

AFFIDAVIT of Plaintiff

We affirm that this is a true and correct statement of facts and circumstances involving scheduled foreclosure sale of property at 350 Cee Run, Bertram, Texas. We fear immediate harm and loss of property should court fail to grant restraining order enjoining sale of property. Issuance is necessary to preserve judgment of court of appeals.

Defendant, PHH Mortgage Services, has been served with this brief at his place of business, 2001 Bishops Gate, Mount Laurel, New Jersey

Plaintiffs:

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David McCrae

Date

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Barbara Mccrae

Date

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Notary

Date

TEMPORARY RESTRAINING ORDER

CAUSE #41159 424<sup>th</sup> District Court

Burnet County Court

Plaintiffs: David and Barbara McCrae

350 Cee Run

Bertram, Texas 78605

Vs.

Defendant: PHH Mortgage Services, et al.

2001 Bishops Gate

Mount Laurel, New Jersey 08054

BY ORDER OF THE COURT

Defendant, PHH Mortgage Services, their agents, assigns, and trustees are restrained from proceeding with the scheduled sale of property owned by David and Barbara McCrae at 350 Cee Run, Bertram, Texas, and to appear at

TIME:

DATE:

To join with Plaintiff and show cause that lawful sale may proceed.

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Judge

Date

REQUEST FOR TEMPORARY RESTRAINING ORDER

BRIEF IN SUPPORT OF STANDARD OF REVIEW

My residence at 350 Cee Run, Bertram, Texas is currently posted for foreclosure sale on 5 March 2013. I am requesting a temporary restraining order against PHH Mortgage, their attorneys, agents, assigns, trustee, and all others acting in their behalf from proceeding with foreclosure sale. We are requesting expedited action on this order due to impending scheduled sale date of 5 March 2013.

I am requesting that the defendant to appear at a time and date certain to show cause, if any, as to why the temporary restraining order should be continued in effect as a temporary injunction pending a trial on the merits, thereafter said trial a permanent injunction restraining and enjoining the defendants as aforesaid to be issued.

I am acting pro se in this matter and have no legal fees to this point.

I pray that the court issue, without notice if necessary, a temporary restraining order, restraining and enjoining defendants from proceeding at the scheduled foreclosure sale of the property described at 350 Cee Run, schedule for 5 March 2013.

I pray that the court order defendants to appear at a specific date and time and show cause why the temporary order should not be continued as a temporary injunction pending a trial on the merits. After such hearing, I pray that the court issue a permanent injunction restraining and enjoining defendants permanently from taking any action whatever with regard to posting of notice or otherwise exercising any of the remedies regarding sale or other disposition of the property or in any manner interfering with the ownership possession of the property so described, pending further action by the court. After a trial on the merits, if successful, I pray that the court enter a permanent injunction restraining and enjoining the defendants as aforesaid to be issued.

These facts are verified by the current owners, David and Barbara McCrae. See CHRONOLOGY OF EVENTS attached below.

Customer Service at PHH has been served this Motion and Request at their home office, by certified Delivery, to the Foreclosure Department, at their place of business in Mount Laurel, NJ, 2/22/2013. They have not responded and apparently do not wish to be heard. I pray that PHH will express itself in this matter before 14 days. See NEGOTIATION CHECKLIST below.

CHRONOLOGY OF EVENTS

DATE	FROM	TO	SUBJECT
9/2001	DAM/BAM	PHH	15 year mortgage starts
			Irregular payments start
2/2013	DAM/BAM	PHH	\$7759 Principal Balance / \$25,300 Scheduled principal balance.
6/1/13			DAM retires, starts own company
9/1/12	DAM	NoName	Loan is not in default. Payoff amount request.
9/4/12	Customer Support	DAM	HAMP Application. Audrey Welsh single point of contact.
9/19/12	Audrey Welsh/PHH	DAM	Another HAMP application.
10/18/12	DAM	Audrey Welsh	Loan is not in default. Payoff amount request. Five points.
11/14/12	DAM	Robert/Mike/Melanie Telecon	Loan principal is 8723. Payoff notice will be sent soon.
12/11/12	DAM	Audrey Welsh/PHH	Loan is not in default. My amortization table. Request for payoff amount.
12/13/12	DAM	Audrey Welsh/PHH	Restatement of 10/18/12 letter.
12/17/12	DAM	Linda Hubbard Telecon	Loan principal is 8723. Payoff notice will be sent soon. Current escrow status unknown, will be analyzed after loan payoff.
1/1/13	DAM	Audrey Welsh/PHH Receipt by Nora Wocken	Restatement of 10/18/letter. Request for complete payment records on account to substantiate claim. Please terminate insurance. Please close escrow.
1/3/13	DAM	Taxlayer	Prep IRS 1040 and MS State Tax, IRS not accepting filings yet
1/4/13			PHH starts foreclosure process
1/15/13	DAM	Maureen O Donnell	Telecon – Loan is in foreclosure, unable to communicate status. Transfer to BBDFTE. Robotic answering system, no people available.
1/15/13	DAM	BBDFTE	Restatement of issues with PHH. Request for loan payoff amount. Bad e-mail address. Talked with Monica. Unable to discuss case in progress. Sent physical letter of e-mail.
1/13/13	MS	Taxlayer	Return rejected, unable to confirm Fed income
1/15/13	Taxlayer	DAM	IRS accepted 1040, processing scheduled for 1/30+
1/15/13	DAM	Taxlayer	Refile MS, accepted this time
1/29/13	PHH	424 DC	PHH posts property for sale
2/19/13	PHH	DAM	PHH informs me of sale by certified mail, dated 2/12/13, received 2/29/13
2/22/13			Retained local counsel, Anne Little. Authorized communication with all parties
UNK			BBDFTE refused to communicate with local counsel. Sent form of authorization.
UNK			Signed BBDFTE form of authorization, authorizing

			Anne Little to communicate
UNK			BBDFTTE refused to communicate with local counsel.
1/30/13	Taxslayer	DAM	1040 involves education credit, processing to begin 2/15+
2/20/13	DAM	AL	Released Anne Little from Attorney client relation (1200)
2/20/13	DAM	PHH/Mary Rufer	Talked with Mary Rufer at PHH(1400) and reached potential agreement structure. Mary not authorized in firm behalf. E-mailed Mary structure of complaint, and informed him I would be filing Motion to Quash Sale and TRO next day. Asked him to review it with staff next day.
2/21/13	DAM	District Court	Prepared and filed Motion and TRO in Burnet, pro se.
2/21/13	DAM	Miss Cindy	Talked with Miss Cindy for scheduling of cause. Not quite yet.
2/22/13	DAM	District Court	UPS delivery of Burnet court filing to PHH.
2/22/13	DAM		Started search for bankruptcy attorney in case of need.
2/22/13	DAM	AL	Formal release of Anne Little from Attorney client relation, by e-mail.
2/22/13	DAM		Draft deal structure.
2/24/13	DAM		Draft prayer for relief
2/25/13	DAM	District Court	File prayer for relief, chronology, and basis as supplemental information to Cause
2/25/13	Cindy	DAM	Deficiencies of filing noted for remedy, affidavit, whitespace page
2/26/13	DAM	Ray Fisher	Hired to resolve sale issues
2/27/13	MS IRS	DAM	Received 3800 of 3400 claimed refund, explanation to follow someday, no 1040X yet
2/27/13	DAM	Ray Fisher	Paid \$2500 retainer for bankruptcy, abandoned TRO based on likelihood of success (UN)
2/28/13	DAM	Ray Fisher	Authorized bankruptcy e-file
3/1/13	DAM	FEDS	Filed Chapter XIII bankruptcy relief to protect assets from wrongful sale
3/5/13	DAM		Attended sale at Burnet Courthouse with video
3/11/13	IRS	DAM	Scheduled receipt of \$5600 (\$6600 - \$1012 for 2008 difference of opinion, no 1040X attached)
3/20/13	DAM	PHH	Placed insurance with Southern County Mutual, instructed PHH to cancel coverage, recalculate escrow, and apply pro rated premium to principal.
4/3/13	DAM	Bankruptcy Trustee	CH XIII plan filed



