Act should be liberally construed and "not hedged about by technicalities". *Anderson v. McRae*, 495 S.W.2d 351, 356 (Civ. App.—Texarkana 1973, no writ) (citing *Cobb v. Harrington*, 144 Tex. 360, 190 S.W.2d 709, 714 (1945)).

29. Under the Quiet Title action within this suit, Plaintiff asks that the Court find Defendant's current interest in Plaintiff's property null and void and to quiet title in Plaintiff's name based on a declaratory judgment.
30. Because this is a suit for declaratory relief, Plaintiff is entitled to recover reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice & Remedies Code section 37.009.

H. Conditions Precedent

31. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

I. Prayer

32. For these reasons, Plaintiff asks that Deutsche be cited to appear and answer and, on final trial, that Plaintiff be awarded a judgment against Deutsche for the following:
 - a. Equitable relief in the form of rescission of the foreclosure sale and deed;
 - b. Reasonable Attorneys Fees;
 - c. Court Costs;
 - d. Postjudgment Interest;
 - e. All other relief to which Plaintiff is entitled.

Respectfully submitted,

By: /s/ Ricardo Guerra
Ricardo Guerra, Attorney for Plaintiff
Law Offices of Rick Guerra
Texas Bar No. 24074331
2211 Rayford Rd., Ste. 111, #134
Spring, Texas 77386
Tel. 832-788-7120
Fax. 866-325-0341

Appendix C

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR CLAY COUNTY, FLORIDA

CASE NO.: 2009-CA-1920
DIVISION: B

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE IN TRUST
FOR THE BENEFIT OF THE
CERTIFICATEHOLDERS FOR AMERIQUEST
MORTGAGE SECURITIES TRUST 2005-R9,
ASSET-BACKED PASS-THROUGH
CERTIFICATES SERIES 2005-R9

Plaintiff,

vs.

GARY L. HANNAH, *et al*,
Defendants.


NOTICE OF FILING ORIGINAL DEPOSITION
TRANSCRIPT OF BRYAN J. BLY

The undersigned counsel for Defendant Gary Hannah hereby files with the Court the
attached Original Deposition Transcript of Bryan J. Bly, and certifies that this Notice was sent
via U.S. Mail to:

Adina Pollan, Esq. (w/o attachment)
Akerman Senterfitt
50 North Laura Street
Suite 2500
Jacksonville, FL 32202

this 12th day of August, 2010.

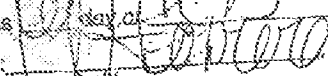
RESPECTFULLY SUBMITTED,
JACKSONVILLE AREA LEGAL AID, INC.


Gloria A. Einstein
Attorney for Defendant Gary Hannah
FL Bar No.: 801119
P.O. Box 1999
Green Cove Springs, FL 32043-1999
(904) 284-8410 ext. 3002; Fax (904) 284-8485

This document certifies
that this page document is a copy
of the original on file in the office of:

James B. Jeff
Clerk of Circuit Court
Clay County, Florida



This day of August, 2010
By:  Deputy Clerk

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR CLAY COUNTY, FLORIDA
CASE NO. 2009-CA-1920
DIVISION B

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE IN TRUST
FOR THE BENEFIT OF THE
CERTIFICATE HOLDERS FOR
AMERIQUEST MORTGAGE SECURITIES
TRUST 2005-R9, ASSET-BACKED
PASS-THROUGH CERTIFICATES
SERIES 2005-R9,

Plaintiff,

vs.

GARY L. HANNAH, et al,

Defendants.
-----/

ORIGINAL

DEPOSITION OF: BRYAN J. BLY

TAKEN: Pursuant to Notice by
Counsel for Defendants

DATE: July 2, 2010

TIME: 2:03 p.m. - 3:50 p.m.

