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State of Minnesota  
In Court of Appeals

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BARRY WAYNE BEECROFT AND TRACEE ANN BEECROFT,  
*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,  
*Respondents.*

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RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE ISSUES

### **I. DID THE DISTRICT COURT PROPERLY DETERMINE THAT DEUTSCHE BANK NATIONAL TRUST COMPANY COMPLIED WITH MINNESOTA'S FORECLOSURE PROCEDURE, INCLUDING MINNESOTA STATUTE SECTION 580.02, AND THAT THE FORECLOSURE IS VALID?**

The district court answered in the affirmative, determining that Deutsche Bank National Trust Company complied with all relevant foreclosure statutes, including Minnesota Statute section 580.02.

#### Apposite Authority

1. Minn. Stat. § 580.02 (2010).
2. *Jackson v. Mortgage Electronic Registration Systems, Inc.*, 770 N.W.2d 487 (Minn. 2009).
3. *Timeline, LLC v. Williams Holdings No. 3, LLC*, 698 N.W.2d 181 (Minn. Ct. App. 2005).

### **II. DID THE DISTRICT COURT PROPERLY DETERMINE THAT THE SIGNATORIES TO THE ASSIGNMENT OF MORTGAGE HAD THE NECESSARY AUTHORITY TO SIGN AND THAT THERE WERE NO ISSUES OF MATERIAL FACT PRECLUDING SUMMARY JUDGMENT?**

The district court answered in the affirmative, determining that Linda Green and Tywana Thomas, Vice President and Assistant Secretary of American Home Mortgage Servicing, Inc., respectively, had the authority to execute the Assignment of Mortgage on behalf of Ameriquest Mortgage Company to Deutsche Bank National Trust Company and that there were no issues of material fact precluding summary judgment in favor of Respondents.

#### Apposite Authority

1. Minn. Stat. § 523.04 (2010).
2. Minn. Stat. § 358.50 (2010).
3. Minn. Stat. § 523.06 (2010).
4. *Timeline, LLC v. Williams Holdings No. 3, LLC*, 698 N.W.2d 181, 187 (Minn. Ct. App. 2005)

## STATEMENT OF THE CASE

Appellants Barry Wayne Beecroft and Tracee Ann Beecroft (collectively, “**Appellants**”) brought this appeal from the above-captioned case out of the Eighth Judicial District Court, County of Kandiyohi, Minnesota, presided over by the Honorable Michael J. Thompson. (Appellant’s App. (“**A.**”) 115-116.) The appeal arises from Judge Thompson’s granting summary judgment in favor of Respondents, Deutsche Bank National Trust Company and American Home Mortgage Servicing, Inc. (collectively, “**Respondents**”) upon Appellants own oral motion to the court for the same. (*Id.*)

Appellants commenced this quiet title action seeking to invalidate the mortgage foreclosure proceedings initiated by Respondent Deutsche Bank National Trust Company (“**Deutsche Bank**”) and seeking a judicial determination as to the ownership of the property in question, located at 9155 Riverwood Circle, New London, Kandiyohi County, Minnesota. (A. 11-15.) Appellants claim that Deutsche Bank did not have the right to foreclose the mortgage at issue, alleging breaks in the chain of title and lack of authority in the execution of the assignment of mortgage to Deutsche Bank.<sup>1</sup> (*Id.*) The district court, based on the undisputed material evidence presented and the arguments of counsel throughout the pendency of the litigation, held that the assignment of mortgage to Deutsche Bank was legitimate and that Deutsche Bank did, in fact, have the right and requisite authority to foreclose the mortgage. (A. 8.) As a result, the district court found Appellants claims to be without merit and the foreclosure proceedings to be valid. (A. 9.)

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<sup>1</sup> Appellants additionally claimed that their prior discharge in bankruptcy extinguished any debt owed under the mortgage. (A. 11-15.) The district court disagreed and held that, though the underlying debt may have been discharged, the mortgage remained valid and enforceable. (A. 6.) Appellants do not appear to challenge this decision on appeal. (*see* Appellant’s Br.)

