IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, STATE OF FLORIDA CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ET AL Plaintiff,

CASE NO.: 51-2007-CA-6684-E

VS.

ERNEST E. HARPSTER Defendant.

MOTION IN LIMINE

COMES NOW, the Defendant, ERNEST E. HARPSTER by and through his undersigned legal counsel who files this, his Motion in Limine, and says:

- 1. The Plaintiff has filed a lawsuit against the Defendant, Ernest E. Harpster, claiming that the Plaintiff has lost the promissory note allegedly signed by the Defendant.
- 2. The Defendant, Ernest E. Harpster, is relying upon the fact that the Plaintiffs have lost the promissory note and have framed discovery and strategy in the case based upon this truth.
- 3. This court has the power to prevent a party from presenting documents and evidence before the court by court order.
- 4. The Defendant, Ernest E. Harpster, requires a court order precluding the Plaintiff from suddenly "finding" the lost promissory note.
- 5. The Defendant, Ernest E. Harpster, has relied upon the representations made by the Plaintiff in its lawsuit. This court should find that the Plaintiff is bound by its pleadings and therefore cannot present a promissory note that it claims to have found at a later date.

WHEREFORE. Ernest E. Harpster, prays that this honorable court will enter an order precluding the Plaintiffs from attempting to present any promissory note before this court and grant the Defendant's Motion in Limine.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail this 6th day of August, 2009, to Halina T. Cegielski, Esq., Law Offices of David Stern, Attorney for the Plaintiff, 900 S. Pine Island Road, Suite 400, Plantation, FL 33324-3920.

RALPH B. FISHER, ESQ.

FISHER'S LAW OFFICE, P.A.

18125 U.S. Highway 41 N., Suite 109

Lutz, FL 33549 (813) 949-2749

Fla. Bar No.: 371580 Attorney for Defendant

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, STATE OF FLORIDA CIVIL DIVISION

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ET AL

Plaintiff,

CASE NO. 51-2007-CA-6684E8

vs.
ERNEST E. HARPSTER
Defendant.

MOTION TO COMPEL RESPONSE TO REQUEST FOR PRODUCTION AND ANSWERS TO INTERROGATORIES

COMES NOW, the Defendant, Ernest Harpster, by and through his undersigned attorney who file this, his Motion to Compel and says:

- 1. On or about January 9, 2008 the Defendant propounded Interrogatories upon the Plaintiff. Additional interrogatories and a Request for production were propounded on July 24, 2009.
- 2. Under Florida's Rules of Civil Procedure the Plaintiff's were required to answer the discovery within 30 days.
- 3. As of October 28, 2009 no response to the Request for Production or the Interrogatories has been received.
- 4. A good faith letter was sent to the attorney for the Plaintiff asking how much time the Plaintiff needed to respond to the discovery.
- 5. In order to properly prepare for and make argument at the Motion to Dismiss hearing that is currently scheduled for November 3, 2009 the Defendant needs the discovery information requested.
- 6. The Defendants have incurred an obligation to pay his attorney a reasonable fee for these proceedings.

WHEREFORE the Defendant, Ernest Harpster, request this Honorable Court to grant this Motion to Compel and require the Plaintiff to produce the discovery and to grant the Defendants a reasonable attorneys fee for these proceedings.

I HEREBY CERTIFY, that a true and correct copy of foregoing has been sent by regular U.S. mail on this 28th day of October, 2009 to Michelle Mason, Law Offices of David J. Stern, PA, 900 S. Pine Island Road, Suite 400, Plantation, FL 33324-3920, attorney for the Plaintiff.

FILED FOR RECORD
ASSO COUNTY, FLORIDA
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RALPH B. FISHER, ESQ.
FISHER'S LAW OFFICE, P.A.
18125 Highway 41 North, Suite 109
Lutz, Florida 33549
ralphfisher@yahoo.com
(813) 949-2749
Fla. Bar No. 371580

Attorney for Defendant Ernest Harpster

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, STATE OF FLORIDA

U.S. BANK, NATIONAL ASSOCIATION TRUSTEE FOR THE BANC OF AMERICA FUNDING 2007-6 TRUST

Plaintiff.

VS. ERNEST HARPSTER. Defendant.

