

IN THE CIRCUIT COURT OF THE FIFTHTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

U.S. BANK NATIONAL  
ASSOCIATION, As Indenture  
Trustee, On Behalf of the holders of  
the Terwin Mortgage Trust 2007-  
AHL1, Asset-Backed Securities,  
Series 2007-AHL1,

Plaintiff,

vs.

CASE NO. 2008 CA 037754 (AW)

GUISEEPPE SERVEDIO a/k/a  
JOSEPH SERVEDIO, *et al.*

Defendant.

\_\_\_\_\_ /

**OBJECTION TO FORECLOSURE SALE**  
**AND MOTION TO STAY FINAL JUDGMENT PENDING APPEAL**

COMES NOW Defendant, GUISEEPPE SERVEDIO a/k/a JOSEPH SERVEDIO, by and through his undersigned attorneys, and files this his objection to the foreclosure sale held on May 16, 2010, in the above-referenced case, and Motion to Stay Final Judgment pending appeal, and as grounds therefore would state:

1. This objection is based upon the misconduct of the Plaintiff as more fully set forth below.
2. On April 6, 2010, this Court held a summary judgment hearing and upon the evidence presented proceeded to enter a Final Judgment of Foreclosure.
3. At the time of the Summary Judgment hearing the Complaint asserted two counts, one for foreclosure and one for reestablishment of a lost note under *Florida Statute* §673.3091. The *pro se* answer filed by Defendant, GUISEEPPE SERVEDIO, admitted that the action was one to foreclose real property located in Palm Beach County, Florida, and that Mr. and Mrs. Servedio were the record title holders of the property. All of the remaining allegations of the Complaint were denied.

- Additionally, Defendant raised several affirmative defenses including Plaintiff's lack of standing and failure to comply with conditions precedent.
4. The Motion for Summary Judgment claimed that the acceleration clause in the installment note and mortgage conferred **a contract right on the note and mortgage holder, which the holder could invoke upon default**. The motion failed to address any issue relating to the lost note count or the affirmative defenses raised by Defendant.
  5. Plaintiff filed an affidavit of one Darren Bronaugh in support of the Motion for Summary stating *inter alia* that the Plaintiff was the holder and owner of the subject mortgage, and the copies attached to the original complaint and/or filed with the court were correct copies of the Note and Mortgage. A copy of Mr. Bronaugh's affidavit is attached hereto as Exhibit "A."
  6. The subject mortgage shows that the lender is "Bankers Express Mortgage, Inc." and not the Plaintiff. There was no assignment of the mortgage attached to the Complaint or filed with the Court. There was no original note filed in the Court file or noted in the docketing sheets of the instant case. Accordingly, summary judgment appears to have been improvidently granted, since Plaintiff never addressed the issues of its standing to foreclose and the circumstances surrounding the lost note.
  7. On May 5, 2008, the day before the sale, Defendant, through his undersigned counsel filed a Notice of Appeal, and requested Plaintiff's counsel to consider cancelling the judicial sale due to the complications that would be caused by Defendant's appeal. Plaintiff's counsel proceeded with the sale, and upon information and belief, the subject property was sold to Pudlit Joint Venture, LLC for \$163,900.
  8. Upon learning of the identity of the purchaser at sale, the undersigned attorney

contacted its agent, one Robert Littman, and advised him of the pending appeal. Mr. Littman inquired as to the basis of the appeal and was informed by the undersigned attorney that it did not appear that Plaintiff had placed into evidence the original Note.

9. Mr. Littman indicated that he did not think that the appeal was well-founded due to the existence of an Affidavit as to Lost Assignment Document that could be found at ORB 23432, Page 1616. A copy of said affidavit is attached hereto as Exhibit "B."
10. During the pendency of this action, on September 8, 2009, Plaintiff's counsel filed in the official records, but not the Court file, a different affidavit of Darren Bronaugh which states that the Plaintiff was assigned the subject note on the date of its execution, and that the assignment of mortgage had been lost. **The affidavit goes on to state that the affidavit may be presented as evidence of the subject assignment of mortgage and that the Plaintiff herein agrees to indemnify and hold harmless its successors and assigns from all loss, liability, costs, damages, reasonable attorney's fees and expenses arising out of the representations made in this Affidavit.**
11. In other words, the Plaintiff indemnified any bidder against any losses it might incur as a result of Plaintiff not having standing to foreclose the mortgage. Accordingly, the successful bidder at public auction knew that even if Defendant pursued its appeal, that Plaintiff would indemnify the successful purchaser from any losses and liabilities that it might incur if the Final Judgment was reversed.
12. If the Court were to permit title to be issued to Pudlit Joint Venture, LLC, then Mr. and Mrs. Servedio will be displaced from their home pending appeal. If Defendant is successful on appeal, then the purchaser should be held liable to Defendant for the

damages caused by the dispossession. However, through the indemnity in the Affidavit as to Lost Assignment Document, the ultimate liability would rest with the Plaintiff. Apparently, Plaintiff has found a method by which it can get a third party to do its dirty work.

13. Defendant would submit that Plaintiff's recording of the Affidavit as to Lost Assignment Document is misconduct and made more egregious by Plaintiff's failure to address the issues raised in the pleadings at summary judgment.

14. Defendant would further submit that the sale to Pudlit Joint Venture, LLC should be set aside, and that the Court should maintain the *status quo* pending appeal.

WHEREFORE Defendant, GUISEEPPE SERVEDIO a/k/a JOSEPH SERVEDIO, prays this Honorable Court to sustain its Objection to the Sale of May 6, 2009, and to stay the instant action pending Appeal.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was forwarded by ( ) U.S. mail ( ) facsimile ( ) hand delivery to Shapiro & Fishman, LLP, attorneys for Plaintiff, 2424 N. Federal Highway #360, Boca Raton, FL 33431, by ( ) U.S. mail ( ) facsimile ( ) hand delivery to Randall K. Roger & Associates, P.A., attorneys for Boca Chase Property Owners' Association, Inc., 621 Northwest 53<sup>rd</sup> Street #300, Boca Raton, FL 33487, and by ( ) U.S. mail ( ) facsimile ( ) hand delivery to Robert Littman, agent for Pudlit Joint Venture, LLC, 7700 Congress Ave. #3114, Boca Raton, FL 33487, this \_\_\_\_ day of May, 2010.

PETER J. SNYDER, P.A.  
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By: \_\_\_\_\_  
PETER J. SNYDER, ESQ.  
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