

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2008 CA 022258 XXXXMB

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF SOUNDVIEW
HOME LOAN TRUST 2006-OPT2, ASSET
BACKED CERTIFICATES, SERIES 2006-OPT2,

Plaintiff,

vs.

LYNN E. SZYMONIAK, et al.,

Defendants.

**DEFENDANT'S MOTION FOR SANCTIONS AGAINST PLAINTIFF DEUTSCHE
BANK AND ITS ATTORNEYS MARSHALL C. WATSON, LINDA CHEVLIN AND
JAMES KARRAT, PURSUANT TO §57.105, FLA.STAT.**

COMES NOW the Defendant in this action, LYNN E. SZYMONIAK, by and through her undersigned counsel, and moves this Honorable Court to enter sanctions against the Plaintiff herein pursuant to Section 57.105, Florida Statutes, and in support thereof states as follows:

1. This is a foreclosure action in which the Plaintiff, DEUTSCHE BANK NATIONAL TRUST, seeks to foreclose upon Defendant after an alleged default on a Note that was made after Defendant refinanced her home in February 2006. Defendant purchased the home in 1998 and has resided there since that time.

2. The Complaint that was filed in this case on July 22, 2008, included an allegation that the Plaintiff had lost possession of the original note. Plaintiff alleged that it was the owner of said Note and the Note was lost "subsequent to the Plaintiff's acquisition thereof."

3. On September 12, 2008, Defendant filed a Motion to Dismiss alleging (in paragraph 8) that there was no proof that the Plaintiff ever held the Note or took possession of

the Note and thus, had no claim or right bringing about the foreclosure; and alleging (in paragraph 9) that there was no proof, without a note, that a proper chain of assignments took place and that the lien positions were properly perfected; and alleging (in paragraph 10) that plaintiff also failed to attach a copy of any Assignment, if Plaintiff claimed to have acquired the Note and Mortgage from an Assignment.

4. In response to Defendant's Motion to Dismiss, on or about October 23, 2008, agents of the Law Offices of Marshall C. Watson, P.A., caused certain documents to be filed and recorded with the clerk and comptroller of the Palm Beach County courts, to wit: an Assignment of Mortgage and an "Allonge to Note." Copies of the Assignment and Allonge filed on October 23, 2008, are attached hereto as Exhibit 1 (Assignment) and Exhibit 2 ("Allonge to Note"). The Assignment was dated 10/17/2008. The Allonge is dated February 3, 2006.

5. At the time the Assignment and Allonge were filed and recorded, despite the pending foreclosure action and Defendant's Motion to Dismiss, the agents of the Law Offices of Marshall C. Watson did not notify the Court, nor counsel for Defendant, nor Defendant herself, of the existence or filing of these documents.

6. The Assignment was purportedly signed by officers of American Home Loan Mortgage Servicing, Inc. (hereinafter, "AHMSI") a corporation described in the Assignment as the "successor-in-interest" to Option One Mortgage Company. No Assignment from Option One to AHMSI was alleged or filed. Failure to notify the Defendant of the Assignment from Option One to AHMSI and the Assignment from AHMSI to DEUTSCHE BANK NATIONAL TRUST was a violation of 12 U.S.C. §2605 which required notice to SZYMONIAK within 15 days of the Assignments. If no such Assignments were actually made, then Plaintiff cannot prove a complete chain-of-title to prove it is the actual owner of the Defendant's Note.

7. On December 23, 2009, nearly 14 months after the actual filing of documents

critical to this action, Law Offices of Marshall C. Watson, through its employee and agent, Karen A. Thompson, Esq. filed or caused to be filed a Notice of Filing claiming to file the Original Note, Original Mortgage, Acceleration Letter, Payment History and a copy of the recorded Assignment of Mortgage. While Attorney Thompson's name appeared on the pleadings, the signature was alleged to have been that of James Karrat, Esq. signing "for" Karen Thompson, Esq.

8. The filing of the Original Note contradicted the allegations in the Complaint that the Original Note had been lost, but Plaintiff did not notify the Court or seek to amend its Complaint.

9. More significantly, and inexplicably, the Assignment showed that DEUTSCHE BANK sued for foreclosure nearly three months before it even allegedly acquired the Mortgage and Note.

10. Also on December 23, 2009, Law Offices of Marshall C. Watson, through its employee and agent Linda Chelvin, Esq. filed or caused to be filed Plaintiff's Response to Defendant's Motion to Dismiss with numerous attachments, including the Assignment and an Allonge. While Attorney Chelvin's name appears on the pleadings, the signature again was alleged to be that of James Karrat, this time signing "for" Linda Chelvin, Esq.

