

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
2012 APR 30 PM 12:09
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY

BEA HUML, ET AL & "JOHN DOE (s)" AND "JANE
DOE (s)" (BY AND ON BEHALF KNOWN AND UNKNOWN
PARTIES)

PLAINTIFFS,

vs.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; MERSCORP, INC.; MORTGAGE
ELECTRONIC REGISTRATON SYSTEMS, INC;
BAC HOME LOAN SERVICING, LP.; THE BANK OF
NEW YORK MELLON, F/K/A THE BANK OF NEW
YORK CWABS, INC., (ASSETT-BACKED
SECURITIES, SERIES 2007-9).

DEFENDANTS.

CAUSE NUMBER 3:12-
CV-00146-DB

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO VACATE
EX PARTE STATE COURT TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE SENIOR U.S. DISTRICT JUDGE BRIONES:

Comes now, BEA HUML (and other named and unnamed plaintiffs in this matter) and files this "Response to Defendant's Motion to Vacate Ex Parte State Court Temporary Restraining Order". This motion may be amended and/or supplemented. Plaintiffs advise this honorable court as follows.

I.

INTRODUCTION

This responsive motion pertains to the order of injunctive relief granted on April 19, 2012 by Judge Bonnie Rangel of the 171st Judicial District Court in El Paso County. Said relief was granted to plaintiffs after a good faith, reasonable showing to the District Court of the imminent harm the plaintiffs fear vis-à-vis the foreclosure process, the eviction practices and procedures of the defendants, in particular MERSCORP, INC.

and the Mortgage Electronic Registration Systems, Inc., (simply as "MERS" collectively hereinafter).

More importantly though, the litigation seeks to confront, expose and challenge the endemic and systemic corruption of the real property records of El Paso County, Texas (and other county clerks across the State of Texas and other states) by the defendants, particularly MERS. Accordingly, the defendants and MERS needs to correct the problems they have caused regarding the chains of title of real property in El Paso County.

II.

THE ORDER FROM 171ST DISTRICT COURT IS VALID

Bea Huml, et al. adopts by reference the procedural history of the defendant's "Motion to Vacate..." up to and including "Section 10" of the motion.

1. Nevertheless, plaintiffs argue that the court record clearly reflects that the order is valid because the defendant's who had been duly-served with notice (and had filed appropriate court appearances) failed to appear; the consequences of this nonappearance lies with the defendants only. The court records are evidence of the notice of the hearing. Hence, relative to these parties, the order is in all respects enforceable and should be upheld. By extension, noncompliance with the 171st court order should be met with an "Order to Show Cause" and, possibly, sanctions. The court docket sheet reflects that the court set the hearing upon its own motion and notified those parties that had made filings with the court (e.g., Chris Pochyla of the Barret, Daffin law firm). Therefore, all fundamental, statutory and legal notice requirements - as to these particular parties - were clearly satisfied.
2. At the hearing, the court heard sworn witness testimony and received evidence. The court also admitted into evidence plaintiff' main, most relevant and material piece of evidence: **A "point presentation" demonstrating the existence of robo-signed foreclosure/ mortgage-related documents which are central to this dispute.** This evidence unequivocally reflects the

knowledge, intent and complicity of MERS in the corruption of the real property records of El Paso County. Arguably – and perhaps upon the import and weight of the robo-signing evidence alone - the relief ordered by Judge Rangel in this regard is in all respects appropriate.

3. Judge Rangel's order is measured, balanced and clearly articulates the relief granted is "interim" - pending further review by the court. The court set a date and time for the follow-up hearing. Hence, the "status quo" contemplated by the court to be maintained by the parties was, in deed, the "last, actual, peaceable and noncontested status that proceeded the controversy". The obvious conclusion: All of these plaintiffs were/are experiencing, direct, real and proximate jeopardy as result of the defendants actions i.e., the foreclosure processes. The poisonous and destructive effect of fraudulently robo-signed foreclosure documents is real and imminent.
4. The "order" was effective on April 21, 2012 pending the follow-up hearing.

III.

AWARD OF ATTORNEY FEES IS VALID AND APPROPRIATE

The award of attorney fees is valid and appropriate for these reasons: (a) the fees were testified to under oath (b) the fees meet all statutory requirements (c) the fees reflect the amount of time and legal work performed by counsel to date, and (c) the court specifies the fees to be paid by either MERS, and/or Fannie Mae.

IV.

NECESSITY OF FURTHER HEARING

The court clearly articulated the need for further testimony regarding the more expansive injunctive relief sought, "to abate all foreclsore filings by these named defendants including all instruments / documents in the deed record of El Paso County, Texas (and others) identifying MERS as having a beneficial interest,,,,,". The issue of MERS' failure to pay required filing fees was also discussed.

V.

ROBOSIGNERS

Most telling of all in this order was the mandate from Judge Rangel that the defendants and MERS produce the alleged “robosigners” Beverly Mitrison, Chester Levings and Cecilia Rodriguez to appear in court and testify as to the practices used in the execution and filing of these documents. .

VII.

COURT’S WAIVER OF BOND REQUIREMENT LEGAL AND VALID

Contrary to defense counsel’s argument, the court’s wisdom was to waive the requirement of a bond to perfect this order i.e., the bond amount required “none” and this does not invalidate the order.

VII.

PLAINTIFF’S HAVE SATISFIED ALL EVIDENTIARY BURDENS FOR RELIEF

Plaintiffs submit to the court that they have met the basic standards necessary to obtain (and sustain) the injunctive relief ordered by Judge Rangel enjoining foreclosure activity or eviction activity by these defendants. There is sufficient evidence in the record to establish the factors required to justify injunctive relief. The plaintiffs have met their burden of proof on this issue. The injunction (temporary, interim or otherwise) should be issued by a court when the evidentiary matters have been affirmatively demonstrated. Plaintiffs submit that this is the case herein.

IIIX.

DEFENDANTS AND MERS ACTING BAD FAITH

Pursuant to 28 U.S.C. Sec. 1446(a) and contrary to their own sworn pleadings, pursuant to 28 U.S.C. Sec. 1446(a), Defendants and MERS **have not** obtained certified copies of all process, pleadings, orders and other papers filed in the state court. Plaintiff’s robo signing power point presentation is curiously excluded in the

motion, and is not attached as an exhibit or even mentioned in any of the defense counsel's pleadings. It is as if the robo signing exhibit does not exist. Also, a copy of the official court transcript of the hearing is not attached. Nevertheless, a copy of the transcript has been ordered by Plaintiff's counsel. It be provided to this court as soon as reasonably possible.

In point of fact, defense counsel has all but admitted liability for the various problems with document filings in El Paso and other Texas counties; however, the estimated exorbitant cost of "fixing" this problem seems to occupy the majority of defense counsel's attention.

Last, evidence of subsequent remedial measures (tampering with government records?) on the part of certain robo signers and MERS to the obvious financial benefit of defendants was admitted into evidence at the trial court, but it too is ignored by defense counsel. Plaintiff's counsel is obtaining copies of these exhibits as well.

IX.


PRAYER

WHEREFORE, in accordance with the foregoing arguments, the plaintiff's respectfully ask the Court as follows:

- (1) Find that Judge Rangel's Order of April 19, 2012 is valid, that the order was obtained with sufficient notice and all legal requirements were met, etc;
- (2) The interim relief specified by Judge Rangel not be vacated;
- (3) Set this matter for the hearing Judge Rangel contemplated, i.e., to review the need for more extensive and expansive injunctive relief relative to the defendants, MERS and the damage being done the El Paso County real property records;
- (4) The court issue a similar mandate that the defendants produce their robo signers;
- (5) The interim attorney fees of \$15,000.00 be payable immediately;
- (6) Any other relief to which they made be entitled;
- (7) Last, because of the exigent circumstances surrounding this matter and the imminent jeopardy these plaintiff's are facing, the court issue its order "*sua sponte*" pending further relief.

