

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA, FIFTH DISTRICT

5TH DCA CASE NO: 5D09-4035
L.T. CASE NO: 05-2008-CA-065811

GREGORY TAYLOR A/K/A GREGORY
M. TAYLOR,

Appellant,

vs.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR FFMLT
2006-FF4, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-FF4,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE 18TH JUDICIAL
CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

APPELLEE'S ANSWER BRIEF

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PREFACE

For the purposes of the Appellee's Answer Brief, "R." refers to the record on appeal and "I.B." refers to the Appellant's Initial Brief (entitled "Opening Brief").

STATEMENT OF THE FACTS AND OF THE CASE

I. THE FACTS:

On or about December 21, 2005, Appellant/Defendant Gregory M. Taylor (hereinafter "Taylor" or "Appellant") and Carrie M. Bargas (hereinafter "Bargas") executed a Note and Mortgage in favor of First Franklin, a division of National City Bank of Indiana (hereinafter "First Franklin"). (R. 3, 6-28). Bargas is not a party to this appeal. First Franklin originated the loan and maintained a predecessor interest to the Appellee, Deutsche Bank National Trust Company, as Trustee for FFMLT 2006-FF4, Mortgage Pass-Through Certificates, Series 2006-FF4 (hereinafter "Deutsche Bank" or "Appellee"). On or about August 1, 2008 First Franklin assigned its interest to Appellee and memorialized the same. (R. 27-28).

Appellants defaulted on the subject Note on June 1, 2008 (R. 3, 95), and owe \$193,487.52 (R. 68) to Appellee. Neither Taylor, Bargas, or any other party have tendered any additional payments to Appellee since the initial default. The issues presently before this Court stem from the aforementioned default, and the resulting mortgage foreclosure action. (R. 3).

II. THE CASE:

Appellant filed a one-count Complaint seeking the equitable remedy of mortgage foreclosure on October 31, 2008 (R. 1-28). On or about February 20,

2009 Deutsche Bank filed the original Note, the original Mortgage and the original Assignment of Mortgage. (R. 62-87). Taylor filed an answer and affirmative defenses, (R. 49-50), and amended said answer and affirmative defenses on June 1, 2009. (R. 110-131). Taylor fails to raise the same issues on appeal as raised in his boiler-plate amended affirmative defenses, and the legal sufficiency of said amended answers remains questionable.

Appellee filed and appropriately served its Motion for Summary Judgment on August 7, 2009. (R. 134-136). Further, Appellee timely filed all affidavits required to support its Motion for Summary Final Judgment (R. 137-142), and the hearing on the Motion occurred on October 9, 2009 at 8:45 a.m. (R. 149-150). The lower court entered judgment at said hearing. (R. 166-172; Appendix Tab 1).

As Appellant freely admits, no issues of material fact existed at the time of Summary Judgment, and Appellant filed his affidavit in opposition to summary judgment only eighteen minutes prior to the hearing. (I.B. 15). Even the trial court's docket reflects receipt of Taylor's objections *after* the entry of final judgment. (Appendix Tab 3). The lower court scheduled a judicial sale date of November 18, 2009, (R. 196) and Appellant chose not to motion for re-hearing, or object to the foreclosure sale. Appellant's property sold on November 18, 2009.

SUMMARY OF ARGUMENT

Both of the arguments asserted by Taylor come to this Court improperly. Appellant filed its Motion in Opposition to Summary Judgment well after the allowable timeframe stated by the Florida Rules of Civil Procedure and therefore cannot raise those issues herein.

Furthermore, Appellant's affidavit failed to conform to the requirements of the Florida Rules of Civil Procedure. Specifically, the proper predicate for any affidavit in opposition to summary judgment remains personal knowledge. Conversely, an employee of Appellant's counsel based his affidavit on a cursory review of the alleged Mortgage Electronic Registration System (hereinafter "MERS") website. Said employee improperly claimed to have personal knowledge of the manner in which MERS operates, and failed to lay a legally sufficient basis for said knowledge. As such, Appellant's affidavit failed to allege any substantive facts, and, therefore must fail.

Even if the Court accepts Appellant's affidavit at face value, Appellant merely states baseless accusations, devoid of any merit. Appellant's argument for the necessity of an indorsement or allonge to assign a Promissory Note, bears no consequence, as even without a written instrument, equity will effectuate a valid assignment. *Johns v. Gillian*, 134 Fla. 575, 581 (Fla. 1938). Indeed, the subject Assignment of Mortgage explicitly assigns the note as well. As such, and coupled

with Appellee's filing of the original Note and Mortgage, Florida Statutes and case law consider Appellee a holder entitled to enforce the Note and Mortgage. Finally, Appellant affirmatively stated, at both the trial and appellate levels, that the assignment filed with the trial court transferred ownership of both instruments (R. 49-50, I.B. 19). Accordingly, Appellant waived any right to maintain that a valid transfer failed to occur.

Last, Florida case law clearly establishes that MERS not only has the interest to transfer both notes and mortgages in this State, but also possesses standing to pursue an action in foreclosure. Appellant cited absolutely no controlling case law to the contrary, and instead attempts to offer non-binding authority. The law is clear in Florida – MERS possesses the necessary interest to transfer an interest in the promissory note.

ARGUMENT

Issue 1.

THE APPELLANT [sic] PRESENTED EVIDENCE THAT IT WAS NOT ENTITLED TO ENFORCE THE PROMISSORY NOTE IN QUESTION.

Standard of Review: The standard of review on appeal, when reviewing evidence presented to the trial court at summary final judgment, is *abuse of discretion*. *Pohlman v Barry*, 753 So.2d 603, 605 (Fla. 4th DCA 2000).

Discussion:

As a cursory matter, Appellant's failure to properly preserve the issues at the trial court level forecloses any opportunity to raise those issues herein. Appellant raises this appeal claiming he filed an Affidavit and Opposition to Summary Judgment that was not properly considered by the trial court. Consequently, no factual questions remain for this Honorable Court.

Pursuant to Fla. R. Civ. Pro. 1.510(c) an adverse party may serve opposing affidavits to be considered at summary Judgment, by mailing the affidavits at least 5 days before the hearing "or by delivering the affidavit to movant's attorney no later than 5:00 p.m. two business days prior to the day of hearing." At the initiation of the summary judgment hearing, and as indicated by the trial court's docket, Appellant either filed his affidavit after the court entered judgment or around the same time. (R. 166-172, 184; Appendix Tab 2). Appellant's Affidavit in

opposition may have been filed more than five minutes prior to summary judgment, but certainly less than the five days mandated by the Florida Rules of Civil Procedure.