NEGOTIATION CHECKLIST

Pattern of dealing	No single point of contact was ever identified by PHH. No individual has expressed knowledge of case prior to phone conversations (history below). Mary Rufer has offered e-mail in late stage, but is not authorized to make decisions.
	BBDfTE secretary has refused to discuss case with me. BBDfTE has refused to discuss case with local attorney of record, Anne Little, before Anne's withdrawal. Anne was twice authorized to represent me, once on her letterhead and once on BBDfTE letterhead.
Usury, in excess of two times legal rate	Loan is currently paid 3 years ahead (September 2016 expiry) using Generally Accepted Accounting Principles. Spreadsheet review of payment data from PHH and my spreadsheet. Aggregate receipt of early payments, principal and interest, and proceeds of early sale will constitute usurious rate..
Deed of trust notice requirements	Posted 1/29/12, notification to me cert letter of 2/12/13 from PHH, received 2/19/13
Named trustee	Is who? Is that person in the deed of trust? Check. Sale may be void. Substitute trustees named; John Latham, John W. Latham, Brett Adams, T. Latham, Michael Latham, representing BBDfTE. These are not original trustees.
Legal description	Look for errors in reading. 2 pp from legal description, no survey plot. No reference to improvements. No reference to utilities, electric x 2, water, sewer, phone. No reference to water line easement across Lyda property. No reference to a/c, appliances, furnishing, deck, fencing, any other improvements. Videotape reading on sale date. No reference to potential IRS lien of 2008.
Amount of debt	Must inform prospective bidders. Debt on notice is \$72,500. Actual principal due is \$7,758.96. Detail default necessary for mortgagor to cure the default.
Creditor may be entitled to an equitable lien on other assets	Creditor currently holding lien on 2010 Nissan, \$15,500. Vehicle is paid off, but creditor (USAA) has not released lien.
Mineral interest	Can I sell the timber? Gravel?
Ogden notice requirements	Lender has accepted late payments in past. Lender has never noted early payments. See pattern of dealing notes. Notice of sale was not unequivocal.
Action by lender indicating it is flexing monetary muscle to detriment of mortgagor	PHH has repeatedly asked mortgagor to complete HAMP application, in order to shed mortgage for full value. This is not in interest of mortgagor due to relatively low remaining value to mortgage of \$8758. Current ratio of debt to equity is 8.758%
Return of partial payments in December	See pattern of dealing, Ogden notice. \$500 returned, suspense amount of \$273 returned. No explanation.
Clear and unequivocal notice	All communication by vendor qualified their response stating they would be free to any other collection action. Have they investigated selling debt to third party?
Misrepresentational fraud and duress	Why does PHH refuse to communicate? Why does BBDfTE refuse to communicate? This has been successful case for class action. Must be based on conduct of threatening party.
Detrimental reliance	Seldom is an acceleration notice given in a vacuum.





No Name Listed

1 September 2012

Mortgage Service Center

PO Box 1945

Bowie, MD 20717

Re: Reference 0016371056

350 Cee Run

Bertram, Texas 78605

Customer Support;

This is in response to your letter of 4 September and reference listed above. You are claiming my mortgage loan to be currently in default, and informing me of your organizational intent to foreclose property.

I am declaring that my loan is not currently in default, and in fact I have made significant early payments this year and previously. These payments have been applied to reduction of principal by your own bookkeeping purpose and not to early payments as was my clear intent. Check your records for the activity from 1 January 2012 to 30 June 2012 and you will see the evidence to support my claim.

I have retired on 1 June 2012 and intend to pay this loan off completely before year end. Imminent payoff depends on receipt of retirement funds with past employers, including PBGC, and sale of certain assets, after which I will pay off loan expeditiously. I have asked your representative for a written statement of loan payoff on 1 September and have not received it.

I will not be asking for assistance from a government program. I will not be discussing this matter with a switchboard operator at your phone bank in Pakistan. Please refer this letter to a single point of contact designated to represent your interest in this matter, his or her e-mail account, and his or her telephone contact. This will be my last communication with a nameless organization.

Thank You,

Dave McCrae

[Xstek99@gmail.com](mailto:Xstek99@gmail.com)

512.667.4480 anytime

Ms. Audrey Welsh

18 October 2012 by e-mail

USAA Federal Savings Bank

PHH Mortgage

2001 Bishop's Gate Blvd.

Mt. Laurel, NJ 08054

800.449.8767 x88414

Audrey.welsh@mortgagefamily.com

Re: Reference 0016371056

350 Cee Run

Bertram, Texas 78605

Ms. Welsh;

I am in receipt of your letter of 19 September 2012. I am glad we have finally established contact. You have been proposed as a single point of contact for your organization, and I am a single point of contact for mine.

I have also received your very complete package for the current federally backed Housing Affordable Mortgage Program. As you know, this is proving to be the most ineffective paths of resolution out there, comprising a significant waste of both your time and mine. We will not be going down that road. We will resolve our problems equitably, or we will meet here in Burnet County at our local courthouse to have an equitable decision meted out to both of us.

We have five points of discussion today-

- 1) Are we in default on the above listed mortgage? My contention is NO, we are not currently in default. we are in fact very much ahead of the anticipated amortization schedule of 15 years, and have repeatedly asked your nameless phone representatives for a payoff amount and received nothing in response. We took this mortgage out for \$72,500 on 26 October 2001, with

the payment including an escrow for anticipated taxes, and excluding any requirement for Homeowner's insurance. Please refer back to Final Commitment in your file. Condition F states that loan may be prepaid at any time without penalty. According to the attached amortization schedule, on 10 October 2012 the outstanding principal should be approximately \$26,555. In my activity statement through 30 June 2012, I am showing a principal balance of \$9,484.64. I don't know how you are valuing it today, but it is a lower amount. This reflects a prepayment through 30 June of \$16,000+ in your favor. We have reached this point by making prepayments through the last few years, which have not been properly charged to our account. Thus this mortgage is not in default at this time.

- 2) I'm asking again, 'What is the current payoff value of this mortgage on 1 November 2012?' I'm expecting to pay this mortgage off completely after sale of either of two cars I own and no longer need, or receipt of tax refunds from the IRS being held in my behalf and currently under discussion. I think I owe about \$5,000, including the last few partial payments made after 30 June 2012. I have no access to mortgagequestions.com because I am blocked as an undesirable customer. I would like a clear and written response.
- 3) I'm currently retired at age 62 as a freelance artist and living on reduced circumstances, with irregular additional earnings. I do not desire to share the financial details of my current situation. My tax situation is private and will remain so. I expect to continue to make occasional payments of approximately \$1000/month or more on this mortgage through end of year 2012, or earlier payoff, even though not obligated, as an expression of good faith.
- 4) I am showing on your statement an escrow account shortage of \$85.58 for our taxes due in December this year. I have paid that electronically to the account as a separate payment. This fulfills our anticipated tax escrow for this year, and our tax rate here in Burnet County actually went down this year. You will require no further escrow payments toward 2013 taxes, as you will not own property by 2014.
- 5) For some reason I continue to be billed for an insurance policy, even though I do not desire any insurance and am not obligated to maintain insurance. I have never requested such a service. My insurance carrier in 2001, USAA, did not and still does not provide insurance for manufactured homes. My current insurance carrier, GEICO, also does not offer that line of insurance. This is commonly considered a predatory practice due to the shoddy construction of such assets, rapidly declining value of the structure, and low ethical behavior of the carriers. I've tolerated this for too long. The current policy, obtained by you and paid by me, is paid through June 2013, and you will not need to renew it. If you would like to cancel it today and apply refund to loan, that would be acceptable to me. I really don't care. However, I would like you to take the insurance escrow amounts off the payment obligation. The five bare acres of the parcel, currently reasonably valued at \$25,000/acre, are adequate collateral for the remainder of the loan obligation. I do not see the need to continue to collect an escrow reserve for 2013, as you will have no interest in the property by then. If we ever appear as adversaries in some Burnet County Courthouse, I will ask for return of all such funds paid in the past, on behalf of myself and my debtor class.

Thank you for your consideration,

Dave McCrae

[xstek99@gmail.com](mailto:xstek99@gmail.com)

512.667.4480

Attachment: 350 Cee Run Mortgage Amortization.xlsx

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Memo of telecom 11/14/12 0847 CST 800.449. 8767 / Robert / Mike / Melanie

Loan payoff is \$8,732.93 on 1 December.

Payoff does not include insurance. Escrow balance has not been used today to pay insurance, and appears to be sufficient. A refund will be issued 30 days after loan payoff of unused escrow funds, for tax due to be paid by me on 31 January.

Loan payoff includes refund of lender placed insurance and there is no refund of prorated premium.

Ms. Audrey Welsh

12 November 2012 by e-mail

USAA Federal Savings Bank

PHH Mortgage

2001 Bishop's Gate Blvd.

Mt. Laurel, NJ 08054

800.449.8767 x88414

Audrey.welsh@mortgagefamily.com

Re: Reference 0016371056

350 Cee Run

Bertram, Texas 78605

Ms. Welsh;

I am in receipt of your letter of 06 November 2012, which appears very similar to your earlier letter. I am glad we have finally established contact. You have been proposed as a single point of contact for your organization, and I am a single point of contact for mine.

I have also received your very complete package for the current federally backed Housing Affordable Mortgage Program. As you know, this is proving to be the most ineffective paths of resolution out there, comprising a significant waste of both your time and mine. This government program has been a miserable failure. We will not be going down that road. We will resolve our problems equitably, or we will meet here in Burnet County at our local courthouse to have an equitable decision meted out to both of us.

We have five points of discussion today-

- 1) Are we in default on the above listed mortgage? My contention is NO, we are not currently in default. We are in fact very much ahead of the anticipated amortization schedule of 15 years, and have repeatedly asked your nameless phone representatives for a payoff amount and

received nothing in response. We took this mortgage out for \$72,500 on 26 October 2001, with the payment including an escrow for anticipated taxes, and excluding any requirement for Homeowner's insurance. Please refer back to Final Commitment in your file. Condition F states that loan may be prepaid at any time without penalty. According to the attached amortization schedule, on 10 October 2012 the outstanding principal should be approximately \$26,555. In my activity statement through 30 June 2012, I am showing a principal balance of \$9,484.64. I don't know how you are valuing it today, but it is a lower amount. This reflects a prepayment through 30 June of \$16,000+ in your favor. We have reached this point by making prepayments through the last few years, which have not been properly charged to our account. Thus this mortgage is not in default at this time.

