

IN THE SUPERIOR COURT FOR THE COUNTY OF DEKALB
STATE OF GEORGIA

CIVIL ACTION FILE#

11CV9150-10

Wekesa O. Madzimoyo,
-Plaintiff

PLAINTIFF DEMANDS TRIAL
BY JURY

v.

THE BANK OF NEW YORK }
MELLON TRUST COMPANY (NYBMT), }
NA., formerly known as The Bank of New }
York Trust Company, N.A., JP MORGAN }
CHASE BANK, NA, GMAC MORTGAGE, LLC, }
MCCURDY AND CANDLER, LLC }
and ANTHONY DEMARLO, Attorney }

-Defendants

FILED
2011 SEP -1 P 3:12
CLERK OF SUPERIOR COURT
DEKALB COUNTY GA

9/2/11

VERIFIED COMPLAINT

**FOR WRONGFUL FORECLOSURE, DECLARATORY RELIEF AND
JUDGEMENT, ASSIGNMENT AND TITLE FRAUD/SLANDER OF TITLE,
VIOLATION OF DUTY OF GOOD FAITH AND FAIR DEALING, CLAIM
FOR LITIGATION FEES AND COSTS AND PUNITIVE DAMAGES**

1. Plaintiff Wekesa O. Madzimoyo (Plaintiff, Madzimoyo) brings this action against the above-named Defendants for wrongful foreclosure, declaratory relief and judgment, assignment and title fraud/ slander of title, violation of

duty of good faith and fair dealing and makes claims for litigation fees and costs, as well as punitive damages.

2. The above-named Defendants have continued to unlawfully and wrongfully foreclosure on his home located at 852 Brafferton Place Stone Mountain, GA 30083. This property is owned by Wekesa O. Madzimoyo (Plaintiff). It has been his primary residence since 1999. Once again, it is scheduled to be auctioned on the DeKalb County Courthouse steps on Sept. 6th, 2011.

INTRODUCTORY STATEMENT

3. The Plaintiff signed a security deed with FT MORTGAGE COMPANIES dba EQUIBANK MORTGAGE CORPORATION on March 23rd, 1999 which was recorded in the office of the clerk of superior court of DeKalb County.
4. The Plaintiff assumed that over the years of changing servicers, mortgage lenders, etc. that proper title and recording procedures had been followed.
5. After having been approved for a loan modification by Homecomings Financial, in February, 2009, the Plaintiff desired to seek better modification terms by negotiating with his true lender (*secured creditor*).
6. Therefore, he started a documented exchange with the Defendants asking them via certified letters to clarify their standing as secured creditors,

servicers, agents, attorneys, debt collectors, investors, trustees, attorneys-in-fact or otherwise relative to the subject property.

7. The Plaintiff was not in default on his mortgage obligation.
8. When the Defendants refused to adequately and lawfully document their standing, the Plaintiff became suspicious.
9. Fearing double jeopardy, and that he had unwittingly become part of a mortgage scam, the Plaintiff began to rightfully withhold payments pending legal validation of Defendants' standing.
10. Over 5 months - from February to June, 2009 - the Plaintiff repeatedly asked the Defendants to validate their standing as required by Georgia law.
11. On July 3rd, 2009 Defendant Anthony DeMarlo of McCurdy and Candler mailed to the Plaintiff a NOTICE OF FORECLOSURE SALE (See EXHIBIT 1). GMAC was noted as the Servicer; The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. Trustee for RAMP 2006 RP2 (NYBMT) was noted as Creditor.
12. The Plaintiff opposed this action, and filed an Emergency Petition for a Temporary Restraining Order in the DeKalb County Superior Court to force the Defendants to cease foreclosure activity and to clarify their standing to

collect monies, and or to foreclose on Plaintiff's home at 852 Brafferton Place, Stone Mountain, GA 30083

13. DeKalb County Superior Court Judge, Tangela M. Barrie, examined over 50 pages of communication between Plaintiff Madzimoyo and Defendants spanning months between February and July 2009.
14. Judge Tangle M. Barrie granted the Emergency Temporary Restraining Order on July 29th, 2009. Judge Barrie set a hearing date for August 28th, 2011 and ordered the Defendants to "***Bring proper evidence of chain of title.***"(emphasis added)
15. Rather than doing so, the Defendants exercised their Right of Removal and removed the **Emergency Petition** and the pending hearing to Federal District Court.
16. After many months and flurries of motions, the Defendants alleged insufficient pleadings.
17. The Defendants were granted a dismissal of the Plaintiff's EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER TO STOP FORECLOSURE by the United States District Court for the Northern District of Georgia, Atlanta Division.
18. The Plaintiff disagreed with the Court's decision, and has appealed that order to the 11th Circuit Court of Appeals.

19. The 11th Circuit Court of Appeals has yet to render a decision on the merits of the pleadings on Plaintiff's July 29th, 2009 EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER TO STOP FORECLOSURE
20. In the meantime, the Defendants have twice commenced new and unlawful foreclosure actions against the Plaintiff's property at 852 Brafferton Place Stone Mountain, GA 30083.
21. In this current action, Plaintiff Madzimoyo alleges that Georgia laws were violated, and that such violation has caused undue pain and suffering.