It is well settled that objections must be made with sufficient specificity to apprise the trial court of the potential error and to preserve the point for appellate review. *Ferguson v. State*, 417 So.2d 639 (Fla. 1982); see also *Castor v. State*, 365 So.2d 701 (Fla. 1978); *Clark v. State*, 363 So.2d 331 (Fla. 1978). The Florida Supreme Court has consistently stated that, “proper preservation entails three components.” *Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005). “First, a litigant must make a timely, contemporaneous objection.” *Id.* “Second, the party must state a legal ground for that objection.” *Id.* “Third, ‘in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below.’” *Id.* (quoting *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982); *Rodriguez v. State*, 609 So. 2d 493, 499 (Fla. 1992).

Appellant readily admits that his objections, and the supporting affidavit, were not filed with the court until mere minutes prior to the hearing, and they were never even mailed, or otherwise delivered prior to the hearing. (I.B. 15). Accordingly, Appellee’s analyses of the previously mentioned three-pronged test

ends at prong one. Simply put, Appellant's failure to preserve objections should prevent this Court from hearing any of Appellant's arguments.

Even if this court entertains Appellant's objections, the affidavit prepared by Taylor's counsel was both legally insufficient and entirely inadmissible. First, an employee of Appellant's counsel prepared and signed said affidavit, and the basis of the information stemmed from a cursory review of the alleged MERS website just one day prior to Summary Judgment. (R. 184, Appendix Tab 2). The notion that the affiant could possess the necessary personal knowledge of the inner workings and corporate structure of MERS (or any company) by reviewing its website, seems quite questionable.

Rule 1.510(e), Florida Rules of Civil Procedure, specifically require that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Further, the comments to Rule 1.510 state: "[t]he requirement that it show affirmatively that the affiant is competent to testify to the matters stated therein is not satisfied by the statement that he has personal knowledge; there should be stated in detail the facts showing that he has personal knowledge."

The purported affidavits in the present case merely presented four legally insufficient statements, devoid of any statement of material issue. (R. 184;

Appendix Tab 2). Accordingly, said affiant cannot testify as to personal knowledge of any corporate practice of MERS.

With that aside, Appellee will address Appellant's primary arguments below. Appellant's principal argument on appeal states that possession of the instant Note does not entitle Appellee the status of a holder. Appellant hypothesizes that the subject Note was, "designed to have been sold in fractional interests on the secondary market." Alternatively, Appellant argues the absence of an endorsement creates a material, factual dispute. Although Appellant failed to properly preserve either of these esoteric arguments, Appellee will address both in order.

By granting summary judgment, the lower court properly found that Deutsche Bank properly held the note and mortgage, and that the assignment of mortgage effectively conveyed the note. As such, and further bolstered by the plain language of §673.3011(1), Florida Statutes, Appellee was entitled to enforce the subject instruments. Section 673.3011(1), Florida Statutes, specifically allows for the holder of the instrument to enforce the instrument. A holder is defined as; "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." § 671.201(21), Fla. Stat.; *Troupe v. Redner*, 652 So.2d 394 (Fla. 2d DCA 1995).

By filing the original Note, Mortgage and Assignment of Mortgage, Deutsche Bank demonstrated that it was the owner and holder of the note and mortgage. (R. 62-87). Even Taylor recognizes this in his Initial Brief. (I.B. 19). As a result, Appellee has satisfied the heavy burden of proving entitlement to summary final judgment.

Next, Taylor mistakenly states that absent evidence of an indorsement, there is a material factual dispute. (I.B. 22). Contrary to Appellant's argument, The transfer of an instrument through assignment is well established in Florida jurisprudence. Florida's Supreme Court held in *Moses v. Woodward* that while an indorsement of the Notes would have carried with them the mortgage, an indorsement was not necessary to transfer the notes. 109 Fla. 348 (Fla. 1933).

Further, the promissory note clearly articulates the possibility that another party may take the note by transfer, and would therefore be entitled to enforce the same. (R. 6). Paragraph 1 of the note states "[t]he Lender or *anyone who takes the Note by transfer* and who is entitled to receive payments under this Note is called the "Note Holder." (R. 6). As such, when the note and mortgage were transferred through MERS, as nominee for First Franklin, the instruments were deemed transferred. Clearly, the aforementioned parties intended the transfer, as reflected by the assignment of mortgage. "A mere delivery of a note and mortgage with intention to pass the title on a proper consideration will vest the equitable interest

in the person to whom it is so delivered.” *Johns v. Gillian*, 134 Fla. 575, 581 140 (Fla. 1938).

In this case, given the valid assignment of mortgage as acknowledged by Taylor, the intent of the parties could not be more clear – the note and mortgage were transferred to Deutsche Bank. Florida law is explicit in that the holder of the note has standing to seek enforcement of the note. *Mortgage Electronic Registration Systems, Inc. v. Azize*, 965 So. 2d 151 (Fla. 2d DCA 2007).

Given the evidence presented to the trial court, it is clear that Deutsche Bank was the holder of the promissory note, as it was the party in possession of same as called for by statute. As a result of being the holder of the note, Deutsche Bank demonstrated that it was the appropriate party to bring and maintain this action.

Issue 2.

MERS DID NOT PASS AN ENFORCEABLE INTEREST IN THE PROMISSORY NOTE TO THE APPELLEE.

Standard of Review: The standard of review on appeal when reviewing an order of summary final judgment is *de novo*. *Everett Painting Co. v. Padula & Wadsworth Construction*, 856 So. 2d. 1059, 1061 (Fla. 4th DCA 2003). However, Appellant is seeking review based on the trial courts refusal to consider the evidence filed in support of this issue. To that end, the standard of review of the trial court’s refusal to consider such evidence is abuse of discretion. *Pohlman v Barry*, 753 So.2d 603, 605 (Fla. 4th DCA 2000).

Discussion:

Appellee objects to the review of Appellants MERS argument on the same basis as raised in Issue 1. Appellant failed to timely raise this argument by filing an opposition and supporting evidence under Florida Rules of Civil Procedure Rule 1.510(c). The trial court did not abuse its discretion in refusing to consider the affidavits and opposition filed by Appellant for the reasons stated in Issue 1.

With that aside, Appellant's final, flawed argument is that MERS failed to pass an enforceable interest in the promissory note. Again, this argument must fail as a result of applicable Florida Statutes, and controlling case law. Taylor again cites to several out of state jurisdictions, which have no bearing on Florida matters whatsoever. Taylor fails to cite to a single, solitary Florida case that would stand for the proposition that MERS cannot transfer an interest in a promissory note, as he argues should be the case in the instant matter.

