

IN THE CIRCUIT COURT OF THE 9th JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR ORANGE COUNTY

U.S. Bank National Association, as Indenture
Trustee of the HomeBanc Mortgage Trust 2005-
5

Plaintiff,

-vs.-

William Thomas Hamel a/k/a William Hamel;
Regions Bank, as Successor in Interest to
AmSouth Bank;

Defendant(s).

Case #: 2009-CA-011009-O
Division #: 35

PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

PLAINTIFF, by and through its undersigned counsel, hereby files this Motion for Protective Order and states as follows:

1. This is a mortgage foreclosure action.
2. On April 16, 2010, Defendant provided a copy of Subpoena Duces Tecum for Deposition for a Crystal Moore, a person who signed an assignment of mortgage in this matter.
3. Plaintiff believes that a deposition of said person is immaterial, moot, and unnecessary.
4. It appears from said subpoena and exhibits that Defendant is solely attempting to depose Crystal Moore based on her status as a signer of the assignment of mortgage and based on her employment status.
5. Pursuant to Fla.R.Civ. P. 1.280, and upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires. Deltona Corp. v. Bailey, 336 So. 2d 1163, 1169 (Fla. 1976); Maris Distrib. Co. v. Anheuser-Busch, Inc., 710 So.2d 1022, 1025 (Fla^{1st} DCA 1998). As such, the Court is authorized to determine that

the discovery method selected by the party seeking discovery is not best under the circumstances and refuse to allow it if other alternatives are available.

6. Plaintiff believes that it would be premature for the parties to have a deposition, when other, less intrusive and expensive means of discovery to collect the information sought, such as a request for admissions and interrogatories are available.
7. The potential inquiries of Crystal Moore as it relates to an assignment of mortgage have no relevance to the action. Pursuant to FS § 692.01, the assignment is deemed valid and no corporate resolution or authority is necessary to establish the validity of an assignment. As such, a deposition that seeks to inquire related to such matters in unnecessary as the questions do not go to the validity of the assignment.
8. The potential inquiries of Crystal Moore as it relates to an assignment of mortgage have no relevance to the action because an assignment of mortgage is not an instrument that confers standing. In Florida, the debt follows the note and the party entitled to enforce the note has the right to foreclose. (Johns v. Gillian, 134 Fla. 575 (Fla. 1938) and WM Specialty Mortgage, Inc., v. Salomon, 874 So.2d 680(Fla. 4th DCA 2004)). An assignment of mortgage executed into a foreclosing Plaintiff is not necessary at the time of the filing of a foreclosure Complaint. Chemical Residential Mortgage v. Rector, 742 So.2d 300 (Fla.1st DCA 1998). The debt obligation (ie, the Note) is not transferred by assignment, but rather, by negotiation or transfer pursuant to FS Chapter 673. Additionally, Plaintiff is in possession of the original note and entitled to enforce the same pursuant to FS 673.2011 and 673.3011. Further, pursuant to the subject trust agreement, Plaintiff has had the right to enforce the note and mortgage since November of 2005. The various SEC filings for the subject trust can be viewed at the following

URL:

<http://www.sec.gov/Archives/edgar/data/1345781/000116231805001111/0001162318-05-001111-index.htm>

9. Lastly, subsequent assignments of a mortgagee's interest, whether recorded or not, do not change the interest of the mortgagor or someone claiming under him. Nor should a failure to record any subsequent assignment afford the mortgagor or anyone standing in his shoes an opportunity to avoid the mortgage. JPMorgan Chase v. New Millennial, 6 So.3d 681 (Fla. 2nd DCA 2009).
10. Based on the above, the Court should grant Plaintiff's Motion for Protective Order.

WHEREFORE, Plaintiff requests this Honorable Court enter an Order granting Plaintiff's Motion for Protective Order.

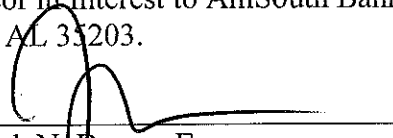
"THIS COMMUNICATION, FROM A DEBT COLLECTOR, IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. Mail on this 25 day of May, 2010, to the following:

William Thomas Hamel a/k/a William Hamel, c/o John A. Morey, Esq., 250 N. Orange Ave., Ste. 1220, Orlando, FL 32801; Regions Bank, as Successor in Interest to AmSouth Bank, C/O Legal Department, 1901 North 6th avenue, Birmingham, AL 35203.

By: 
Joseph N. Dayan, Esq.
FL Bar # 0125660
SHAPIRO & FISHMAN, LLP
Attorneys for Plaintiff
10004 N. Dale Mabry Highway
Suite 112
Tampa, FL 33618
Telephone: (813) 880-8888
Fax: (813) 880-8800