FIRST CAUSE OF ACTION

WRONGFUL FORECLOSURE

22. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.
23. The Plaintiff alleges that the Defendants are not the "secured creditors" and have violated O.C.G.A. § 44-14-162 (a-c) by commencing foreclosing on 852 Brafferton Place Stone Mountain, GA 30083 on July 3rd, 2009, February 14, 2011; then again on July 25th, 2011.
24. While Defendants' July 3rd, 2009 NOTICE OF FORECLOSURE listed Defendant NYBMT as the "creditor" (See July 3, 2009) Foreclosure Notice: **EXHIBIT 1**), please note:

- a. Examination of the DeKalb County Real Estate Records on July 3, 2009 and months thereafter revealed that none of the Defendants had recorded any assignment of title as required by Georgia law.
 - b. On February 18th, 2010, the Defendants did file an assignment in the DeKalb County Real Estate records purporting to establish the New York Bank of Mellon Trust Company, NA as the “secured creditor.”
 - c. Examination of the Defendants’ assignment document (See **EXHIBIT 2**) indicates that the purported assignment occurred on February 8th, 2010 - a full seven months after foreclosure proceedings were commenced on July 3rd, 2009 and after the Defendants’ publicly advertised that the Plaintiff was in Default and his home was to be auctioned.
 - d. **Note:** Plaintiff is not confusing a late filing date with execution of assignment date. The Document clearly shows that it was filed with the DeKalb County clerk on February 18th, 2010, while it was purportedly legally executed on February 8th, 2010.
25. According to **O.C.G. A. § 44-14-64 (a-c)** only the documented secured creditor/holder in due course can foreclose on subject property.

“The security instrument or assignment thereof vesting the *secured creditor* with title to the security instrument shall be filed prior to the time of sale in the office of the clerk of the superior court of the county in which the real property is located.” O.C.G.A. § 44-14-162(b) (emphasis added).

“Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the *secured creditor* no later than 30 days before the date of the proposed foreclosure.” O.C.G.A. § 44-14-162.2(a) (emphasis added).

26. United States District Court Judge (for Northern District of Georgia) Amy Totenburg in *Morgan vs. Ocwen Loan Servicing LLC*. not only concurs, but makes clear the Georgia Supreme Court view on this matter:

“Georgia law authorizes the secured creditor, the holder of the obligation, to exercise a power of sale. See **O.C.G.A. §§ 44-14-162.2** (See quote above.)

The Georgia Supreme Court has clearly indicated that the right to foreclose lies with the party that holds the indebtedness:

“Could there be a more conclusive defense to the foreclosure than that the party prosecuting it was not the holder of the debt or demand secured by the mortgage, which he failed to produce when called on, and offered nothing to show that he controlled it, or to explain why it was not forthcoming at the trial?”

Weems v. Coker, 70 Ga. 746, 749 (1883), cited by *Truitt v. Moister*, 11 B.R. 15 (Bankr.N.D. Ga. 1981); see also *Bowen*, 438 S.E.2d at 122; *Boaz*, 580 S.E.2d at 578; *Cummings v. Anderson*, 173 B.R. 959, 963 (Bankr. N.D. Ga. 1994) (foreclosure was null and void where the entity foreclosing did not have an actual assignment of the note and security deed), aff’d, 112 F.3d 1172 (11th Cir. 1997); *Weston v. Towson*, No. 5:04-CV-416, 2006 WL 2246206, at *6 (M.D. Ga. Aug. 4, 2006) (“[T]he holder of the note continues to retain remedies under the security deed so

long as the debt evidenced by the note has not been satisfied.”).

27. "A cause of action for wrongful foreclosure starts at the point of the property being advertised for sale." *Sale City Peanut & Milling Company, Inc. v. Planters & Citizens Bank et al.*, 107 Ga. App. 463 (130 SE2d 518 (1963)).

28. This was also affirmed in *Morgan vs. Ocwen Loan Servicing, LLC*, United States District Court Judge, Amy Totenburg:

“... courts have recognized a cause of action for wrongful attempted foreclosure when a foreclosure action was commenced, but not completed, where plaintiffs have shown that a defendant “knowingly published an untrue and derogatory statement concerning the plaintiffs’ financial conditions and that damages were sustained as a direct result.”

Sale City Peanut & Milling Co. v. Planters & Citizens Bank, 130 S.E.2d 518, 520 (Ga. Ct.App. 1963).

29. Defendants are again attempting to wrongfully foreclosure. They have again violated **O.C.G.A 44-14-162.2** (a-c) by commencing foreclosing Plaintiff’s residence on 852 Brafferton Place Stone Mountain, GA 30083 on July 25, 2011 and advertising an auction date of Sept. 6th, 2011.