In fact, Florida law is entirely to the contrary to the arguments offered by Taylor. "[I]t is apparent—and we so hold—that no substantive rights, obligations or defenses are affected by the use of the MERS device..." *Mortgage Electronic Registration System, Inc. v. Revoredo*, 955 So.2d 33 (Fla. 3d DCA 2007). The *Revoredo* Court held that MERS, even though it did not own the note, was the holder and had standing to bring a foreclosure action. 955 So. 2d at 33. In the present matter, the Deutsche Bank was both the owner *and* the holder of the

subject note. If MERS has the standing necessary to maintain an action in foreclosure on a note and mortgage, surely it has the ability to transfer the note upon which the mortgage is secured.

Further, in *Mortgage Electronic Registration System, Inc. v. Azize*, the court similarly found that MERS was the owner and holder of the note as nominee for the lender, and was enforcing the note on the lender's behalf. 965 So. 2d 151 (Fla. 2d DCA 2007). In the present case, the plaintiff was not a nominee, but was instead the true owner and holder of the note and mortgage by way of a valid assignment of mortgage and note. There is simply no record evidence to the contrary that would indicate otherwise.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Appellee, respectfully requests that this Court AFFIRM the trial court's October 9, 2009 Order on Plaintiff's Motion for Summary Final Judgment entered in favor of Appellee.

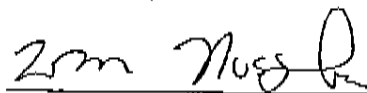
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing was furnished by U.S. Mail this 8th day of March, 2010 to:

George Gingo, Esq.
P.O. Box 838
Mims, Florida 32754
Attorney for Defendant Gregory Taylor a/k/a Gregory M. Taylor

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that Appellee's Answer Brief complies with the font requirement set forth by Fla. R. App. P. 9.210, which governs appellate briefs. The foregoing Brief is typed in Times New Roman 14-point font and double-spaced with one-inch margins.



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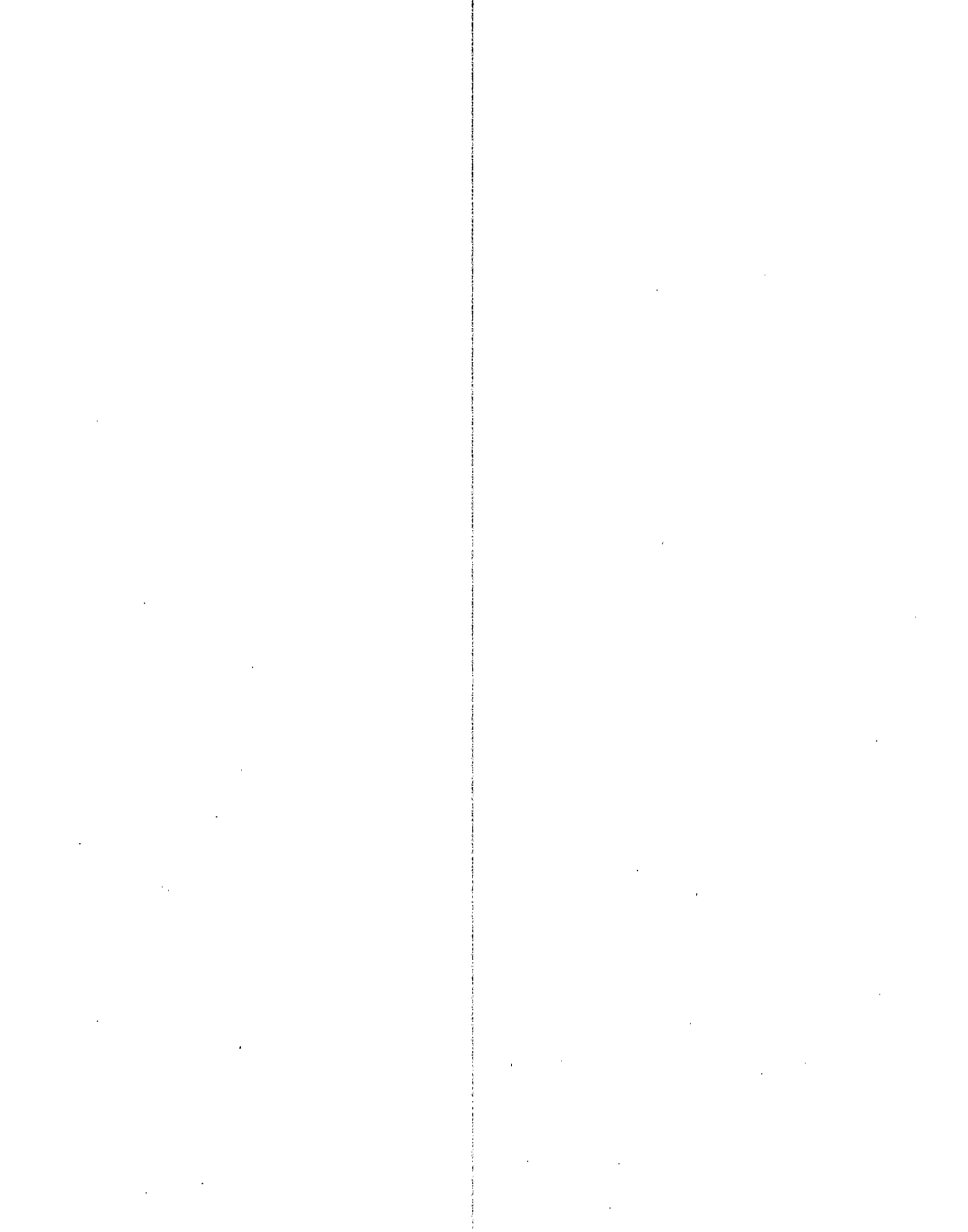
APPELLEE'S APPENDIX TO ANSWER BRIEF

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IN THE CIRCUIT COURT IN AND FOR
BREVARD COUNTY, FLORIDA

CASE NO: 05-2008-CA-065811

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR FFMLT 2006-
FF4, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-FF4

Plaintiff,

vs.

GREGORY TAYLOR A/K/A GREGORY M.
TAYLOR; CARRIE BARGAS A/K/A CARRIE M.
BARGAS; UNKNOWN SPOUSE OF GREGORY
TAYLOR A/K/A GREGORY M. TAYLOR;
UNKNOWN SPOUSE OF CARRIE BARGAS
A/K/A CARRIE M. BARGAS; UNKNOWN
TENANT I; UNKNOWN TENANT II, and any
unknown heirs, devisees, grantees, creditors, and
other unknown persons or unknown spouses claiming
by, through and under any of the above-named
Defendants,

Defendants.