DIVISION, J

ADDITIONAL MOTION TO DISMISS FOR FAILURE TO POST SECURITY B RESIDENT AS REQUIRED BY F.S. SECTION 57.011

COMES NOW the Defendant, ERNEST HARPSTER, who file this, his additional Motion to Dismiss for Failure to post security after demand and says:

1. Florida Statute 57.011 states that a non-resident plaintiff must post security with the clerk of the court within 20 days of a written demand or suffer dismissal of its suit.

In the case at bar, a written demand was given to the Plaintiff's counsel Halina T. Cegielski, Law Offices of David Stern, 900 S. Pine Island Road, Suite 400, Plantation, Florida 33324-3920 on July 24, 2009 but no proof of the posting of a bond has been shown to the Defendant.

WHEREFORE, the Defendant, ERNEST HARPSTER, requests that this Honorable Court enter an Order dismissing this action for failure to post security

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail this 28th day of October, 2009, to Halina T. Gegielski, Law Offices of David Stern, PA, 801 S. University Drive, Suite 500, Plantation, FI 33324.

> RALPH B. FISHER, ESQ. FISHER'S LAW OFFICE, P.A. 18125 Highway 41 North, Suite 109 Lutz, Florida 33549 (813) 949-2749

Fla. Bar No. 371580

Attorney for Defendant ERNEST HARPSTER

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, STATE OF FLORIDA CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ET AL Plaintiff,

CASE NO.: 51-2007-CA-6684-ES

VS.

ERNEST E. HARPSTER Defendant.

AMENDED MOTIONS IN LIMINE

COMES NOW, the Defendant, ERNEST E. HARPSTER by and through his undersigned legal counsel who files this, his Amended Motions in Limine, and says:

First Motion in Limine

- 1. The Plaintiff has filed a lawsuit against the Defendant, Ernest E. Harpster, claiming that the Plaintiff has lost the promissory note allegedly signed by the Defendant.
- 2. The Defendant, Ernest E. Harpster, is relying upon the fact that the Plaintiffs have lost the promissory note and have framed discovery and strategy in the case based upon this truth.
- 3. This court has the power to prevent a party from presenting documents and evidence before the court by court order.
- 4. The Defendant, Ernest E. Harpster, requires a court order precluding the Plaintiff from suddenly "finding" the lost promissory note.
- 5. The Defendant, Ernest E. Harpster, has relied upon the representations made by the Plaintiff in its lawsuit. This court should find that the Plaintiff is bound by its pleadings and therefore cannot present a promissory note that it claims to have found at a later date.

FILED FOR RECOR

Second Motion in Limine/Motion to Strike

- 6. This Court has the right to strike sham pleadings under Florida Rule of Civil Procedure 1.150. This Court also has the right to enter Motions in Limine.
- 7. In the case at bar, the Plaintiff has filed a lawsuit on December 7, 2007 for foreclosure. In paragraph 4 of the lawsuit the Plaintiff states that the mortgage being sued on was assigned to the Plaintiff by virtue of an assignment to be recorded. A copy of the assignment to be recorded was in fact recorded on or about September 10, 2008. The assignment states that Mortgage Electronic Registration Systems, Inc., located at Wells Fargo Bank of Fort Mills, South Carolina has assigned to the Plaintiff the mortgage and the note in the above-styled case. Although the assignment states that the signatory to the assignment is located in Fort Mills, South Carolina, Terry Rice notarized the document in Broward County, Florida on December 5, 2007. Terry Rice has notary stamp affixed to the assignment of mortgage indicating a commission number DD782247 which expires on May 19, 2012. The notary is bonded by Atlantic Bonding Co., Inc.
- 8. Under Florida Statute Chapter 117.01(1), notaries shall be appointed for four years. Therefore, the notary commission period for Terry Rice would have begun on May 20, 2008 and run through May 19, 2012. The notary commission stamp that Terry Rice used on December 5, 2007 did not exist on this date. The date of recording indicates that the recording took place on September 10, 2008. On its face, the assignment of mortgage is a fraud on the Court. The notary obviously "back-dated" the assignment to predate the date that the lawsuit in this case was filed, December 7, 2007.
- 9. Since the Plaintiff's claim is predicated upon the assignment of mortgage assigning the rights to the mortgage prior to the date the lawsuit was filed and the assignment of mortgage could not have been signed on that date, the assignment must be stricken and considered a nullity. Moreover, the Plaintiff's Complaint, the Complaint itself must be stricken as a sham pleading under Florida Rule of Civil Procedure 1.150.

10. The Defendant, Ernest Harpster, ahs incurred an obligation to pay his attorney a reasonable fee for these proceedings.