LOCATION: Akerman Senterfitt
401 East Jackson Street, Suite 1700
Tampa, Florida

REPORTER: DAVID L. KELLY
Notary Public
State of Florida at Large

MAXA ENTERPRISES, INC.
1275 Cleveland Street
Clearwater, Florida 33755
(727) 441-2404 Fax: (727) 448-0028

APPEARANCES: ADINA L. POLLAN, ESQ.
 WILLIAM HELLER, ESQ. (by telephone)
 Akerman Senterfitt
 50 North Laura Street, Suite 2500
 Jacksonville, FL 32202-3646

Attorney for the Plaintiff

GLORIA A. EINSTEIN, ESQ.
 Jacksonville Area Legal Aid, Inc.
 P.O. Box 1999
 Green Cove Springs, FL 32043

Attorney for the Defendant

ALSO PRESENT: Raye Blair

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EXHIBITS

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Deposition Exhibit Number 4	8
Deposition Exhibit Number 5	21

1 Q Okay. And Tom McKinnon is an employee of
2 NTC?

3 A Yes.

4 Q And the first thing you said it was
5 corporate something?

6 A Yeah. In other words, I have the
7 corporate -- I know I'm allowed to sign for this
8 company. So then I submit my signature to Tom to
9 scan. It's not like a blank signature to sign
10 anywhere.

11 MS. POLLAN: Can I take a quick break?

12 MS. EINSTEIN: Sure.

13 MS. POLLAN: Thank you.

14 (A brief recess was held.)

15 Q (By Ms. Einstein) We are back on the
16 record. Okay. Mr. Bly, right before we took a break
17 you were telling me that you had not ever seen
18 Exhibit 5 before and that your signature on there was
19 done by an electronic process, that you had given an
20 exemplar to an NTC employee named Thomas McKinnon; is
21 that correct?

22 A That's correct.

23 Q Okay. When did you do that, sir?

24 A I don't recall.

25 Q Okay. And was that specifically for Citi?

1 Was that for any signing you would do?

2 A I don't recall.

3 Q Okay. Now, the specific document that
4 Exhibit 5 that has your signature, who actually
5 created it?

6 A I don't know.

7 Q Okay. Was it somebody at NTC? Do you know
8 that?

9 A I would assume.

10 Q Okay. Do you know the title of a person who
11 would create that document and put your signature on
12 it?

13 A No.

14 Q Okay. Do you know how many people do that
15 job?

16 A No.

17 Q Okay. Do you know where it gets done?

18 A No.

19 Q Okay. So you don't know the actual person
20 who pushes a button, clicks a mouse, does something,
21 and suddenly your signature gets on the piece of
22 paper?

23 A No.

24 Q Okay. So you don't supervise these people
25 that apply your signature to documents; is that

1 correct?

2 A That's correct.

3 Q Do you know who supervises them?

4 A No.

5 Q Okay. Do you have any communication with
6 them about what documents they are applying your
7 signature to?

8 A No.

9 Q Okay. Does anyone ever come to ask you
10 about a particular document, should you -- you know,
11 should your signature go on it?

12 A No.

13 Q Okay. Do you know about any procedures that
14 are in place to check these documents?

15 A No.

16 Q Okay. Now, do you know anything about how
17 your signature or your E-signature would have been
18 notarized?

19 A I don't know the technical end and all the
20 encryptions and all that, no, I don't.

21 Q Okay. Can you tell whether the notarization
22 is also done electronically on that?

23 A I would assume.

24 Q So you know that notarizations are done
25 electronically?

1 or if they have to retrieve it to print, this is the
2 number they use for identification purpose.

3 Q But you're not able to do that?

4 A No.

5 Q Okay. Now, in this loan, which you sign the
6 assignment of, did you see the original note or
7 mortgage change hands?

8 A No.

9 Q Okay. Do you know where the original note
10 and mortgage are now?

11 A No.

12 Q Do you know where they were, excuse me, when
13 you signed the assignment?

14 MS. POLLAN: Object.

15 MS. EINSTEIN: I'm sorry?

16 MS. POLLAN: I'm objecting to form. You
17 can answer.

18 THE DEPONENT: Okay. Well, I wouldn't
19 know because I didn't sign this. This was done
20 electronically.

21 Q (By Ms. Einstein) Okay. If you had
22 physically signed it, would you know where those
23 documents were?

24 A No.

25 Q Okay. Do you know anything at all about the

1 original mortgage and note in this case?

2 A No.

3 Q Okay. Now, have you ever signed this
4 mortgage before February 13, 2009?

5 A I don't know.

6 Q Okay. So there's nothing in your process
7 that would have prevented you from signing this
8 mortgage other times?

9 A Can you rephrase that?

10 Q Okay. Exhibit 5 you assign it from Citi
11 Residential as Attorney-in-Fact for Ameriquest to
12 Deutsche Bank as trustee with certain other
13 stipulations of what they're trustee for.

