

## **M & T BANK - A CASES OF SPECIAL INTEREST TO FLORIDA FORECLOSURE DEFENSE LAWYERS**

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JUNE 13, 2010*

*M & T Bank v. Lisa D. Smith, et al., St. Johns County, FL, Case No.  
CA09-0418*

June 10, 2010

Order Granting Defendant's Motion to Dismiss Second Amended Complaint with Prejudice, Circuit Court Judge J. Michael Traynor

This foreclosure action was filed by the Law Offices of Marshall C. Watson on February 10, 2009. Defendants moved to dismiss because the plaintiff's allegations that it owned the note as bearer paper based on an Allonge attached to the Note conveying possession of the note in blank was inconsistent with the plaintiff's allegations that the note was lost. On September 22, 2009, this motion to dismiss was granted. Plaintiff filed an amended Complaint on September 22, 2009, alleging that it owned the Note by virtue of an Assignment. On October 6, 2009, plaintiff again moved to dismiss, because a foreclosure action cannot be based on an assignment of a mortgage that did not exist at the time the foreclosure was filed. On February 19, 2010, the Court granted the second motion to dismiss. On March 3, 2010, plaintiff filed a Second Amended Complaint, alleging that it is now the servicer of the loan, and that Wells Fargo owns the note pursuant to the Allonge. The defendants moved to dismiss the second amended complaint on March 9, 2010 for **fraud upon the court** because 1) the previously blank Allonge was submitted with a stamp indicating Wells Fargo, N.A. as Trustee was the owner of the Note; and First National Bank of Nevada could not have added the stamp since the FDIC closed the Frist National Bank of Nevada in 2008; and 3) Plaintiff's allegations that it owns the note contradicts all of its previous claims.

Upon review of Defendants' motion, the Court finds the plaintiff lacks standing and is not a proper party to the suit. The Court has been misled by the Plaintiff from the beginning. In its initial Complaint, the Plaintiff alleged it owned the note that was lost. Then Plaintiff alleged that not only was the lost Note found, but the Plaintiff actually owned the Note by Assignment. After both of these Complaints were dismissed, Plaintiff then alleged that

Wells Fargo owned the Note, while the Plaintiff was merely a servicer of the loan. Moreover, the Assignment on which Plaintiff relied in its First Amended Complaint postdates the filing of this foreclosure action and is inconsistent with the Mortgage, Note, stamps allegedly affixed to the Note, and the Allonge. The blank stamp affixed to the Note and to the Allonge indicate a transfer from First Bank Mortgage, a division of First Bank of Georgia, to First National Bank of Nevada, and then to an unidentified bearer. In contrast, the Assignment indicates a transfer from First Bank Mortgage, by and through Mortgage electronic Recording Systems, directly to the Plaintiff. However, First Bank Mortgage had transferred possession of the Note to First National Bank of Nevada prior to the date of Assignment from First Bank Mortgage to Plaintiff, and the Assignment postdates the filing of the foreclosure action. Accordingly, this action will be dismissed with prejudice as to M & T Bank, since M & T Bank has been unable to clarify how it owns the Note, but Wells Fargo may commence a new action, on its own, if it is in fact the owner of the Note.

Additionally, the Court is concerned with the authenticity of the documents filed. Plaintiff is asking the Court to ignore the documents filed in the first two Complaints, and to rule solely on the most recent Complaint. However, all three of these documents appear to be inconsistent with one another and have changed as needed to benefit the Plaintiff. For instance, the blank Allonge as filed on both February 10, 2009, and September 22, 2009, remarkably turned into a stamped Allonge on March 3, 2010, with Wells Fargo's information in the previously blank area. This transformation is most interesting, given that it was argued that the Office of the Comptroller of the Currency closed the First National Bank of Nevada on July 25, 2008, and the stamp did not appear in either of the February or September 2009 filings. Similarly, Assignments appeared and vanished as needed, and the Allonge changed to fit the Plaintiff's particular purpose at that moment. Accordingly, an evidentiary hearing will be held to determine the authenticity of the Allonge and the appearance of the Assignment.

The evidentiary hearing in this matter is scheduled for August 19, 2010 at 1:45 in St. Augustine, Florida.

Regarding the first assignment, recorded August 14, 2009, the Assignment is TO M & T Bank, by "Mortgage Electronic Registration Systems, as nominee for First Bank Mortgage, a Division of First Bank of Georgia." It is signed by Daryle J. Deveso who is identified as "Assistant Vice President, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR FIRST BANK MORTGAGE, A DIVISION OF FIRST BANK OF GEORGIA."

The Deveso signature is witnessed by Natasha Hyman and Patricia Sneck and notarized in Erie County, New York by Katherine M. Kraus. The question that comes to mind is why an officer of First Bank of Georgia traveled to Erie County, New York to sign this document.

Because Daryle Deveso has an unusual name, it is possible to find an answer in the age of Google. A search of this name indicates that Daryle Deveso was a member of the Conference Planning Committee for the 6<sup>th</sup> Annual Property Preservation Conference, held November 4-6, 2009. Mr. Deveso is identified as being employed by "M & T."

This would mean that when Deveso signed the Mortgage Assignment as an officer of MERS as nominee for First Bank Mortgage, the GRANTOR, he was actually employed by the GRANTEE, M & T Bank.

Regarding the second Assignment, recorded September 30, 2009, it should first be noted that the word "*Corrective*" appears under the words "Assignment of Mortgage." A note to explain this is typed along the side of the document: "This Corrective Assignment is being recorded to correct the Effective Date in that certain Assignment of Mortgage recorded 8/14/2009 in Official Record Book 3229 at Page 1748 of the Public Records of St. Johns County."

And what is the new effective date of this Assignment signed and notarized on September 21, 2009? According to Assignment #2, the Assignment is effective October 16, 2004. If taken at face value, this would certainly solve the problem of the Assignment post-dating the filing of the foreclosure action, February 10, 2009.

This Second Assignment is also TO M & T Bank, by "Mortgage Electronic Registration Systems, as nominee for First Bank Mortgage, a Division of First Bank of Georgia." In this regard, it is identical to the first. The Second Assignment is signed by Christopher M. Zeis who is identified as "Vice President, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR FIRST BANK MORTGAGE,

A DIVISION OF FIRST BANK OF GEORGIA.” Christopher Zeis was NOT part of a conference planning committee where he is readily identified as an officer of M & T Bank. His signature, however, is witnessed by Natasha Hyman and Patricia Sneck and notarized in Erie County, New York by Katherine M. Kraus. These are the same witnesses and notary used by Daryle Deveso on the First Assignment when employees of M & T Bank, the GRANTEE, were signing on behalf of the GRANTOR.

This is NOT the first time a defendant has accused The Law Offices of Marshal Watson of fabricating an Allonge. It is also NOT the first time a defendant has accused The Law Offices of Marshall Watson of filing and recording a fraudulent mortgage assignment. It is certainly NOT the first time that The Law Offices of Marshall Watson have filed an action on behalf of a plaintiff who lacks standing to sue. This is NOT even the first time the Law Offices of Marshall Watson are accused of all three offenses in the same lawsuit. This may be the FIRST TIME, however, that these offenses are appropriately sanctioned.