SUMMARY FINAL JUDGMENT FOR FORECLOSURE

THIS ACTION came before the Court on Plaintiff's Motion for Summary Final Judgment and the Court, based upon the state of the record at the time of the hearing, finds that there is no material issue of fact or law and grants plaintiff's motion. It is therefore

ORDERED AND ADJUDGED:

1. JURISDICTION OVER THE PARTIES AND SUBJECT MATTER:

This Court has jurisdiction over foreclosure cases pursuant to Florida Statutes. Service of process has been secured upon all Defendants.

ndb

2. THE DEBT AND ITS VALIDITY:

Plaintiff holds a lien for the total sum in this Final Judgment which is superior, prior and paramount to the right, title interest, claims liens, encumbrances and equities of the following Defendants: GREGORY TAYLOR A/K/A GREGORY M. TAYLOR; CARRIE BARGAS A/K/A CARRIE M. BARGAS; UNKNOWN SPOUSE OF GREGORY TAYLOR A/K/A GREGORY M. TAYLOR; UNKNOWN SPOUSE OF CARRIE BARGAS A/K/A CARRIE M. BARGAS; UNKNOWN TENANT I; UNKNOWN TENANT II, and all persons claiming any interest since the filing of the Lis Pendens on the following real property:

Lot 36, Block 2, County Club Heights, Fourth Addition,
according to the Plat thereof, as recorded in Plat Book 17,
Page 87, of the Public Records of Brevard County, Florida

The Note and Mortgage sued upon by the Plaintiff constitutes a valid and superior lien to the interest of all Defendants upon the real estate encumbered thereby and therefore are established. The Note and Mortgage are in default as alleged in the Complaint. Plaintiff is entitled to foreclose its interests, liens, and encumbrances under said mortgage and have the proceeds of the sale applied in payment of the sums due Plaintiff.

3. PLAINTIFF'S LIEN ON PROPERTY & SUPERIORITY:

From the Affidavits in the file and the uncontested allegations of the Complaint, the correct legal description of the property is as shown above. Plaintiff has a lien upon the real estate hereinafter described and such lien and security interests are prior, paramount and superior to the right, title, interest, claims, liens, encumbrances and equities of all Defendants and all persons claiming any interest since the filing of the Lis Pendens in the property more particularly described above.

THIS IN REM JUDGMENT IS AGAINST GREGORY TAYLOR A/K/A GREGORY M. TAYLOR AND AS RECORD TITLE OWNER(S) TO THE REAL PROPERTY HEREIN DESCRIBED. All other Defendants' interests are in the form of inferior liens to Plaintiff's note and mortgage. As such said liens are extinguished subject to any statutory right of redemption as outlined further in this Final Judgment.

4. ATTORNEY'S FEES:

The mortgage provides for Plaintiff's attorney's fees. Plaintiff has retained an attorney. The Court finds 6 hours have reasonably been expended by Plaintiff's attorney, as set forth on said attorney's Affidavit. Plaintiff has filed a supporting attorney's fee Affidavit by an independent attorney. The hourly fee of \$175.00 is a reasonable hourly fee. Below is the total fee awarded pursuant to *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

5. DAMAGES:

There is now due and owing to Plaintiff under the Note and Mortgage sued upon herein, the following sums of money, to-wit:

PRINCIPAL BALANCE DUE	\$164,933.82
Court Costs Due	\$1,630.08
Total Advances Due	\$2,334.15
Less Credits (if any)	- 0 -
PLUS REASONABLE ATTORNEY'S FEES (\$175.00 x 8.6 hours), plus a flat fee of \$1,000.00	\$2,505.00
Interest on Principal Balance From 5/1/09 to 10/9/09 (\$42.28 per diem)	\$22,084.47
TOTAL DUE	\$193,487.52

6. ADDITIONAL COSTS & ADVANCES:

6.1. Any third party bidder is responsible for paying the Registry Fee and Documentary Stamps. The Clerk shall compute the Registry Fee and Documentary Stamps and collect said amounts from the third party bidder. Also, additional advances made by Plaintiff such as real estate taxes, insurance, and superior mortgagee payments may be added upon filing of an affidavit listing them. Any such amount will be added to the total bid.

6.2. Additionally, the total sum due Plaintiff shall include publication of Notice of Sale costs, interest at the legal rate per Sect. 55.03, F.S.(1994), from the date of this Final Judgment to the date of sale. Said interest shall be applied in accordance with paragraph 5 above.

7. CLERK'S SALE:

7.1. DIRECTIONS TO SELL: Unless the Defendants shall, at any time prior to the sale of the real estate and other property and fixtures heretofore described, pay to the Plaintiff or its attorneys, the total sums found to be due Plaintiff, then said property shall be sold by the Clerk of the Court to the highest bidder for cash at public sale, free and clear of all right, title, interest, claim, lien, encumbrance, remainder, reversion, homestead, dower or equity of redemption whatsoever of the Defendants named herein, and all persons, firms or corporations claiming interest in said property subsequent to the filing of the Notice of Lis Pendens. If subsequent to the date of Plaintiff's Affidavit of Indebtedness and prior to the foreclosure sale, Plaintiff shall be required to advance any monies to protect its mortgage lien, then Plaintiff or its attorneys shall so certify to the Clerk of this Court, and the amount found due to Plaintiff shall be increased by the amount of such advances without further order of the Court.

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7.2. DATE: Said sale shall be held by the Clerk of this Court at Brevard County Government Center-North, Brevard Room, 518 South Palm Avenue, Titusville, FL 32780. on the 18 day of NOV., 2009, at 11:00 a.m., after the publication of notice thereof as required by Section 45.031 of the Florida Statutes, and promptly after such sale the Clerk shall complete and file a Certificate of Sale. If Plaintiff is the successful bidder at foreclosure sale it has the right to assign its bid by filing an Assignment of Bid form naming the party to which the bid has been assigned. The Clerk of the Circuit Court is to issue the Certificate of Title in accordance with Plaintiff's Assignment of Bid.

7.3. PLAINTIFF'S BID RIGHTS: Plaintiff is hereby given leave to bid at said sale and to apply against any bid made by it the amount found to be due Plaintiff in this Final Judgment. Section 45.031(2) F.S. requires that the high bidder post with the Clerk a deposit equal to five percent of the final bid. However, if the Plaintiff or its assignee is the successful bidder, they are excluded from the deposit requirement. In the event that the successful bidder fails to place the requisite deposit in accordance with Florida Statutes with the Clerk, said bid is void. Additionally, if the final payment is not made within the prescribed period, the clerk shall readvertise the sale and pay all costs of the sale from the deposit in accordance with Florida Statutes. Any remaining funds shall be applied toward the judgment.