## STATEMENT OF THE FACTS

On December 23, 2005, Appellants executed and delivered a Promissory Note to Ameriquest Mortgage Company (“**Ameriquest**”) in the principal amount of \$279,000.00 (“**Note**”). (A. 2.) To secure the indebtedness evidenced by the Note, Appellants simultaneously executed a mortgage to Ameriquest encumbering the property commonly known as 9155 Riverwood Circle, New London, MN 56273 and legally described as:

Lot 7, Block 1; and outlot D, except the West 325 feet of said Outlot D, Riverwood

(“**Property**”). (*Id.*) The mortgage was recorded in the Kandiyohi County Recorder’s Office on January 9, 2006 as Document No. 537146 (“**Mortgage**”). (*Id.*)

Immediately after the execution of the Mortgage, Appellants were notified in writing that AMC Mortgage Services would be servicing the Mortgage held by Ameriquest. (A. 73.) Subsequently, on or about October 2, 2007, Ameriquest transferred the servicing rights from AMC Mortgage Services to Citi Residential Lending, Inc. (“**Citi Residential**”), and executed a Limited Power of Attorney, dated October 2, 2007, allowing Citi Residential to act on its behalf and service its mortgage loans, which included the Mortgage at issue in this case (“**Citi Residential LPOA**”). (A. 74-77.) At the time of the servicing rights transfer to Citi Residential, Ameriquest remained the mortgagee under the Mortgage. (*see id.*) On or about January 23, 2009, Appellants were notified in writing that American Home Mortgage Servicing, Inc. (“**AHMSI**”) would be servicing their Mortgage on behalf of Citi Residential. (A. 80.) Again, no transfer of the mortgagee interest occurred; Ameriquest remained the mortgagee of record. (*see id.*)

On July 1, 2008, AHMSI executed a Unanimous Written Consent of the Board of Directors in Lieu of Special Meeting electing officers and granting certain individuals employed by DOCX – a Georgia-based company in the business creating and executing mortgage releases and assignments for mortgage servicers – the authority to act on behalf of AHMSI in a limited capacity, including the execution of documents as necessary (“**2008 AHMSI Consent**”). (Respondent’s App. (“**R.A.**”) 1-4.) This resolution specifically appointed Linda Green and Tywana Thomas as officers of AHMSI, and expressly granted them the authority to act on behalf of AHMSI. On November 16, 2009, AHMSI executed a subsequent Unanimous Written Consent of the Board of Directors in Lieu of Special Meeting authorizing the same officers, again including Linda Green and Tywana Thomas, additional powers to act on behalf of AHMSI (“**2009 AHMSI Consent**”). (A. 111-114.) This resolution further ratified all actions previously taken by these officers consistent with the additional powers as delineated. (*Id.*) On January 30, 2009, Citi Residential executed a Certificate (“**Citi Residential Certificate**”) authorizing officers of AHMSI to act on behalf of Citi Residential with respect to certain functions as enumerated in, *inter alia*, the October 2, 2007 Citi Residential LPOA given to Citi Residential by Ameriquest. (A. 82-84.)

Not until March 4, 2009 was the mortgagees’s interest in the Mortgage assigned from Ameriquest to Deutsche Bank National Trust Company, as Trustee in trust for the benefit of the Certificateholders for Ameriquest Mortgage Securities Trust 2006-R1, Asset-Backed Pass Through Certificates, Series 2006-R1 (“**Deutsche Bank**”). (A. 106.) Linda Green and Tywana Thomas, in their official capacities as Vice President and Assistant Secretary of AMHESI, executed the Assignment of Mortgage on behalf of Citi Residential as

servicing agent for Ameriquest. (*Id.*) This Assignment of Mortgage was recorded in the Kandiyohi County Recorder's Office on March 10, 2009 as Document No. 569795 ("Assignment of Mortgage"). (*Id.*)

Based on the foregoing, the relevant chronology of the Mortgage and its servicing may be summarized as follows:

- 12/23/2005 – Mortgage is executed and given to Ameriquest; serviced by AMC Mortgage Services;
- 10/02/2007 – Servicing rights are transferred to Citi Residential;
- 07/01/2008 – AHMSI grants signing authority to officers Linda Green and Tywana Thomas (AHMSI ratifies all prior actions of officers via 11/29/2009 Conset);
- 01/30/2009 – Citi Residential grants authority to AMHSI officers to act on its behalf;
- 03/04/2009 – Assignment of Mortgage to Deutsche Bank executed by AMHSI officers on behalf of Citi Residential as servicing agent for Ameriquest.