- 2) I'm asking again, 'What is the current payoff value of this mortgage on 1 December 2012?' I'm expecting to pay this mortgage off completely on or prior to that date. I have no access to mortgagequestions.com because I am blocked as an undesirable customer. I would like a clear and written response.
- 3) I'm currently retired at age 62 as a freelance artist and living on reduced circumstances, with irregular additional earnings. I do not desire to share the financial details of my current situation. My tax situation is private and will remain so. I expect to pay this obligation on or before 1 December 2012. I am curious as to the current amount of the obligation.
- 4) I am showing on your statement an escrow account shortage of \$85.58 for our taxes due in December this year. I have paid that electronically to the account as a separate payment. This fulfills our anticipated tax escrow for this year, and our tax rate here in Burnet County actually went down this year. You will require no further escrow payments toward 2013 taxes, as you will not own property by 2014. If you have paid the taxes, I would like a statement reflecting such payment from escrow. If you have not made such payment, I would like a statement of that escrow amount applied to loan payoff, and I will pay taxes myself when they are due on 31 January.
- 5) For some reason I continue to be billed for an insurance policy, even though I do not desire any insurance and am not obligated to maintain insurance. I have never requested such a service. My insurance carrier in 2001, USAA, did not and still does not provide insurance for manufactured homes. My current insurance carrier, GEICO, also does not offer that line of insurance. This is commonly considered a predatory practice due to the shoddy construction of such assets, rapidly declining value of the structure, and low ethical behavior of the carriers. I've tolerated this for too long. The current policy, obtained by you and paid by me, is paid through June 2013, and you will not need to renew it. I would also like the current value of the insurance applied to loan payoff, and would like a statement of that value included in the 1 December payoff.

Thank you for your consideration,

Dave McCrae

[xstek99@gmail.com](mailto:xstek99@gmail.com)

512.557.0283 Global

Attachment: 350 Cee Run Mortgage Amortzation.xlsx

Ms. Audrey Welsh

13 December 2012 by e-mail

USAA Federal Savings Bank

PHH Mortgage

2001 Bishop's Gate Blvd.

Mt. Laurel, NJ 08054

800.449.8767 x88414

Audrey.welsh@mortgagefamily.com

Re: Reference 0016371056

350 Cee Run

Bertram, Texas 78605

Ms. Welsh;

A while back, I sent you the following:-

I am in receipt of your letter of 19 September 2012. I am glad we have finally established contact. You have been proposed as a single point of contact for your organization, and I am a single point of contact for mine.

I have also received your very complete package for the current federally backed Housing Affordable Mortgage Program. As you know, this is proving to be the most ineffective paths of resolution out there, comprising a significant waste of both your time and mine. We will not be going down that road. We will resolve our problems equitably, or we will meet here in Burnet County at our local courthouse to have an equitable decision meted out to both of us.

We have five points of discussion today-

- 1) Are we in default on the above listed mortgage? My contention is NO, we are not currently in default. we are in fact very much ahead of the anticipated amortization schedule of 15 years, and have repeatedly asked your nameless phone representatives for a payoff amount and received nothing in response. We took this mortgage out for \$72,500 on 26 October 2001, with



the payment including an escrow for anticipated taxes, and excluding any requirement for Homeowner's insurance. Please refer back to Final Commitment in your file. Condition F states that loan may be prepaid at any time without penalty. According to the attached amortization schedule, on 10 October 2012 the outstanding principal should be approximately \$26,555. In my activity statement through 30 June 2012, I am showing a principal balance of \$9,484.64. I don't know how you are valuing it today, but it is a lower amount. This reflects a prepayment through 30 June of \$16,000+ in your favor. We have reached this point by making prepayments through the last few years, which have not been properly charged to our account. Thus this mortgage is not in default at this time.

- 2) I'm asking again, 'What is the current payoff value of this mortgage on 1 November 2012?' I'm expecting to pay this mortgage off completely after sale of either of two cars I own and no longer need, or receipt of tax refunds from the IRS being held in my behalf and currently under discussion. I think I owe about \$5,000, including the last few partial payments made after 30 June 2012. I have no access to mortgagequestions.com because I am blocked as an undesirable customer. I would like a clear and written response.
- 3) I'm currently retired at age 62 as a freelance artist and living on reduced circumstances, with irregular additional earnings. I do not desire to share the financial details of my current situation. My tax situation is private and will remain so. I expect to continue to make occasional payments of approximately \$1000/month or more on this mortgage through end of year 2012, or earlier payoff, even though not obligated, as an expression of good faith.
- 4) I am showing on your statement an escrow account shortage of \$85.58 for our taxes due in December this year. I have paid that electronically to the account as a separate payment. This fulfills our anticipated tax escrow for this year, and our tax rate here in Burnet County actually went down this year. You will require no further escrow payments toward 2013 taxes, as you will not own property by 2014.
- 5) For some reason I continue to be billed for an insurance policy, even though I do not desire any insurance and am not obligated to maintain insurance. I have never requested such a service. My insurance carrier in 2001, USAA, did not and still does not provide insurance for manufactured homes. My current insurance carrier, GEICO, also does not offer that line of insurance. This is commonly considered a predatory practice due to the shoddy construction of such assets, rapidly declining value of the structure, and low ethical behavior of the carriers. I've tolerated this for too long. The current policy, obtained by you and paid by me, is paid through June 2013, and you will not need to renew it. If you would like to cancel it today and apply refund to loan, that would be acceptable to me. I really don't care. However, I would like you to take the insurance escrow amounts off the payment obligation. The five bare acres of the parcel, currently reasonably valued at \$25,000/acre, are adequate collateral for the remainder of the loan obligation. I do not see the need to continue to collect an escrow reserve for 2013, as you will have no interest in the property by then. If we ever appear as adversaries in some Burnet County Courthouse, I will ask for return of all such funds paid in the past, on behalf of myself and my debtor class.

Thank you for your consideration,

Dave McCrae

[xstek99@gmail.com](mailto:xstek99@gmail.com)

512.667.4480

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**-I've never received a response, either in written form or verbally.**

I keep getting letters asking me to apply for some kind of HAMP program, and collect an armful of information, and probably to pay another batch of fees, and probably enable you to pass of the mortgage to someone else as another securitized package, and collect another armful of fees from someone else. I do not plan to apply for any HAMP programs. The ratio of the number of mortgages modified to the number of applications processed reveal that that avenue is another poor choice from a consumer viewpoint, although I suppose you love the program as an information processor. Possibly you get some fees elsewhere.

By telephone, talking with Robert, Mike, and Melanie, I have finally received a statement from your organization for 1 December payoff for an amount due of \$8,757.93. You will note that this is considerably less than the scheduled principal due at the 11 year 3 month point on the original 15 year mortgage, of \$28,000+ Therefore, the mortgage is not currently in default, and never has been in default. I am instructing you by this letter to stop all foreclosure activity.

You will receive \$500 on 13 December, tomorrow, by electronic transfer, leaving \$8,257 due, plus the daily accrual of \$1.33 interest per day.

You will receive \$5,500 before 1 January 2013. You will receive the last remaining amount next year before 15 February 2013. This will satisfy the loan instrument well before it's expected due date of September 2026.

Robert, Mike, and Melanie were unable to shed any light on the question of whether taxes had or had not been paid from the current escrow. They are due on 31 January, and sometimes you have paid this earlier. In any case, no further escrow withholding is required.

Robert, Mike, and Melanie were also unable to shed any light on the status of any prorated insurance refund on the premium you paid on my behalf in July of 2012. I'm willing to also address that point at a later time. Further escrow withholding will not be required.

As per my specific previous instruction, please communicate only by e-mail or written mail, with a specific response to the above listed points, signed by an individual of your corporation authorized to

conduct business in your behalf. You have been designated by your corporation. You may be overwhelmed with work and desire to delegate someone else.

Attachment: 350 Cee Run Mortgage Amortization.xlsx

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Memo of telecom 11/14/12 0847 CST 800.449. 8767 / Robert / Mike / Melanie

Loan payoff is \$8,732.93 on 1 December.

Payoff does not include insurance. Escrow balance has not been used today to pay insurance, and appears to be sufficient. A refund will be issued 30 days after loan payoff of unused escrow funds, for tax due to be paid by me on 31 January.

Loan payoff includes refund of lender placed insurance and there is no refund of prorated premium.

---

Linda Hubbard

800.750.2578 x88692

12/17/12

Mid January payoff

Escrow tax and hazard refunded after payoff

Ms. Audrey Welsh

1 January 2013 by e-mail

USAA Federal Savings Bank

and Certified USPS Mail

PHH Mortgage

Return Receipt signed by Nora Wocken

2001 Bishop's Gate Blvd.

No other response

Mt. Laurel, NJ 08054

800.449.8767 x88414

Audrey.welsh@mortgagefamily.com

Re: Reference 0016371056

350 Cee Run

Bertram, Texas 78605

Ms. Welsh;

We've never met. We've never talked. Nevertheless, your organization on 19 September 2012 nominated you as a single point of contact to discuss the payment of our mortgage agreement as listed above.

I have received from a variety of parties over the last few months invitations to join a HAMP plan of some sort, apparently a government program which may be of some unknown benefice to you, and none to me. I know it's become widespread as a fee generator and time occupier for many in your industry, but I have no interest.