BAD FAITH

30. The Plaintiff's allegations of fraudulent assignments and bad faith stem from the after-the fact assignment executed on February 8th, 2010, and "Corrective Assignment of Security Deed" filed with the DeKalb County, GA Clerk of Superior Court on January 4th, 2011.
31. Plaintiff specifically avers that a fraudulently created Assignment confers no rights at all, let alone the right to foreclose.
32. Indeed, O.C.G.A. § 44-2-43 declares

"Any person who: (1) fraudulently obtains or attempts to obtain a decree of registration of title to any land or interest therein; (2) knowingly offers in evidence any forged or fraudulent document in the course of any proceedings with regard to registered lands or any interest therein; (3) makes or utters any forged instrument of transfer or instrument of mortgage or any other paper, writing, or document used in connection with any of the proceedings required for the registration of lands or the notation of entries upon the register of titles; (4) steals or fraudulently conceals any owner's certificate, creditor's certificate, or other certificate of title provided for under this article; (5) fraudulently alters, changes, or mutilates any writing, instrument, document, record, registration, or register provided for under this article; (6) makes any false oath or affidavit with respect to any matter or thing provided for in this article; or (7) makes or knowingly uses any counterfeit of any certificate provided for by this article shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years."

33. The February 8th, 2010 ASSIGNMENT OF NOTE AND SECURITY

DEED filed by the Defendants features the signature of known robo-signer - Jeffrey Stephan. (See **EXHIBIT 2**.)

34. The Defendants have acted in bad faith by initiating foreclosures on the Plaintiff's home with the full knowledge that the purported assignment was signed by Jeffrey Stephan, who had by that time admitted in a Florida deposition that he signed thousands of affidavits a month without personal knowledge, and has made false statements to courts under oath in hundreds of cases.

35. Other depositions and court sanctions followed. (See **EXHIBIT 3**)

36. Ohio Judge, Margaret Russo, ordered GMAC to appear before her to provide "*proof of integrity of all documents submitted*" in the foreclosure case US Bank, National Association as Trustee vs. James W. Renfro. Russo made this requirement for US Bank and its servicer – GMACM (GMAC Mortgage Corporation) -- when they submitted documents executed by Jeffrey Stephan.

37. On October 27th, 2010, in the same case (US Bank National Association as Trustee vs. James W. Renfro, et al.) US Bank moved to withdraw the property from sale because GMAC Mortgage Corporation (GMACM) discovered that "...verification irregularities may have occurred in connection with the execution of certain affidavits used in the judicial foreclosure process. GMACM requests that the order of sale be withdrawn until GMACM can confirm the accuracy of the affidavit supporting the judgment in this matter..."

38. On January 19th, 2011 the Washington Post reported:

- a. “Ally Financial, one of the nation's largest lenders, said Tuesday that it is withdrawing all of its foreclosures in Maryland that were approved by employee Jeffrey Stephan, the "robo-signer" who admitted he signed off on thousands of files every month with little or no review. The company, formerly known as GMAC, said about 250 active cases signed by Stephan will be dismissed...”

39. The Defendants operated in bad faith by not verifying and instead submitting into the DeKalb County Real Estate Record a document signed by Jeffrey Stephan, when they knew that hundreds of court dismissals, foreclosure withdrawals had occurred in Florida, Maine, Ohio and Maryland prior to his signature on the February 8th, 2010 ASSIGNMENT OF NOTE AND SECURITY DEED purporting to properly assign the subject property to Defendant, BNYMT.

40. Though not binding in Georgia, the Defendants, aforementioned pattern of using Stephan’s fraudulently signed documents to establish title ownership where none exists, combined with the defendants’ early refusal to validate their standing to the Plaintiff before commencing foreclosure in July of

2009, and their decision to execute and file an after-the-fact assignment which is fraudulent on its face, leads the Plaintiff to these conclusions, and Plaintiff alleges:

- a. The Jeffrey Stephan-signed ASSIGNMENT OF NOTE AND SECURITY DEED is consistent with the thousands of other fraudulent documents he has signed and
- b. Knowing this and in bad faith, the Defendants recorded it in the DeKalb County Real Estate Record to fraudulently vest title in the Defendant – BNYMT, in order to justify the Defendants’ illegally collecting payments from the Plaintiff, and wrongfully foreclosing on Plaintiff Madzimoyo’s home and property at 852 Brafferton Place, Stone Mountain, GA. 30083.

41. Georgia’s highest Court has spoken clearly about forged documents in Mortgage transactions in *Aurora Loan Services, LLC v. John MacElray Veatch, ADMR., et al.*, Supreme Court of Georgia, S10A1725 (decided March 18, 2011)

“A forged deed is a nullity and vests no title in a grantee [Cit.]. As such, even a bonafide purchaser for value without notice of a forgery cannot acquire good title from a grantee in a forged deed, or those holding under such a grantee, because the grantee has no title to convey.”

42. Any foreclosure of the security in the absence of a valid assignment is null and void ab initio. In re *Cummings*, 173 B.R. 959, 962 (N.D. Ga. 1994). Any foreclosure conducted using fraudulently signed and attested documents, which the Defendants knew or should have known to be fraudulently executed, including deeds, transfers, assignments or any other document, that are missing the signature of an unofficial witness and deeds missing the signature of an official witness (emphasis added) are defective. Therefore, any wrongful foreclosures are void under O.C.G.A. § 23-2-114.

