

STATE OF MINNESOTA

IN COURT OF APPEAL

Case No. A10-1144

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Barry Wayne Beecroft and Tracee Ann Beecroft,

Plaintiffs/Appellants,

vs.

Deutsche Bank National Trust Company,  
American Home Mortgage Servicing, Inc.,  
Ameriquest Mortgage Company, CITI Residential  
Lending, Inc., AMC Mortgage Services, Inc.,  
and all other Persons Unknown Claiming any  
Right, Title, Estate, Interest, or Lien in  
the Real Estate Described in the Complaint  
Herein,

Defendants/Respondents.

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APPELLANTS' REPLY BRIEF

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## FACTS REPLY TO RESPONDENTS' STATEMENT OF FACTS

An examination of the documents of record in this case shows a company from DOCX from Alpharetta, Georgia, is creating various mortgage employees to re constructive presidents, vice-presidents, assistant secretaries, and members of multiple corporations and entities arguably engaged in the same, if not competing, enterprises. Those employees, such as Linda Green and Tywana Thomas, who have probably never been inside a corporate boardroom, are serving as officers of defunct corporations located 1,000 away. They are one cut above - or one cut below - robo-signers. The chances that they really acted in any capacity other than a pen or pencil are minimal.

Indeed, a careful look at the signatures on some of the document bearing their names (see, e.g., A-34, A-35, A-37, A-71, and A-99). While it is true that no person signs his or her name exactly the same way twice, claiming that the same person called, e.g., Linda Green, signed her name to A-37 and a-99 takes a leap of faith. Nor is it credible that the person claiming to be Tywana Thomas signed her name backhand on A-34 and straight up-and-down on A-35 in a cramped style. Again, on A-106, Green and Thomas are acting as officers (or something officers) of Citi Residential Lending (A-106), while acting as president and vice-president of Arbor Mortgage of Michigan (A-35) assigning to a Bogus Assignee, and in Linda Green's case, she signs as Assistant

Secretary of MERS, a California Corporation (or somebody does - this Linda Green signature does not look even vaguely like the signature on page A-34).

In Respondents' statement of fact, Respondent states:

Linda Green and Tywana Thomas, in their official capacities as Vice President and Assistant Secretary of AMHSI, executed the Assignment of Mortgage on behalf of Citi Residential as servicing agent for Ameriquest.

(Respondents' Brief, p. 5)

This is not what the document's signature block says. It reads, "Ameriquest Mortgage Company by Citi Residential Lending, Inc., attorney in fact.... [by] ... Tywana Thomas, Asst. Vice President." Respondents should be careful. There are some demonstrable errors in respondents' statements of fact (see below), and while brief writers often make errors, and while these mistakes are usually inadvertent, we are dealing with a reasonable possibility that one or more of the documents of record here may contain forged signatures: while it is possible that the same person signed the document at A-104 as signed the document at A-35, it strains credulity to believe that the same Linda Green who signed the document at A-35 is the Linda Green who signed the document at A-34 or at A-37. Note also that Tywana Thomas claims to have been appointed to serve as an Assistant Vice President of Citi Residential Lending, Inc. (A-103), but on page A-111, Ms. Thomas is listed as being appointed as Assistant Secretary of American Home Mortgage Serving (See

also RA-1).

Given the "musical officers" game that the record suggests is being played, Ms. Thomas or Ms. Green could be serving in capacities as President, Vice President, Secretary, Assistant Secretary, and Janitor of any number of corporations simultaneously, it is possible that Ms. Thomas really was Assistant Secretary of American Home Mortgage, Inc. But that is not how she signed Exhibit A at A-106. And in any event, the chances that Ms. Green and Ms. Thomas reviewed what they were signing, much less had any idea of the import of what they were signing, are slim and none.

This is important here, because many of the documents necessary to effectuate a proper foreclosure show signs of, at the least, sloppy practice. For example, the abstract in evidence notes a lis pendens dated March 26<sup>th</sup>, 2009, and that notice lists only one of the parcels foreclosed upon, whereas the warranty deed lists two parcels deeded to the Beecrofts.<sup>1</sup> And the Powers of Attorney to Foreclose have similar discrepancies. The power of attorney recorded May 13<sup>th</sup>, 2009 notes "[f]or Deutsche Bank National Trust Company, as 2006--R1, Asset-Backed Pass-Through Certificates, Series 2006-R1, a **Delaware** corporation, on behalf of the corporation," while the power for

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<sup>1</sup>For that matter, neither does the Beeceroft's original mortgage.

attorney recorded October 5, 2009 notes"[f] or Deutsche Bank National Trust Company, as 2006-R1, Asset-Backed Pass-Through Certificates, Series 2006-R1, a **Texas** corporation, on behalf of the corporation."