WHEREFORE. Ernest E. Harpster, prays that this honorable court will preclude the promissory note from being brought into evidence and prays that this court will grant the Defendant's Motions in Limine and prevent the assignment from coming into evidence and strike the sham pleadings of the Plaintiff including the Mortgage Foreclosure Complaint itself with prejudice and award him a reasonable attorney's fee for these proceedings.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail this 6th day of November, 2009, to Halina T. Cegielski, Esq., Law Offices of David Stern, Attorney for the Plaintiff, 900 S. Pine

Island Road, Suite 400, Plantation, FL 33324-3920.

RALPH B. FISHER, ESQ.

FISHER'S LAW OFFICE, P.A.

18125 U.S. Highway 41 N., Suite 109

Lutz, FL 33549 (813) 949-2749

Fla. Bar No.: 371580 Attorney for Defendant

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, STATE OF FLORIDA CIVIL DIVISION

U.S. BANK, NATIONAL ASSOCIATION TRUSTEE FOR THE BANC OF AMERICA FUNDING 2007-6 TRUST

Jan Jak

Plaintiff,

CASE NO. 5107-CA-6684-ES DIVISION. J

vs.

ERNEST HARPSTER,

Defendant.

MOTION TO DISMISS FOR FAILURE

TO JOIN AN INDISPENSABLE PARTY, FAILURE TO ALLEGE OR SHOW

COMPLIANCE WITH FLORIDA STATUTE 559.715 AND SUIT AGAINST A PERSON

NOT NAMED AS BORROWER UNDER TERMS OF MORTGAGE

COMES NOW the Defendant, ERNEST HARPSTER, who file this, his Motion to Dismiss for Failure to Join an Indispensable Party and say:

1. Florida Rule of Civil Procedure 1.140(b)(7) allows this Honorable Court to dismiss an action for failure to join an indispensable party.

In the case at bar, the entity that appears on the mortgage and note as mortgagee is an entity called MERS, a Delaware entity. Moreover, under the terms of the mortgage, the lender is American Home Mortgage, 538 Broadhollow Rd, Melville, NY 11747.

The entity that filed this action, U.S. Bank, National Association, is not the entity that the Defendant ERNEST HARPSTER, agreed to pay.

Moreover, paragraph 20 of the mortgage requires that "if there is a change of the Loan Servicer Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer..."

The Plaintiff is claiming to be the loan servicer. The complaint must be dismissed because the Plaintiff has failed to allege that it has given the Defendants notice of change of servicers as required by the terms of the Mortgage and under RESPA.

The Plaintiff's lawsuit contains a request that this court appoint a receiver of the rents and income from the property but there has been no perfection by recording of the assignment of the right to collect rents as required by Florida Statutes, Section 697.07(2).

Also, there is no allonge attached to the complaint evidencing assignment of the rights to the note and mortgage.

The Plaintiff has no standing to bring this action and the case should be dismissed.

2. No Florida law allows a party to sue to enforce a debt if that party is not the "real party in interest" (see Trawick's Florida Practice and Procedure 2004 Ed. §4-3 which states: "The real party in interest in an action is the person who loses or gains from an outcome.")

Trawick goes on to state that the modern and better practice is to sue only in the name of the real party in interest. For example, if in fact the Plaintiff is the assignee in the interest of the mortgage sued on in the complaint, then the Plaintiff should attach the assignment and a copy of the notice of assignment that was required under Florida Statutes, Section 559.715.

In fact, attachment of such allonge or assignment is required to state a cause of action under FRCP 1.130 (a).

Moreover, no notice of assignment has been given to the Borrower as required by F.S. section 559.715 within 30 days of assignment or at any time.

- 3. Defendant, Ernest Harpster, is not shown as Borrower on the Mortgage (see definitions section of the Mortgage) or note. It is therefore improper to plead or request this court enter judgment against her for costs, charges, expenses, attorney's fees or the principal or interest amounts sued for in the complaint.
- 4. It is impossible that the Exhibit B is a correct recitation of the terms of the note because it names the plaintiff, U.S. Bank National Association, as the Obligee, not the lender, American Home Mortgage. Moreover, the length of the note, interest rate increase provisions, location of the payments or the other terms of the actual note as stated in the Exhibit. Even if the original note is lost, a copy should be required to be attached under FRCP 1.130(a).
- 5. The Defendant is entitled to fees and costs under the alleged note and mortgage and under Florida Statutes, Section 57.105.

