

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In Re:

Case No. 6:10-bk-07828-KSJ

MARIA RENEE BALDERRAMA,

Chapter 7

Debtor.

\_\_\_\_\_ /

CARLA P. MUSSELMAN, Trustee  
of the Bankruptcy Estate of Maria  
Renee Balderrama,

Adv. Proc. No.

Plaintiff,

v.

AURORA LOAN SERVICES, LLC,

Defendant.

\_\_\_\_\_ /

COMPLAINT TO VALUE SECURED CLAIM  
PURSUANT TO § 506(a) AND QUIET TITLE IN REAL PROPERTY IN THE ESTATE

COMES NOW CARLA P. MUSSELMAN, CHAPTER 7 TRUSTEE (the "Trustee"),  
Plaintiff, and files this Complaint against AURORA LOAN SERVICES, LLC (the  
"Defendant"), and states:

**NATURE OF THE CASE**

1. This Complaint seeks pursuant to 11 U.S.C. § 506(a) to value the secured claims of the Defendant, at \$0.00, to avoid any alleged liens pursuant to 11 U.S.C. §§ 506(d), 544, 547, 548 and 549, and to quiet title in real property located at 398 Tunbridge Drive, Rockledge, Florida 32955 (the "Property"), legally described as follows:

LOT 3, IN BLOCK G, OF CHELSEA PARK UNIT 7 A S/D OF A PORT OF SEC  
22 & A, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT

### VENUE AND JURISDICTION

2. This Court has subject matter jurisdiction over this adversary proceeding, which arises under Title 11, arises in, and relates to cases under Title 11, in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the "Court"), Case No. 6:10-bk-07828, pursuant to 28 U.S.C. §§ 157 and 1334(b).

3. The claims and causes of action set forth herein concern the determination, allowance, disallowance, avoidability and amount of claims under 11 U.S.C. §§ 506, 544, 547, 548 and 549. This adversary proceeding is a "core" proceeding to be heard and determined by the Bankruptcy Court pursuant to 28 U.S.C. § 157(b)(2).

4. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1409.

### GENERAL ALLEGATIONS

1. On May 6, 2010, the Debtor filed in this Court a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code.

2. At the time of filing, the Debtor owned and was in possession of the Property, which by operation of law became property of the bankruptcy estate.

3. On August 16, 2010, the Defendant filed its *Motion for Relief from Automatic Stay and Notice of Opportunity to Object and for Hearing* (Main Case Doc. No. 22) (the "Motion") as to the Property.

4. On September 3, 2010, the Trustee filed her *Objection to Motion for Relief from Stay of Aurora Loan Services, LLC* (Main Case Doc. No. 29).

5. At the final evidentiary hearing on September 21, 2010, this Court found that insufficient evidence had been provided to support relief, and denied the Defendant's Motion.

6. The Debtor executed the subject loan on April 13, 2007.

7. The subject mortgage, attached to the Defendant's Motion for Relief (the "Mortgage"), is executed in favor of the Originator, and not in favor of the Defendant. Furthermore, the Mortgage identifies MERS as the mortgagee, but limits the interest of MERS by stating that "MERS holds only legal title to the" Mortgage.

8. The assignment of mortgage, attached to the Defendant's Motion for Relief (the "Assignment"), allegedly transferring the interest in the mortgage contract from MERS to the Defendant, specifies an Ocala, Florida address for MERS but has been notarized in Nebraska.

9. The Assignment was executed on February 26, 2009.

10. The Assignment was not executed as part of any bona fide transfer of an interest in the subject mortgage contract but rather was prepared solely for purposes of litigation, and is void and has failed to transfer any interest.

11. The subject note, attached to the Defendant's Motion for Relief (the "Note"), is executed in favor of "First National Bank of Arizona" (the "Originator"), and not in favor of the Defendant.

12. Even though there is ample room on the face of the Note, it bears no endorsements.

13. The allonge, attached to the Defendant's Motion for Relief (the "Allonge"), purports to negotiate the interest in the note two times.

14. First, the allonge allegedly negotiates the interest in the Note from the Originator to the First National Bank of Nevada.

15. Second, the allonge allegedly negotiates the interest in the Note from the First National Bank of Nevada to "blank" (i.e. no designated payee), purporting to make the Note a bearer instrument enforceable by any holder.

16. The allonge improperly attempts to negotiate the Note twice, when an allonge may only be used for a single transfer.

17. The allonge was executed separately from the Note.

18. The allonge was never permanently affixed to the Note.

19. A person having appropriate authority never properly executed the allonge.

20. The allonge is undated, unwitnessed, and not notarized.

21. The allonge is not a document executed as part of any bona fide transfer of an interest in property but rather is a document prepared expressly for purposes of litigation.

22. The allonge is void and fails to transfer any interest in the Note to anyone.

23. The Defendant cannot provide a complete chain of title for the subject loan transaction.

24. Upon information and belief, the Defendant never paid reasonable consideration to acquire the loan.

25. The Defendant has failed to provide the Trustee with evidence that it holds a legal and enforceable secured interest in the Property.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **(Valuation of Secured Claim and Avoidance of Alleged Lien Pursuant to 11 U.S.C. § 506)**

26. Paragraphs 1-25 are re-alleged and re-plead herein.

27. The Defendant is unable to prove that it is the lawful owner of the Note and Mortgage allegedly securing the Property.