As another example, the respondents recorded a September 6, 2007 limited power of attorney given to CITI from Ameriquest signed by a Denise Apicella as an Assistant Secretary of Ameriquest Mortgage Company to act on behalf of Ameriquest to assign the mortgage to Deutsche Bank and foreclose the mortgage prior to the Sheriff's sale (see R.A. 22). But per paragraph 3 of the Certificate (pp. A-82 and 83) the power of attorney had to be dated October 2<sup>nd</sup>, 2007. But respondents recorded a second power of attorney dated October 1<sup>st</sup>, 2007 prior to the March 1<sup>st</sup>, 2010 hearing and Denise Apicella signed as Vice President of Ameriquest on this document. A quick promotion.

So while normally the mere discrepancy in respondent's statement that Ms. Thomas signed as Assistant Secretary of AHMSI when the words "Asst. Vice President" appears below her signature would be taken as a mere oversight, the clear errors in Respondents' statement of facts cast doubt on other claims which cannot be so easily proved. Like the thirteenth stroke of a crazy clock, the irregularities in signatures and titles of alleged officers cast doubt not only upon themselves but on everything than went before.

## ARGUMENT

Respondents' state:

The documents evidencing the valid foreclosure were properly executed and recorded pursuant to Minnesota statutes and case law. Further, the record on appeal clearly demonstrates that Linda Green and Tywana Thomas had the requisite authority to execute the Assignment of Mortgage on behalf of Ameriquest and that the Assignment of Mortgage was, in fact, executed by both of them.

(Respondent's Brief, p. 8)

All the record demonstrates is that someone signing the name "Linda Green" and someone signing the name "Tywana Thomas" appear on some documents which are required to validly foreclose a mortgage. The question is, does claiming it is so, even claiming that it is so under oath, make it so for summary judgment purposes?

Not if there is some reason to believe otherwise arising from documents in the record. There is ample reason to so believe. First, the signatures of Green and Thomas differ considerably from one document to another, raising an issue of material fact as to whether they are genuine. Second, there are numerous flaws in those documents. Third, the numerous documents people such as Linda Green, Tywana Thomas and others showing them sometimes as vice-presidents of defunct corporations in states 2,000 miles away from their Georgia base, and sometimes as assistant vice-presidents or secretaries or other things or other corporate entities. There is more than enough evidence before

the District Court to conclude that there is a genuine issue of material fact as to whether these persons were "robo-signers," e.g., hair stylists, teens, Walmart workers, or janitors who were hired to put their signatures on documents they could not distinguish from a comic book.

Consider, for example, the article provided as an attachment to Mr. Anderson's affidavit and attached to the Plaintiff's principal Brief at A-41:

The prosecutors are "reviewing the business processes" of the subsidiary of Lender Processing Services Inc., based in Jacksonville, Fla., according to the company's annual securities filing released in February. People familiar with the matter say the probe is criminal in nature.

Michelle Kirsch, and LPS spokeswoman, said the subsidiary being investigated is Docx LLC. Docx process and sometimes produces documents needed by banks to prove they own the mortgages. LPS's annual report said that the processes under review have been "terminated," and that the company has expressed its willingness to cooperate. Ms. Kirsch declined to comment further on the probe.

....

The case follows on the dismissal of numerous foreclosure cases in which judges across the U.S. have found that the materials banks had submitted to support their claims were wrong. Faulty bank paperwork has been an issue in foreclosure proceedings since the housing crisis took hold a few years ago. It is often difficult to pin down who the real owner of a mortgage is, thanks to the complexity of the mortgage market.

(A-41)

See in this regard, *Ruscalleda v. HSBC*, 43 So.3d 947 (Fla. App. 2010).

To be sure, Wall Street Journal articles, funky signatures, absurd corporate titles, etc. do not prove that signatures are forged, corporate authority is non-existent, or signatories are robo-signers. But they are sufficiently persuasive to raise a genuine issue of material fact that they are. As our Supreme Court said in *Donnay v. Boulware*, 144 N.W.2d 711 (Minn. 1966):

Summary judgment is a 'blunt instrument' and should not be employed to determine issues which suggest that questions be answered before the rights of the parties can be fairly passed upon. It should be employed only where it is perfectly clear that no issue of fact is involved, and that it is not desirable nor necessary to inquire into facts which might clarify the application of the law. 3 Barron & Holtzoff, Federal Practice and Procedure (Rules ed.) s 1234.

(*Id.* at 716)

To grant summary judgment under conditions where the defendants' paperwork is as suspect as it is in this case before plaintiffs could even depose, e.g., Green and Thomas to find out who they are, what they are, what they did, how they did it, where they did it, what they knew and when they knew it, is an abdication of the care Courts should take before they apply that blunt instrument.

To this, respondents state:

Appellants also attempt to cloud the facts of this case with unsupported allegations and generalized inferences about the mortgage industry. When a mortgagee transfers servicing rights for a mortgage, the appointed serving agent merely assumes certain rights and obligations under the terms of the mortgage, subject to the mortgagee remaining the holder and the ultimate beneficiary of the mortgage.

