Lawlessness

WOE UNTO YOU, LAWYERS!

> A lusty, gusty attack on "The Law" as a curious, antiquated institution which, through outworn procedures, technical jargon and queer mummery, enables a group of medicine-men to dominate our social and political lives and our business, to their own gain.
>
> Preface
>
> No lawyer will like this book. It isn't written for lawyers. It is written for the average man and its purpose is to try to plant in his head, at the least, a seed of skepticism about the whole legal profession, its works and its ways. [1]

Introduction

There is no need for this writer to make things up, or concoct some silly theory about this real property debacle but this writer also knows this whole *e*Scheme can be very confusing to many. This is why this writer wants the reader to stay focused on the **deed of trust** because this is the instrument of choice by *book entry system* members to take free houses all across the country. Not only residential. But commercial also. Actually a lot of *things* are affected. They use it as a secondary market "eMortgage" unbeknownst to many. Hence the reason for the **M**ortgage **I**dentification **N**umber in regards to real property.

It should be noted that this paper is for educational purposes with the use of articles already in circulation. Let it be known that the writer is in no way taking credit for another man's intellect. The writer is bringing awareness to a certain system used in the United States where alleged electronic mortgages are registered, sold, purchased, assigned, and transferred. There is only one instrument used to demonstrate the proof, the deed of trust. This is the instrument allegedly registered in such system. It is up to the reader with mental sharpness and inventiveness; keen intelligence to decide. If you can succeed at this, you're qualified to be a legislator.

1 FRED RODELL, Professor of Law, Yale University

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Understanding the deed of trust and its purpose as a contract limits the use of that security instrument. It is only a security instrument because it secures to the loan, a paper promissory note which may not be eligible to be a negotiable instrument according to Chapter 3, of the Texas Business and Commerce Code.[2] Without examining the promissory note, do the Texas courts assume the promissory note is negotiable? Nonetheless, the deed of trust is a lien that is attached to the paper promissory note at origination and after the "borrower" signs the two instruments. By the "borrower" signing the deed of trust, such act invokes the statute of frauds. This is an age old procedure and nothing changed.

Who's Instruments?

It is the alleged "lender" who provides the two contracts, a promissory note, and a deed of trust. The deed of trust is not a mortgage it is a lien. However, on the face of the deed of trust, the lien, it has a possibility of actually being a mortgage and such would depend upon the intent written within the deed of trust. With such wording, fact is evidenced by such wording. This would be the reason the reader's focus should be upon the deed of trust to determine if the "borrower" signed a deed of trust or coerced into signing a mortgage instead. Again, Texas is a lien theory state. It is the mortgage, a debt instrument, which is assigned. Without the lien attached to the note, the lien is without effect.

> A grantee who accepts a deed becomes contractually bound by its provisions, and becomes liable to perform any promise or undertaking imposed by the deed on the grantee, including a promise to assume an existing mortgage.[3]

Mortgage is a loose term and used seemingly for confusion, however, there are mortgage states, and there are deed of trust states. Both are considered instruments that secure a promissory note. Depending upon the term "mortgage" when used would depend on statute. For instance, in Texas, Texas Local Government Code, chapter 192.007 requires the *deed of trust* or *mortgage* regarding real property to be *re-filed* when there is an assignment, transfer,

2 Article 3, Uniform Commercial Code, UCC.
3 Langman v. Alumni Ass'n of U. of Va., 442 SE 2d 669 - Va: Supreme Court 1994

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or sale of a debt instrument, a mortgage, a promissory note which the deed of trust is allegedly attached to. It would not matter whether it was a mortgage, or deed of trust evidenced by public record, such instrument would be *re-filed*. Such is the law of Texas.

> Sec. 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.[4]

To further support this;

> "If the MERS system did not exist, MERS members would re-file their deeds of trust with the proper county each time the security instruments are transferred in order to remain perfected."[5]

In the days prior to the 1990's, this was a procedure all public banks practiced to keep perfection of the secured loan. However, after the public servants were educated into a belief that the *book entry system* was the same as the old paper days, things changed, especially in the bookkeeping of the *book entry system*. Borrower's lost homes, called deadbeats, families divided, friends distanced themselves, things changed all due to an education by the public servants belief in their teachers, men of the *national banking industry* who changed law to fit their needs in commercial practice, private needs, not public interest though they may claim so.