11. A side-by-side comparison (see Exhibit 2) of the Allonge attached to the Notice of Filing (Allonge 1) and the Allonge attached to the Response to Motion to Dismiss (Allonge 2) shows that the Allonge attached to the Notice of Filing has been altered, doctored or fabricated. Across the top of Allonge 1 there is a strip of information indicating that the Allonge was recorded with the Clerk of the Court on February 15, 2006, and was located at Book 19933, page 1827.

12. In fact, this strip was cut from Page 1 of the recorded mortgage and pasted on to

the newly-discovered Allonge document. The documents actually filed on February 15, 2006, did NOT contain any Allonge. On December 29, 2009, the Clerk of the Court's Office confirmed and certified the actual documents filed. No Allonge was filed. A copy of those certified documents is attached as Composite Exhibit 3 and it is readily apparent from an examination of the front page of the mortgage, (omitted from the packet attached to the Notice of Filing) that the Allonge has been fabricated and an attempted fraud perpetrated on this Court and on the Defendant.

13. Defendant believes and alleges that the Assignment of Mortgage suddenly and inexplicably found in this case also is a fabricated document, for the reasons set forth further below.

DOCUMENTS PREPARE BY DOCX

14. A careful examination of this Assignment (Exhibit 1) shows that the individuals who allegedly signed as officers of American Home Mortgage Servicing, Linda Green and Jessica Ohde, as well as the witnesses to these signatures, Korell Harp and Christina Huang, are actually names used repeatedly by DOCX, a mortgage document mill in Alpharetta, Georgia.

THE "LINDA GREEN" DOCUMENTS PREPARED BY DOCX

15. On mortgage-related documents prepared by DOCX, the name and purported signature of "Linda Green" is repeatedly used, with Green supposedly being an officer of numerous mortgage lenders. Defendant will ask the Court to take judicial notice (or will otherwise prove) of mortgage-related documents all signed by Green, attached hereto as Composite Exhibit 4, in which Green is represented to be the Vice President of Loan Documentation for Wells Fargo Bank, the Vice President of American Home Mortgage Servicing, Inc., and the Vice-President of Bank of America. On yet another mortgage-related document prepared by DOCX, Linda Green is the witness to the signature of Tywana Thomas

who is identified as “Asst. Vice President” of “Sand Canyon Corporation formerly known as Option One Mortgage Corporation.” (Tywana Thomas herself also appears on numerous other DOCX mortgage-related documents, also supposedly as an officer of various lenders, including Assistant Vice President of Mortgage Electronic Registration Services, Inc, as nominee for Quick Loan Funding, Inc. and Asst. Vice President of American Home Mortgage Servicing, Inc. (See Composite Exhibit 5 attached hereto for mortgage-related documents prepared by DOCX with Tywana Thomas as a witness or bank officer.)

16. Each of the Linda Green signatures on the DOCX-prepared documents is notarized by a notary in Fulton County, Georgia, which would have required Linda Green to have repeatedly traveled to Fulton County, Georgia, to sign documents.

THE “JESSICA OHDE” DOCUMENTS PREPARED BY DOCX

17. The Assignment filed herein is also signed by Jessica Ohde as Assistant Vice President of American Home Mortgage Servicing. On mortgage-related documents prepared by DOCX, the name and purported signature “Jessica Ohde” is repeatedly used, with Ohde supposedly also being an officer of numerous mortgage lenders. Defendant will ask the Court to take judicial notice of mortgage-related documents all signed by Ohde, attached hereto as Composite Exhibit 6, in which Ohde is represented to be the Vice President of Mortgage Electronic Registrations Systems, Inc., as nominee for Chevy Chase Bank FSB, as well as the Vice-President of Bank of America.

18. Each of the Jessica Ohde signatures on the DOCX-prepared documents is notarized by a notary in Fulton County, Georgia, which would have required Jessica Ohde to have repeatedly traveled to Fulton County, Georgia, to sign documents.

THE KORELL HARP DOCUMENTS

19. On the Assignment filed herein, the signature of Linda Green is witnessed by

Korell Harp. On mortgage-related documents prepared by DOCX, the name and purported signature “Korell Harp” is repeatedly used, with Harp supposedly also being an officer of numerous mortgage lenders. Defendant will ask the Court to take judicial notice of mortgage-related documents all signed by Harp, attached hereto as Composite Exhibit 7, in which Harp is represented to be the Vice President of Mortgage Electronic Registrations Systems, Inc., as nominee for Quick Loan Funding, Inc, as well as the Vice-President of American Home Mortgage Servicing, Inc. and the Authorized Signer for USAA Federal Savings Bank.

