

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA, CIVIL DIVISION

AURORA LOAN SERVICES, LLC,

Plaintiff

CASE NO. 51-2009-CA-8414-ES

v.

JASON DAVID STRONG, et al,

DIVISION: J-1

Defendant

ORDER ON DEFENDANT'S MOTION TO DISMISS

THIS CAUSE, came before the court on May 3, 2010 on Defendant's Motion to Dismiss the Plaintiff's Complaint for Failure to State a Cause of Action.

Defendant, in support of its position that the Plaintiff's complaint contains allegations which materially conflicted with the exhibits attached to the complaint, first argued that while in Paragraph 2 of the complaint Plaintiff alleges that "Jason David Strong executed and delivered a promissory note . . . and mortgage securing payment of the same to Mortgage Electronic Registration Systems, Incorporated as Nominee for Solutions Funding, Inc.", the promissory note and mortgage that Plaintiff has attached to its complaint both conflict with this allegation in that both the promissory note and mortgage reflect payment being secured not to "MERS", but instead to the original "Lender", i.e., Solutions Funding, Inc..

Second, Defendant argued that the note contains three endorsements showing that that note was initially specifically endorsed, without recourse, from the originating

lender, Solutions Funding, Inc. to Lehman Brothers Bank; the second endorsement is from Lehman Brothers Bank to Lehman Brothers **Holding**, Inc.; and the third endorsement on the note, which is a blank endorsement, and the endorsement from which the Plaintiff claims supports its right to sue on the promissory note and mortgage, is from another entity, i.e. “Lehman Brothers Holdings, Inc. (Note that the bold “s” is used at the end of “Holdings” to demonstrate the difference in the Lehman entities, i.e. one is a singular “Holding”, Inc. and the other entity is a plural “Holdings”, Inc.). As such, Defendant argued that the note contains no endorsement from Lehman Brothers “Holding”, Inc. to Lehman Brothers “Holdings”, Inc., and accordingly, the Lehman Brothers Holdings, Inc. blank endorsement is invalid, as there is no evidence on the note by way of endorsement or an allonge to the note showing that the note was ever transferred to Lehman Brothers Holdings, Inc. As such, while Plaintiff claims to have the right to enforce the note at issue as the holder of the note with a “blank endorsement”, the blank endorsement the Plaintiff relies on is from an entity to whom this note was never specifically endorsed, and accordingly, the blank endorsement is from an entity with no apparent rights in the instrument.

The Court finds that while Plaintiff has attached a copy of the note and mortgage and assignment of mortgage to the complaint, and since filing the complaint has filed originals of the note and mortgage with the court, both of those exhibits facially conflict with Plaintiff’s allegations in the complaint as to whom the note was originally payable and for whom said payment was secured by way of the mortgage. Further, the blank endorsement upon which Plaintiff claims to be the “holder” of the promissory note is from an entity with no apparent rights in the promissory note, and accordingly; it is

HEREBY ORDERED AND ADJUGED that:

1. The Defendant's Motion to Dismiss is hereby GRANTED.
2. The Plaintiff shall have thirty (30) days from the date of this Order to Amend and file its Complaint in response to the matters raised in the Defendant's Motion to Dismiss as addressed in this Order. If the Plaintiff Amends and files its Complaint within thirty (30) days from the date of this Order, the case shall not be dismissed.
3. The Defendant shall have twenty (20) days from the date of receipt of Plaintiff's Amended Complaint to file its Answer or responsive pleading.

DONE AND ORDERED in chambers, Pasco County, Florida on this _____ day
of _____, 2010

Done and Ordered
at Dade City,
Pasco County, Florida

Hon. Lynn Tepper

MAY 14 2010

Lynn Tepper,
Circuit Judge

cc: Jon B. Coats, Jr., Esq.
Ryan Shipp, Esq.