Today I received by mail a check for \$500, a return of my last partial payment made in December, along with a demand for \$2702 to cure some sort of default. I am attaching once again for your review, in case you lost it, an amortization schedule of this fifteen year mortgage, which would indicate to the most minimally interested that this mortgage is currently well ahead of the agreed payment schedule,

by several years. Print it out somehow and share it with your legal department. Bring it to court with you. I'll be reviewing it with the judge, and with your legal representatives if we get to that point.

I talked with Robert, Mike, and Melanie in November and have received a payoff statement for 1 December. I've been unable to comply due to unknown cash flow reasons among my own debtors. Now I know that you are not interested in accepting partial payments, so I will send no more. Please prepare a loan payoff statement for 31 days from today, 1 February 2012. I will pay the whole amount on or near that date. I will expect to receive in exchange a mortgage release and clear title to the property. I repeat, Please prepare a loan payoff statement for 31 days from today, 1 February 2012. I will pay the whole amount on or near that date. I will expect to receive in exchange a mortgage release and clear title to the property.

For my second request at this writing, please also prepare a statement of all receipts and disbursements from the escrow account on this property since 2001, to include all tax payments and insurance payments. As of this date, 1 January 2013, I will be responsible for all taxes and insurance. Please close that escrow account you are currently holding and remit all remaining funds to me, today. If you have already paid the taxes due 31 January 2013, I would expect to see that transaction recorded, and any remainder of the tax escrow returned; if not, I expect to receive all tax funds held in escrow at this time with your statement of account activity, and I will pay the tax bill of 31 January 2013. No one in your office has been able to tell me what the current activity has been on that account since July of 2012, my last statement.

Please terminate all insurance policies you may or may not have contracted in my behalf, as of today. I have never requested you obtain or maintain any insurance on either the property or the improvements, and have never received, reviewed, or approved such policies as you may have obtained in the past. Maintenance of insurance was specifically excluded on our initial mortgage agreement, and this has always come as a constant surprise to me on your escrow communications. Along with the statement you are preparing today, please segregate the accounting for any insurance premiums you have expended without my authorization, and return those funds to me immediately. By my accounting, this is approximately \$2,500 per annum over the last eleven years, a total of \$27,500 plus any return of unused prorated premium. In accord with our law here in Texas, since these funds were expended by you without my approval, yet billed to me every year in connection with the mortgage, I am asking for triple damages. That brings your bill to a total of \$82,500+. I can only suggest you seize this opportunity while it lasts, and before I decide to present myself as a representative of a class.

I prefer to accept payments through PayPal.com, transfer to the account you are familiar with as the source of all my payments to you over the last eleven years, a check in the mail, ISIS? (if you use it), or I will go to a place of business here in Texas and pick it up. I know USAA has a vast complex in San Antonio, an hour from my house. I'll be there.

I have to this point been open and complete in my communications with your organization. On the other hand, your organization has remained disorganized, shadowy and confused. Now we are going to have to become more formal. Please respond today to all of these issues, in writing. E-mail is great, and recognized in Texas as a legitimate form of communication. You have been nominated as the single point of contact by your organization, by whatever standards you measure, so I will continue to treat you as that single point of contact. IF YOU ARE UNABLE TO COMMUNICATE CLEARLY, AND COMMIT TO BINDING AGREEMENTS, please review your situation with your leader, and get someone else to answer this letter. I expect their answer will start out something like, Dear Mr. McCrae, I am sorry we have had such a confusion last year, we have resolved all our issues, and I am here to assist in closing out your account. My name is \_\_\_\_\_

Yours, &c.

Dave McCrae

[Talked with Maureen O'Donnell 1/15/13, after call from robotic representative. Maureen was unfamiliar with any previous correspondence. She had not talked with Robert, Mike, or Melanie, and they had not left any note of their communication with me. She stated that loan was in process of foreclosure since 4 January and she was unable to communicate further. She referred inquiry to Barrett, Burke and Wilson, foreclosure attorney from PHH].

15 January 2013

by e-mail

350 Cee Run

Bertram, TX 78605

512-557-0283

Xstek99@gmail.com

Barrett, Burke and Wilson

15000 Surveyor Boulevard #100

Addison, TX 75001

972.419.1163

txfhad@bdfgroup.com

Re: Reference PHH #0016371056

Tx-

I have been told by PHH that you are now handling the above account.

I am requesting payoff value for the above listed mortgage, as suggested by your robotic service.

Please return value by e-mail or written communication.

Thank You,

Dave McCrae

[this e-mail was returned as undeliverable due to a bad address. I called and talked to Monica, who stated they were preparing that information and would have it to me, along with payment instructions, by e-mail within five business days]

Delivery to the following recipient failed permanently:

[txfhad@bdfgroup.com](mailto:txfhad@bdfgroup.com)

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the recipient domain. We recommend contacting the other email provider for further information about the cause of this error. The error that the other server returned was: 550 550 #5.1.0 Address rejected. (state 13).

----- Original message -----

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;

d=[gmail.com](mailto:gmail.com); s=20120113;

h=mime-version:date:message-id:subject:from:to:content-type;

bh=MlkO2hlaX/wQvN19uuUpvVp/C65KNcg7XIL1FUoLXSI=;

b=sx3cDzSIHHZ6lb06GZg+SQc80b8Qz5Rr/gdJnFE3JpD3uCsOD/Qbfa8J50R8tKsCEA  
2LTzjcRhT7St7V0ndvd41dNfZHldFosksC+/ZNC+L3uvRQW4KodHvi98A/40xBNFarpd  
2OKHMRHV2AiS0CBYyOJiV53UWchu/MSV441IaM+A9ZEK7D/OnAAuo8VGGvwrz8F5C69M  
xlYBI0hdRqhsBPNLduZYp71cKDXMKv6fas/FoSTxdCw9wHi6Zd63UwDZz/OF6yIVEfLk  
bWKzOa1uHeV2tiMO9F/78tPhTEwXgSYqPd/0Belypo9E4BrCGPnzO0TdNg8Yn04WtMAs  
j8SQ==

MIME-Version: 1.0

Received: by 10.50.184.229 with SMTP id ex5mr2161470igc.72.1358269424054; Tue,  
15 Jan 2013 09:03:44 -0800 (PST)

Received: by 10.50.125.41 with HTTP; Tue, 15 Jan 2013 09:03:43 -0800 (PST)

Date: Tue, 15 Jan 2013 11:03:43 -0600

Message-ID: <[CAAS8gpq1YbJb8OW-65o8jcpqeZm3+YfYwhxMtf5zi46yR3Z6NQ@mail.gmail.com](mailto:CAAS8gpq1YbJb8OW-65o8jcpqeZm3+YfYwhxMtf5zi46yR3Z6NQ@mail.gmail.com)>

Subject: PHH Account #0016371056

From: Dave McCrae <[xstek99@gmail.com](mailto:xstek99@gmail.com)>

To: [txfhad@bdfgroup.com](mailto:txfhad@bdfgroup.com)

Content-Type: multipart/alternative; boundary=14dae9340ddf87b33904d356be13

<http://www.faqs.org/patents/app/20080201190>

[http://www.stayviolation.com/files/parsley\\_i\\_bbwcdf\\_countrywide\\_bohm.pdf](http://www.stayviolation.com/files/parsley_i_bbwcdf_countrywide_bohm.pdf)

<http://www.ripoffreport.com/corrupt-companies/countrywide-home-loa/countrywide-home-loans-jeff-d-6b7pa.htm>



[http://tx.findacase.com/research/wfrmDocViewer.aspx/xq/fac.20080422\\_0000490.NTX.htm/qx](http://tx.findacase.com/research/wfrmDocViewer.aspx/xq/fac.20080422_0000490.NTX.htm/qx)

The opinion of the court was delivered by: A. Joe Fish Senior United States District Judge

#### MEMORANDUM OPINION AND ORDER

Before the court are the motions for summary judgment of (1) the defendants Greg Bertrand ("Bertrand"), Keith Smiley ("Smiley"), R.H. Patterson ("Patterson"), Barrett Burke Wilson Castle Daffin & Frappier, LLP ("Barrett Burke") and (2) the defendants JP Morgan Chase Bank, National Association ("JP Morgan") and Litton Loan Servicing LP ("Litton"). For the reasons set forth below, (1) the motion of the defendants Bertrand, Smiley, Patterson, and Barrett Burke is granted in part and denied in part; and (2) the motion of the defendants JP Morgan and Litton is granted as to Cooper's federal claim against them. All remaining claims against JP Morgan and Litton are remanded to the state district court from which this case was previously removed. See 28 U.S.C. § 1367(c)(3). Decision on Cooper's claims not addressed herein is reserved to the judge of the state district court.

#### I. BACKGROUND

This case arises out of the attempt to foreclose on and sell the homestead of the pro se plaintiff Jay Sandon Cooper ("Cooper").