It should also be noted that "*the note follows the mortgage*" in some states, like Kansas. According to K.S.A. 58-2323 provides that a promissory note follows the mortgage that secures it. Nonetheless, this is different in Texas. Kansas is a mortgage state, Texas is a deed of trust state. In Texas the lien follows the note.

United Stated Supreme Court

As the United States Supreme Court so clearly explained approximately 140 years ago:

4 https://statutes.capitol.texas.gov/Docs/LG/htm/LG.192.htm#192.007
5 Nueces County v. MERSCORP HOLDINGS, INC., Dist. Court, SD Texas 2013

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> The note and mortgage are inseparable; the former as essential[the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. Carpenter v. Longan, 83 U.S. 271, 274 (1872) (footnote omitted).
>
> If the holder of the deed of trust does not own or hold the note, the deed of trust serves no purpose, is impotent, and cannot be a vehicle for depriving the grantor of the deed of trust of ownership of the property described in the deed of trust. The sole purpose of the deed of trust is to secure payment of the note. The very, and sole, purpose of a foreclosure sale pursuant to the deed of trust is to obtain funds for payment of the note. If the holder of the deed of trust does not own or hold the note, and there were to be a foreclosure under the deed of trust, there is no assurance that the proceeds of the foreclosure would be used for the purpose intended by the deed of trust, i.e., to be applied as payment of, or on, the note. That is not to say that the owner or holder of the note cannot arrange for an agent or nominee, acting on its behalf, to conduct a foreclosure for the benefit of the owner or holder of the note. But that is quite a different proposition from assertions that the holder of the deed of trust who does not own or hold the note has the power to transfer the note from the original note holder to another and that an entity that does not own or hold the note can conduct a foreclosure under the deed of trust.[6]

Intentions

This paper will use various sources in order to help assist the reader on who, what, where, and when things changed with real property versus personal property. Whether court opinions, scholar articles, or items from GSE's, or the mortgage banking association, this writer has intention for the reader to comprehend what is taking place.

This article could be considered a summary of the alleged scheme to deceive consumers and why it is necessary to understand the relationship between the book entry system and book entry system members and the claims against them through their own admissions.

6 McCarthy v. Bank of America, NA, Dist. Court, ND Texas 2011

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The author of the first article published in 2013 could help one to understand that in order for the *thing* he is referencing to be legal, the law would need to be changed in order for it to work. Notice that in 2013 the author seemingly demonstrated in the article that the system was not legal in a certain sense other than it being created to satisfy E-SIGN, UETA, and this admission was in 2013 which would reflect severe issues 9 years after Texas officially declared a *national book entry system* as a "book entry system" in Texas. Be not confused, there is a national book entry system but it is not the book entry system created by Texas, it is a "commercial" book entry system accessed through Treasury Direct that lets you buy and redeem securities directly from the U.S. Department of the Treasury in paperless electronic form.[7] Nonetheless, there is no way possible for this writer to include every detail of all laws broken else I may have a book the size of War and Peace, and there would be more the 559 characters, as in actors, involved.

A Proposal

A Proposal for a National Mortgage Registry: MERS Done Right[8]

> **Abstract:** In this Article, Professor Whitman analyzes the existing legal regime for transfers of notes and mortgages on the secondary market, and concludes that it is highly inconvenient and dysfunctional, with the result that large numbers of market participants simply did not observe its rules during the huge market run-up of the early and mid-2000s. He also considers Mortgage Electronic Registration System (MERS), which was designed to alleviate the inconveniences of repeatedly recording mortgage assignments, but concludes that it was conceptually flawed and has proven to be an inadequate response to the problem. For these reasons the legal system was ill-prepared for the avalanche of foreclosures that followed the collapse of the mortgage market in 2007, and continues to be beset by litigation and uncertainty. This Article then provides a conceptual outline for an alternative National Mortgage Registry, which

7 https://www.treasurydirect.gov/instit/auctfund/held/cbes/cbes.htm
8 https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4024&context=mlr

> would supplant the present legal system and would provide convenience, transparency, and efficiency for all market participants. He concludes with a draft of a statute that could be enacted by Congress to create such a registry.