43. The Plaintiff alleges that the Defendants' subsequent filing of a January 4th, 2011 "CORRECTIVE ASSIGNMENT OF SECURITY DEED" further demonstrates fraud and bad faith.

44. Although the "authorized officers" signers have changed, if the original signer (Jeffrey Stephan) of the February 8th, 2010 assignment ^{lacked} signing authority or signed fraudulently as the Plaintiff alleges, then the document is a nullity, which is not correctable.

45. The Defendants assert: ***“This Corrective Assignment of Security Deed is being recorded in order to correct the corporate names of the Assignee and Assignor.”*** This implies that these changes were to address “scrivener’s errors” (spelling errors, typos, insignificant, and or agreed upon date errors, etc.). (See **EXHIBIT 4**)

46. According to US Legal.Com:

- a. The doctrine of Scrivener's error is a legal principle which permits a typographical error in a written contract to be corrected by parol evidence if the evidence is clear, convincing, and precise. ***However if such correction affects property rights then it must be approved by those affected by it.*** (Emphasis Added) Scrivener's error is an error due to a minor mistake or inadvertence and not one that occurs from judicial reasoning or determination.

47. The Defendants’ CORRECTIVE ASSIGNMENT OF SECURITY DEED goes much farther than correcting the spelling of corporate names to naming different corporate entities. They change the assignor from:

a. The Bank of New York Mellon Trust Company,
National Association fka The Bank of New York Trust
Company, N.A. as successor to JPMorgan Chase Bank,
NA as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m
to *The First National Bank of Chicago as Trustee*

to

b. The Bank of New York Mellon Trust Company,
National Association fka The Bank of New York Trust
Company, N.A. as successor to JPMorgan Chase Bank,
NA as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m
to *The First National Bank of Chicago as Trustee for
RAMP 2006RP2*

48. The Plaintiff alleges that in this day of securitization of mortgages, trusts, pools, etc. that these are not the same corporate entities. Neither **The First National Bank of Chicago as Trustee** or **The First National Bank of Chicago as Trustee for RAMP 2006RP2** existed on Stephan's February 8th, 2011 Assignment of Mortgage, or on either of the first two NOTICES OF FORECLOSURE mailed to the Plaintiff.

49. Other key inconsistencies mark this “Corrective Assignment” fraudulent:

- a. The July 25th, 2011 NOTICE OF FORECLOSURE on Subject Property from McCurdy and Candler, LLC, list yet another corporate entity as the creditor. It lists **The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, NA as Trustee for RAAC 2006 RP2** (See **EXHIBIT #5**)

50. According to the “Corrective Assignment of Security Deed” those purporting to hold legal title to the subject property are not the ones listed on the Defendants July 25th, 2011 NOTICE OF FORECLOSURE mailed to the Plaintiff and published for public view.

51. This is in direct violation of the already cited GA Law regarding mailing notices under Powers of Sale

52. Other peculiarities support the fraudulent assignment allegation:

- a. The mortgage note is assigned rather than endorsed from Party “A” to Party “B.” This is especially critical when “correcting assignments of security deeds.”
- b. On the Stephan Assignment of February 8, 2010, the same “signing officers” or Vice Presidents” (Stephan, Kerr, Turner) of a mortgage company or lender is also the “Vice President” or “signing officer” of many other entities or lenders in the chain of assignments or endorsements . This also applies to Susan Turner as “Authorized Officer” on the January 4th, 2011- Corrected Assignment.
- c. The return address on the Assignment or affidavit is to a third party provider – in this case one of the Defendants: McCurdy and Candler, LLC.
- d. Both assignments submitted by the Defendants came after foreclosure actions were commenced against the plaintiff and years after the trust (RAMP 2006RP2 or RAAC2006RP2) were closed.

53. At the very least it will take discovery, depositions, and a trial to clarify these anomalies.

GOOD FAITH AND FAIR DEALING

54. **O.C.G.A. 23-2-114** states in part that “Powers of Sale in deeds of trust, mortgages, and other instruments *shall be strictly construed and shall be fairly exercised.*” [emphasis added]
55. The Defendants have violated **O.C.G.A. 23-2-114** by repeatedly abusing the Powers of Sale and failing to exercise good faith and fair dealing by publishing on July 3rd, 2009, and subsequently on February 14, 2011, and July 25, 2011 that Plaintiff Madzimoyo was in default, that his home was subject to public auction, and that the Defendants were or represented the verified secured creditor, when neither was/is true.

QUIET TITLE/SLANDER TITLE

56. The Defendants’ fraudulent assignments create both patently and latently defective deeds, which slanders the title of any property foreclosed upon that relied upon an assignment with the fraudulent attestation causing the Plaintiff damages.
57. While purporting to have standing, the Defendants by initiating multiple foreclosure proceedings, actually slandered the Plaintiff’s title, and in violation of O.C.G.A 44-14-162.2 (A-C), the Defendants routinely refused and failed to proffer evidence to show any one of them has the capacity, standing, and or authority to:

- a. Accelerate Plaintiff Madzimoyo's Note;
 - b. Exercise a valid Power of Attorney to conduct a non-judicial foreclosure sale of the property;
 - c. Advertise and notice a non-judicial foreclosure action;
 - d. Modify any terms or conditions of the Plaintiff's Note;
 - e. Collect any fees owed to the note's defined "Note Holder;"
 - f. Release and satisfy the Plaintiff's Deed;
 - g. Cancel and return the Plaintiff's Note.
 - h. Foreclose on subject property
-

58. There is a genuine issue of material fact as to whether the Plaintiff's note was ever equitably and lawfully assigned to any party, let alone the Defendants, and the invisible intervening owners and holders in the alleged securitization chain. Proper discovery is needed to clarify this.