On October 30, 1998, Cooper and his then-wife Linda Cooper (collectively, "the Coopers") secured a loan in connection with their purchase of a home located at 1520 Janwood Drive in Plano, Texas ("the property"). Affidavit of Chris Wyatt ("Wyatt Affidavit") ¶¶ 2-3, attached to Appendix in Support of Defendants Litton Loan Servicing, LP and JP Morgan Chase Bank, N.A., as Trustee,'s Motion for Summary Judgment ("Litton/Chase Appendix") as Exhibit A. Specifically, the Coopers executed an adjustable rate note ("the note") promising to repay \$140,000 and a deed of trust securing the note by granting a first lien on the property. Id. ¶ 3. The lender was First Consolidated Mortgage Company. See Adjustable Rate Note and Deed of Trust, attached to Litton/Chase Appendix as Exhibit A-1 and Exhibit A-2 respectively. At closing, the Coopers waived establishment of escrow funds and promised to pay not only principal and interest but also property taxes and insurance premiums. Wyatt Affidavit ¶ 9.

Pursuant to an agreement between JP Morgan and Litton, effective January 17, 2000, Litton began servicing the loan. Id. ¶ 4. Prior to this agreement, the loan was serviced by Nations Credit. Id. ¶ 5. Nations Credit transferred the servicing of the loan to Litton. Id. [\\*fn1](#)

At the end of two rounds of bankruptcies, see id. ¶¶ 10-14, Cooper's loan was three months in arrears due to Cooper's insufficient payment history. Id. ¶ 15. In addition to making insufficient payments, Cooper failed to maintain insurance on the property during the second bankruptcy proceeding. Id. ¶ 16. In a letter from Litton to Cooper, Litton informed Cooper that because he had not provided proof of insurance on the property, Litton had secured insurance on the property and would bill this fee to Cooper's loan. See Letter, attached to Litton/Chase Appendix as Exhibit A-6.

After the second bankruptcy was dismissed, on May 10, 2006, Litton accepted one final payment from Cooper, and Litton paid insurance premiums and property taxes. Wyatt Affidavit ¶ 18. On June 9, 2006, maturity of the loan was accelerated. Id. ¶ 21. As of December 4, 2007, Cooper owed \$184,894.74 on the loan, and after that date this amount accrues interest at a per diem rate of \$33.71. Id. Cooper learned that the property was posted for foreclosure when he received notice in the mail. Plaintiff's Original Petition ("Petition") at 2, attached to Notice of Removal at Tab 1. Cooper avers that "[v]ia Western Union, [he] consistently delivered his monthly payments in the amount of \$1,026.29 to . . . Litton Loan Servicing L.P., mortgage servicing agent for JP Morgan Chase Bank, NA . . ." Id. Cooper alleges that the defendants "secretly and wrongfully charged [him] fees . . . [so that his] monthly payments were wrongfully considered to be inadequate to pay principal and interest." Id.

On February 5, 2007, this action was commenced in the 116th District Court of Dallas County, Texas. Therein, Cooper filed an application for a temporary restraining order and a temporary injunction seeking relief under, among others, the Texas Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37.0001, et seq.; the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq.; and the Fair Credit Protection Act, 15 U.S.C. § 1605. Cooper brought claims against all of the defendants for breach of contract, usury, breach of the duty of good faith and fair dealing, common law and statutory fraud, and intentional infliction of emotional distress.

On March 7, 2007, the case was removed to this court by the defendants, alleging jurisdiction under 28 U.S.C. § 1331. On April 2, 2007, Cooper moved to remand this case to the state court from which it was removed, or, in the alternative, to abstain from deciding his claims which arise under state law. In that motion, Cooper claimed that this case must be remanded because removal was untimely and a procedural irregularity warranted remand. On July 23, 2007, this court denied Cooper's motion to remand and granted the defendants' motion to supplement their notice of removal.

## II. ANALYSIS

### A. Evidentiary Burdens on Motion for Summary Judgment

Summary judgment is proper when the pleadings and evidence on file show that no genuine issue exists as to any material fact and that the moving parties are entitled to judgment as a matter of law. FED. R. CIV. P. 56(c).<sup>\*fn2</sup> "[T]he substantive law will identify which facts are material." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. The movants make such a showing by informing the court of the basis of their motions and by identifying the portions of the record which reveal there are no genuine material fact issues. Celotex Corporation v. Catrett, 477 U.S. 317, 323 (1986). The pleadings, depositions, admissions, and affidavits, if any, must demonstrate that no genuine issue of material fact exists. FED. R. CIV. P. 56(c).

Once the movants make this showing, the non-movant must then direct the court's attention to evidence in the record sufficient to establish that there is a genuine issue of material fact for trial. Celotex, 477 U.S. at 323-24. To carry this burden, the "opponent must do more than simply show . . . some metaphysical doubt as to the material facts." Matsushita Electric Industrial Company, Ltd. v. Zenith Radio Corporation, 475 U.S. 574, 586 (1986). Instead, the non-movant must show that the evidence is sufficient to support a resolution of the factual issue in his favor. Anderson, 477 U.S. at 249.

While all of the evidence must be viewed in a light most favorable to the motion's opponent, Anderson, 477 U.S. at 255 (citing Adickes v. S.H. Kress & Company, 398 U.S. 144, 158-59 (1970)), neither conclusory allegations nor unsubstantiated assertions will satisfy the non-movant's summary judgment burden. Little v. Liquid Air Corporation, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc); Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir.), cert. denied, 506 U.S. 825 (1992). Summary judgment in favor of the movant is proper if, after adequate time for discovery, the motion's opponent fails to establish the existence of an element essential to his case and as to which he will bear the burden of proof at trial. Celotex, 477 U.S. at 322-23.

### B. Defendants Bertrand, Smiley, Patterson, Barrett Burke

Defendants Bertrand, Smiley, Patterson, and Barrett Burke assert that they are entitled to summary judgment on all of Cooper's claims against them because Cooper violated Texas Property Code § 51.007. Brief in Support of Defendants Barrett Burke Wilson Castle Daffin & Frappier, LLP, Greg Bertrand, Keith Smiley, and R.H. Patterson's Motion for Summary Judgment ("Bertrand, Smiley, Patterson, Barrett Burke Motion") at 1. Under this section, "[t]he trustee named in a suit or proceeding may plead in the answer that the trustee is not a necessary party by a verified denial stating the basis for the trustee's reasonable belief that the trustee was named as a party solely in the capacity as a trustee under a deed of trust, contract lien, or security instrument." TEX. PROP. CODE § 51.007(a) (Vernon 2007). Within 30 days after the filing of the trustee's verified denial, a verified

response is due rebutting the trustee's verified denial. Id. § 51.007(b). If a verified response is not timely filed, the trustee shall be dismissed from the suit without prejudice. Id. § 51.007(c).

In their motion for summary judgment, defendants Bertrand, Smiley, Patterson, and Barrett Burke aver that they are not necessary parties, and that on March 7, 2007, they filed a first amended answer which contained a verified denial alleging that they were being sued solely in their capacity as trustees and that Cooper did not file a verified denial within 30 days. Bertrand, Smiley, Patterson, Barrett Burke Motion at 1, 3. Cooper did not file a verified response within 30 days; however, he asserts that his verified complaint complies with Texas Property Code § 51.007. Plaintiff's Brief in Support of Plaintiff's Response to Defendants' Barrett Burke Wilson Castle Daffin & Frappier, LLP, Greg Bertrand, Keith Smiley, and R.H. Patterson's Motion for Summary Judgment ("Response to Bertrand, Smiley, Patterson, Barrett Burke Motion") at 4. The clear language of Texas Property Code § 51.007 states that "[w]ithin 30 days after the filing of the trustee's verified denial, a verified response is due from all parties to the suit or proceeding setting forth all matters, whether in law or fact, that rebut the trustee's verified denial." TEX. PROP. CODE § 51.007(b) (Vernon 2007) (emphasis added). Cooper did not file a verified response within 30 days, so he did not comply with the explicit mandate of that section. However, Cooper asserts that he did not receive verified denials of Bertrand and Smiley. Response to Bertrand, Smiley, Patterson, Barrett Burke Motion at 4. Because Cooper does not contest receipt of the verified denials of Patterson and Barrett Burke, the motion for summary judgment of Cooper's claims against them is granted. Defendants Bertrand and Smiley have moved the court to consider sua sponte their right to summary judgment under Texas Property Code § 51.007 or, in the alternative, for leave to file expedited verified denials. Defendants Barrett Burke Wilson Castle Daffin & Frappier, LLP, Greg Bertrand, Keith Smiley and R.H. Patterson's Reply to Plaintiff Jay Cooper's Summary Judgment Response at 2 n.1. The court grants the motion of the defendants Bertrand and Smiley for leave to file verified denials or responses. They shall do so within ten days of this date.

#### C. Defendants Litton and JP Morgan

Defendants Litton and JP Morgan move for summary judgment on all of Cooper's claims against them. Cooper asserts that these defendants violated the Fair Credit Protection Act, 15 U.S.C. § 1605. Petition at 23. Defendants Litton and JP Morgan contend that Cooper's Fair Credit Protection Act claims are more properly construed as claims under the Truth-in-Lending Act ("TILA"). 15 U.S.C. § 1640, et seq. Brief in Support of Defendants Loan Servicing, LP and JP Morgan Chase Bank, N.A., as Trustee's Motion for Summary Judgment at 6 n.1. The court agrees.