Over intentions

Notice that the final sentence in the previous paragraph reflects that "*a draft of a statute that could be enacted by Congress to create such a registry*.". Whether the author of the article he wrote realized his statement or not, this would lead this writer to ponder the *non-delegation doctrine* in the instance of Texas where it seemingly violated the U.S. Constitution, and created something only congress could do. Congress cannot delegate its power in this act of creating a national book entry system to the state of Texas. National book entry system is not defined in the Texas Property code by the Texas legislature either.

> Sec. 51.0001. DEFINITIONS. In this chapter: (1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee,

Since 2004, Texas has unleashed something that has affected all the other states of the United States by giving recognition by lack of delegation from the Congress of these United States. Did Texas intend to do this? The answer is yes only because of its association with the BAR, lawyers. These would be the actors who embraced changing this state for personal interests instead of public interest. These actors seemingly violated the Texas constitution by applying legal rights to a book entry system, a computer database. This writer believes that all citizens of Texas should understand that we are to have distinct departments that are a civil officer or lay judge who administers the law with mental sharpness and inventiveness; keen intelligence. The is what "magistracy, to wit" means.

Supreme Law

THE TEXAS CONSTITUTION

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ARTICLE 2. THE POWERS OF GOVERNMENT

Sec. 1. SEPARATION OF POWERS OF GOVERNMENT AMONG THREE DEPARTMENTS. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit

Article 3 is where the legislative power exists for these "*to wit*" persons to adhere to. Their power is only given unto them to create laws that are not repugnant to the Texas Constitution, or the federal constitution or federal laws, or treaties. However, Article 1, provides the means for the people of Texas to address the offense.

Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 2 provides that we are pledged to a republican form of government which basically means we are the power and the officials are those who work to protect the interests of the people of Texas, the public. For some, these people seem to think a bit radical about this idea, yet many times have they been proven wrong. They even go to jail for their ignorance.

The constitution does not apply to a single man, it applies to all men and doing something wrong to another man was not the intentions of the framers of the Texas Constitution. If this were the case why would this supreme law of Texas provide for equal rights, or equality under the law? Seems it would be a waste of paper if the framer's didn't intend for it to be there don't you think? Why would the framer's even bother with including freedom of speech, or protection from searches and seizures? Why would they even include the rights of accused in criminal prosecutions? It is all there for a reason. And it is not supposed to be abused by anyone, zealot, or government. But, this author feels that since laws

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have changed for the benefit of the *corporation*, it seems a bit wonky on how section 15-a applies to the corporations due to it being defined as a person? Maybe you see the humor?

Winding down through the Texas Bill of Rights, this writer brings attention to section 16 for the purpose evidenced from the Texas Constitution which holds the opposite of what Texas legislators did in 2004.

> Sec. 16. BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

According to section 16, legislature cannot make a law that impairs contracts. The deed of trust is a contract. In fact, I do not believe Congress delegated its power to the Texas Legislature to create a “national book entry system”. Though this has not been challenged, this is the reason for this writer to share his knowledge with other who probably know more in the various areas of law. That is why we the people of Texas are alike in our constitution.

In 2013 the author of the MERS, done it right paper reflected it was known then that in 2012 that there was no lien registry and never pondered the thought of how this mortgage system was legally or lawfully active in the mid 1990’s which would be prior to ESIGN, or UETA.

> BD. OF GOVERNORS OF THE FED. RESERVE SYS., THE U.S. HOUSING MARKET: CURRENT CONDITIONS AND POLICY CONSIDERATIONS 24-25 (2012). The Board further commented,
>
> > The national lien registry could also record the name of the servicer. Currently, parties with a legitimate interest in contacting the servicer have little to go on from the land records because, among other reasons, many liens have been recorded only in the name of the trustee or of Mortgage Electronic Registration Systems (MERS). Registering the servicer, and updating the information when servicing is transferred, could help local

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> governments and nonprofits, for example, who might be working to resolve the status of vacant or abandoned properties.

It is up to the reader to look into the "MERS done right" article to understand what I am presenting because I mean no disrespect to the author, or the learned, I just believe that God speaks out of our own mouths and we seem not to see, or hear what he is telling us sometimes.