59. The Plaintiff and his wife are self-employed. These untrue and derogatory financial statements concerning the Plaintiff's financial condition have tremendously hurt his business.

60. This, combined with the time and expense of litigation to defend his home and reputation against multiple attempts at wrongful foreclosure at the hands of the Defendants have been severe and substantial.

61. In addition to seeking compensatory, consequential, punitive and other damages, Plaintiff seeks declaratory relief as to what (if any) party, entity or individual or group thereof is the owner of the promissory note executed at the time of the loan closing by Plaintiff Madzimoyo, and whether the purported Deed to Secure Debt (“Deed”) secures any obligation of the Plaintiff to any Defendant, **and** if not, a Final Judgment granting Defendant Quiet Title in the subject property and an unsecured note payable to its true owners.

Wherefore, Plaintiff requests

1. That the commenced foreclosure be set aside
2. That the Court grant Declaratory Judgment which states Defendants had and have no legal standing or the proper legal or equitable interest in either the Note AND Security Deed to institute or maintain a foreclosure;
3. That the Court determine and rule on the lawful chain of title to the Plaintiff’s note so as to determine each lawful transfer and who the current holder in due course of the Plaintiff’s note is, if any;

4. That the Court , finding none of the Defendants to be holders in due course, issue a Final Judgment granting Defendant Quiet Title in the subject property, and an unsecured note payable to its true owners.
5. That the Defendants be required to pay damages to the Plaintiff for the slander of Plaintiff's title to land for more than two years;
6. That the Defendants be required to pay damages to the Plaintiff for the violations of GA mortgage law: 44-14-162.2 (A-C);
7. That the Defendants be required to pay damages including punitive damages to the Plaintiff for bad faith and fraudulent acts against the Plaintiff;
8. That the Court void and further declare the Plaintiff's property free and clear from all claims and encumbrances; and
9. That the Court includes relief for the Plaintiff that takes into account the financial burden caused by this Defendants' actions, litigation as well as the infliction of emotional distress and that the court includes relief as it may deem necessary and just.

Submitted this _____ day of _____, 2011

Wekesa O. Madzimoyo
Pro Se Litigant

852 Brafferton, Place
Stone Mountain, GA 30083
404-201-2356

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended

Complaint has been serviced via U.S. Certified Mail to:

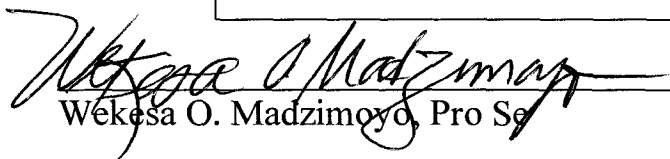
THE BANK OF NEW YORK
MELLON TRUST COMPANY,
N.A.,
Registered Agent: Scott Posner
CT CORPORATION SYSTEM
350 N SAINT PAUL STREET
SUITE 2900
DALLAS, TX 75201-4234

JP MORGAN CHASE, N.A.
AGENT: CT CORPORATION SYSTEM
1201 PEACHTERET STREET, NE
ATLANTA, GA 30361

GMAC MORTGAGE, LLC
AGENT: CORPORATION
SERVICE COMPANY
40 TECHNOLOGY PARKWAY
SOUTH, SUITE #300
NORCROSS, GA 30092

MCCURDY AND CANDLER, LLC
2500 PONCE DE LEON AVENUE,
SUITE 600
DECATUR, GA 30030

ANTHONY DEMARLO,
ATTORNEY
250 PONCE DELEON AVENUE
SUITE 600
DECATUR, GA 30030


Wekesa O. Madzimoyo, Pro Se

09/01/2011
Date

EXHIBIT 1

July 3, 2009 Initial Foreclosure Notice

LAW OFFICES
McCURDY & CANDLER, L.L.C.