A one-year statute of limitations governs Cooper's claims under the TILA. Id. § 1640(e). According to the statute, limitations runs from the date each violation occurred. A violation occurs when credit is extended through the consummation of the transaction between creditor and its customer without the required disclosures being made. Stevens v. Rock Springs National Bank, 497 F.2d 307, 309-10 (10th Cir. 1974). The loan transaction in this case was closed on October 30, 1998. Limitations thus bars Cooper's TILA claims, since suit was not filed until February 5, 2007.

#### D. Pendent Jurisdiction

Federal court jurisdiction exists over an entire action, including state law claims, when the federal and state law claims "derive from a common nucleus of operative fact" and are "such that [a plaintiff] would ordinarily be expected to try them all in one judicial proceeding." Carnegie-Mellon University v. Cohill, 484 U.S. 343, 349 (1988) (citing United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966)). Yet pendent jurisdiction is a "doctrine of discretion, not of plaintiff's right." Gibbs, 383 U.S. at 726. Consequently, "a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims." Carnegie-Mellon, 484 U.S. at 349-50.

When the federal claims are dismissed before trial and only state law claims remain, the balance of factors to be considered under the pendent jurisdiction doctrine weigh heavily in favor declining

jurisdiction; therefore, the federal court should usually decline the exercise of jurisdiction over the remaining claims and remand the case to state court. Id. at 350 n.7.

In the case before the court, the federal claim against the defendants JP Morgan and Litton has been dismissed and only state law claims against those defendants remain. Because the federal claim was dismissed before trial, the factors of judicial economy, convenience, fairness, and comity suggest that this court ought to decline jurisdiction over the remaining state law claims and remand those claims to state court. See 28 U.S.C. § 1367(c)(3).

### III. CONCLUSION

Accordingly, the motion of defendants Bertrand, Smiley, Patterson, and Barrett Burke is GRANTED in part and DENIED in part. The motion of defendants Patterson and Barrett Burke for summary judgment on Cooper's claims against them is GRANTED. Defendants Bertrand and Smiley have leave to file verified denials in this case. If such verified denials are filed within ten days of this date, Cooper shall have thirty days to respond, as provided by TEX. PROP. CODE § 51.007(b). In the absence of any response from Cooper, summary judgment will be entered in favor of Bertrand and Smiley.

The motion of defendants JP Morgan and Litton is GRANTED on Cooper's TILA claim against them. Cooper's remaining claims against these two defendants, all of which are governed exclusively by state law, are REMANDED to the 116th Judicial District Court of Dallas County, Texas.

The clerk shall mail a certified copy of this order to the district clerk of Dallas County, Texas. 28 U.S.C. § 1447(c).

SO ORDERED.

<https://www.casefilexpress.com/>

NOTES-

[1/21/13 - Process server came to house, gave notice 'Call morgage [sic] 800.330.0423']

Talked with Hugo Torres

Unable to give payoff statement, transfer to attorney, BarrettBurkeWilson

1=request reinstatement/payoff figure, refer to invalid e-mail address

-----

350 Cee Run

by Certified Mail to all Listed

Bertram Texas 78605

1/22/2013

~~John Latham~~

~~John W. Latham~~

~~Brett Adams~~

~~T. Latham~~

~~Michael Latham~~

~~c/o Barrett Daffin Frappier Turner & Engel, LLP~~

~~15000 Surveyor Blvd. Suite 100~~

~~Addison, TX 75001~~

~~[This one was never sent as I decided to hire local legal counsel]~~

~~[BBDFFE refused to discuss matter with my counsel until letter of authorization was completed]~~

~~[BBDFFE refused to discuss matter with my counsel after letter of authorization was completed]~~

~~Terminated relationship with counsel Wednesday and filed TRO Thursday 2/21/13~~

~~Re: Notice of Foreclosure Sale~~

PHH 0016371056

Gentlemen;

I received notice today of your intent to foreclose and sell my property. The mortgagor, PHH, has apparently represented to your organization that I am in default on said obligation. I took this mortgage out for 15 years in 2001, and my current scheduled debt by traditionally accepted accounting standard, using the appropriate amortization table, is \$26,555. I have attached that table for your examination. You are claiming to accelerate claim for the entire note due in the amount of \$8,913.28, which is all the money due your client, and some unknown collection fees due yourselves. This agrees fairly closely with my own records. Using the same traditionally accepted accounting standards as above for time and rate, this amount is due on 1 August 2015. Today, at this writing, as above is 22 January 2013.

As you can see, the note is not in default, and will not be for several years in the future. Please withdraw your action, and inform both me and your client of the satisfactory conclusion in writing. I have been asking PHH for several months without response for a payoff statement (this is satisfactory), and a list of all payments received by PHH since the inception of this mortgage, and the disposition. I realize they may not be choosing to use traditionally accepted accounting standards, which is fine, but I will require that information at the discovery stage prior to our court appearance.

By the way, did I miss an invitation to a court appearance before a sale order was issued? Who was the judge, what was the case number, &c. so I can properly respond with the above information for consideration by all. Please let me know soonest.

I am writing this on 22 January 2013, the same day I received notice of claim, so I believe I am within the thirty day response period. You will be receiving this soon, as soon as the Post Office comes, so we will see. I know they are somewhat overwhelmed with their daily commitment, but I have no concerns that they will get to you soon.

Item 2 for this response; I intend to assert my rights as an active service member of the Armed Forces of the United States. I am attaching also my Merchant Marine document, which is a lifetime commission still in use as required. You will not be permitted to offer this property for sale.

Now I believe we have disposed of the issues of validity of the debt and legal protection extended to individuals in active military service. I would like to pay this debt off completely, as funds become available. I have \$2000 available today which I could send you. I have an additional sufficient amount being held in my behalf by the US Internal Revenue Service, although they are currently not processing tax refunds due to their own internal confusion. They expect to start processing tax claims soon, and I would have the balance of funds available in 10-14 business days, or know the reason why not. I have additional amounts of partial sufficiency being held in my behalf by the Mississippi Department of Revenue, but they are telling me their disbursement depends on the US Government prior acceptance. If you were able to accept partial payments, it might be in the interest of both your client and yourself

for cash flow purposes. If you have tax obligations of your own this year, you could pay in, they could pay out, and all would work out well. I will however require information of satisfactory purpose in writing, as PHH has returned a partial payment I made in December of \$500, and a 'suspense amount' of \$272 in January. I don't know what the 'suspense amount' represents since, as I say, they are apparently using non-traditional accounting methods. I will not send any more partial payments unless I know they are acceptable, as otherwise the money just lays around for unknown periods of time and causes confusion or loss.

Please let me know your feeling after reviewing the situation.

Thank You,

Dave McCrae

512.557.0283 Worldwide, I answer all the time

[Xstek99@gmail.com](mailto:Xstek99@gmail.com), that goes directly to me

Like me on Facebook

Attachments:

350 Cee Run Amortization.xlsx

Offshorepapersbw.jpg

Letter of 1 January to Audrey Welsh, receipt signed by Nora Wocken

[Received letter from Telita Carson with notice to submit formal QWR to Customer Service, also had complete payment records of loan. ]

BDFTE refused to communicate with Anne Little, who withdrew from case 1200 2/20/13

Notified Anne Little to terminate effort and talked with PHH loss mitigation rep maryrufer and reached agreement on mutual desire to pay loan completely, and suitably separate BDFTE charges. They will require time to prep numbers. Confirming copy below pp 24-26. I will file Motion to Quash today, pro se.

Failed to borrow money from Western Sky to pay off loan when denominated. XX Western Sky.

350 Cee Run

Bertram, TX 78605

2/19/13

Re: Account #0016371056

Customer Service

e-mail to [mary.rufer@mortgagefamily.com](mailto:mary.rufer@mortgagefamily.com)

2001 Bishops Gate

PO Box 5469

Mt. Laurel, NJ 08054

800-449-8767

800-330-0423

Re: Telita Cannon Letter of 02/12/2013

Customer Service;

I am writing at the request of Telita Cannon to present a Qualified Written Request (QWR) pursuant to the Real Estate Settlement Procedures Act (RESPA) and HUD's Regulation X, which defines a QWR as "a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name or account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower."

I am now mailing this 'QWR' to the address suggested by Ms. Telita Cannon, rather than to the single point of contact initially suggested to me in November of 2012, Ms. Audrey Welsh. Audrey Welsh and I have never successfully communicated.

To continue, I believe there has been a servicing error in application of my payments to the above account, over the past 12+ years. By your own accounting, the balance due on principal is today



\$7,758.96. According to a fifteen year amortization table, 180 payments at 6.25% (6.625 APY), my liability today would be approximately \$23,000+, using Generally Accepted Accounting Principles (GAAP). I have previously sent you an applicable spreadsheet. I have paid to this account approximately an additional \$15,000, three years earlier than the commitment, yet your attorneys in Dallas have scheduled a foreclosure sale for 5 March 2013. I don't understand how you have reached this decision, and I am very unclear as to how your attorneys have committed such a grievous error of miscommunication to you. I would like to pay this entire amount, and I have necessary funds available today. It is not really appropriate for me to go through the HAMP process and enter into another long mortgage commitment, as I am now retired and within close sight of paying this entire amount about three years earlier than the fifteen year commitment.

You should also be aware that as an active Merchant Marine, which is a lifetime commitment, my primary residence is protected from seizure or sale by various Federal laws. Again, you should consult with your attorney in Dallas, BBDFTE, for specific legal advice.