WHEREFORE, the Defendants, ERNEST HARPSTER, request that this Honorable Court enter an Order dismissing this action for:

1) Failure to join an indispensable party;

- 2) Failure to sue in the name of the real party in interest;
- 3) Failure to allege recording the assignment of rents or to allege the giving of notice of change of loan servicer under the terms of paragraph 20 of the mortgage and under RESPA.
- 4) Failure to give notice of assignment within 30 days as required by F.S. statute section 559.715;

ANSWER TO MORTGAGE FORCLOSURE COMPLAINT

COMES NOW the Defendants, ERNEST HARPSTER, who files this, his Answer to the Complaint and responds to each individually numbered allegation and say:

COUNT I

- 1. Admitted.
- 2. Admitted.
- 3. Admitted.
- 4. Without knowledge that the Plaintiff is the present owner and holder of the promissory note and mortgage. There has not been compliance with F.S. 559.715 if this debt is a consumer debt.
- 5. Without knowledge and therefore denied. There is no allonge or assignment attached showing a transfer to the Plaintiff from the original note holder. Moreover, no notice of change of servicers was ever given to the Defendants.
 - 6. Admitted that Ernest Harpster is in possession.
 - 7. Admitted.
 - 8. Denied.
 - 9. Admitted.
- 10. Denied. Without knowledge as to ERNEST HARPSTER since the status of the Plaintiff is unproven and not properly alleged.
 - 11. Admitted.
 - 12.Admitted.
 - 13. Admitted
 - 14.Admitted.
 - 15. Denied. Ernest Harpster is not a borrower under the terms of the mortgage.

COUNT II

- 16. Admit.
- 17. Deny as to Stefanie. Admit as to Franklin
- 18. Admit
- 19. Denied. There is no allonge or assignment or other proof that the original note holder gave up its interest in the note and mortgage.
- . 20. Denied. There is no note assignment attached to the complaint. There is no proof attached the Plaintiff is the owner of the note. The terms aren't correct and the name of payee on the note is wrong in that the term of the note isn't stated or it's beginning date. The note may be an adjustable note and this fact is left out of the Plaintiff's summary.
- 22. Denied. The Defendants demand proof the Plaintiff is the owner of the note and mortgage and proof of it is an entity entitled to do business in Florida. There is no proof shown that the Plaintiff is the current owner of the mortgage or that notice was given as required by the mortgage that a transfer of ownership occurred or that the Plaintiff is sui juris.

FIRST AFFIRMATIVE DEFENSE

If the Plaintiff is an assignee, the Plaintiff has failed to comply with Florida Statutes, Section 559.715, as it has not given notice of the assignment of a consumer debt within thirty days to the Defendant, as required by Florida law. The Defendant should be awarded fees and costs.

The Plaintiff is not a real party in interest (MERS is the mortagee under the terms of the mortgage). The real party in interest, American Home Mortgage is the lender, not the Plaintiff. No assignment is attached or recorded. No proof is attached establishing Plaintiff as the real party in interest. Moreover, no notice has ever been given as to that the Plaintiff is a servicing agent or other entity as required by the mortgage and by F.S. 559.715.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail this 9th day of January, 2008, to Halina T. Gegielski, Law Offices of David Stern, PA, 801 S. University Drive, Suite 500, Plantation, Fl 33324.

RALPH B. FISHER, ESQ.

FISHER'S LAW OFFICE, P.A. 18125 Highway 41 North, Suite 109 Lutz, Florida 33549 (813) 949-2749 Fla. Bar No. 371580

Attorney for Defendant ERNEST HARPSTER

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, STATE OF FLORIDA **CIVIL DIVISION**

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ET AL

Plaintiff,

CASE NO. 51-2007-CA-6684ES

VS.

ERNEST E. HARPSTER

Defendant.