7.4. CLERK'S DISBURSEMENT: Out of the proceeds arising from the sale, the Clerk shall retain their fee, then shall pay to the attorneys for Plaintiff the attorney's fees and Court costs allowed by this Court in this Judgment, and this shall be in a separate check made payable to Butler & Hosch, P.A., and mailed to 3185 S. Conway Road, Suite E, Orlando, Florida 32812. From the remainder of the proceeds, as far as they shall apply in satisfying the Plaintiff's remaining sum due, they are to send their check to Butler & Hosch, P.A., at the above address, and payable to Plaintiff.

7.5. SURPLUS FUNDS: If this property is sold at public auction, there may be additional money from the sale after payment of persons who are entitled to be paid from the sale proceeds pursuant to this Final Judgment. If said real property and other property shall sell for more than enough to pay Plaintiff all sums due it, then the Clerk shall report any surplus proceeds to this Court. The Clerk of Court shall hold the surplus in the Registry of this Court. Thereafter, upon motion and notice of hearing to all parties, even those defaulted, the Court will adjudicate the rights thereto according to law and equity. *General Bank v. Westbrook Pointe, Inc.*, 548 So. 2d 736, (Fla. 3rd DCA 1989).

Subordinate lienholders claiming a right to funds remaining after the sale, must file a claim with the clerk no later than 60 days after the sale. If a subordinate lienholder fails to file a claim, said lienholder will not be entitled to any remaining funds.

If you are the property owner, you may claim these funds yourself. You are not required to have a lawyer or any other representation and you do not have to assign your rights to anyone else in order for you to claim any money to which you are entitled. Please check with the clerk of the court, Brevard County Clerk of Court, Moore Justice Center, Attn: Circuit Civil, P.O. Box 219, Titusville, FL 32781-0219, within ten (10) days after the sale

to see if there is additional money from the foreclosure sale that the clerk has in the registry of the court.

If you decide to sell your home or hire someone to help you claim the additional money, you should read very carefully all papers you are required to sign, ask someone else, preferably an attorney who is not related to the person offering to help you, to make sure that you understand what you are signing and that you are not transferring your property or the equity in your property without the proper information. If you cannot afford to pay an attorney, you may contact:

Brevard County Legal Aid, Inc.
1017 S. Florida Avenue
Rockledge, FL 32955
Phone: (321) 631-2500

to see if you qualify financially for their services. If they cannot assist you, they may be able to refer you to a local bar referral agency or suggest other options. If you choose to contact Brevard County Legal Aid, Inc. for assistance, you should do so as soon as possible after receipt of this notice.

7.6. PRESENCE OF PLAINTIFF AT SALE: The said sale shall not take place unless a representative of the Plaintiff is present. If there is no representative, then the sale shall be cancelled by the Clerk. The Plaintiff's attorney shall secure a new sale date. If a sale shall take place, it shall be null and void and no documents issued by the Clerk, except to inform this Court of what may have occurred.

7.7. WITHDRAWING ORIGINAL DOCUMENTS: If the Plaintiff is the purchaser at the sale, then, upon confirmation of the sale, whether by the Clerk filing the Certificate of Title herein or by order of the Court ruling upon objections to the sale, the said Plaintiff may permanently withdraw from the court file the original mortgage, the original promissory note and the original assignments of mortgage, (if the originals were filed) and the photocopies of same attached to the complaint shall hereafter be and stand in lieu thereof.

7.8. RIGHT OF REDEMPTION: The right of redemption of any Defendant is terminated upon the issuance of the Certificate of Sale by the Clerk of Court pursuant to the provisions of Florida Statutes Chapter 45.

8. TITLE TO SUCCESSFUL BIDDER:

If no objections to said sale are filed in this proceeding within ten days from the filing of the Certificate of Sale, the Clerk shall forthwith complete and file a Certificate of Title as prescribed by law, after which the sale of the real estate and other property and fixtures shall stand confirmed as certified by the Clerk. Title shall pass fully and completely to the purchaser named in the Certificate of Title free and clear of any right, title, interest, estate, claim or equity of redemption of the Defendants or any person claiming by, through or under them or any person claiming any

interest in said real estate or other property and fixtures herein ordered to be sold shall stand confirmed as certified by the Clerk. Title to the real estate and other properties sold shall pass fully and completely to the purchaser named in the Certificate of Title, free and clear of any right, title, interest estate, claim or equity of redemption of the Defendants or any person claiming by, through or under them or any person claiming any interest in said real estate or other property and fixtures since the filing of the Notice of Lis Pendens herein. Plaintiff, if successful bidder at the foreclosure sale, may assign its Bid by filing a Notice of Assignment and the Clerk of the Court shall issue the Certificate of Title to said assignee without further Order of Court.

8.1. CERTIFICATE OF TITLE: On filing the Certificate of Title the defendants in this action as mentioned above and all persons claiming under or against said defendants since the filing of the Lis Pendens shall be foreclosed of all estate or claim in the real property and the purchaser at the sale shall be let into possession of the property.

9. WRITS OF POSSESSION ISSUANCE:

If the Plaintiff is the purchaser at the sale, Plaintiff, its heirs, representatives, successors or assigns shall be placed in immediate possession of the aforescribed premises. In the event the defendants fail to vacate said premises within ten days of the date of the foreclosure sale as provided above, the Clerk of the Court is directed to issue a Writ of Possession to the Plaintiff forthwith and without the necessity of any further Order from this Court for the premises located at 2763 Pine Ridge Drive, Titusville, FL 32780.

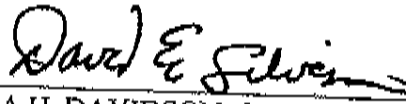
10. COMPLIANCE WITH FLORIDA STATUTES CHAPTER 55

Pursuant to Florida Statutes Chapter 55 the following is the address of the Plaintiff: 150 Allegheny Center, Pittsburgh, PA 15212

11. RETENTION OF JURISDICTION:

This Court retains jurisdiction for the purpose of making any further orders and judgments as may be necessary and appropriate herein, including but not limited to all claims for deficiencies.

DONE AND ORDERED in Chambers at Titusville, Brevard County, Florida this 9 day of Oct, 2009.


LISA H. DAVIDSON, CIRCUIT COURT
Acwls

Copies to:

Jonathan J.A. Paul, Esquire
BUTLER & HOSCH, P.A.
3185 South Conway Road, Suite E
Orlando, Florida 32812
Attorney for Plaintiff

Carrie Bargas a/k/a Carrie M. Bargas
6080 Grissom Parkwa
Cocoa FL 32927

Tushaar Desai, Esq.
4767 New Broad Street
Orlando, FL 23814
Attorney for Defendant

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR BREVARD COUNTY

DEUTSCHE BANK NATIONAL ASSOCIATION
COMPANY, AS TRUSTEE FOR FFMLT 2006-FF4,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2006-FF4,

Case No.: 05-2008-ca-065811

Plaintiff,

v.