I have retained local counsel, Anne Little, and authorized her firm to defend this unlawful seizure and sale, and we will do everything in our power to prevent this activity from occurring. Unfortunately your representative BBDFTE has refused all communication with either of us, as their responsibility is solely to yourselves. I am filing in Burnet County, Texas, today, pro se, to stop sale of property. Anne has withdrawn from the case and advised me to just pay what I owe. I agree. We still have some uncertainty of what I owe.

Please advise me on cancellation of sale, and once again I ask for a single point of contact with your corporation with necessary authority to resolve this issue.

Thank You,

Dave McCrae

512.557.0283 Global

[Xstek99@gmail.com](mailto:Xstek99@gmail.com)

Attachment: offshorepapers.jpg (Merchant Marine)

[Mary Rufer acknowledged receipt]

MOTION TO QUASH FORECLOSURE SALE OF 350 CEE RUN,

SCHEDULED 5 MARCH 2013

FILED IN BURNET COUNTY TEXAS 2/20/13

David and Barbara McCrae, pro se

Vs.

PHH Mortgage / USAA Savings Bank

Represented by BPDFTE

I respectfully move that this sale be cancelled due to the following facts-

- 1) The mortgage instrument is not delinquent, as payments since 2001 on this fifteen year mortgage are made through approximately February of 2016. Payments have not been properly applied to account by mortgage servicing company. Records of all payments will be submitted for review. The owner desires to pay account completely, but
- 2) The property at 350 Cee Run is the sole and principal residence of David and Barbara McCrae. David is an active Merchant Marine and has been since 1972. It is a lifetime commitment, subject to activation at the sole discretion of US Federal Government. As such residence, this property is protected from seizure and sale. Documentation will be submitted for review.
- 3) BPDFTE has refused to discuss these facts with the current owner or with the owner's prior attorney of record, Anne Little. By their intentional refusal to communicate with the adversary parties, they have harmed the interest of their client, and the interest of justice. BPDFTE has engaged in a pattern of activity and has been reprimanded by the courts in the past for just such behavior. We submit as precedent (attached)

[Case 05-90374 Document 248 Filed in TXSB on 03/05/2008 Page 1 of 40](#)

Their behavior continues, without regard to previous censure. Their behavior and their exorbitant and unsupported fee structure will be reviewed in a separate action proceeding. We are asking for their removal from this case and cancellation of all fees they have submitted either to PHH or David and Barbara McCrae.

[Filed motion with supporting documentation under MotionToQuash

Called Miss Cindy for scheduling

Sent motion and all documentation in package to PHH , received Friday 2/22/13]

Went hunting for bankruptcy attorneys in case of need on 4 March

Released Anne Little from AC privilege

Talked with Denise at Bill Gammon

Talked with Cathryn Curtis at Davis

Deal Memo-

PHH agrees to accept \_\_\_\_\_ in full payment of this mortgage #0016371056

AMOUNT

In recognition of current government organizational difficulties, PHH agrees to forbear this payment until Federal and State tax refund payments currently being processed are disbursed to David and Barbara McCrae.

David and Barbara McCrae agree to continue daily occupy and care for property, preserving present value.

PHH agrees to accept collection fees of \$1 for all time devoted to this transaction since 1 November 2012, for their own expense or any expenses incurred by their agents.

David and Barbara McCrae agree to accept defense fees \$1 for all expenses devoted to defense of this action since 1 November 2012, for their own expense or any expense incurred by their agents

PHH agrees to fully account for current escrow funds held for taxes and prorated insurance refunds on cancellation of policy, and release those funds with title within thirty days of receipt of the above payment .

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For PHH Date

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David A McCrae Date

---

Barbara A McCrae Date

Receipt to be completed in future

On \_\_\_\_\_, I have received \_\_\_\_\_, to be

This date

this amount

applied to PHH Mortgage account #0016371056, in name of David and Barbara McCrae.

This represents full payment of this mortgage instrument. PHH will satisfactorily calculate and return to David and Barbara McCrae any funds held in escrow account for taxes or insurance within 30 days of this transaction.

I authorize that I am authorized to represent PHH in this transaction.

---

Representative

Date

PHH Mortgage Services

350 Cee Run

Bertram, TX 78605

2/19/13

Re: Account #0016371056

Customer Service

e-mail to [mary.rufer@mortgagefamily.com](mailto:mary.rufer@mortgagefamily.com) and surface mail

2001 Bishops Gate

PO Box 5469

Mt. Laurel, NJ 08054

800-449-8767

800-330-0423

Re: Texas Customs

by e-mail Sunday and certified mail to Bishops Gate about Tuesday or so

Mary-

By now you have received service of my motion to quash sale of my property scheduled for 5 March.

I'm sending you this helpful information for your files discussing our procedures for such sales down here in Texas, just in case your attorney of record has not discussed them with you. This is not part of my motion, but is a key part of my preliminary discussion with the judge, as soon as Miss Cindy schedules our meeting. Real Soon Now.

If we are not able to resolve this matter soon (in the next six business days) I will be at the sale on the courthouse steps, opposing the action to the best of my ability. If the sale somehow proceeds, I will be pursuing recovery of asset, expenses, &c., not only for myself but also other members of my class.

I expect this is the most expensive and time consuming way to do it, with the potential liability to PHH far exceeding the potential gain you might achieve by a settlement of this entire mortgage, approximately 3 years before it's due date. My legal expenses right

now are \$1; I'd be willing to pay \$1 for your own. Somehow I think you've been poorly served until now by BPDFTE.

Let's arrange a meeting at your earliest convenience and talk through our issues.

With Best Regards,

Dave McCrae  
XSTechnology, LLC  
350 Cee Run  
Bertram Texas 78605  
001.512.557.0283 Global

Dirt washes off. Money sticks.

[No further communication, apparent intent of PHH to pursue sale]

[Met with Ray Fisher, preparing strategic bankruptcy]

2/26/13 – Completed Access Debt Counseling Course - \$15

2/27/13 – Received partial Fed tax Refund, retained Ray Fisher for bankruptcy filing - \$3700

2/28/13 – Authorized CH XII filing -

3/1/13 – Filed for CH XIII protection of assets - \$300

3/5/13 – Went to house sale 1300-1700 hours at courthouse

DATE	ENTRY	EXPENSE	INCOME
1/29/13	BBDTFE posts sale of 350 Cee Run, substitute trustee for PHH		
2/13/13	Hire Anne Little, attorney of record, to stop posted sale	\$1,000	
2/22/13	Prepare and File TRO, pro se	2,500	
2/26/13	Hire Ray Fisher, attorney of record, for strategic bankruptcy to stop sale	3,700	
2/28/13	File CH XIII	300	
	Consumer credit course	15	
	Refund of unused retainer, Anne Little		(600)
	BBDTFE claim for expenses	denied	
	Dave McCrae expenses, 5 days @ \$1,150	5,750	
	<b>Expense recovery to be applied to balance due on 350 Cee Run</b>	<b>\$13,265</b>	<b>(600)</b>
	<b>Credit to balance due on 350 Cee Run</b>	<b>\$7,759</b>	
	<b>Invoice to PHH for Wrongful Foreclosure Defense Action</b>	<b>\$5,506</b>	







**[FROM 4CLOSUREFRAUD.ORG]**

**TOLL-FREE NUMBERS REGARDING LENDER PROCESSING SERVICES SETTLEMENT**

**MEDIA RELEASE**

The Department of Commerce and Consumer Affairs' Office of Consumer Protection has announced consumers affected by a multi-state settlement last month with Lender Processing Services, Inc. (LPS) and its subsidiaries, LPS Default Solutions and DocX, can now begin making calls regarding their cases.

Hawaii joined 44 other states and the District of Columbia in reaching a \$120 million multi-state settlement.

The proposed agreement resolves allegations that the Jacksonville, Fla.-based company, which primarily provides technological support to banks and mortgage loan servicers, "robo-signed" documents and engaged in other improper conduct related to mortgage loan default servicing.

The judgment requires LPS and its subsidiaries to reform its business practices and, if necessary, to correct documents it executed to assist the homeowner.

LPS clients can call toll-free 866-854-8935 for questions about document execution.

For questions about LPS field services, consumers can call toll-free 800-767-8674.

350 Cee Run

Bertram, TX 78605

3/20/13

Re: Account #0016371056

Customer Service

By certified mail

2001 Bishops Gate

PO Box 5469

Mt. Laurel, NJ 08054

800-449-8767

800-330-0423

Dear Service,

I'm attaching new homeowner's insurance policy to replace current force-placed coverage in effect. Please stop coverage effective today and apply pro-rated unused premium to mortgage principal. You will also need to recalculate escrow calculation to take into account cessation of premium.

Thank You,

Dave McCrae

[Xstek99@gmail.com](mailto:Xstek99@gmail.com)

512.557.0283

[Foreclosure Crisis](#), [Housing Crisis](#), [Fannie Mae](#), [Freddie Mac](#), [Edward Demarco](#), [Fhfa](#), [Fhfa Inspector General](#), [Freddie Mac Complaints](#), [Freddie Mac Homeowner Complaints](#), [Freddie Mac Inspector General Fannie Mae Inspector General](#), [Freddie Mac Lender Complaints](#), [Business News](#)

NEW YORK -- For more than five years, many homeowners who complained about mortgage industry foreclosure abuses have wondered whether anyone with a financial stake in keeping them in their home was paying attention. On Thursday, with the release of a new report from a federal watchdog, they got their answer: No.

