IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MORTGAGE FORECLOSURE / MECHANICS LIEN SECTION

U. S. BANK., N.A., etc.,	)
	)
Plaintiff,	)
	)
v.	) No. 07 CH 29738
	)
JOSEPH YOUNES, RICHARD DANIGGELIS, *et al.*,	) 1720 North Sedgwick) Chicago, IL 60614
	)
Defendants.	)

MEMORANDUM OPINION AND ORDER

This five-year old case comes before the court on a motion to extend the discovery deadlines. To understand why the court denies that motion, a discussion of the background of the case is in order.

This is hardly a typical mortgage foreclosure case. According to the record as it stands, Richard Daniggelis has lived at the property for over 50 years. He claims that he was tricked into signing a deed to his property by Joseph Younes and others. These individuals then mortgaged the property on their own, and that mortgage has since gone delinquent. In short, the case presents a standard mortgage rescue fraud scenario. *See, e.g., LaSalle Bank v. Ferone*, 384 Ill. App. 3d 239, 246 (2d Dist. 2008); *Wilbourn v. Advantage Fin. Partners, LLC*, No. 09-CV-2068, 2010 U.S. Dist. LEXIS 26898 (N.D. Ill. March 22, 2010). Danigellis's strained and problematic relationship with his previous attorneys, and his assiduous search for *pro bono* counsel on this challenging case, resulted in many delays. In light of the extraordinary facts of the case, the court granted far more leniency than usual toward Danigellis. However, his current attorney has now been of record for well over a year.

For Daniggelis to win this case, he will have to successfully use unusual equitable remedies and overcome significant burdens to unravel the underlying mortgage and restoring himself to the chain of title. Rather than concentrating his efforts on that goal, Danigellis's current attorney has embarked on a quest to invalidate the underlying foreclosure lawsuit (which, we must remember, involves a mortgage Danigellis did not even sign) on the basis that the plaintiff does not have standing to prosecute on the subject mortgage and note. To this end, he requests even more time to depose persons scattered across the country who may have been involved with the transfer process, some of whom apparently no longer work for the relevant employer. He also claims that the plaintiff did not respond to certain discovery requests. The plaintiff vigorously denies that it has failed to produce anything that the defendant requested.

Mortgage loans are frequently bought and sold, and securitization of these loans means

that foreclosure cases are often brought by trustees or servicers acting on behalf of the owners of the securitized loans. Illinois law does not prohibit this practice. In fact, it provides an easy route for anyone holding a relationship with a subject mortgage and note to prosecute a foreclosure lawsuit. In Illinois, a foreclosure lawsuit may be brought by the holder or owner of the note *or* mortgage; someone possessing the rights of a note holder or owner; a servicer acting on behalf of any of those entities; or any entity claiming "through a mortgage as a successor", among many others. 735 ILCS 5/15-1208. A loan servicer has standing to bring a foreclosure case in its own name. *CWCapital Asset Mgmt., LLC v. Chi. Props., LLC*, 610 F. 3d 497, 500-02 (7th Cir. 2010). Mortgage Electronic Registration Systems, known as "MERS", is a ubiquitous – but controversial – nominee mortgagee in standard American mortgages. MERS has the right to sue in Illinois to foreclose one of its mortgages even though it is acting only on behalf of a lender which is itself a holder or owner of the note or mortgage. *Mortgage Elec. Registration Sys. v. Barnes*, 406 Ill. App. 3d 1, 6 (1st Dist. 2010).

Under section 3-301 of the Uniform Commercial Code (UCC), a person is entitled to enforce a note if he is: (1) the holder of the note; (2) a "nonholder in possession of the [note] who has the rights of a holder"; or (3) the person who held the note before it was lost, stolen, or destroyed. 810 ILCS 5/3-301; *see* Permanent Editorial Board for the Uniform Commercial Code, Application of the Uniform Commercial Code to Selected Issues Relating to Mortgage Notes 5-7 (Nov. 14, 2011). The listing of the second group of authorized persons makes it clear that there are other individuals besides the holder of the note who, nonetheless, may have the rights of the holder such that they can enforce the note.

Defendants unable to extract themselves from a clear default and inevitable foreclosure have tried to take advantage of the frequent transfer of mortgage loans by raising issues regarding the plaintiff's standing. However, virtually all of these motions focus only on the ownership of the note as demonstrated by the written transfer documents and, as here, completely neglect to address the key issue of whether or not the plaintiff might be acting on behalf of someone else. The plaintiff's response to the motion to extend discovery asserts that it has possession of the original note, and that counsel for the defendant has had an opportunity to review it. This possession alone makes any allegations regarding "forgery" *in the assignment process* moot. The defendant's reply on the pending motion does not deny the assertion regarding the possession of the original note, and no other party has come forth in the five years this case has pended to claim that it has the truly original note, that the one possessed by plaintiff's counsel is fake, or that the original note was stolen.

As explained by decades of case law interpreting the Uniform Commercial Code (UCC), and as further explained by the Permanent Editoral Board on the UCC's recent examination of transfer of mortgage and loan documents, this possession fairly well shuts the door on challenges to the plaintiff's standing to bring this lawsuit. Despite the ubiquity of similar mortgages across the country, courts have been loathe to simply hand out free homes to borrowers on hypertechnical bases such as those claimed here. In particular, the appellate court recently halted attempts to challenge standing based on the alleged failure of the note or mortgage to be

transferred in punctilious compliance with the terms of encyclopedia-sized pooling and servicing agreements (PSAs), finding that because borrowers were not parties to the PSAs, they had no standing to complain about them. *Bank of America v. Bassman*, 2012 IL App (2d) 110729. As Danigellis did not even sign the underlying mortgage, his interest in challenging the transfer process is even more attenuated than that of the *Bassman* defendant.

In short, Danigellis's remaining discovery appears to be entirely directed at a defense which not only lacks support in the applicable statutes, but also in case law. If the defense "had legs", so to speak, millions of American mortgages would already have been judicially invalidated, and the courts of review would have certainly given a more favorable signal regarding the defense than they have so far. The court understands that it suggested that the parties put discovery on the back burner while the case went to mediation. However, this case must come to an end at some point, and the court believes that the discovery schedule provided ample time for the parties to develop their cases and obtain relevant evidence.

Therefore, the court hereby ORDERS:

1. The motion to extend discovery is denied;

2. Any dispositive motion shall be filed by August 10, 2012;

3. Counsel for U. S. Bank shall immediately transmit a copy of this order to any party not shown on the service list below; and

4. The case is set for case management for August 15, 2012 at 3:00 p.m. in Room 2804, at which time the court expects to set briefing schedules on the dispositive motions; and

5. Counsel for U. S. Bank shall prepare a list of any outstanding motions and submit it to the court by August 9, 2012.

ENTER:

ENTERED
Assoc. Judge Mathias William Delort-1950
JUL 24 2012
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Mathias W. Delort #1950
Associate Judge
July 24, 2012

The court sent copies of this order by U.S. mail on the above date to: