

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

CASE NO. 50 2008 CA 022258 XXXMB
DIVISION AW

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 SZYMONIAK'S
OBJECTION TO CONTINUED USE OF ORIGINAL
COURT DOCUMENTS BY PLAINTIFF

COMES NOW, Defendant Lynn E. Szymoniak, by and through undersigned counsel, and objects to the Court allowing the law firm Akerman Senterfitt and the Plaintiff to continue to maintain the Clerk's original file documents. Further, Defendant requests that the Court instruct the Akerman Senterfitt firm to return the documents to the Clerk immediately. In support thereof the Defendant Lynn E. Szymoniak would show as follows:

1. This is an action to foreclose a mortgage on a property owned by the Defendant Lynn E. Szymoniak in Palm Beach Gardens, Florida.
2. The original complaint in this action was filed without the note attached to the complaint. The original complaint included a "lost note" count in which it was alleged that "4.

The original promissory note was lost or destroyed subsequent to Plaintiff's acquisition thereof, the exact time and manner of said loss or destruction being unknown to Plaintiff.¹

3. On or about, December 23, 2009, the Plaintiff caused to be filed a document entitled "Notice of Filing" to which was ostensibly attached a "ORIGINAL NOTE, ORIGINAL MORTGAGE, ACCELERATION LETTER, PAYMENT HISTORY and a copy of recorded ASSIGNMENT OF MORTGAGE."

4. The undersigned went to view the official file in the Clerk's office on February 8, 2011 to look at the original documents contained in Plaintiff's Notice of Filing. Of concern to the undersigned, inter alia, was the condition of the original documents which were in the filing, whether these documents were originals, and whether the allonge was attached to the Note. See Exhibit A, Pictures of Note, Mortgage and Allonge as they appeared in Clerk's file.

5. The allonge in blank must be permanently attached to the note in order for it to be effective. *F.E. Booker v. Sarasota, Inc.*, 707 So.2d 886, 887 (Fla. 1st DCA 1998)

6. The current law firm for Plaintiff, Akerman Senterfit, filed its first Motion for Temporary Release of Original Note, Allonge to Note and Mortgage on or about April 1, 2011.

7. When the hearing was originally held on the Akerman Senterfit Motion, the firm was represented by Nathaniel D. Callahan. In a conference immediately prior to the hearing on the Motion, the undersigned explained the Defendant's objection to the granting of the Motion as making sure that the order of the documents was not disturbed and that the documents not be manipulated, destroyed or damaged, as Defendant raised the issue that the Allonge was not permanently attached to the Note. The condition of the Note and the fact that it was not attached to the Allonge was important to the Defendant.

¹ This allegation is absolutely the opposite of the assertion by Plaintiff's attorneys Akerman Senterfit in their Second Amended Complaint that the Note was always in the Plaintiff's possession and was never lost.

8. This Court originally granted the Motion for Temporary Release of Original Note, Allonge to Note and Mortgage on April 5, 2011 and ordered “The Clerk of Court is directed to Bate stamp number on consecutively the documents as filed and then release the original note and mortgage filed December 28, 2009 [sic], to Akerman Senterfitt as counsel for Deutsche Bank..” See Exhibit B.

9. At some unknown time the documents were returned to the Clerk by the firm.

10. During the undersigned’s inspection of the official Clerk’s file on February 8, 2011, the undersigned took note of the sequencing of the documents in the file and the condition of the documents in the file.

11. The undersigned observed that the Note was immediately in front of the Mortgage in the official Clerk’s file. The Allonge was not adjacent to the Note and was not immediately before or after the Note in the official Clerk’s file. The Note was separated from the Allonge by many pages.

12. The undersigned also observed that the Allonge was free of any holes in the upper left corner which would indicate that the allonge had never been stapled as a means to permanently attach the Allonge to the Note. Photographs of copies of the Note, Mortgage and Allonge as it was placed in the official Clerk’s file records are attached as Exhibit A.

13. Subsequently the Akerman Senterfitt firm sought again to remove the documents for use at the Lynn E. Szymoniak deposition, which was scheduled initially for January 31, 2012, and which was cancelled by Plaintiff on the day of that deposition, and then reset for March 9, 2012. The Court granted the subsequent request to remove the original documents and in its order ruled “The Clerk shall substitute certified copies for the originals removed. The certified copies shall be returned to the Plaintiff’s counsel upon return of the originals to the court file.”

14. At the deposition, Akerman Senterfitt, with its six attorneys present, asked the Defendant Lynn E. Szymoniak to identify the Mortgage, Note and Allonge which had been removed by the Akerman Senterfitt firm for the purpose of using same for questioning at the deposition.

15. It was at that time that the Defendant Lynn E. Szymoniak and the undersigned discovered that Akerman Senterfitt had altered, destroyed and damaged the documents which had been entrusted to the firm.