SUITE 600
250 EAST PONCE DE LEON AVENUE
DECATUR, GEORGIA 30030

JULIUS A. McCURDY (1903 - 1993)
SCOTT CANDLER, JR. (1926 - 1994)
J. ROBIN HARRIS (1925 - 1989)

MAILING ADDRESS:

Post Office Box 57
Decatur, Georgia 30031

TELEPHONE: 404-373-1612
MAIN TELECOPIER: 404-370-7232

WEBSITE: WWW.MCCURDYCANDLER.COM

JOHN WALTER DRAKE
ALAN E. RAUBER
JOHN C. SAMMON
ANTHONY DEMARLO
SCOTT CANDLER, III
CLARK E. CANDLER
EDNA E. HAWES
SIDNEY A. GELERNTER*
DONALD C. SUESSMITH, JR.
J. MICHAEL DUGAN*
CHRISTIE B. HENNINGES
DEBORAH Y. CHANDLER
REBECCA A. HOELTING
MARGARET C. COURTRIGHT

FRANK R. OLSON*
A. BRETT VERNER
LAURA A. GRIFFA*
C. ELIZABETH JONES
PATRICK N. TAGGART*
JOHN D. ANDRLE
C. ERIC BURKETT
JESSICA A. PRICE
BRENT Z. SKOLNICK
CHRISTINA J. SOLOHUB
TENNIELLE R. BAILEY
ROBERT J. WILKINSON*
OF COUNSEL:
FRANK J. RHODES, JR.
H. RAIFORD HODGES, JR. (RETIRED)

*ALSO ADMITTED IN TENNESSEE

July 3, 2009

Certified Mail
Return Requested 7008 1830 0001 0661 3884
and Regular Mail

Wekesa O. Madzimoyo
852 Brafferton Place
Stone Mountain, GA 30083

RE: NOTICE OF FORECLOSURE SALE ENCLOSED
Our File No.: 09-15522
Loan No.: 7800527285
Borrower Name: Wekesa O. Madzimoyo
Property Address: 852 Brafferton Place
Stone Mountain, GA 30083

*****Pursuant to O.C.G.A. Section 44-14-162.2, the following is the entity who has full authority to discuss, negotiate, or change all terms of the mortgage with you concerning the foreclosure alternatives described later in this letter.*****

Servicer: GMAC Mortgage, LLC
Address: Two Ravinia Dr. . Suite 500
Atlanta, GA 30346
Phone Number: Joyce Gregory-6788557067

Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2

Dear Sir or Madam:

By letter dated July 3, 2009, (the "Initial Communication Letter"), I notified you that the above-referenced creditor has referred the referenced loan to this law firm for handling. That letter also advised you of certain rights (the "Borrowers' Rights" which include your right to validate the debt) you could exercise within 30 days of your receipt of the Initial Communication Letter. Nothing in this letter will prevent you from exercising the Borrowers' Rights as explained in the Initial Communication Letter.

36

A failure to comply with the terms of the above loan with The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 has created a default. As a result, the entire amount of the outstanding balance of the loan has been, and is hereby, declared immediately due and payable. This letter is a formal demand for immediate payment of the total indebtedness. Any partial payment received by The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 on the subject debt after the date of this letter will be applied to the reduction of the aforesaid debt and will not result in a reinstatement or a deceleration of the loan.

Advertisement of foreclosure will be inserted, as provided by law, providing for public sale to be held on August 4, 2009 , before the courthouse door of DeKalb County, Georgia.

Please be advised that the provisions in the loan documents relative to payment of attorney's fees, in addition to principal and interest, will be enforced. Unless the entire balance is paid within ten (10) days from the date you receive this notice, such attorney's fees as allowed by Official Code of Georgia, §13-1-11, as amended, will be owed.

If you are currently in the military service AND joined after signing the mortgage (Security Deed) now in foreclosure, please so notify this office immediately. You may be entitled to relief under the Soldiers and Sailors Relief Act. When contacting this office as to your military service you must provide us with positive proof as to your military status. The name, address and telephone number of your Base Commander is essential. If you do not provide this information we will assume that you are not entitled to protection under the above mentioned act.

If you have received a discharge in Bankruptcy proceeding, this notice is not intended to indicate that you are personally liable for this debt. In this instance the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purposes other than that of conducting a non judicial foreclosure of the security pursuant to Georgia law.

The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at Joyce Gregory-6788557067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

The enclosed "Notice of Sale Under Power" is a copy of the advertisement sent to The Champion Newspaper for publication.

BE GOVERNED ACCORDINGLY.

McCurdy & Candler, L.L.C.

Anthony DeMarlo

Anthony DeMarlo
Attorney for The Bank of New York Mellon Trust
Company, National Association fka The Bank of New York Trust
Company, N.A. as successor to JPMorgan Chase Bank N.A. as
Trustee for RAMP 2006RP2

EXHIBIT 2

Jeffrey Stephan Security Deed Assignment



Filed and Recorded:
2/18/2010 11:30:20 AM
Linda Carter
Clerk of Superior Court
DeKalb County, Georgia

When Recorded, Return to
Attn: Anthony Deblasio, Paralegal Dept/Sec
McCarthy & Candler, L.L.C.
750 East Ponce De Leon Avenue
Decatur, GA 30033

STATE OF Ga.
COUNTY OF Montgomery

File No. D9-15522

ASSIGNMENT OF NOTE AND SECURITY DEED

FOR VALUE RECEIVED, Assignee Name: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 (hereinafter referred to as "Assignee"), whose address is 1100 Virginia Drive Fort Washington, PA 19034, that certain Security Deed or Deed to Secure Debt executed by Wekcsa D. Madzimoya to FT Mortgage Companies d.b.a. EquiBanc Mortgage Corporation and dated March 23, 1999, recorded in Deed Book 10618, Page 268, Clerk's Office, Superior Court of DeKalb County, Georgia, together with the real property therein described; and also the indebtedness described in said Deed and secured thereby, the notes evidencing said indebtedness having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

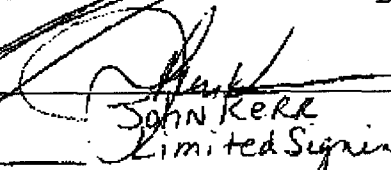
File No. 09-15522

This Assignment of Note and Security Deed is executed on this 8 day of February, 2010.