The report, by the inspector general of the Federal Housing Finance Agency, says banks and other companies that manage more than 10 million home loans for Freddie Mac "largely failed" to alert the mortgage giant to the most serious category of homeowner complaints, despite a requirement they do so. These "escalated complaints" often include the most serious allegations of misconduct, including improper fees, misapplied mortgage payments and a frustrating cycle of lost paperwork and unreturned calls. In some instances, the mismanagement has led to a wrongful foreclosure.

"The results are shocking on a number of different levels," said Steve Linick, the FHFA inspector general, in an interview with The Huffington Post. "It is surprising that servicers were not reporting in such large numbers, that Freddie was not on top of this, and that [the FHFA] did not catch it in its exam."

Four of the largest bank servicers -- Bank of America, Wells Fargo, Citigroup and Provident -- reported no escalated cases to Freddie Mac, despite handling more than 20,000 over a 14-month period, according to the report. Freddie Mac examiners did not notice that the mortgage companies were failing to disclose the complaints, nor did the FHFA, which relied on "incomplete" Fannie Mae examinations, the report concludes. The FHFA oversees the bailed out lenders Freddie Mac and Fannie Mae.

The report suggests a striking failure by the government-controlled Freddie Mac and its federal overseer to ensure that borrowers were treated fairly, even as [news reports](#) showed that abuses were broad and systemic and banks agreed to [huge settlements](#) to resolve abuse allegations. It comes at what could be a crossroads for the FHFA and its [embattled acting director Edward DeMarco](#), whose tenure atop the agency may be drawing to a close after more than three years. Last week, [multiple news reports](#) indicated that President Barack Obama was considering nominating Rep. Mel Watt (D-N.C.) as permanent director, though that nomination would likely face a challenge from Senate Republicans who have praised DeMarco. DeMarco has refused to implement Obama's proposal to reduce the principal on underwater mortgages, preventing some foreclosures.

Congress created the FHFA in 2008 as a regulator with special powers to oversee and control Fannie Mae and Freddie Mac, which required more than \$180 billion in taxpayer bailout money that they have not repaid. Despite their uncertain future, Fannie and Freddie control more than half of all U.S. home mortgage. Their rules for how the servicers they hire

to manage those loans treat struggling homeowners are considered industry boilerplate. Also industry boilerplate, say homeowners and their advocates: their seeming disinterest in enforcing those rules.

Hundreds of thousands of foreclosed homeowners have filed legal complaints, or complained to bank regulators, that their mortgage company presented roadblocks preventing them from enrolling in a government-sponsored program that lowers home payments and helps prevent foreclosure. For homeowners and their advocates, one of the most puzzling aspects of the experience has been the seeming indifference of Fannie and Freddie, which have a financial incentive to keep borrowers in their homes, even if they are making lower payments. So why haven't the mortgage giants done more to intervene with the companies they pay to manage loans?

This report doesn't answer that question. But it does show that Freddie Mac, in many instances, simply wasn't aware of the problems. By not requiring servicers to submit data on serious complaints, there was no way for the company to ensure those complaints were being handled in a way that would satisfy legal requirements, which include helping homeowners avoid foreclosure.

Freddie Mac data revealed that 98 percent of its loan servicers reported no escalated cases over a 14-month period ending Dec. 31, according to the inspector general report. In response to this statistic, Freddie Mac officials suggested that the lack of reporting may indicate there were no escalated cases, the report says. This conclusion, the inspector general concludes, is "highly unlikely," given the 6.6 million loans these companies manage.

The report also found that the servicers failed to resolve roughly 20 percent of the escalated complaints within 30 days, as required. The worst-performing institution, Bank of America, failed to resolve nearly half its cases within the timespan. What this means is difficult to assess, however, given "notable instances of inconsistencies and inaccuracies" presented by the servicers for what constitutes "resolving" a case, according to the report.

The report also faults the FHFA for failing to validate data provided to it by Freddie Mac, a consistent criticism that the inspector general has levied in past reports. In 2011, the inspector general concluded that the agency was not doing enough to track homeowner complaints.

Freddie Mac did not respond to a request for comment. A Fannie Mae spokesman said he could not comment because he had not seen the report. A FHFA spokeswoman referred a reporter to a letter sent to the inspector general in response to the findings.

That letter appears to send a mixed message. The FHFA says that while it agrees with the "intent and the spirit" of the recommendations in the report -- which essentially boil down to better oversight of Fannie Mac -- carrying out specific recommendations "may be limited"

in response to new mortgage rules issued earlier this year by the Consumer Financial Protection Agency.

Later in the letter, the FHFA says it "agreed with the intent of the recommendations" and would complete a plan to review escalated cases by June.

Bank of America did not respond to a request for comment.

A homeowner advocate, and a lawmaker who has been a frequent critic of DeMarco and the FHFA, said that the report was further evidence of the continued failure of government regulators and banks to help those struggling to save their homes.

"Yet again we've learned that servicers are not doing what they are supposed to be doing, and the government stands by and lets it happen," said Elizabeth Lynch, a housing lawyer with the nonprofit MFY Legal Services in New York.

"Today's report reveals the latest in a sorry string of failures by FHFA leadership to protect American homeowners," said Rep. Elijah Cummings (D-Md.). "After so many reports documenting the abuses homeowners have suffered at the hands of mortgage servicers, it is unconscionable that FHFA has failed to require mortgage servicers to properly handle tens of thousands of homeowner complaints."

**NY judge finds Flagstar liable for \$90 million in mortgage case**

(Reuters) - [Flagstar Bancorp Inc \(FBC.N\)](#) was ordered on Tuesday to pay \$90.1 million to bond insurer [Assured Guaranty Ltd \(AGO.N\)](#) in a contract dispute over loans underlying \$900 million in mortgage-backed securities.

U.S. District Judge Jed Rakoff in Manhattan ruled that Flagstar had materially breached contracts specifying the quality and characteristics of loans to be packaged into the securities.

The closely watched lawsuit has been seen as a test of the ability of bond insurers to hold [banks](#) accountable for losses incurred insuring securities at the heart of the financial crisis.

A number of other suits have been filed against [banks](#) by Assured and fellow insurers, but have yet to reach trial.

"This ruling is a significant milestone in forcing the banks to honor the contractual commitments they made and have long sought to avoid," Jacob Buchdahl, a lawyer for Assured at Susman Godfrey, said in a statement.

The ruling followed a bench trial last year. Assured had at the close of trial sought \$116 million.

In a statement late on Tuesday, Flagstar Bancorp said it "strongly disagrees with the court's ruling and intends to vigorously contest the outcome on appeal."

The lawsuit, filed in April 2011, accused Troy, Michigan-based Flagstar of misrepresenting the quality and traits of loans packaged into two mortgage securitizations issued in 2005 and 2006, valued at more than \$900 million.

Assured had guaranteed the Flagstar securities. When the housing meltdown hit, it was forced to pay millions in claims.

Rakoff said the loans in the securitizations "pervasively breached Flagstar's contractual representations and warranties."

The decision was another reminder of the continued litigation fallout from the subprime meltdown of 2007 and the financial crisis that followed.

The ruling came a day after the U.S. Department of Justice launched a civil fraud lawsuit against credit ratings agency Standard & Poor's, a unit of [The McGraw-Hill Companies Inc \(MHP.N\)](#), over its mortgage bond ratings.

The Flagstar case mirrors other lawsuits by insurers such as [MBIA Inc\(MBI.N\)](#) and Ambac Financial Group Inc ([ABKFQ.PK](#)). Defendants have included JPMorgan Chase & Co ([JPM.N](#)), Credit Suisse Group AG ([CSGN.VX](#)) and Bank of America Corp's ([BAC.N](#)) Countrywide Financial unit.

Assured's lawsuit against Flagstar was the first by the insurers to reach trial. Assured CEO Dominic Frederico, whose company is pursuing other lawsuits, in a statement said the ruling "sets a strong precedent in support of the rights of Assured Guaranty in these cases."

Flagstar, which had net income of \$223.7 million for 2012, said January 23 that it had reserved \$82.7 million for pending and threatened litigation, including Assured's lawsuit.

The litigation reserves also cover another bondholder lawsuit launched earlier this month by MBIA, which sued after paying out \$165 million on claims related to two mortgage-backed transactions it insured.

Flagstar had separately agreed in February 2012 to pay \$132.8 million to settle claims by the U.S. Department of Justice that it improperly approved mortgages for government insurance.



The Assured case amounted to what Rakoff called a "war of experts." Expert witnesses for Assured used a statistical sample of 800 of the 15,000 loans at issue. Of the 800, 606 were defective, an expert for Assured testified.

Flagstar challenged the experts' methodologies and the insurer's ability to prove liability on a sample. But Rakoff said sampling was a "widely accepted method of proof" and largely accepted the experts' testimony.

The case is Assured Guaranty Municipal Corp v Flagstar Bank, FSB in U.S. District Court, Southern District of New York, 11-2375.

(Reporting By Nate Raymond in New York; additional reporting by Sakthi Prasad in Bangalore; Editing by Martha Graybow, Gary Hill, Bernard Orr and Richard Pullin)