14 A Okay.

15 Q Okay. Is there -- do you know if you could
16 have assigned this mortgage to some other company?

17 A No.

18 Q Meaning you could have?

19 A I don't -- I have no way of recalling.

20 Q meaning you could have:

21 A I don't -- I have no way of recalling.

22 Q Okay. And would you have any way of finding
23 out?

24 A No.

25 Q Okay. So before assigning a mortgage, you
don't check to see if it has been assigned to some
other company?

Appendix D

ASSGN
Y

20090059473
02/16/2009 ER \$20.00

CRL L#: 0049799521
Assignee L#: 4000258956
Investor L#: 0049799521
Custodian: 85
Effective Date: 02/11/2009

CORPORATE ASSIGNMENT OF DEED OF TRUST

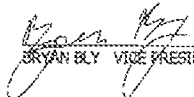
FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, CITI RESIDENTIAL LENDING INC., AS ATTORNEY-IN-FACT FOR ARGENT MORTGAGE COMPANY, LLC, WHOSE ADDRESS IS 10801 E. 6TH STREET , RANCHO CUCAMONGA, CA 91730, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described deed of trust together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR, ARGENT SECURITIES INC. ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2003-W8, UNDER THE POOLING AND SERVICING AGREEMENT DATED DECEMBER 1, 2003, WHOSE ADDRESS IS 1761 EAST ST. ANDREW PLACE , SANTA ANA, CA 92705-4934. (ASSIGNEE)

2EE

Said Deed of Trust dated 06/25/2003 executed by FERNANDO VAZQUEZ AND WINONA VAZQUEZ and recorded as Instr# W852482 in Book , Page in the records of Real Property of HARRIS County, Texas.

IN WITNESS WHEREOF, the said corporation has caused these to be signed by its duly authorized officer, THIS 13TH DAY OF FEBRUARY IN THE YEAR 2009

CITI RESIDENTIAL LENDING INC., AS ATTORNEY-IN-FACT FOR ARGENT MORTGAGE COMPANY, LLC 2OR


BRYAN SLY VICE PRESIDENT

form5/efrmtxgl

ER 010 - 49 - 1228



CFN 20080416489
 OR BK 22956 PG 1585
 RECORDED 11/18/2008 11:04:07
 Palm Beach County, Florida
 Sharon K. Bock, CLERK & COMPTROLLER
 Pg 1585; (1pg)

Prepared by:
 Jessica Fretwell/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
 When Recorded return to:
 Nationwide Title Clearing
 2100 Alt. 19 North
 Palm Harbor, FL 34683
 0015270260

AFFIDAVIT

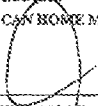
The undersigned CRYSTAL MOORE, being duly sworn deposes and states as follows:

1. That (s)he is VICE PRESIDENT of AMERICAN HOME MORTGAGE SERVICING, INC. having its principal place of business at c/o 2100 Alt. 19 North, Palm Harbor, FL 34683, an officer duly authorized to make this affidavit.
2. That (s)he has personal knowledge of the facts set forth in this Affidavit.
3. That AMERICAN HOME MORTGAGE SERVICING, INC. ("Current Mortgagee") is the owner and holder of a certain mortgage dated 09/15/2005 made by JAN MICHAEL CARSON as mortgagors to ("Original Mortgagee") as mortgagee, which mortgage was recorded on in the office of the Register or Recorder/Clerk of PALM BEACH County, on in Book/leaf 19271 page 0943 or Doc# 20050591293. That said Current Mortgagee owns and holds said mortgage as a result of sale and assignment thereof to said Current Mortgagee from FIRST FEDERATED FUNDING CORP. OF SOUTH FLORIDA INC.. The mortgage premise are known as 11790 ST ANDREWS PLACE #94107 WELLINGTON, FL 33414

