UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORIGA ATLANTA DIVISION

Wekesa O. Madzimoyo, Plaintiff,	}	
v.	}	**CIVIL ACTION FILE No. 1:09-CV-02355-CAP-GGB**
THE BANK OF NEW YORK	}	
MELLON TRUST COMPANY, NA., formerly known as The Bank of New York Trust Company, N.A., JP MORGAN CHASE BANK, NA, GMAC MORTGAGE LLC and ANTHONY DEMARLO, Attorney, McCurdy and Candler, LLC	}	**OPPOSITION TO DEFENDANTS' MOTION FOR JUDJMENT ON THE PLEADINGS**
Defendants.	}	

AFIYA C. MADZIMOYO, wife of the Plaintiff Wekesa O. Madzimoyo (Plaintiff, Plaintiff Wekesa, Plaintiff Madzimoyo) affirms the following to be true under penalties of perjury:

1. My legal name is Carolyn C. Madzimoyo. I go by the first name of Afiya. I have been married to Plaintiff Madzimoyo since 1988, and we have resided together at 852 Brafferton Place in Stone Mountain,

GA30083 since our closing with FT Mortgage Companies on March 23, 1999.

2. I was not co-borrower on the loan for our property, however I am fully familiar with this matter based upon my first hand knowledge, and I assert the following: that "the matters started herein are true to the best of my information, knowledge and belief."

3. I also submit this affirmation in Opposition to Defendants' Motion for Judgment on the Pleadings.

4. Defendants' opening statement of the case contains a contradiction of fact. It is stated that Homecomings Financial Network acquired servicing rights for the loan on July 6, 1999. In a letter sent to the Plaintiff from Homecomings on April 22, 2009 another date is named. This is not the last discrepancy I have seen in terms of dates the loan was allegedly transferred for servicing on to another alleged creditor.

5. The Defendants assert, "Plaintiff claims that Defendants' failure to produce the original Note for his review prior to initiating foreclosure proceedings somehow renders the foreclosure 'unlawful' and 'wrongful.'" This is not true. We asked the state superior court to halt the foreclosure because not one of the Defendants were assigned as having any interest in the property. According to **O.C.G. A. 44-14-64 (a-c)** only the documented

secured creditor/holder in due course can foreclose on subject property. Neither of the Defendants are documented assignees, creditors, secured creditors, servicers, etc.

6. I declare that the Plaintiff and myself for months asked all the Defendants to identify themselves and their role/s in our loan. To this date, they have not taken the opportunity to do this.
7. The Defendants claim that "Plaintiff is not entitled to Injunctive Relief because he cannot prove that he or she tendered to the creditor the amounts admittedly due." We do not owe any of the Defendants. I have return receipts to show the Defendants received our requests for verification, but they ignored them in most cases repeatedly, and in fact, Homecomings Financial answered for JP Morgan Chase saying "the information requested is subject to business and trade practices which are proprietary and confidential and will not be provided."
8. Plaintiff Madzimoyo did not accept that the secured credit / holder in due course as defined by Georgia law should be withheld from him. We discussed repeatedly our concern that we could pay the "wrong" people and then have the "right" (holder in due course) demand payment, and it was our understanding that we would have to pay, per Georgia law.

9. I declare further that we are not in default and have never been in default. We were approved for a loan modification in late February. We had made all payments during the trial period, and after signing the loan modification, we were set to begin payments. Hearing of predatory lending, securitization schemes, fraud, etc. we asked Homecomings Financial to verify our debt. We made our request per the Fair Debt Collection Practices Act, 15 USC1692g, which includes the cease of the collection of the alleged debt until validation is provided.
10. Again, the Defendants skirt the issue and allege that Defendant's claim has to do with "failure to produce the note." Again, I declare that we asked for protection from the court per **O.C.G. A. 44-14-64 (a-c).**
11. The Defendants assert that they are not subject to the FDCPA in this instance. The Defendants have not proven themselves to be creditors, let alone secured creditors which is required by Georgia law.
12. In simple terms, they have been attempting to collect from us. In fact, McCurdy and Candler's letterhead specify them as debt collectors.
13. In regard to McCurdy and Candler, they call themselves debt collectors as well as attorney for the alleged creditor and attorney-in-fact for the Plaintiff. Who are they? They, along with the other Defendants have

been asked to identify themselves as assignees, creditors, secured creditors, servicers, etc. All Defendants have refused.

14. Defendants quote the FDCPA to define a debt collector as: Any person who uses any instrumentality of interstate commerce or the mails in any business with the principal purpose of which is the collection of any debts, who regularly collects or attempts to collect, directly or indirectly, debts owed or due or assessed to be owed or due another. In my experience Homecomings Financial, GMAC and McCurdy and Candler have attempted to collect from us.
15. Defendants assert, "Creditors who collect in their own name and whose principal business is not debt collection, therefore, are not subject to the Act."
16. Does this mean that Homecomings Financial, GMAC and McCurdy and Candler have been my secured creditor in this matter? Do they have interest/standing in our loan?
17. We don't know because we have been denied this information.
18. I do know enough to take this very seriously, and for the record we do not owe any of the Defendants in this case.
19. Lastly, I would like to point out that I was very shocked to learn that the Bank of New York Mellon Trust Company was allegedly assigned an

interest in our loan. I am quite skeptical that the loan could go from Residential Funding to JP Morgan Chase to Bank of New York Mellon Trust Company from June 10th to July 3, 2010 (per GMAC). Defendants now assert that the loan was acquired by Bank of New York Mellon Trust Company on April 7, 2006.

20. This chain of events leaves two many non-answers. We still seek the complete chain of title so we will know who / if anyone has interest / standing / is holder in due course in this mortgage.

21. I submit this affirmation in opposition to the motion for judgment on the pleadings.

Afiya Carolyn Madzimoyo requests that this Court deny Defendants' Motion for Judgment on the Pleadings.

Dated: October 27, 2010

Decatur, GA

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Afiya Carolyn Madzimoyo