Thus, Linda Green's and Tywana Thomas' authority to execute the Assignment of Mortgage derived from the combination of the Citi Residential LPOA allowing Citi Residential to act on behalf of Ameriquest, the 2008 and 2009 AHMSI Consents authorizing officers Linda Green and Tywana Thomas to act on its behalf, and the Citi Residential Certificate authorizing AHMSI officers to act on its behalf.

In or around the end of 2008, Appellants ceased making payments as required under the terms of the Note and Mortgage.<sup>2</sup> (A. 4.) As a direct result of Appellants' defaults,

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<sup>2</sup> Inexplicably, Appellants now attempt to bootstrap an argument on appeal that they never would have been default under the terms of the Note and Mortgage but for their assertion that they did not know to whom their payments should be sent. However, given the January 23, 2009 notice to Appellants (specifically stating: "[e]ffective February 11, 2009, the servicing of your mortgage account, *that is, the right to collect payments from you*, will be transferred from Citi Residential Lending to AHMSI." (A. 80 (emphasis added))), a June 16, 2009 letter to Appellants from AHMSI (unquestionably indicating that AHMSI is the servicer to whom payments should be made

foreclosure proceedings were commenced. (*Id.*) Appellants then filed for bankruptcy, delaying the foreclosure proceedings. (*Id.*, A. 95-97.) Following completion of the bankruptcy action, and after compliance with all requirements of Minn. Stat. § 580.01 *et seq.*, the Property was sold at Sheriff's sale on November 10, 2009 subject to a six-month redemption period. (A. 85-94.) The redemption period expired on May 10, 2010 with no redemption having been made by Appellants or any other party.

Appellants initiated this action in district court on or about October 19, 2009, and initially sought to enjoin Deutsche Bank from conducting the Sheriff's Sale. Appellants brought a Motion for Temporary Restraining Order on for hearing on November 9, 2009.<sup>3</sup> (R.A. 5-8.) District Court Judge Donald M. Spilseth denied the Motion, finding that Appellants failed to show that they would suffer any more harm than would Deutsche Bank in having the Sheriff's sale enjoined. (*Id.*) Appellants then moved for summary judgment, requesting that the District Court vacate the November 10, 2009 Sheriff's sale and declare that neither Deutsche Bank nor AHMSI have any right, title or interest in the Property. Appellants' Summary Judgment Motion was heard on March 16, 2010. (A. 23-26.) District Court Judge Michael J. Thompson denied the Motion, finding that the evidence clearly demonstrated a chain of title to Deutsche Bank may exist, resulting in a material issue of fact for further consideration since Respondents had not brought a cross-motion for summary judgment. (*Id.*) Ten days later, Appellants again moved the district court for a

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(R.A. 9-10)), and the September 21, 2009 Notice of Mortgage Foreclosure (listing the mortgage servicer as AHMSI (R.A. 11-12)), this argument strains credulity at best.

<sup>3</sup> Appellants first brought a Motion for Temporary Restraining Order on for hearing before the Honorable Kathryn N. Smith of Kandiyohi District Court; however Judge Smith denied the Motion, finding that Appellants had failed to properly effectuate service on Deutsche Bank and AHMSI. (R.A. 13-14.)

Temporary Restraining Order to enjoin the redemption period from expiring. (A. 1-9.)

During the arguments at the hearing on April 20, 2010, Appellants' counsel invited the district court to convert the motion into one for summary judgment:

I recognize the reticence with the court with the arguments that I have made so far on this issue and the fact that the court has previously acted on summary judgment negatively towards us, so I would suggest and invite the court to enter summary judgment if it's appropriate. If you think that our case is that bad, then I invite the court to make summary judgment at this time or at its – you know, on its own motion, or if counsel for Deutsche Bank feels impelled to do so . . .

(Tr. 18-19.) For this reason, and with Respondents' counsel's consent, the district court agreed to consider a Motion for Summary Judgment based on the evidence and arguments in the record in addition to the Appellants' second TRO Motion. (Tr. 20-21.) On May 3, 2010, Judge Thompson denied the TRO Motion and granted summary judgment in favor of Respondents, finding that the chain of title from Ameriquest to Deutsche Bank is unbroken, clear and "cannot be reasonably disputed," (A. 8) and further that "the undisputed material evidence before the court regarding this particular mortgage and assignments shows that the assignments were properly executed by parties with the power to execute them" (A. 9). It is from this May 3, 2010 Order Granting Summary Judgment that Appellants make their appeal.

