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	}	**AFFADAVIT IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDJMENT ON THE PLEADINGS**
Defendants.	}	

Testimony of Mr. Wekesa O. Madzimoyo taken and submitted in support of Plaintiff's opposition to Defendant's Motion for a Judgment on the Pleadings.

I am Wekesa O. Madzimoyo. I live at 852 Brafferton Place where I have lived with my family since 1999.

I come today, Oct. 27th, 2010 of my own free will to present my support to the Plaintiff's opposition to the Defendants Motion for a Judgment on the Pleadings.

Question:

Mr. Madzimoyo,

Would you respond to the Defendant's **Introduction and Summary of the Facts** contained in their motion for Judgment on the Pleadings.

Answer:

Mr. Madzimoyo:

Yes, thank you.

> "The Defendants' statement of the facts is misleading and false. As stated, it leads one the conclusion that BANK OF NEW YORK MELON TRUST CO, NA (BNYMT) is the legal secured creditor and or note holder in due course. Terribly missing is an accounting for 10 years of mortgage transfer from FT Mortgage (with whom we signed the promissory note) to one or more Mortgage Back Securities (MBS) pools and into the hands of BNYMT. Notice the Defendants use of the passive voice which tends to add an air of legitimacy and simultaneously makes the actor invisible. We need to see the other party. The operative question is from whom did JPMC receive the mortgage?"

The Defendants also create a straw-man, then vigorously attack it by reframing and reducing the Plaintiff's claims to a "produce the note" or you "can't foreclose

strategy." Even a cursory reading of the Plaintiff's complaint shows that The Plaintiff's claims are rooted in Georgia Mortgage Law: OGCA 44-14-162.2. Even further examination reveals the initial letters received by the Defendants in which the Plaintiff Madzimoyo's 18 questions were to be used to verify the Defendants' standing as the secured creditor, legal servicer, attorney, trustee, etc. as defined by GA state law. "Produce The Note" was but a small part of a much larger request for documents governing the multiple agreements between buyers, sellers, investors, etc. when the note was turned into a securities instrument to be traded on wall street. The Defendant's Produce-The-Note straw man is a deflecting away from their illegal behavior from 852 Brafferton Place Stone Mountain, GA to Wall Street.

Mr. Madzimoyo introduced all of the questions via the letters attached to the initial Petition and referenced therein.

Argument and Citation of Authority

Defendants argue that the Plaintiff has no standing to sue and is barred from injunctive relief to stop foreclosure because he has not tendered arrears payment to the Defendants.

Mr. Madzimoyo, will you speak to that claim?

My pleasure.

The Defendants' position of this is clear, and they site Georgia case law:
"Under Georgia law [a] borrower who has executed a deed to secure a debt is not entitled to enjoin a foreclosure sale unless he first pays or tenders to the lender the amount admittedly due."

The Defendants seem oblivious to the fact that I don't owe them one cent. The key phrase is "admittedly due." The Plaintiff has never admitted to owing the Defendants anything. In fact, he doesn't owe anything on the note, period. Defendants also conveniently forget that they in contradiction to OCGA 44-14-162.2, have not proved (either by assignment or documenting the Complete Chain of Title) that they are the creditors, secure creditors or have any standing relative to my note.

Section B of the Defendants Motion attacks the produce-the-note straw man that they created to divert attention from the real cause of action – their violating OCGA 44-14-162.2 (a-c). Here both the notification and advertisement provisions of the law require action by the "secured creditor." Again, both by failure of assignment and documentation of proper and complete chain of title, the Defendants violated GA Law when they moved to foreclosure. They have also

slandered the Plaintiff's land title. Because of this strong cause of action, I oppose the Defendant's contention that the Plaintiff fails to state a cause of action.

Now, let's look at Section C of Defendant's arguments? Here, Mr. Madzimoyo, the Defendants assert that the Plaintiff has no claim under FDCPA. What have you to say on this point?

Mr. Madzimoyo:

I oppose it, of course. It's simple. The Defendants again quote relevant statutes, and case law to support the Defendants' position. They say: "Creditors who collect on their own accounts under their own names are not "debt collectors." Let's stop here, and let me repeat. They are not creditors! I owe them nothing and never have. They have not, nor can they prove that I owe them anything. That means that any monies that I have paid them was collected by them under fraudulent pretense. That is an FDCPA violation. Co-Defendant Anthony Demarlo and McCurdy and Candler, who Defendants have joined, admit that he's a debt collector. He then violates FDCA, by threatening legal action that he is not able to legally bring, because his Co-defendants have no standing.

For the aforementioned reasons I, Wekesa O. Madzimoyo, oppose the Defendants' motion for a judgment on the pleadings in favor of the Defendants.

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Wekesa O. Madzimoyo

This the 27th day of October, 2010