20. Each of the Korell Harp signatures on the DOCX-prepared documents is notarized by a notary in Fulton County, Georgia, which would have required Korell Harp to have repeatedly traveled to Fulton County, Georgia, to sign documents.

21. As further evidence of inexplicable conflicts and oddities in documents prepared by DOCX in mortgage-related transactions, evidencing that the documents are fabrications, Defendant also relies upon mortgage-related documents with Brent Bagley signature attached hereto as Composite Exhibit 8; mortgage-related documents with Christie Baldwin signature attached hereto as Composite Exhibit 9; mortgage-related documents with Cheryl Thomas signature attached hereto as Composite Exhibit 10; and mortgage-related documents with Linda Thoresen signature attached hereto as Composite Exhibit 11. The Defendant will ask the Court to take judicial notice of these documents.

22. DEUTSCHE BANK has a long and well-documented history of filing documents and making allegations with Courts in foreclosure actions with complete disregard of the truth of the allegations or authenticity of the documents:

a. In Deutsche Bank Natl. Trust Co. v Castellanos, 01/14/2008, 158 Misc 3d 1115A, 2008 NYSlipOP 50033(U), (copy attached), Judge Arthur M Schack, on January 14, 2008, denied a renewed application for a judgment of foreclosure and sale due to the plaintiff's lack of

standing because Deutsche Bank had sold the note and mortgage to MTGLQ Investors, L.P., after filing a foreclosure action and had failed to notify the Court. Judge Schack noted the presence of an affidavit of merit executed by a Mr. Jeff Rivas, who was identified as Deutsche Bank's "Vice President Default Timeline Management." He then noted the presence of a mortgage assignment within the files executed the same date which identifies Mr. Jeff Rivas as the "Vice President Default Timeline Management" for Argent Mortgage Company, LLC, the assignor of a the mortgage to Deutsche Bank. Judge Schack pointed out that if Mr. Rivas was acting as an officer of both the grantor and the grantee of the assignment that this would create a conflict rendering the conveyance void. Judge Schack also directed that Mr. Rivas' employment history be clarified in any future application for a foreclosure order. Judge Schack then referenced an earlier decision, HSBC Bank, N.A. v Cherry, 18 Misc 3d 1102 (A), issued on December 17, 2007 where he noted at 3: "with HSBC, OCWEN and MERS, joining with Deutsche Bank and Goldman Sachs at Suite 100, the Court is now concerned as to why so many financial goliaths are in the same space. The Court ponders if Suite 100 is the size of Madison Square Garden to house all of these financial behemoths or if there is a more nefarious reason for this corporate togetherness." In the Castellanos case, Judge Schack stated: "Therefore, if Deutsche Banks seeks to renew its motion for a judgment of foreclosure and sale, it must provide an affidavit explaining why Suite 100 is such a popular venue for all of these corporations. Should Deutsche Bank fail to provide an adequate explanation in its affidavit, I will conclude that this corporate togetherness is evidence of corporate collusion."

b. In Deutsche Bank Natl. Trust Co. v Maraj, 1/31/2008, 18 Misc 3d 1123(A), 2008 NYSlipOP 50176(U), another foreclosure case decided by Judge Arthur Schack, the Judge noted many problems with the Assignment. As in the instant case before this Court, the Assignment was signed by an individual whose name and signature appear regularly on mortgage-related

documents, but she is “employed” by many different banks and mortgage companies. Judge Schack observed and ruled: “The Assignment by MERS, on behalf of INDYMAC, was executed by Erica Johnson-Seck, Vice President of MERS. The notary public, Mai La Thao, stated in the jurat that the assignment was executed in the State of Texas, County of Williamson (Williamson County is located in the Austin metropolitan area, and its county seat is Georgetown, Texas). The Court is perplexed as to why the assignment was not executed in Kansas City, the alleged "principal place of business" for both the assignor and the assignee.

Twenty-eight days later, on July 31, 2007, the same Erica Johnson-Seck executed plaintiff's affidavit submitted in support of the instant application for a default judgment. Ms. Johnson-Seck, in her affidavit, states that she is "an officer of Deutsche Bank National Trust Company as Trustee under the Pooling and Servicing Agreement Series INDX 2006-AR6, the plaintiff herein." At the end of the affidavit she states that she is a Vice President of DEUTSCHE BANK. Again, Mai La Thao is the notary public and the affidavit is executed in the State of Texas, County of Williamson. The Erica Johnson-Seck signatures on both the July 3, 2007 assignment and the July 31, 2007 affidavit are identical. Did Ms. Johnson-Seck change employers from July 3, 2007 to July 31, 2007, or does she engage in self-dealing by wearing two corporate hats? The Court is concerned that there may be fraud on the part of plaintiff DEUTSCHE BANK, or at least malfeasance. Before granting an application for an order of reference, the Court requires an affidavit from Ms. Johnson-Seck, describing her employment history for the past three years.” Further, the Court requires an explanation from an officer of plaintiff DEUTSCHE BANK as to why, in the middle of our national subprime mortgage financial crisis, DEUTSCHE BANK would purchase a non-performing loan from INDYMAC, and why DEUTSCHE BANK, INDYMAC and MERS all share office space in Suite 400/500.