Lien Theory

In 1981 the Texas Supreme Court stated;

> Texas follows the lien theory of mortgages. Under this theory the mortgagee is not the owner of the property and is not entitled to its possession, rentals or profits. Thus, it has become a common practice to include in the deed of trust, or in a separate instrument, terms assigning to the mortgagee the mortgagor's interest in all rents falling due after the date of the mortgage as additional security for payment of the mortgage debt.[9]

Notice the theory of mortgages is the theory of the debt instrument, or alleged note, which the mortgagee is not the owner of the real property and such act would be included in a deed of trust for benefit of the mortgagee. It can be confusing because of words like mortgage and deed of trust, but keep in mind the nook entry system is a Delaware corporation, and Delaware is a mortgage state, Delaware is not a deed of trust state.[10] Not to mention that in essence, there are so many court opinions being decided in favor of a system that is used by its members to essentially take real property for free and leave not only the citizen of Texas without remedy, but this system is also depriving very county who favors it. All of this is accomplished by lawyers who have access to a computer database. I am not speaking ill of lawyers, I am presenting truth.

According to the author of "MERS, done right", who also has another article called "How Negotiability Has Fouled Up the Secondary Mortgage Market, and What to Do About

9 Taylor v. Brennan, 621 SW 2d 592 - Tex: Supreme Court 1981
10 https://www.leagle.com/decision/infdco20160824992 - MERSCORP HOLDINGS, INC. v. MERS, INC.

It"[11], Article 3 of the Uniform Commercial Code, is not only useless but positively detrimental to the operation of the modem secondary mortgage market. In that article the author also stated; "This is not a new idea. More than a decade ago, Professor Ronald Mann made the point that negotiability is largely irrelevant in every field of consumer and commercial payment systems, including mortgages.' Professor Mann's paper in also an interesting read.[12]

In conclusion of the MERS, done right article the author had this to say;

> "So, what is to be done? Legislative action is needed. Too many state nonjudicial foreclosure statutes are simply inadequate to address the problems created by the sale of mortgages on the secondary market. The changes brought on by the development of that secondary market have modified the dynamics of the relationship between borrower and lender. When enacted, most state nonjudicial foreclosure statutes afforded adequate protections to the borrower, but the rules have changed. No longer can a borrower obtain a loan and be assured the loan will be held by that lender for the loan's entire life. As the cases above illustrate, courts have, for the most part, displayed an unwillingness to address this problem. Only state legislatures are able to protect borrowers by ensuring that nonjudicial foreclosure statutes are properly amended to require enforcing parties to prove they hold the note and meet the requirements of UCC Article 3.

This writer does not believe the author of MERS. Done right, Dale A. Whitman would have ever imagined the legislature of the State of Texas would address the *book entry system* in the way Texas did, much less delegate in its own authority to create a national book entry system, which would be something Congress has the authority to do according to the federal constitution.

11 http://law.missouri.edu/whitman/files/2013/12/How-Negotiability-Has-Fouled-Up-the-Secondary-Mortgage-Market-and-What-to-Do-About-It.pdf

12 Searching for Negotiability Payment and Credit Systems, Ronald J. Mann

> "purpose of recording laws is to notify subsequent purchasers ... and not to give protection to perpetrators of fraud"[13]
>
> Unconscionable contracts, however — whether relating to arbitration or not — are unenforceable under Texas law. A contract is unenforceable if, "given the parties' general commercial background and the commercial needs of the particular trade or case, the clause involved is so one-sided that it is unconscionable under the circumstances existing when the parties made the contract."[14]

Ignorance of the law is not an excuse

This is why it is important to review the deed of trust to determine the intentions of the creator of that instrument with such commercial background needs for the secondary market.

Account Debtor

Let's ponder that the reader understands that real property is not related to the UCC since the courts have stated so. So, the reader may ponder how does the UCC become involved, and why are there other entities not named in the contracts I signed and are showing up and making claim to my note and deed of trust? If the UCC is involved, goods, and services are involved. The reader, if a "borrower" is not a party to those commercial contracts. Those are unrelated, yet related to the real property by reference.

Borrower is another confusing word in terms of its meaning. Yes, borrower means someone "borrowed", but who was doing the borrowing? Nothing should be assumed else problems arise later on. In the realm of the UCC the borrower could be a debtor of goods or services, or the borrower could be an account debtor of goods and services. Both involves goods and services, not real property. The following is an explanation of the intangible and the tangible.