### **STANDARD OF REVIEW**

On appeal from a summary judgment, the appellate court is tasked with reviewing the record below for the purpose of answering: (1) whether there are any genuine issues of material fact and (2) if the district court erred in its application of the law. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (citing *K.R. v. Sanford*, 605

N.W.2d 387, 389 (Minn. 2000)). In general, on review, the evidence must be viewed in the light most favorable to the party against whom summary judgment was granted and questions of law must be reviewed *de novo*; however this Court has also opined that summary judgment should be affirmed if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 825, 828 (Minn. Ct. App. 1995). Furthermore, the appellate court may only reverse a lower court's decision to grant or deny equitable relief if it finds the lower court clearly abused its discretion in making that decision. *Septran, Inc. v. Independent School Dist. No. 271, Bloomington, Minn.*, 555 N.W.2d 915, 918 (Minn. 1996).

### ARGUMENT

It is clear that the district court's grant of summary judgment in favor of Respondents was appropriate. There are no material issues of fact present in this case and Respondents are entitled to judgment as a matter of law. Deutsche Bank conducted a foreclosure of the Property in accordance with Minnesota law. 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 them both. For these reasons, the Court should uphold the lower court's decision and affirm summary judgment in favor of Respondents.

**I. DEUTSCHE BANK NATIONAL TRUST COMPANY COMPLIED WITH MINNESOTA'S FORECLOSURE PROCEDURE, INCLUDING MINNESOTA STATUTE SECTION 580.02, AND THE FORECLOSURE IS VALID.**

Minnesota Statute section 580.02 states in pertinent part: “[t]o entitle any party to make such foreclosure, it is requisite: . . . (3) that the mortgage has been recorded and, if it has been assigned, that all assignments thereof have been recorded . . .” (2010). In essence, Appellants argue that the foreclosure proceedings were improperly conducted by Deutsche Bank because they claim that the Mortgage itself was assigned between each of the servicing entities and that none of these alleged assignments was recorded in compliance with Minnesota Statute Section 580.02 prior to the foreclosure sale.

Appellants’ argument, however, is misplaced because of their fundamental misunderstanding of the difference between an assignment of a mortgage and the transfer of servicing rights to a mortgage. 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 servicing 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. Servicing rights are sold by a purchase and sale agreement, which is a non-recordable contractual right. *See* Minn. Stat. § 336.9-106 (2010). Servicers are paid to handle loan payment processing, deal with tax and insurance escrows, receive and process loan payoffs, handle delinquencies and defaults, and interact with borrowers. *See, e.g., Deerman v. Fed. Home Loan Mtg. Corp.*, 955 F. Supp. 1393, 1396 (N.D. Ala.

1997), *aff'd*, 140 F.3d 1043 (11th Cir. 1998). In contrast, an assignment of a mortgage involves the full conveyance of all rights, beneficial ownership interests and obligations under the mortgage contract and is required to be recorded in the respective county's land records. *See* Minn. Stat. § 580.02 (2010); *see generally*, Minn. Stat. Ch. 507 (2010). The Minnesota Supreme Court, in the recent decision of *Jackson v. Mortgage Electronic Registration Systems, Inc.*, 770 N.W.2d 487, 501 (2009), expressly held that, in the context of equitable assignments of mortgages made in connection with endorsements of underlying promissory notes, "only assignments of legal title of the security instrument [i.e., mortgage] must be recorded in order to commence foreclosure by advertisement." Additionally, this Court has held that documentation supporting the authority of attorneys-in-fact to act on behalf of the principal need not be recorded. *Timeline, LLC v. Williams Holdings No. 3, LLC*, 698 N.W.2d 181, 187 (Minn. Ct. App. 2005).