CERTIFICATE OF SERVICE

I hereby certify that on April 30th, 2012 a true and correct copy of the foregoing instrument has been forwarded to the attention of opposing counsel for Federal National Mortgage Association, 5000 Plano Parkway, Carrollton, Texas 75010 to Dwayne Danner at McGlinchey & Stafford; MERS c/o Bill Beckmann, President and Chief Executive Officer, MERSCORP, 1818 Library Street, Suite 300, Reston, Virginia 20190; BAC HOME LOAN SERVICING LP., c/o Mary Spiedel, Esq., Codilis & Stowiarski, PC, 650 North Sam Houston Parkway, Ste. 450, Houston, Texas 77060, and THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, c/o Pite Duncan, LP., Atten: Olga Panchenko, Esq., 550 Westcott, Ste. 560 Houston, Texas 77007.



Richard A. Roman, Esq.

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DEFENDANTS.

"AFFIDAVIT OF BEA HUML"

"My name is Bea Huml and I am the affiant herein.

I am over the age of eighteen, am a citizen of the United State of America and a resident of El Paso County, Texas. I am competent to make this affidavit, as I have never been found incompetent by court of law or any other similar or comparable administrative agency, etc. I have direct, first-hand knowledge of the contents of this affidavit. This affidavit is being executed of my own free will and I have not received anything of benefit in exchange for it.

I am one of the plaintiffs in this matter. Previously I was employed by El Paso County with the "Child Welfare Board", so I have a good working knowledge of how El Paso County Government functions.

I have direct and personal knowledge of "certain remedial measures" being taken by robosinger Beverly Mitrison (and perhaps others) with respect to the filing of foreclosure-related documents in the deed records of El Paso County Texas.

Out of an abundance of caution, I conveyed my observations of these "irregularities and discrepancies" to the Federal Bureau of Investigation's Financial Crimes Unit here in El Paso, Texas.

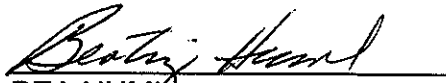
Also, contrary to the statements made pursuant to 28 U.S.C. Sec. 1446(a) by the Defendants and (MERS), they **have not** obtained certified copies of all process, pleadings, orders and other papers filed in the state court. **Specifically a "robosigning" power point presentation is not attached, nor is it even mentioned in any of the defense counsel's pleadings. It is as if it does not exist.**

A copy of the official court transcript of the hearing is also not attached. And copies of "new documents" filed in the county records by robosinger Beverly Mitrison are also not attached. In any event, a copy of the court transcript from the 171st court hearing has been ordered by my attorney and will be provided to this court as soon as reasonably possible.

I contacted the State Bar of Texas and was made aware that these types of omissions and/or misrepresentations by MERS and its counsel are potential violations of certain rules and regulations of the State Bar of Texas. By way of this affidavit I am advising the court that I feel it is incumbent upon me to notify the Texas Bar of these actions and practices. I live with constant fear and embarrassment of losing my home due to fraudulent, robosigned documents. **Compound this anxiety with the fact that I was making my payments on my mortgage when I was foreclosed. I do not want my home for free.** I simply want the defendants to be held to the same standards of law and behavior as everyone else even though they are large banks and corporations.

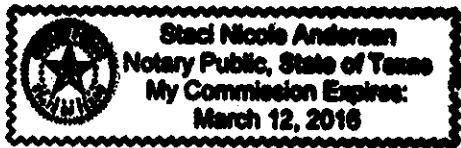
By these actions, the defendants and MERS have caused untold damage, anxiety and stress to me and others in the El Paso community. Further, I am thankful that my previous experience with El Paso County government gives me insight that other citizens of this community may not have that tells me that the actions of MERS and others have caused untold damage to the real property records of El Paso County, Texas and me.

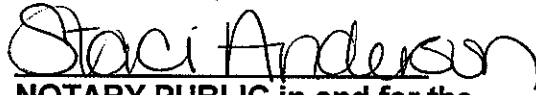
Affiant sayeth further not"


BEA HUML

STATE OF TEXAS)
) **VERIFICATION**
COUNTY OF EL PASO)

BEA HUML acknowledged this instrument before me on 30th day of April, 2012.

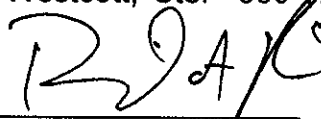



NOTARY PUBLIC in and for the
STATE OF TEXAS

My commission expires: 3-12-16

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A handwritten signature in black ink, appearing to read "R. A. Roman", written over a horizontal line.

Richard A. Roman, Esq.