GREGORY TAYLOR, A/K/A GREGORY M.
TAYLOR, CARRIE BARGAS, A/K/A CARRIE
M. BARGAS, UNKNOWN SPOUSE OF GREGORY
TAYLOR, A/K/A GREGORY M. TAYLOR,
UNKNOWN SPOUSE OF CARRIE M. BARGAS,
UNKNOWN TENANT I, UNKNOWN TENANT II,
AND ANY UNKNOWN HEIRS, DEVISEES,
GRANTEES, CREDITORS, AND OTHER UNKNOWN
PERSONS OR UNKNOWN SPOUSES CLAIMING BY
THROUGH AND UNDER ANY OF THE ABOVE-
NAMED DEFENDANTS,

Defendants.

**DEFENDANT GREGORY TAYLOR'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY FINAL JUDGMENT AND
CROSS-MOTION FOR SUMMARY FINAL JUDGMENT**

Defendant Gregory Taylor ("Defendant"), by and through his undersigned attorneys, and pursuant to Rule 1.510 responds to Plaintiff's Motion for Summary Judgment and hereby cross-moves for Summary Judgment.

FACTS

These are the sole facts: the existence of a Promissory Note, a Mortgage Instrument and an Assignment of Mortgage. The Plaintiff's complaint was not verified, so the claims therein are not evidence. Plaintiff offers no other sworn facts in support of the motion for summary judgment other than those regarding attorney fees.

Plaintiff claims that there are no material disputed facts. Defendant agrees. Plaintiff claims it is entitled to summary judgment as a matter of law. Defendant disagrees and contends that the evidence before the court clearly and unequivocally states that the Plaintiff is not entitled to enforce the Promissory Note and therefore is not entitled to foreclose on the Defendant or to collect a fee for payment on said mortgage loan.

II ENFORCEMENT OF A NOTE

Plaintiff claims that the facts show that it is the owner and holder of the promissory note and mortgage which are the subject of this action. The documents upon which the Plaintiff rests are the Promissory Note, Mortgage Instrument and the Assignment of Mortgage. The authenticity of these documents are not in dispute.

Plaintiff makes an improper inference that these documents grant it ownership and holder status of the promissory note and mortgage. The documents speak for themselves and they clearly state that Plaintiff does not own this mortgage loan and can not foreclose nor can it collect a payment thereon.

The Promissory Note does not carry with it any endorsement, allonge or assignment, and as such, it is payable exactly to whom it directs payment – the lender, First Franklin A Division of Nat. City Bank of IN – it does not indicate that it has been transferred to the Plaintiff, as previously stated in Defendants' Motion to Dismiss which is incorporated in the ANSWER.

In fact, Defendant Gregory Taylor had requested copies of endorsements, allonges and assignments of the Promissory Note in his Request for Production, but Plaintiff responded that this was a vague request. (Exhibit A, Defendants Request for Production #2 and #4, attached; Judicial Notice is requested of Plaintiff's Response to Defendants Request for Production, "received Oct. 8, 2009 by clerk) Certainly Plaintiff will not be able to secure an endorsement on the Promissory Note or an allonge and since the Plaintiff claims that it already filed the originals of these documents in court, its evidence will not get any better over time.

As to the Note instrument, Florida Statutes section 673.2011 states:

Negotiation.—

(1) The term "negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(2) Except for negotiation by a remitter, *if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder.* If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

And, if a Note is transferred, but not endorsed, the holder gets the specifically enforceable right to the the indorsement of the the transferor - so that it can be enforced!

Florida Statutes section 673.2031 states:

Transfer of instrument; rights acquired by transfer. -

- (1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.
- (2) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- (3) Unless otherwise agreed, *if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.*

Every mortgage is composed of two documents - the note and the mortgage instrument. No matter how much the mortgage is acclaimed as the basis of the agreement, the note is the essence of the debt. Sobel v. Mutual Dev. Inc., 313 So. 2d 77 (Fla. 1 DCA, 1975); Pepe v. Shepherd, 422 So. 2d 910 (Fla. 3 DCA 1982); Margiewicz v. Terco Prop., 441 So. 2d 1124 (Fla. 3 DCA 1983); Restatement (Third) Property (Mortgages) section 5.4 (1997).

The note is the instrument of concern in all assignment situations. There is an old maxim "the mortgage follows the note". Evins v. Gainesville Nat'l Bank, 85 So. 659 (Fla. 1920); Case v. Smith, 200 So. 917 (Fla. 1941) The note is evidence of the primary mortgage obligations or the debt. The assignment of the note carries with it the mortgage and its rights, even though the mortgage instrument has not been assigned either orally or in writing. Collins v. Briggs, 123 So. 833 (Fla. 1929); Miami Mtge. & Guar. Co. v. Drawdy, 127 So. 323 (Fla. 1930); So. Colonial Mtge. Co. v. Medeiros, 347 So. 2d 736 (Fla. 4 DCA 1977)

The Promissory Note is evidence of the primary mortgage obligation. The mortgage is only a mere incident to the note. Brown v. Snell, 6 Fla. 741 (1856); Tayton v. American Nat'l Bank, 57 So. 678 (Fla. 1912); Scott v. Taylor, 58 So. 30 (Fla. 1912); Young v. Victory, 150 So. 624 (Fla. 1933); Thomas v. Hartman, 553 So. 2d 1256 (Fla. 5 DCA 1989); Restatement (Third) Property (Mortgages) section 1.01 (1997)

The mortgage instrument is only the security for the indebtedness and the mortgagee may sue

on the note rather than the mortgage. Grier v. M.H.C. Realty Co., 274 So. 2d 21 (Fla. 4 DCA 1973); Mellor v. Goldberg, 658 So. 2d 1162 (Fla. 2 DCA 1995); Century Group Inc. v. Premier Fin. Services East L. P., 724 So. 2d 661 (Fla. 2 DCA 1999) When these cases were decided, courts hadn't contemplated that the mortgage would be separated from the Note as referenced in the mortgage itself by Mortgage Electronic Registration Systems, Inc., (MERS) being the mortgagee by nominees status only.