REQUEST FOR PRODUCTION

Pursuant to Florida Rules of Civil Procedure, the Defendant, Ernest E. Harpster requesting the following decoupled the following the following decoupled the follo that the Plaintiff produce the following documents within thirty (30) days after the date of ser of this Request for Production at Fisher's Law Office, P.A., 18125 Highway 41 North, Suite 409, Lutz, Florida 33549, for inspection and copying:

- 1. Any disclosures under the Fair Debt Collection Practices Act that you have given the Defendants.
- 2. Copy of any documents referencing or memorializing the assignment from American Home Mortgage, to any other party. In your response please produce the assignment itself along with all contracts, agreements, closing documents and any other documents created to document the sale of the note. Please also produce any and all documents that reference any successive assignments of interests, whether whole or fractional, in the Note and Mortgage sued on in your complaint.
- 3. Any account histories from the inception of the account to the present showing all payments, interest accruals, charges, etc., leading up to the current balance sued on in your Complaint.
- 4. Copies of the HUD settlement statement and copies of all cancelled checks evidencing payment of all amounts at the closing of the loan that is the subject of your suit. Please produce a copy of the loan file including the face sheet of the file, the cover and inside pages, front and back of the loan file.
 - 5. A copy of any notices of default sent pursuant to paragraph 22 of the mortgage.

- 6. Copies of any correspondence or emails that you have received from or sent to anyone regarding loss of the note sued on in your complaint.
- 7. Copies of any and all documents (contracts, closing documents, agreements, etc) that evidenced or memorialized the transfer of ownership of the note/mortgage from the original note holder or its nominee to anyone else (to the extent you have not complied with this request in responding to item 2 above).
- 8. Copies of any and all documents that describe or contain policies and procedures for securing and protecting promissory notes, including but not limited to the note you claim to have lost in this case.
- 9. Copies of any police or other reports, internal or external, and correspondence with your auditors, whether internal or external or employees and staff describing or noting the loss of the promissory note sued on in your complaint.
- 10. Copies of any notice of assignment or notice of change of loan servicing agent given to the Defendant.
- 11. Copies of any contracts or memorandum or agreements that evidence or establish your status as authorized agent for the owner of the note/mortgage sued on in your complaint.

regular U.S. mail this 24th day of July, 2009, to Halina T.Cegielski, Esq., Law Offices of David Stern, Attorney for the Plaintiff, 900 S. Pine Island Road, Suite 400, Plantation, FL 33324-3920.

RALPH B. FISHER, ESQ. FISHER'S LAW OFFICE, P.A.

18125 Highway 41 N., Suite 109

Lutz, FL 33549

(813) 949-2749

Fla. Bar No. 371580

Attorney for Defendant, Ernest E. Harpster

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, STATE OF FLORIDA CIVIL DIVISION

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ET AL

Plaintiff,

CASE NO. 51-2007-CA-6684ES

VS.

ERNEST E. HARPSTER

Defendant.

NOTICE OF SERVICE OF INTERROGATORIES

TO: Halina T. Gegielski, Esq. Law Offices of David J. Stern, P.A. 900 S. Pine Island Road, Suite 400 Plantation, FL 33324-3920 Paula S. O'Neil Clerk & Comptroller casco County, Florida

Pursuant to Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, the Plaintiff, US Bank National Association, is required to answer within thirty (30) days after the date of service of the attached interrogatories numbered 1 through 18 in writing and under oath, inserting said answers upon the original and copy served, and to return the said original to the undersigned and serve copies pursuant to said Rules.

I HEREBY CERTIFY that the original and one copy of the attached interrogatories, together with a copy of this document, have been furnished by regular U.S. Mail this 24th day of July 2009, to the above-named addressee.

RALPH B. FISHER, ESQ. FISHER'S LAW OFFICE, P.A. 18125 Highway 41 North, Suite 109 Lutz, Florida 33549 (813) 949-2749/Bar# 371580

PASCO COUNTY FILE MANAGEMENT DEPARTMENT - DADE CITY PAULA S. O'NEIL, CLERK AND COMPTROLLER

RECEIPT #: C 000006515

DATE: 05-10-2010

TIME: 12:48:58

RECEIVED OF: LINDEMAN JON BURTON

MEMO: 512007CA006684ES

PART. ID: 1061743 BY CLERK: SWEAAN

CHECKS:

CASH \$0.00 CREDIT \$12.00

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CASE NUMBER

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TAX NO. **AMOUNT**

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Case Number: 512007CA006684

Name as it appears on Card: JON BURTON LINDEMAN JR

Comments: COPIES

City & State: MIAMI FL 33015 Phone Number: 305 398-4910

Contact Address: ADVOCATE LAW GROUPS USA 5931 NW 173 RD DRIVE SUITE 6 MIAMI FL 33015

Name On Card: JON BURTON LINDEMAN JR

Credit Card Number: *********4074

Card Type: MASTER Item Amount: \$12.00 Service Fee: \$0.42 Total Charge: \$12.42

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