4. That (s)he has examined the files and records of Current Mortgagee relating to the Mortgage.
5. That said files and records do not contain either a recorded or an unrecorded instrument of an assignment from FIRST FEDERATED FUNDING CORP. OF SOUTH FLORIDA INC. to Current Mortgagee.
6. That the Assignment from FIRST FEDERATED FUNDING CORP. OF SOUTH FLORIDA INC. to AMERICAN HOME MORTGAGE SERVICING, INC. was lost, misplaced or destroyed before the same could be placed of record.
7. That Current Mortgagee is unable to obtain an instrument confirming the sale and assignment of the Current Mortgage from FIRST FEDERATED FUNDING CORP. OF SOUTH FLORIDA INC..
8. That Current Mortgagee duly and properly acquired the Mortgage, and has thereafter serviced the same and has in its possession the note secured thereby and all of the other mortgage loan documentation pertaining to said Mortgage.
9. That Current Mortgagee is the owner of the Mortgage and the note secured thereby, and has not further assigned or transferred said note and Mortgage to any other party.
10. That this affidavit is made to induce the Register/Recorder of said county, to accept for recording a satisfaction/release of the Mortgage, executed and acknowledged by Current Mortgagee as assignee of the Mortgage.
11. Current Mortgagee agrees to indemnify and hold harmless the Recorder, Registrar or Clerk of said County from and against any cost or claims which may arise by reason of the acceptance and recording of said satisfaction or release of the Mortgage and/or discharge of said Mortgage.

dated: 10/20/2008

AMERICAN HOME MORTGAGE SERVICING, INC.

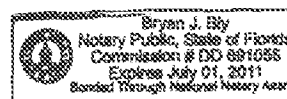
By: 
 CRYSTAL MOORE VICE PRESIDENT

STATE OF FLORIDA COUNTY OF Pinellas

On 10/20/2008 before me, BRYAN J. BLY, Notary Public, personally appeared CRYSTAL MOORE personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the same.

WITNESS MY hand and official seal.

BRYAN J. BLY
 Notary Public/ My Commission Expires 07/01/2011



form1/AFFFL1



CFN 20100260063
 OR BK 23954 PG 0275
 RECORDED 07/19/2010 13:36:18
 Palm Beach County, Florida
 Sharon R. Beck, CLERK & COMPTROLLER
 Pg 0275; (1pg)

Loan# 89717528

Document Prepared By:
 J. Lasinski / NTC, 2100 Alt. 19 North
 Palm Harbor, FL 34683 (800)346-9152

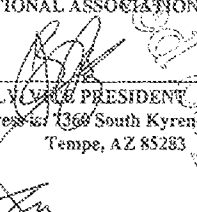
When Recorded Return To:
 GREEN TREE SERVICING LLC
 C/O NTC 2100 Alt. 19 North
 Palm Harbor, FL 34683

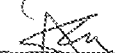
SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That US BANK NATIONAL ASSOCIATION a corporation existing under the laws of the State of is the owner and holder of a certain mortgage deed executed by DANIEL FORMISANO AND VALERIE M FORMISANO recorded in Official Records Book 18873, Page 1861 or Doc # , in the office of the Clerk of the Circuit Court of PALM BEACH County, Florida, upon the property situated in said State and County as more fully described in said mortgage.

Hereby acknowledges full payment and satisfaction of said note and mortgage deed, and surrenders the same as cancelled, and hereby directs the Clerk of the said Circuit Court to cancel the same of record.

WITNESS the signature of said corporation by its VICE PRESIDENT this 30th day of June in the year 2010
 US BANK NATIONAL ASSOCIATION

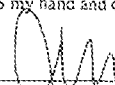
By: 
 BRYAN BLY VICE PRESIDENT
 whose address is 1360 South Kyrene Rd, T324
 Tempe, AZ 85283

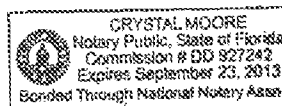

 ALEXANDRA KANE Witness

STATE OF FLORIDA
 COUNTY OF PINELLAS

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared BRYAN BLY well known to me to be the VICE PRESIDENT of US BANK NATIONAL ASSOCIATION a corporation, and that s/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 30th day of June in the year 2010


 CRYSTAL MOORE
 Notary Public/Commission expires 09/23/2013



GTSRC 12127181_@ TST2614184 form1/RCNFI.1



12127181

CERTIFICATE OF SERVICE

I certify that on May 29 2013 a true and correct copy of Plaintiff's Response to Motion for Summary Judgment was served by facsimile transmission on Kurt Lance Krolkowski at 713-223-3717.

/s/ Ricardo Guerra

RICARDO GUERRA