Signed, sealed and delivered
in the presence of:

Assignee Name: The Bank of New York Mellon Trust
Company, National Association fka The Bank of New
York Trust Company, N.A. as successor to JPMorgan
Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A.

By: 
Its: Jeffrey Stephan
Limited Signing Officer

By: 
Its: John Kerr
Limited Signing Officer


Unofficial Witness


Notary Public

My Commission Expires: _____

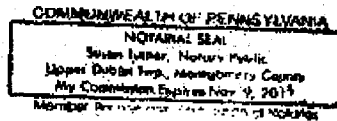


EXHIBIT 3

<p style="text-align: center;">Florida December 10, 2009</p>	<p style="text-align: center;">Maine June 7, 2010</p>
<p>Q: So these documents wouldn't be actually executed on your own personal knowledge? A: Right. (p. 10, ls. 13-15)</p>	<p>Q: When you receive a summary judgment affidavit to sign, do you read every paragraph of it? A: No. (p. 61, ls. 24-25 & p. 62, ls. 1-3)</p>
<p>Q: And how do they [his team at GMAC] verify that information is accurate? A: They do not go into the system and verify the information as accurate. (p. 12, ls. 21-24)</p>	<p>Q: Do you have any knowledge about how GMAC ensures the accuracy of the data entered into the system? A: No, I do not. (p. 30, ls. 10-13)</p>
<p>Q: Is the notary present with you...? A: No, they are not physically present.... (p. 13, ls. 10-16)</p>	<p>Q: So you do not appear before the notary; is that correct? A: No, I do not. (p. 56, ls. 16-18)</p>
<p>Q: But is it fair to say that you don't ascertain whether the member is the current promissory note-holder when you assign the lien? A: That would be correct. (p. 31, ls. 12-15)</p>	<p>Q: So other than the due date and the balances due, is it correct that you do not know whether any other part of the affidavit that you sign is true? ... A: That is correct. (p. 67, ls. 21-24 & p. 68, l. 3)</p>
<p>Q: Do you normally review notes to make sure that they are a true copy of the lost note? ... A: No, I do not. It is not my position. (p. 36, ls. 17-19)</p>	<p>Q: When you sign a summary judgment affidavit, do you inspect any exhibits attached to it? A: No. (p. 54, ls. 22-25)</p>
	<p>Q: Is it your understanding that the process that you follow in signing summary judgment affidavits is in accordance with the policies and procedures required of you by GMAC Mortgage? A: Yes. Q: Does GMAC do any quality assurance training for your department? A: Presently, no. (p. 64, ls. 8-17)</p>
	<p>Fiserv system Q. Do you have any responsibilities for making entries in the Fiserv system? A. Other than usual notes, no..... Q. What is your usual business practice and routine with respect to making usual notes</p>

	<p>in the Fiserv system?</p> <p>A. If a customer were to call in, I would make a note in our computer system.</p> <p>A. Do customers call you in your capacity as team lead fro the document execution team?</p> <p>A. No, they do not.</p> <p>Q. So if that's the only kind of notes that you would make in the system, is it fair to say that you don't make notes in the system?</p> <p>A. That would be correct. (pp. 26-28 of Maine deposition, Exhibit B)</p> <p>Q. I think you said that the cash department receives payments – customer payments; is that correct?</p> <p>A. That is correct.</p> <p>Q. So you don't have firsthand knowledge about how it operates; is that correct?</p> <p>A. That is correct.</p> <p>Q. Do you have any knowledge about how the data relating to those payments are entered into the system?</p> <p>A. I do not have that knowledge.</p> <p>Q. Do you have any knowledge about how GMAC ensures the accuracy of the data entered into the system.</p> <p>A. No I do not.</p> <p>Q. Do you have nay knowledge as to what measures GMAC takes to preserve the integrity and security of the system?</p> <p>A. No, I do not. (p. 29-30 of Maine deposition, Exhibit B)</p>
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B. GMAC Has Been Sanctioned Twice for Filing False Affidavits

The initial discovery of the problems with GMAC's foreclosure affidavits began, at the latest, in 2006. In May 2006, the Circuit Court in Duvall County, Florida sanctioned a plaintiff in a Florida foreclosure proceeding for filing a false affidavit, and ordered its servicer, GMAC, to provide written confirmation that "affidavits filed in future foreclosure actions in Florida accurately memorialize the actions and conduct of the affiants." (**Exhibit C**)

EXHIBIT 4

2011026868 DEED BOOK 22326 Pg 593



Filed and Recorded:
1/24/2011 2:43:00 PM
Linda Carter
Clerk of Superior Court
DeKalb County, Georgia