13 Ojeda de Toca v. Wise, 748 SW 2d 449 - Tex: Supreme Court 1988
14 In re Poly-America, LP, 262 SW 3d 337 - Tex: Supreme Court 2008

Tangible v. Intangible

INTANGIBLE - unable to be touched or grasped; not having physical presence.

So, why the confusion? I mean when it comes to the intangibles of tangible practically everything is dual, as for instance in the tangible you have an “obligor”, and an “obligee”, and as for the intangible you have an obligor and an obligee. You have a debtor and a lender, and you have a debtor and a creditor. And both are considered “borrower” and lender”. Yet, there is a twist which seems to confuse many and that would be another entity called an “account debtor” playing the role of obligee from a tangible transaction, creating an intangible transaction conversion, from the tangible transaction. But I suppose the foremost confusion arises from the word “secured transaction” because both the tangible transaction and the intangible transaction can be such a beast. And if clarity is not addressed, one could easily assume it is the tangible transaction in conversation, when in fact it could be the intangible transaction being alluded to. Thus, an assumption, or presumption could be confusing. It could be fatal.

So here may be where the confusion begins? The average individual has the capability of knowing and explaining the difference between tangible, and intangible. They have witnessed tangible and intangible even if they knew it not. I know this because I taught my 8 year old grandson and later asked him to explain it to those who were around at the time. He made a very big impression. He educated quite a few people. And they too were amazed when they knew. So, understanding intangible is not as complicated as one may think. Then it may become clearer as to which “obligor”, and which “obligee” is which, tangible, or intangible. I do find it curious that the UCC[15] is a subject of choice for a BAR exam, and called bar-tested, and it seemingly appears to have been looked over in that profession by quite a few. Take for instance

15 Uniform Commercial Code

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In Texas, and according to a Texas A&M white paper[16], UCC 2 & 2A is rarely tested. And since MERS[17] seemingly came into the real property world, this should have been an important topic to cover, but it wasn't. And there is not a need to go to MERS. However Amici provides an article link to Moody's Investor Service on why MERS was placed into a deed of trust[18]. And there is no need to go to the deed of trust because the UCC 9 does not govern such real property contracts[19], only the sales of goods or services because it is commerce.

So from what I understand and because I am not a lawyer, UCC 2 & 2A are "crossover topics". Which means they are part of the subjects tested, like property, or family law, but not by themselves tested. And it is also noted that UCC 3 & 4, and 9 are tested. So now the intangible can be narrowed down by reflecting on the tested subjects. There is one section to look at for the "intangible" and that is Article 9. Now this is not the only place but we are focused on the UCC because that is where the "intangible" is defined. Article 3 does not apply to intangibles except in a narrow exception. And Article 4 covers bank deposits and collections.

And from what I also understand is that Texas Real Property Real Estate Transactions, Water Law, Real Estate Practicum, Land Use, Real Estate Financing are "supplemental" courses so it makes sense how some attorney's have difficulty with this. It's called compartmental organization. Need an example? Civil law, and criminal law. Usually an attorney knows one or the other, but not both. However there are exceptions in that statement. I believe this could also be a portion of the problem because if the civil lawyer could prove criminal in civil court, now criminal court becomes involved. But, I won't go into that illusion we already have. The point is, when someone brings a false document into the court, is it overlooked? Or is it challenged? Or is it reported to law enforcement? This would apply even

16 What's on the Bar exam - https://law.tamu.edu/docs/default-source/current-students/asp-texas-bar-exam-orientation-handout.pdf?sfvrsn=2
17 Mortgage Electronic Registration System
18 https://www.moodys.com/sites/products/AboutMoodysRatingsAttachments/2001700000415918.pdf
19 Thomas v. EMC MORTGAGE CORPORATION, Dist. Court, ND Texas 2011 citing Vogel v. The Travelers Indem. Co., 966 S.W.2d 748, 753 (Tex. App.-San Antonio 1998

if it were to be a simply scenario like one man giving a counterfeit federal reserve note to an unsuspecting victim. It was a civil scenario that turned criminal.

CHASING INTANGIBLES

The intangible usually cannot be created unless there is substance for it. This is usually in the form of tangibles. But for grins and giggles let' look at the UCC? The UCC committee made it even easier for one to understand what intangibles are because they placed them all in one definition; "General Intangible". You can find it in 9.102(42)

"General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

You can also find the definitions of the other terms used from the UCC[20]. And as stated before, the promissory note Guy 2 is holding is an instrument which is personal property which is a general intangible. So, the general intangible derives from the tangible. In this case, a promissory note.

