

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL  
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR  
HILLSBOROUGH COUNTY  
CIVIL DIVISION

US BANK NATIONAL ASSOCIATION,  
As trustee,  
Plaintiff,

Vs

ALFRED EASTBURN, et al,  
Defendants.

CASE NO.: 08-CA-017211  
DIVISION: "A"

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TRANSCRIPT OF PROCEEDINGS

BEFORE: Honorable J. ROGERS PADGETT  
DATE: Friday, September 24th, 2010  
TIME: Commencing at: 2:00 p.m.  
Concluding at: 2:10 p.m.  
PLACE: Hillsborough County Courthouse  
Room 513  
Tampa, Florida 33602  
COURT REPORTER: Amy Somerset Isse  
Stenographic Shorthand Reporter  
Notary Public  
State of Florida at Large

Pages 1-9

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**ORIGINAL**

**APPEARANCES :**On behalf of the Plaintiff:

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On behalf of the Defendant:

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(No Exhibits were Marked or Received into Evidence)

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THE COURT: The next case is US Bank versus Eastburn?

MR. HICKS: That's mine.

THE COURT: Okay. What is it? What's it about?

MR. HICKS: It's US Bank National Association as trustee. It's our motion to dismiss, Your Honor.

THE COURT: Okay. Tell me about it.

MR. HICKS: We've alleged in our motion to -- amended -- actually I've filed an amended motion to dismiss. Both the capacity, which we've brought before this Court before in that we believe that the complaint needs to allege with specificity the capacity of the Plaintiff. In this instance it's listed as US Bank National Association as trustee.

We would also point out, Your Honor, that we believe that if this is in fact a trustee acting on behalf of the trust, that there needs to be a disclosure as to more of what the trustee is. In past cases that I've had in front of you, you have denied our motion based on the grounds that we feel that there should be

1 capacity argued. However, I did want to point  
2 out to the Court that I've attached a copy of  
3 the -- an opinion that was rendered by the  
4 controller of currency administrators of  
5 National Bank.

6 The reason that we want to have capacity  
7 alleged in the complaint, Your Honor, is so that  
8 we can determine whether or not the Plaintiff  
9 has complied with all State laws that give it  
10 the capacity, and thus this Court the  
11 jurisdiction to hear the complaint. Without  
12 complying with State laws, if they don't have  
13 the capacity the come into this court, they  
14 don't have the right to bring the lawsuit.

15 Counsels before in front of you and cases  
16 that I've had in front of you have argued that  
17 State law doesn't apply to them because they're  
18 a bank, and therefore law preempts it. The  
19 opinion that I've attached to my amended motion  
20 to dismiss disagrees with that, particularly in  
21 an instance that we have here where a National  
22 Bank is acting as a trustee for a securitized  
23 trust.

24 I don't know if this is a securitized  
25 trust, but there is no allegation either in the

1 style of the complaint or in the body of the  
2 complaint as to what this particular Plaintiff  
3 is, other than as trustee.

4 THE COURT: So this is something that's  
5 unique to these trust -- what does it allege,  
6 that they're a trust?

7 MR. HICKS: It is. It is, Your Honor,  
8 unique to them because of the manner in which  
9 they are doing business and pursuing these  
10 claims.

11 We have, Your Honor, also claimed that  
12 they have failed to set forth a cause of action  
13 related to the lost note. They have a lost note  
14 count. Since the filing of the complaint, they  
15 have filed apparently the original note. It's  
16 our position that based on case law, if it's  
17 their intention to drop those, that they do so  
18 in the form of an amended complaint, which is  
19 what the current case law requires.

20 THE COURT: Drop what? A count?

21 MR. HICKS: Yes. That's what they're  
22 doing. They haven't done that yet, but I'm  
23 assuming that they're contending that they now  
24 don't -- they haven't lost it because they filed  
25 the original.

1 MR. DeL'ETOILE: Your Honor, this is  
2 actually my case. I misspoke the Plaintiff's  
3 name. You know, we have no problem amending the  
4 complaint to drop the count because we did file  
5 the original note in July of 2009, so we don't  
6 have a problem amending the complaint for that.  
7 As to capacity to bring the suit, I have not  
8 read the case law that he has provided, but it  
9 is always our position that it is Federal case  
10 law instead of State that carries, since it is a  
11 bank.

12 THE COURT: Well, today I'm going to  
13 grant Mr. Hicks' motion.

14 MR. DeL'ETOILE: Okay.

15 THE COURT: So you're going to have to  
16 allege in your -- when you're amending your  
17 complaint, put something in there about  
18 capacity, okay? And if you find out something  
19 and you come back for another hearing and it's  
20 not making the same argument, show us some,  
21 okay? Because he's got something to show us.

22 MR. DeL'ETOILE: Yes. No problem.

23 THE COURT: You need to find something  
24 and show us.

25 MR. HICKS: Thank you, Your Honor.

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THE COURT: Okay.

MR. HICKS: That's all I have for you  
today.

THE COURT: Okay.

(Proceedings conclude at 2:10 p.m.)

\* \* \* \* \*

CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

I, Amy Somerset Isse, Court Reporter, certify that I was authorized and did stenographically report the forgoing proceedings and that the transcript is a true, accurate and correct computerized record of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the outcome of this action.

Dated this 8th day of October, 2010.



Amy Somerset Isse  
Stenograph Shorthand Reporter  
Notary Public  
State of Florida at Large  
Commission No.: DD-986943  
Expires: 7/27/2014