When Recorded, Return to:
Attn: Anthony DeMario/Foreclosure Dept/am
McCurdy & Candler, L.L.C.
3525 Piedmont Road NE, Six Piedmont Center, Suite 700
Atlanta, GA 30305

Clerk, please cross reference to
Security Deed in Deed Book 10618, Page 268
Assignment in Deed Book 21860, Page 499
DeKalb County, Georgia Records

STATE OF Pennsylvania
COUNTY OF Montgomery

File No. 09-15522

*** CORRECTIVE ASSIGNMENT OF SECURITY DEED**

FOR VALUE RECEIVED, The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee for RAMP 2006RP2 (hereinafter referred to as "Assignee"), whose address is 1100 Virginia Drive Fort Washington, PA 19034, that certain Security Deed or Deed to Secure Debt executed by Wekesa O. Madzimoyo to FT Mortgage Companies d.b.a. EquiBanc Mortgage Corporation and dated March 23, 1999, recorded in Deed Book 10618, Page 268, Clerk's Office, Superior Court of DeKalb County, Georgia, together with the real property therein described, which has the property address of 852 Brafferton Place; and also the indebtedness described in said Deed and secured thereby, having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

* This Corrective Assignment of Security Deed is being recorded in order to correct the corporate names of the Assignee and Assignor.

This Assignment of Security Deed is executed on this 18th day of January, 2011.

Signed, sealed and delivered
in the presence of:

The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee

By: [Signature]
Its: Mira Smoot Authorized Officer

By: [Signature] Susan Turner

Its: [Signature]
Authorized Officer

[Signature]
Unofficial Witness Rosentman

[Signature]
Notary Public

My Commission Expires:

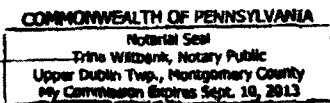


EXHIBIT 5

LAW OFFICES
McCurdy & Candler, LLC

Six Piedmont Center, Suite 700
3525 Piedmont Road, NE
Atlanta, GA 30305

TELEPHONE: 404-373-1612
MAIN TELECOPIER: 404-378-7232

WEBSITE: WWW.MCCURDYCANDLER.COM

July 25, 2011

Certified Mail
Return Requested
and Regular Mail

Wekesa O. Madzimoyo
852 Brafferton Place
Stone Mountain, GA 30083

RE: NOTICE OF FORECLOSURE SALE ENCLOSED

Our File No.: 09-15522
Loan No.: 7800527285
Borrower Name: Wekesa O. Madzimoyo
Property Address: 852 Brafferton Place
Stone Mountain, GA 30083

******Pursuant to O.C.G.A. Section 44-14-162.2, the following is the entity who has full authority to discuss, negotiate, or change all terms of the mortgage with you concerning the foreclosure alternatives described later in this letter.******

Servicer: GMAC Mortgage, LLC
Address: Two Ravinia Dr., Suite 500
Atlanta, GA 30346
Phone Number: 678-855-7067

Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2

Dear Sir or Madam:

By letter dated July 25, 2011, (the "Initial Communication Letter"), I notified you that the above-referenced creditor has referred the referenced loan to this law firm for handling. That letter also advised you of certain rights (the "Borrowers' Rights" which include your right to validate the debt) you could exercise within 30 days of your receipt of the Initial Communication Letter. Nothing in this letter will prevent you from exercising the Borrowers' Rights as explained in the Initial Communication Letter.

A failure to comply with the terms of the above loan with The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2 has created a default. As a result, the entire amount of the outstanding balance of the loan has been, and is hereby, declared immediately due and payable. This letter is a formal demand for immediate payment of the total indebtedness. Any partial payment received by The Bank of New York Mellon Trust Company, National Association fka



Advertisement of foreclosure will be inserted, as provided by law, providing for public sale to be held on September 6, 2011, before the courthouse door of DeKalb County, Georgia.

Please be advised that the provisions in the loan documents relative to payment of attorney's fees, in addition to principal and interest, will be enforced. Unless the entire balance is paid within ten (10) days from the date you receive this notice, such attorney's fees as allowed by Official Code of Georgia, §13-1-11, as amended, will be owed.

If you are currently in the military service AND joined after signing the mortgage (Security Deed) now in foreclosure, please so notify this office immediately. You may be entitled to relief under the Soldiers and Sailors Relief Act. When contacting this office as to your military service you must provide us with positive proof as to your military status. The name, address and telephone number of your Base Commander is essential. If you do not provide this information we will assume that you are not entitled to protection under the above mentioned act.

If you have received a discharge in Bankruptcy proceeding, this notice is not intended to indicate that you are personally liable for this debt. In this instance the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purposes other than that of conducting a non judicial foreclosure of the security pursuant to Georgia law.

The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at 678-855-7067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

The enclosed "Notice of Sale Under Power" is a copy of the advertisement sent to The Champion Newspaper for publication.

BE GOVERNED ACCORDINGLY.

McCurdy & Candler, LLC

Attorneys for The Bank of New York Mellon

Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2 and

GMAC Mortgage, LLC

awilby

THIS LAW FIRM IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