With the assignor MERS and assignee DEUTSCHE BANK appearing to be engaged in possible fraudulent activity by: having the same person execute the assignment and then the affidavit of facts in support of the instant application; DEUTSCHE BANK's purchase of a non-performing loan from INDYMAC; and, the sharing of office space in Suite 400/500 in Kansas City, the Court wonders if the instant foreclosure action is a corporate "Kansas City Shuffle..."

c. In Deutsche Bank v HARRIS, Judge Arthur M. Schack, Kings, Index No. 39192/2007 (05 Feb 2008), decided the following month Judge Schack again raised the issue of "troubling questions" he had about the representations in the Deutsche Bank application and denied Deutsche Bank's application for a Default Judgment. Judge Schack Ordered that Deutsche Bank could renew its application upon presentation to the Court, within forty-five (45) days of his decision and order, only if it produced the following: "an affidavit from Erica Johnson-Seck describing her employment history for the past three years; and, an affidavit from an officer of plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY, explaining why: (1) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY purchased a non-performing loan from INDYMAC BANK, F.S.B.; (2) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY shares office space at 460 Sierra Madre Villa, Pasadena, CA 91107 with MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and INDYMAC BANK, F.S.B.; (3) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY claims 460 Sierra Madre Villa, Pasadena, CA 91107 as its principal place of business in the October 23, 2007 Assignment of the instant mortgage, but executed the Assignment in Dakota County, Minnesota; and, (4) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY claims 460 Sierra Madre Villa, Pasadena, CA 91107 as its principal place of business in the affidavit in support of the instant application, but the affidavit was executed in Williamson County, Texas."

(Note: DEUTSCHE BANK claims a different principal place of business in the instant

case. It should also be noted that the issue of the true employer of Erica Johnson-Seck has also arisen in other Palm Beach County foreclosure cases, most recently in Indymac Federal Bank, FSB v. Israel Machado, et al., Case No. 50 2008 CA 037322XXXX MB, and where Johnson-Seck claimed to be an officer of IndyMac, not of Deutsche Bank.)

d. In Deutsche Bank v. Ezagui, Judge Arthur M. Schack, Kings, Index No. 03724/2007 (21 Dec 2007) Judge Schack noted that in an affidavit in support of a Deutsche Bank application for default, a Ms. Tamara Price identified herself as the "Vice President" of Deutsche Bank while also showing herself to be the Vice President of AMC Mortgage Services, Inc. Judge Schack ordered Deutsche Bank to provide an affidavit within thirty days clarifying Ms. Tamara Price's employment history for the previous three years, as well as explaining why Deutsche Bank seemed to have purchased a non-performing loan from Ameriquest and why Deutsche Bank and Ameriquest seemed to be sharing office space with Ameriquest at 505 City Parkway West, Orange, CA 92868.

e. On October 10, 2007, in Deutsche Bank National Trust Company v. Williams, et al., Case No. 1:2007cv03029, N.D. Ohio, Judge Christopher H. Boyko gave DEUTSCHE BANK NATIONAL TRUST COMPANY seven days to file a copy of an executed assignment showing that DEUTSCHE BANK was the holder and owner of the Note and Mortgage as of the date the Complaint was filed or face dismissal; the same action was taken in two other Deutsche Bank cases decided by Judge Boyko: Deutsche Bank National Trust Company v. Tonia Benitez, et al., Case No. 1:2007cv03000, N.D. Ohio, and Deutsche Bank National Trust Company v. Dorphine Desouza, et al., Case No. 1:2007cv01474, N. D. Ohio. These cases and 14 others were dismissed when the lenders did not produce the Assignments as ordered. Amended General Order, No. 2006-16 (N.D. Ohio).

f. On November 14, 2007, U.S. District Judge Kathleen M. O'Malley dismissed 32

foreclosure cases, including 24 cases filed by Deutsche Bank, in a mass dismissal because documentation that the plaintiff was the owner and holder of the Mortgage and Note was inadequate. According to Judge O'Malley's Order, "Appropriate "documentation" includes, but is not limited to, trust and/or assignment documents executed before the action was commenced, or both as circumstances may require." As in the instant case, many of the cases O'Malley dismissed involved documentation that an assignment occurred, but occurred after the filing of the complaint.