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. There was never any assignment of the Mortgage between the servicing entities that were involved with the Appellants' loan servicing. The documentary evidence regarding service transfers in the record below – the Citi Residential LPOA and the January 23, 2009 notification of AHMSI's servicing on behalf of Citi Residential – clearly demonstrate that these transfers were of certain servicing rights only and were not full assignments of the mortgage. Thus, the only transfer related to the Appellants' loan that was required to be recorded prior to the sale was the one Assignment of Mortgage from Ameriquest to

Deutsche Bank, which Assignment of Mortgage was unquestionably recorded well in advance of the Sheriff's sale. Also, like in *Timeline* holding, the Court need not look beyond the four corners of the Assignment of Mortgage to review the authority of the attorney-in-fact; the Assignment of Mortgage in and of itself is *prima facie* evidence of the signatories' attorney-in-fact authority; the Limited Powers of Attorney granting signatory rights among the servicers were not required to be recorded.

As such, the district court correctly determined that the Assignment of Mortgage to Deutsche Bank is valid, that the foreclosure proceedings were completed in strict compliance with the requisite statutes, and that the foreclosure sale is valid. Summary judgment in favor of Deutsche Bank was appropriately granted and should be affirmed on appeal.

**II. THE DISTRICT COURT PROPERLY DETERMINED THAT THE SIGNATORIES TO THE ASSIGNMENT OF MORTGAGE HAD THE NECESSARY AUTHORITY TO SIGN AND THAT THERE WERE NO ISSUES OF MATERIAL FACT PRECLUDING SUMMARY JUDGMENT.**

Appellants further argue that the individuals who signed the Assignment of Mortgage – Linda Green and Tywana Thomas – did not have the requisite authority to do so, despite the plethora of documentary evidence in the record attesting to the contrary.

Appellants attempt to paint the contractual relationships between the entities involved as a complicated and nefarious conspiracy “to frighten away potential purchasers.” (Appellant's Br., at 13.) In reality, however, the flow of authorities is relatively straight forward and is a matter of course in the mortgage servicing industry in

order to ensure that actions necessary for the servicing of a loan can be timely and accurately completed. The majority of mortgage contracts, including the Appellants' Mortgage, specifically allow for the servicing rights to be transferred away from the mortgagee. Transfers of servicing rights, which may or may not accompany the transfer of other interests in the mortgage loan, are typically done through various contracts that are, as previously discussed, non-recordable events. In this case, the record below indisputably demonstrates that Linda Green and Tywana Thomas, as officers of AHMSI, had the requisite authority to execute the Assignment of Mortgage on behalf of Citi Residential as servicing agent for Ameriquest.

**A. Citi Residential Was an Appointed Attorney-in-Fact for Ameriquest.**

Based on the October 2, 2007 Citi Residential LPOA given by Ameriquest to Citi Residential, Citi Residential was an attorney-in-fact for Ameriquest and had the express authority to execute the Assignment of Mortgage.

The Citi Residential LPOA was publicly recorded on November 2, 2007 in Hennepin County, a certified copy of which was recorded in Kandiyohi County on February 25, 2010. Contrary to Appellants' protestations, the absence of the October 2, 2007 Citi Residential LPOA in Kandiyohi County land records prior to February 25, 2010 does not invalidate the Assignment of Mortgage or the foreclosure.<sup>4</sup> Minnesota Statute section 523.04 states: "A written power of attorney that is dated and purports to

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<sup>4</sup> Although Respondents do not concede that an absence of the Citi Residential LPOA is fatal, it is important to note that Appellants fail to acknowledge here that the Citi Residential LPOA is identical to a power of attorney previously filed for record in Kandiyohi County on January 14, 2009 as Document No. 568232 which granted Citi Residential the ability to act on behalf of Ameriquest with the same powers. (R.A. 15-24.) Therefore, there actually exist two separate powers of attorney for Citi Residential to act on behalf of Ameriquest.

be signed by the principal named in it is presumed to be valid.” (2010). “An acknowledgment made in a representative capacity for and on behalf of a corporation, partnership, limited liability company, trust, or other entity and certified substantially in the form prescribed . . . is prima facie evidence that the instrument . . . was executed and delivered with proper authority.” Minn. Stat. § 358.50 (2010). Moreover, “[a] certified copy of a power of attorney has the same force and effect as a power of attorney bearing the signature of the principal.” Minn. Stat. § 523.06 (2010). Lastly, as previously discussed, this Court has held that, in the context of an assignment made during redemption, a power of attorney does not need to be recorded to establish attorney-in-fact status. *Timeline, LLC*, 698 N.W.2d at 187-188.