TANGIBLE

For the sake of clarity, everything is alleged. There are no admissions.

Until the past decade, transactions took place on a tangible basis. Meaning Guy 1 gives Guy 2 a physical promissory note to Guy 2 for a money loan from Guy 2. We'll leave out the "security" portion for the purpose of understanding how the promissory note becomes personal property of Guy 2. And how the personal property is "movable" because you cannot move real property unless the boundaries change, but the dirt doesn't. In other words, you cannot move land. So the "movable" is the focus of the intangible confusion.

Now Guy 2 loaned money to Guy 1. Guy 1 now returns money in increments as agreed to conclude Guy 1's debt because he is considered a debtor paying off a debt. This was a tangible transaction with substance being provided for substance in a sense. Yet the whole deal

20 Uniform Commercial Code

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was caused upon by an agreement between the two. Whether it was an oral, or a written agreement, it was a contract.

So Guy 2 gives Guy 1 the money he has in return for example, federal note(s) given back from Guy 1 in agreed increments. This was, and is a tangible transaction. Though it is not substance for substance, it is still a transaction if the parties agree. This same scenario is still the topic today but it somehow became complicated in “words” of the craft. For lawyers, it is a lack of understanding possibly because they are only partially focused on equity law? It is not to be taken as offensive, it should be taken for understanding.

Let’s use the Guy 1 and Guy 2 scenario and go a bit further. We know Guy 1 gave Guy 2 federal notes for Guy 2’s tangible money loan. So both Guys have tangibles, a federal note for Guy 2, and a tangible lump sum for Guy 1. Both tangibles can be felt or grasped, and has a physical appearance. Hence “tangible”.

CONVERTING TANGIBLE INTO INTANGIBLE

This is for simplicity if you will because it is an easy way to show conversion. Guy 2 takes his tangible note payments from Guy 1 to the ATM machine to make a deposit into his bank account. Guy 2 slides each federal note into the slot of the ATM, and upon completion of the transaction the ATM in return provides, or returns Guy 2 a deposit slip reflecting his deposit. So now Guy two now has a different tangible. Guy 2 now has a record of the tangible federal notes he inserted into the ATM. And that record reflects what is now an “intangible” value because Guy 2 can no longer touch or feel the federal note(s) he held prior to inserting them into the ATM, and there is no physical appearance other than the deposit slip returned to Guy 2 for his deposit, or the current view of the ATM display. Thus a tangible reflection. Unlike tangible federal notes, Guy 2 can travel anywhere he chooses and do transactions in commerce in any land he wants without the concern of carrying that many federal notes around with him which may be stolen, or possibly cause of harm by carrying such monetary influence.

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Let's not confuse the scenario with Article 4 because this tangible federal note gains its affect from the Federal Reserve Act. However negotiable notes are governed by Article 3 of the UCC when used in transactions also. The only thing that could prevent Guy 2 from any further transactions with his "intangible" representations of his physical federal notes would be if the electricity went out because the intangible is something that is not felt or grasped, and has no physical appearance except through the magic of a digital display, or a tangible receipt.

TANGIBLE NOTE

Promissory notes are tangibles. You can use the Guy 1 and Guy 2 scenario, except replace the federal note as the tool of value with a promissory note of value. And you can keep the thing in place for Guy 2, the debt instrument. Then you can replace the ATM machine with a different entity called a "prospective buyer" because Guy 2 now knows he can sell his "asset" which is the promissory note from Guy 1. Or you could call the promissory note from Guy 1, and now belonging to Guy 2 "personal property" and because Guy 2 is the holder in due course of the note. With the promissory note from Guy 1 which is personal property, Guy 2 only holds the debt, which is a promise to pay. Hence, debtor, and lender. Or borrower and lender.

SUBSTANCE FOR SUBSTANCE

In substance for substance items are exchanged. For instance, a person gives a $20.00 bill for purchase of something costing $15.00, and in return he is returned what change is due him. Substance for substance.

SUBSTANCE FOR INTEREST

In substance for interest, a "seller", Guy 2, can gear his debt transaction with Guy 1 for a profit from the "promise to pay" from Guy 1, though he may have included "interest" during the pay back transaction from Guy 1 to complete his promise to pay, and clear his debt.