g. In Deutsche Bank National Trust Co., trustee for Goldman Sachs v. Pope, Case No. 16-20 07-CA-008285 (Duval Co., Fla., Cir. Ct.) Circuit Judge Lance Day dismissed a foreclosure brought by Deutsche Bank, ruling there were "inconsistencies" in the plaintiff's documents.

h. In Deutsche Bank Trust Company Americas v. Peabody, 2008 NYSlipOp 51286(U), decided on June 26, 2008, Saratoga County Supreme Court Judge Thomas Nolan denied Deutsche Bank's motion for summary judgment, noting: "Again, here, plaintiff offers no evidence that it took physical delivery of the note and mortgage before commencing this action, and again, the written assignment was signed after defendant was served. The assignment's language purporting to give it retroactive effect, absent a prior or contemporary delivery of the note and mortgage, is insufficient to grant it standing."

i. In Re Robin Hayes, Debtor, Case No. 07-13967-JNF, U.S. Bankruptcy Court, District of Massachusetts, United States Bankruptcy Judge Joan N. Feeney, also criticized Deutsche Bank National Trust Company and its documentation of a loan, stating (on pages 15-16): "Although courts have been addressing the issues raised by Bankruptcy Judge Rosenthal in the Nosek case for some time, see In re Foreclosure Cases, No. 1:07CV2282, 2007 WL 3232430 (N.D. Ohio Oct. 31, 2007), problems associated with the practices are amplified in the instant

case. The mortgage lender, its affiliates, assignees, and agents involved in this case, through the convoluted process of securitization, the submission of a 191-page, incomplete PSA, and reliance upon back-dated, unrecorded assignments, have confounded the identity of the current holder of the mortgage for the purpose of filing the Motion for Relief from Stay, as well as the proof of claim. The Court and the Debtor are entitled to insist that the moving party establish its standing in a motion for relief from stay through the submission of an accurate history of the chain of ownership of the mortgage. Absent such proof, relief from stay is unwarranted and a proof of claim filed by the wrong party, to which an objection is filed, must be disallowed.”

23. Plaintiff and its counsel knew or should have known that false documents were created for the purpose of raising a defense to the Motion to Dismiss and that the documents were fraudulent in nature and contained false signatures of persons posing as officers of entities related to this litigation even though none of the signators held the officer positions indicated on the false documents.

24. Plaintiff and its attorney knew or should have known that this lawsuit and the claims contained within the lawsuit were (a) not supported by the material facts necessary to establish the claims; or (b) would not be supported by the application of the then-existing law to the material facts for the aforementioned reasons.

25. This motion is being served on the Plaintiff twenty-one days prior to being filed with the Court, pursuant to Fla. Stat. § 57.105.

26. Having been provided this motion for sanctions twenty one days in advance of the actual filing of this motion, Plaintiff and Plaintiff’s counsel are demonstrating that they knew or should have known that the claims in the response to the Defendant’s Motion to Dismiss are not supported by the material facts necessary to establish the claims. If Plaintiff and Plaintiff’s counsel continue to pursue this claim or defense they run afoul of §57.105, Fla. Stat.

27. Section 57.105, Florida Statutes states in pertinent part:

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

28. Twenty-one days have passed and Plaintiff has not withdrawn its claims set forth in the response to Defendant's Motion to Dismiss.

29. All conditions precedent, for filing this Motion, have been met.

WHEREFORE, Defendant requests this Court enter an Order granting the sanction of dismissal with prejudice against Plaintiff in this case; and ordering Plaintiff and Plaintiff's counsel (Marshall C. Watson, Linda Chevlin, and James Karrat) to pay in equal amounts Defendant's reasonable attorney fees incurred in defense of this action as allowed by statute as

sanctions.

PRE-FILING CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail to Linda Chelvam, Esq., Karen A. Thompson, Esq., and James Karrat, Edq. Law Offices of Marshall C. Watson, P.A., 1800 Northwest 49th Street, Ft. Lauderdale, Florida 33309, counsel for plaintiff Deutsche Bank National Trust on this ____ day of February, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail to Linda Chelvam, Esq., Karen A. Thompson, Esq., and James Karrat, Edq. Law Offices of Marshall C. Watson, P.A., 1800 Northwest 49th Street, Ft. Lauderdale, Florida 33309, counsel for plaintiff Deutsche Bank National Trust on this ____ day of February, 2010.

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