(Respondents' Brief, p. 9)

But Appellants' allegations are hardly unsupported. Appellants have entered sufficient information into evidence indicating that the "officers" transferring rights and signing powers of attorney were robo-signers. Indeed, a reasonable person, reading the documents making total strangers in Georgia into presidents, vice-presidents, executive secretaries, etc. would conclude that the authority such persons purported to have is wholly fictitious, and that they signed the documents not having the foggiest idea what they were signing. There is no indication that they knew what a mortgage assignment was, what a president of the relevant corporations pf which they were officers did (or for that matter, whether they existed), what an executive secretary did, or what the import of the documents they were signing was. Where the issue of the real nature of the "officers" has been fairly put into question, the burden of evidence production is placed back upon the non-moving party to show that Green and Thomas are real, that their "official capacity" was more than a sham, that they knew what they were doing, and their signatures were more than ink scrawls on paper. As the California court indicated in *Western Union Financial Services, Inc. v. First Data Corp.*, 20 Cal.App.4th 1530, 25 Cal.Rptr.2d 341 (Cal.App. 2 Dist. 1993):

Once a presumption is rebutted, the burden shifts back to the moving party to offer actual proof of injurious

intent. (*Dooley's Hardware Mart v. Food Giant Markets, Inc.*, *supra*, 21 Cal.App.3d at pp. 517-518, 98 Cal.Rptr. 543.)

(*Id.* at 347)

There are several claims in respondents' reply brief which are highly problematical. For example, respondent claims:

Here, it is indisputable that the Mortgage was assigned only once - from Ameriquest to Deutsche Bank on March 4, 2009, and that this Assignment of Mortgage was recorded on March 10, 2009, eight months prior to the Sheriff's sale.

(Respondent's Brief, p. 10)

But how do we know that? We do know that there was an assignment dated March 4, 2009 signed by Green and Thomas. But that hardly proves that there were no others. More importantly, in order to determine whether the assignment was proper, it is necessary to examine the governing documents of the trust for the benefit of the certificateholders for Ameriquest Mortgage Securities Trust 2006-R1, Asset-Backed Pass-Through Certificate, Series 2006-R1, because these would be the governing documents which would indicate how the assignments were to be completed, and respondents never produced these documents. So it is impossible to determine from the mere fact of the assignment noted above whether the assignment was proper, whether it complied with the governing documents of the trust, and therefore whether Green and Thomas had authority even if they are real.

Respondents go on to allege:

The act of execution and delivery with the acknowledgment, of the Citi Residential LPOA clearly demonstrates that Citi Residential was an appointed attorney-in-fact for Ameriquest.

(Respondent's Brief, p. 13)

How do we know this, and what does the word "the" mean in this context? There is an LPOA dated 1 October, 2007 signed by Denise Apicella purporting to be a vice president of Ameriquest (A-74ff) which was recorded after the Sheriff's sale, and another LPOA signed by Denise Apicella but recorded in Kandiyohi County after the Sheriff's sale (presumably the same Denise Apicella) signing on behalf of Ameriquest as assistant secretary. Which is the purported "Citi Residential LPOA which clearly pre-dates the Assignment of mortgage?" There are no documents purporting to appoint or elect Denise Apicella to any office with Ameriquest. Ordinarily, one might not have to require that a corporation show that its officers have been duly appointed or elected. But where, as here, they are promoted from an assistant to a vice president within a month, one has a right to demand that the corporation show some regularity in its promiscuous elevation of, e.g., waitresses to presidents.

In short, however much respondents may argue that the record here shows a chain of authority permitting respondents to do what they did, the record as it appears and as it appeared to the District Court is, on its face, so suspect that appellants should have had the right to go behind the documents before a Court

authorized summary judgment.

#### CONCLUSION

Minnesota Courts have traditionally favored banking interests and given liberal interpretations to their documents to facilitate their operations. But there have to be limits. It is becoming increasingly obvious in the current mortgage crisis that major banks have been at best careless and at worst fraudulent in servicing and foreclosing upon their mortgages. A major problem is the distance between the original mortgagee and the numerous entities who are later assigned the note and mortgage and have no knowledge of, or interest in, the debtors and their situation.

In this case, there are at least four entities which had a substantial interest in this mortgage, and the role of those entities in making, servicing, transferring, and foreclosing the Beecroft's mortgage is so confusing that it is virtually impossible to obtain a clear picture of what is going on here. But it is a virtual certainty that this case involves a great deal of "robo-signing," and that the actions and authorities of the various signatories to assignments, powers of attorney, and other papers are purely notional. To put it graphically, there is a mighty judgment coming, and it may be coming before this appeal is complete. The Courts should not place themselves on the wrong side of history here. It is perfectly obvious that people like Green and Thomas were mere "straw persons" with

respect to transactions which the law has required to be carefully scrutinized and performed. They are required to be carefully scrutinized and performed for a reason -- a mortgagor has a right to believe that he is dealing with real people and that his mortgagees are dealing with him in good faith. Where there are bogus transactions, reviews, and filings, that right is violated and the system is in danger of collapse. Courts should not be a party to that collapse by permitting shad practices, and permitting them to be vetted by the judiciary.

Dated: November 11<sup>th</sup>, 2010

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