The mortgage, as evidenced by the mortgage instrument, is only a mere incident to the debt. Therefore, the mortgage instrument is of lesser significance. Because the assignment of the note is an imperative act as to the transferring of the mortgagee's right, the assignment of the mortgage instrument without the note is an ineffective assignment. Vance v. Fields, 172 So. 2d 613 (Fla. 1 DCA 1965); Sobel v. Mutual Dev. Inc., 313 So. 2d 77 (Fla. 1 DCA 1975); Amacher v. Keel, 358 So. 2d 889 (Fla. 2 DCA 1975) An assignment can only take place where the note is transferred by the mortgagee-assignor to the assignee. Second Nat'l Bank v. GMT Property, Inc., 364 So. 2d 59 (Fla. 3 DCA 1978)

The debt is the Promissory Note, not the Mortgage Instrument.

III

MERS IS NOT A BENEFICIAL OWNER OF THE MORTGAGE LOAN AND COULD NOT TRANSFER ANY INTEREST

MERS has nothing to transfer by an assignment. MERS own website listed "MERS Recommended Foreclosure Procedures for FLORIDA". In this document MERS states that it is not the beneficial owner of the promissory note. This document states:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc., as nominee for [insert name of the current servicer]. The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. *MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note.* An investor, typically a secondary market investor, will be the ultimate owner of the note. (fn 8)

Foot Note 8:

Even though the servicer has physical custody of the note, custom in the mortgage

industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note. (Exhibit B, Affidavit of Charles Allen Hinkley, see page 8 of exhibit. (Note: the document is 111 pages long. Counsel redacted only material relating to foreclosure procedures in the other states)

MERS also admits that "MERS does not create or transfer beneficial interests in mortgage loans or create electronic assignments of the mortgage. What MERS does do is eliminate the need for subsequent recorded assignments altogether." (Exhibit B, Affidavit of Charles Allen Hinkley, see page 4 of exhibit.)

There has been an industry-wide practice of selling residential real estate mortgage loans to Real Estate Mortgage Investment Conduit (REMIC) trusts. The mortgage loan is typically sold by the Lender to a purchaser on the secondary or tertiary market who would sell/convey the mortgages to the trust, usually in a bundle of Promissory Notes, where a depositor would "purchase" the mortgage loans from the seller, and immediately transfer these mortgage loans to the trustee in exchange for certificates. The certificates provide terms of payment of principal and interest to the certificate holder. The depositor then typically sells the certificates to sophisticated investors (as that term is defined by the Securities and Exchange Commission's regulations and relevant statutes) such as pension plans. The identities of these investors is unknown as it changes as these negotiable instruments are sold and resold in these markets, and as the investors sell and re-sell their certificates/shares in the mortgage-backed securities. The description of a mortgage loan as being "securitized" or "collateralized" means that the mortgage loan was sold in the secondary or tertiary mortgage market and the Promissory Note was transferred to a REMIC trust where certificate holders are the ultimate beneficiary thereof. As Defendant MERS publicly asserts, the "investors" are the beneficial owners of the mortgage loan.

The "secondary mortgage market" consists of the government or one of the government-sponsored entities created by statute to purchase residential mortgage loans from banks and other lenders. See 12 U.S.C. §§ 1451-59, 1716-23 et seq. [creating the Government National Mortgage Association ("Ginnie Mae"), Federal National Mortgage Association ("Fannie Mae"), and Federal Home Loan Mortgage Corporation ("Freddie Mac")]. The "tertiary mortgage market" consists of private entities, other than those made up by the secondary mortgage market, that purchase mortgage loans.

There is a statutory purpose to the creation of the secondary mortgage markets, which is to enable the original lender to be able, from the sale of the first mortgage loan, to have additional funds readily accessible to additional home buyers. (12 U.S.C. §§ 1451, 1716)

In 1993, the Mortgage Bankers Association, Ginnie Mae, Fannie Mae, Freddie Mac and others recognized the need for an electronic registration and tracking system to keep track of the ownership interests in mortgage loans. Failure to demonstrate ownership would prove fatal to the liquidity of this market. As a result, they created MERSCORP, Inc. Defendant MERS is not MERSCORP, Inc.

MERS is the wholly owned subsidiary of MERSCORP, Inc. The dual structure of the company was designed to prevent creditors of MERSCORP from attempting to seize loans recorded in the Mortgage Electronic Registration Systems, Inc.'s name in the event that MERSCORP, Inc. declares bankruptcy. (Carson Mullen, *MERS: Tracking Loans Electronically*, MORTGAGE BANKING, May 31, 2000, p. 62) The substantial difference between the two entities is that whereas MERSCORP, Inc. tracks the beneficial ownership of the mortgage loan, MERS claims it is the beneficial owner of the Security Instrument.

When the note is sold by the original lender to others, the sale is tracked on the MERS® System, a private, for profit, database and tax evasion service causing atrophy in the nation's public real property information infrastructure by (i) destroying the transparency in ownership of real property heretofore safeguarded by county recording offices, and (ii) usurping the recording fees that once funded maintenance, innovation and vigilance in public record keeping systems. MERS has member entities who typically are purchasers in the tertiary mortgage market. If the mortgage loan is sold to a non-member of MERS, an assignment from MERS to the non MERS entity is made, executed and recorded in the county where the real estate is located, and the loan is "de-activated" from the MERS® System. MERS is actively working to insure that, one day, de-activation from the MERS® System will cease entirely. The Chief Executive Officer of MERS, R.K. Arnold, has stated publically that it is the mission of MERS "to capture every mortgage loan in the country." (*MERS Registers 20 Million Loans*, INSIDE MERS, Jan/Feb. 2004, at 1.) MERS' mission is to supplant the public land title recording systems' lien records with a purely private system and to achieve this end in the absence of legislation or meaningful judicial precedent. On information and belief, Plaintiff's mortgage loan was "securitized" or "collateralized" on the secondary market.

The MERS recording and foreclosure system has been a contributing cause of the American mortgage foreclosure crisis, as is most eloquently and succinctly explained by Christopher L. Peterson, the Associate Dean of Academic Affairs and Professor of Law at the University of Utah, S.J. Quinney College of Law, in his legal abstract entitled FORECLOSURE, SUBPRIME MORTGAGE LENDING, AND THE MORTGAGE ELECTRONIC REGISTRATION SYSTEM. (electronic copy available at : <http://ssrn.com/abstract=1469749>) MERS facilitates predatory structured finance by decreasing the exit costs of loan originators. During the years 2000-2007, as investment banks, hedge funds, institutional investors, and the credit rating agencies weighed the risks of dumping billions of dollars into mortgage securities drawn out of the balance sheets of thinly capitalized, bankruptcy prone mortgage lenders, MERS provided an inducement to take that risk. When thinly capitalized loan originators churned out more and more securitized loans, the claims against those lenders accumulated while their assets did not. Once the projected costs of (i) the recourse demands by the disgruntled investors and (ii) the borrower predatory lending lawsuits, had exceeded the projected costs of bankruptcy and reformation under a new corporate guise, management of the loan originators would predictably opt to discard their corporate identity. (Christopher L. Peterson, *Predatory Structured Finance*, 28 CARDOZO L. REV. (2007) at 2275) MERS made this easier by offering a *super-generic placeholder* that transcended the aborted life of the loan originators. MERS reassured investors that even when an originator goes bankrupt, county property records would remain unaffected and foreclosure could proceed apace. By serving as the true