28. Therefore, the Defendant cannot show that it has any allowable secured claim pursuant to 11 U.S.C. § 506(a), and its secured claim must be valued at zero dollars (\$0.00) pursuant to 11 U.S.C. 506(a).

29. Because it has no allowable secured claim against the Debtor, Defendant's lien, to the extent any such lien exists, is avoided pursuant to 11 U.S.C. 506(d).

#### **COUNT II**

##### **(Avoidance of Alleged Lien Pursuant to § 548 as a Fraudulent Transfer)**

30. Paragraphs 1-25 are re-alleged and re-plead herein.

31. The Defendant's actions in attempting to perfect its secured status in the Property constitute a fraudulent transfer pursuant to 11 U.S.C. § 548, which actions sought to hinder, delay, or defraud other creditors of the estate.

32. To the extent that the Defendant has any secured interest in the Property, such interest should be avoided pursuant to 11 U.S.C. § 548.

### **COUNT III**

#### **(Avoidance of Alleged Lien Pursuant to § 547 as a Preference)**

33. Paragraphs 1-25 are re-alleged and re-plead herein.

34. The Defendant's actions in attempting to perfect its secured status in the Property constitute an avoidable preference pursuant to 11 U.S.C. § 547, where the transfer was intended to benefit the Defendant, was on account of an antecedent debt, made while the Debtor was insolvent, on or within 90 days of the filing of the petition, intended to enable the Defendant to receive more than its unsecured position should enable it to receive.

35. To the extent that the Defendant has any secured interest in the Property, such interest should be avoided pursuant to 11 U.S.C. § 547.

### **COUNT IV**

#### **(Avoidance of Alleged Lien Pursuant to § 549 as a Postpetition Transaction)**

36. Paragraphs 1-25 are re-alleged and re-plead herein.

37. The Defendant's actions in attempting to perfect its secured status in the Property are avoidable pursuant to 11 U.S.C. § 549, in that the postpetition transactions were not authorized by this Court.

38. To the extent that the Defendant has any secured interest in the Property, such interest should be avoided pursuant to 11 U.S.C. § 549.

## COUNT V

### **(Valuation of Secured Claim and Avoidance of Alleged Lien Pursuant to § 502)**

39. Paragraphs 1-25 are re-alleged and re-plead herein.
40. The Plaintiff Objects to the Claim.
41. Defendant has no standing to assert a claim against the Estate pursuant to the Court's Order.
42. Defendant did not have possession of the Note and Mortgage to enforce its obligation on the petition date.
43. Defendant's claim should be disallowed in full.

## COUNT VI

### **(Defendant is not a Holder in Due Course Pursuant to F.S. § 673.302)**

44. Paragraphs 1-25 are re-alleged and re-plead herein.
45. F.S. § 673.3021 states the elements required to demonstrate that a lender is an owner and holder in due course:

673.3021 **Holder in due course.--**

(1) . . . [T]he term "holder in due course" means the holder of an instrument if:

(a) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) The holder took the instrument:

1. For value;
2. In good faith;
3. Without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

4. Without notice that the instrument contains an unauthorized signature or has been altered[.]

46. Defendant has not proved that it took the subject loan for value, in good faith, or without notice of the uncured default.

47. Therefore, this Court should find that Defendant is not a holder in due course of the subject Note and Mortgage, and lacks any secured interest in the Property.

### COUNT VII

#### **(Action to Quiet Title as to the Property in the Estate)**

48. Paragraphs 1-25 are re-alleged and re-plead herein.

49. Because Defendant has no lien or its lien has been avoided pursuant to §§ 506(d), 547, 548, and/or 549, and because there is no other entity who has filed a claim or is capable of filing a claim against the Property, title in the property should be vested in the Estate, so that the Property can be sold for the benefit of the unsecured creditors of the Estate.

50. Pursuant to Florida Statutes § 65.011, this Court should determine the title of Plaintiff as against Defendant and enter judgment quieting the title of, and awarding possession to the Plaintiff, and in support of such judgment should enter such injunctions or additional orders as are necessary to protect the rights of the parties.

**PRAYER FOR RELIEF**

WHEREFORE, the Trustee respectfully requests that this Court grant the following relief against Defendants, and enter such orders as necessary to provide the requested relief:

(a) value the secured claim of Defendant in the Property as zero dollars (\$0.00) pursuant to § 506(a);

(b) avoid any lien that may be allegedly held by Defendant against the property pursuant to §§ 506(d), 547, 548, and/or 549;

(c) quiet title in the Property pursuant to Florida Statutes § 65.011;

(d) enter such orders as necessary to reflect free and clear ownership in the Property in the Estate such that the Property may be administered by the Trustee for the benefit of unsecured creditors of the Estate;

(e) award fees and costs to Plaintiff; and

(f) for such all and further relief as this Court should deem necessary and appropriate.

**CHILDERSLAW** 

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