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. Just as in *Timeline, LLC*, the lack of recording the Citi Residential LPOA in Kandiyohi County has no legal significance as to whether the power existed or not.

The Citi Residential LPOA clearly pre-dates the Assignment of Mortgage, and its validity was not challenged by Appellants at the district court level. The Citi Residential LPOA grants broad powers, and states that Citi Residential shall have “full power and authority to execute such instruments and to do and perform all and every act and thing necessary and proper to carry into effect the power or powers granted by or under this Limited Power of Attorney as fully as the undersigned might or could do . . . .” (A. 76.)

It further grants Citi Residential a broad range of powers to act on behalf of Ameriquest, including the:

[f]ull power and authority to sign, execute, acknowledge, deliver, file for record, and record any instrument on its behalf and to perform such other act or acts as may be customarily and reasonably necessary and appropriate to effectuate the following enumerated transactions:

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8. With respect to a Mortgage or Deed of Trust, the foreclosure . . . or the completion of judicial or non-judicial foreclosure, . . . including, without limitation, any and all of the following acts:

f. the preparation and execution of such other documents as may be necessary under the terms of the Mortgage . . . or state law to expeditiously complete said transactions.

(A. 74-75.) This language is designed to grant a broad range of powers to Citi Residential in order to act as an attorney-in-fact for Ameriquest. These actions would logically include assignments of mortgages, which are specifically permitted under the terms of the Mortgage and required by Minnesota law to document such transactions. Again, despite Appellants' baseless claims to the contrary, there is absolutely no requirement, legal or otherwise, that Ameriquest expressly list each and every mortgage on which it is giving Citi Residential authority to act by virtue of the Citi Residential LPOA. As a result, there can be no question that Citi Residential had the requisite authority to execute the Assignment of Mortgage on behalf of Ameriquest.

**B. Linda Green and Tywana Thomas, as officers of AHMSI, Were Authorized to Sign on Behalf of Citi Residential.**

Linda Green and Tywana Thomas were elected as Vice President and Assistant Secretary of AHMSI, respectively, by virtue of the 2008 AHMSI Consent. The 2008

AHMSI Consent additionally specifies the limited authority granted; to execute documents on behalf of the corporation. The subsequent 2009 AHMSI Consent clarifies the powers granted to the officers elected and expressly states the officers' authority to execute assignments of mortgage. The 2009 AHMSI Consent further ratifies all actions previously taken by the officers consistent with the enumerated powers. On or about January 30, 2009, Citi Residential issued the Citi Residential Certificate, appointing officers of AHMSI to act as officers of Citi Residential with limited authority. The Citi Residential Certificate expressly elects each of the officers of AHMSI as officers of Citi Residential.

Read together, these documents clearly provide the path of Linda Green's and Tywana Thomas' authority to execute the Assignment of Mortgage on behalf of Ameriquest:

Linda Green and Tywana Thomas elected officers of AHMSI → AHMSI officers are given authority to act as officers of Citi Residential → Citi Residential given attorney-in-fact powers by Ameriquest.

As a result, there is no issue of material fact as to Linda Green's and Tywana Thomas' authority to execute the Assignment of Mortgage from Ameriquest to Deutsche Bank. Summary judgment was therefore properly granted and the district court's ruling must be affirmed.

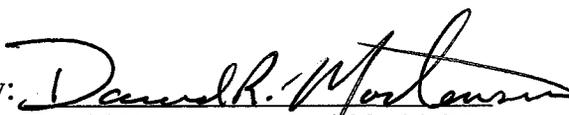
### **CONCLUSION**

For the foregoing reasons, it is clear the district court was correct in granting summary judgment in favor of Respondents. There are no genuine issues of material fact

and Respondents are entitled to judgment as a matter of law. All applicable mortgage documents including the Assignment of Mortgage were properly executed and were of record at the time of the foreclosure. The foreclosure was conducted in accordance with Minnesota law. Further, the record below clearly demonstrates that the signatories to the Assignment of Mortgage had the necessary authority to do so. Based upon the foregoing, Respondents respectfully requests the Court affirm the lower court's decision to grant summary judgment in their favor.

**WILFORD & GESKE, P.A.**

Dated: October 25, 2010

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