mortgagee's proxy in recording and foreclosure, MERS abetted a pump-and-dump, no accountability model of structured mortgage finance. Moreover, the use of MERS' corporate identity has facilitated the separation of foreclosure actions and litigation of predatory lending and servicing claims. When MERS (or, more accurately, servicers or foreclosure specialists acting in MERS' name) brings foreclosure actions, it justifies this entitlement based on a fraudulent claim of legal ownership of mortgage liens. But, when borrowers attempt to assert counter-claims challenging the legality of mortgage brokers, lenders, trusts, or servicers, MERS hides behind its claims of "nominee" status. MERS represents the mortgage finance industry's best effort to create a single, national foreclosure plaintiff that always has foreclosure standing, but never has foreclosure accountability.

IV

SOMEONE IS ENTITLED TO ENFORCE THE NOTE

Defendant executed a Promissory Note and Mortgage instrument. The Note was securitized and bundled with a number of similar Notes and sold on the market as a derivative. The certificate holders of those notes are the real parties in interest – the beneficial owners of the Promissory Note and Mortgage. If they trace back their certificates to the pooling and service agreement registered with the United States Securities and Exchange Commission (available online through "Edgar"), they should be able to find the subject Note and Mortgage. They can then bring an action to enforce that debt.

V

CONCLUSION

It is clear that the Plaintiff takes nothing by way of its assignment of the Mortgage Instrument from MERS. It is also clear that the Plaintiff does not have an endorsement or allonge on the Promissory Note to itself or its principal. Plaintiff has no right to enforce this debt.

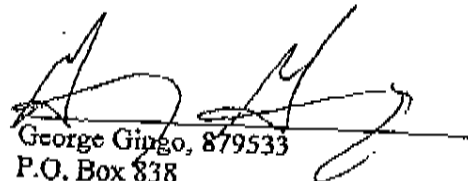
The evidence won't get any better for the Plaintiff – the original Promissory Note, Mortgage Instrument and the Assignment of Mortgage are all part of the record and they speak for themselves. There can be no further evidence of an endorsement or an allonge because those must be attached to the original Promissory Note and it is doubtful that the clerk will let that happen. The evidence is undisputed that the Plaintiff has no right to enforce this debt and summary judgment should be granted to the defendant.

The laws upon which movant Greg Taylor intends to rely in seeking summary judgment are the general laws of the State of Florida relating to mortgage foreclosures, Florida Rules of Civil Procedures and Chapter 45, 695, and 702, Fla. Stat.

Movant Greg Taylor requests the Court to adjudicate a reasonable attorneys fee for movant Greg Taylor. Affidavits as regards this will be filed and served on all parties.

WHEREFORE, movant Greg Taylor requests this Court deny the Plaintiffs request for

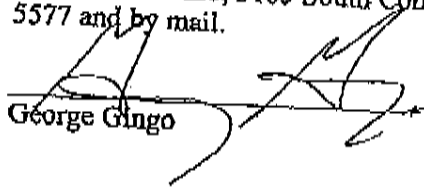
summary judgment and enter summary judgment in favor of movant Greg Taylor, or in the alternative, partial summary judgment.



George Gingo, 879533
P.O. Box 838
Mims, Florida 32754
321-264-9624 Office
866-311-9573 Fax

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing was furnished by U.S. Mail this 8th day of October, 2009, to Carrie Bargas 6080 Grissom Parkway, Cocoa, Florida 32727 and to Mark Interlicchio, 3185 South Conway Road, Suite F, Orlando, Florida 32812 by both fax (407) 381-5577 and by mail.



George Gingo

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EXHIBIT A

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EXHIBIT B

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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR BREVARD COUNTY

DEUTSCHE BANK NATIONAL ASSOCIATION
COMPANY, AS TRUSTEE FOR FFMLT 2006-FF4,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2006-FF4.

Case No.: 05-2008-ca-065811

Plaintiff,

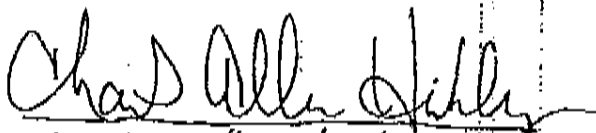
v.

GREGORY TAYLOR, A/K/A GREGORY M.
TAYLOR, CARRIE BARGAS, A/K/A CARRIE
M. BARGAS, UNKNOWN SPOUSE OF GREGORY
TAYLOR, A/K/A GREGORY M. TAYLOR,
UNKNOWN SPOUSE OF CARRIE M. BARGAS,
UNKNOWN TENANT I, UNKNOWN TENANT II,
AND ANY UNKNOWN HEIRS, DEVISEES,
GRANTEES, CREDITORS, AND OTHER UNKNOWN
PERSONS OR UNKNOWN SPOUSES CLAIMING BY,
THROUGH AND UNDER ANY OF THE ABOVE-
NAMED DEFENDANTS,

Defendants.

I, Charles Allen Hinkley, hereby swear as follows:

1. I am employed by attorney George Gingo.
2. This declaration is based upon my personal knowledge, and if called upon as a witness in this matter I could competently testify to the facts as set forth below.
3. On October 8, 2009, I accessed the MERS internet website located at <http://www.mersinc.org/filedownload.aspx?id=176&table=ProductFile> and I downloaded the MERS State-by-State MERS Recommended Foreclosure Procedures.
4. I have attached to this affidavit 9 pages from that 111 page downloaded document, redacting only information relevant to others states foreclosure procedures.


CHARLES Allen Hinkley

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this petition and that the punishment for knowingly making a false statement includes fines and/or imprisonment.


STATE OF FLORIDA)
COUNTY OF BREVARD)

Sworn to or affirmed and signed before me on October 8, 2009, by Charles Allen Hinkley.

Personally known

Produced Identification
Type of identification produced

George M. Gingo
NOTARY PUBLIC

NOTARY PUBLIC-STATE OF FLORIDA
 George M. Gingo
Commission # DD421246
Expires: APR 21, 2009
Bonded Thru Atlantic Bonding Co., Inc.

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APPELLEE DEUTSCHE BANK NATIONAL TRUST COMPANY ETC		

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