16. In particular, Akerman Senterfitt had repeatedly stapled and otherwise put holes in the Allonge which had never existed before. This was done in an apparent attempt to make the original Allonge appear to have been permanently affixed to the Note in this case in order to overcome the ineffectiveness of the Allonge, as it had not previously been attached to the Note. There was no other reason for Akerman Senterfitt to damage the official Clerk's documents. Copies of the altered original Clerk's file documents were made at the deposition. Those copies are attached as Exhibit C.

17. The copies of the documents were each adorned with bates numbers (as previously instructed by the Court in its April 5, 2011 Order.) Someone had written the numbers in pencil and affixed the initials "Glf". It appears that several of the penciled in numbers on the documents had been written with a particular original number, erased and then a new number was placed on the original Clerk's documents in pencil. It is apparent that the documents have been renumbered.

18. A review of the numbering on the documents that were presented to the Defendant at her deposition reveals that the first three numbers (documents numbered 3, 4, 5) are in sequence by penciled number without any erasure. Then the Allonge appears with a penciled

number which appears to have been erased. The newly added number is a number 6. It is clear that the Allonge was numbered something other than “6” before it was altered.

19. When the undersigned viewed and took pictures of the documents, the Allonge was not adjacent to the Note. The document immediately adjacent to the Note was the Mortgage. Hence, the numbering should have been consecutive from the Note (pages 3, 4, 5) followed by the Mortgage (pages 6 through 13). An inspection of the altered Mortgage presented to the Plaintiff at her deposition reveals that the following: page 6 has been changed to page 7, page 7 has been changed to page 8, page 8 has been changed to page 9 and so on. See Exhibit C.

20. By the erasures and renumbering on the Mortgage documents it appears that the Mortgage documents were renumbered to start two digits after the number on the last page of the Note, to allow the false and misleading insertion of the Allonge after the Note.

21. It appears that the numbering on the Allonge was altered to appear as if the Allonge was the document immediately following the Note, when it was not in that sequence in the original Clerk’s file.

22. Though the Akerman Senterfitt firm was obliged to keep the documents in sequence, it appears as if the numbering was altered and the documents were taken out of their original Clerk file sequence. Curiously, only Akerman Senterfitt had access to these documents once they left the possession of the Clerk.

23. Plaintiff’s counsel Akerman Senterfitt certainly had an interest in countering the argument of Defendant Lynn E. Szmoniak that not only was the Allonge not permanently attached to the Note but it was also never adjacent to the Note in the original Clerk’s files.

24. By the renumbering of the documents in the original Clerk's files, the Plaintiff, possibly through its attorneys Akerman Senterfitt, tried to suggest that the Allonge was properly adjacent to and permanently attached to the Note, when in fact it was not.

25. The tomfoolery associated with the damage done to the original Clerk's file documents and the apparent manipulation of the sequencing of documents in the original Clerk's file indicates that the Plaintiff through its attorneys has either (1) innocently stapled and restapled and restapled the previously unstapled Allonge and has somehow innocently realigned the numbering on the official Clerk's file documents or (2) it has allowed or intentionally did cause the damage to occur to the Allonge because it was in the interests of the Plaintiff to remove the defense offered by the Defendant or it has allowed or intentionally did cause the numbering on the documents to be altered or re-sequenced the documents prior to numbering because it was in the interests of the Plaintiff to remove the defense offered by the Defendant.

26. The integrity of the official Clerk's file documents has been drawn into question by the possession and apparent alteration of the documents by Akerman Senterfitt.

27. The Clerk's office has an obligation to make sure that its documents are not altered, mangled or manipulated. The Court allowed the Akerman Senterfitt firm the extraordinary relief of allowing the original Clerk's file documents to be removed from the Clerk.

28. This extraordinary relief should no longer be allowed by Akerman Senterfitt.

29. At the deposition of Defendant Lynn E. Szymoniak on March 9, 2012, Akerman Senterfitt and their six lawyers spent well over two hours questioning Defendant about the original Clerk's file documents, there is no need for any additional questioning about these documents which would require the presence of the original Clerk's file documents.

30. The request by Akerman Senterfitt should be denied and the original Clerk's file documents should be returned to the Court immediately. Akerman Senterfitt has shown itself to be a poor custodian of records. Someone has tampered with the evidence while the documents were in the possession of the law firm representing the Plaintiff, Akerman & Senterfitt.

WHEREFORE, Defendant objects to Akerman Senterfitt continuing to maintain possession of the original Clerk's file records for all of the foregoing reasons and further requests that this Court Order the immediate return of the documents to the Clerk.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via facsimile to William P. Heller, Esq., Nathaniel D. Callahan, Esq., Akerman Senterfitt, Las Olas Centre, Suite 1600, 350 East Las Olas Blvd., Fort Lauderdale, FL 33301-2229 (Fax: 954.463.2224) this 27th day of March 2012 and will be hand delivered to counsel for Akerman Senterfitt on March 28, 2012 at the UMC hearing.

/s/ Mark A. Cullen

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