Now Guy 2 has a promissory note from Guy 1 with a value of $100,000 dollars. Guy one also includes the agreed interest as he forwards his allotted monies for clearing the debt

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which may possibly be twice the size of the actual debt itself, or even more. Nonetheless that was the agreement.

GREAT DIVIDE

Guy 2 decides he will sell his asset, or even pledge his debt instrument, or will seek further monies using the debt instrument, an asset, Guy 2 holds in hand which Guy 1 gave him, the promissory note that has value. If Guy 2 sells the promissory note from Guy 1, the true sale would reflect a new entity which would now be holding the promissory note from Guy 1. All this transaction would be according to Article 2, and Article 3 because Guy 2 sold the promissory note to Guy 3 in a true sale of the promissory note. Hence “buyer” and “seller”. Guy 3 is the buyer and Guy 2 is the seller. So, now Guy 3 collects from Guy 1 instead of Guy 2 collecting. Guy 2 would provide Guy 1 with the lawful evidence to reflect there was a true sale of the promissory note. So Guy 1 now pay his debt to Guy 3. No problems. But, what happens when Guy 2 wants to use the promissory note from Guy 1 so Guy 2 can get a loan for himself?

INTANGIBLE ASSETS/ PERSONAL PROPERTY

Here is the scenario; Guy 2 has a promissory note from Guy 1 with the value of $100,000 dollars, plus interest. Guy 2 wants to find a backer for his financial venture and he finds one. The hedging risk. The financial backer wants something for security from guy 2 just in case something goes wrong and guy 2 does not fulfill his obligation, otherwise it would be a lousy investment for the backer.

ACCOUNT DEBTOR

For the support of the transaction and for the evidence used to support transaction “investor” turns to Article 9 regarding secured transactions for legal and lawful enforcement, as Guy 2 is not only a “debtor”, Guy 2 is also a potential “account debtor”. Guy 2 holds the promissory note related to Guy 1. That is evidence of a tangible transaction. On the books of Guy 2, the promissory note from Guy 1 is an intangible asset for Guy 2 to utilize as a pledge

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of security to the investor. Guy 2 to provides his “general intangible” to the investor so that the investor may know Guy 2 has “receivables” that would help Guy 2 to in obtaining his loan from the UCC 9 creditor.

So at the beginning, there was Guy 1 who would be called an “obligor”, and also a “debtor” and Guy 2 who would be called an “obligee”, and a lender. Guy 1 is considered a “debtor”, and Guy 2, a “lender”.

Then when Guy 2 pledged the promissory note to Guy 3, Guy 2 is now called a debtor, and Guy 3 is called a creditor. But that is not where it ends. Guy 2 is also called an account debt because Guy 2 is using Guy 1’s “general intangible”[21] as Guy 2’s pledge to the creditor. Now you also have Guy 2 as an obligor and Guy 3 an obligee. Confused? They made it that way on purpose. But it does not need to be confusing.

It is simple. Tangible is what Guy 1 and Guy 2 did in their transaction. But it is intangible as to what Guy 2 and Guy 3 accomplished through their transaction.

Also notice that when the creditor cannot locate the account debtor, it is the debtor of the tangible which the intangible creditor pursues whether the intangible holds the original promissory note from Guy 1, or not. If Guy 1 does not deny such involvement, the intangible creditor may use recognition of debt for its defense even with a copy because the promissory note was the collateral used by the account debtor.

This did not go into the lawful aspects of not following the required law governing secured transactions, nor did it discuss the implications of 15 USC 7003 in the E-SIGN Act, or Texas UETA. The purpose was to assist in understanding the difference between the tangible and the intangible. Thus a “secured transaction” of the “tangible” is not a “secured transaction” of the “intangible”. Secured transactions of a real estate transaction are not governed by the UCC[22] and secured transactions of general intangibles are not except for areas of the UCC that is excluded. That simple.

21 Guy 1’s promise to pay, or, promissory note.

22 Thomas v. EMC MORTGAGE CORPORATION, Dist. Court, ND Texas 2011, citing Vogel v. The Travelers Indem. Co., 966 S.W.2d 748, 753 (Tex. App.-San Antonio 1998, no pet.)

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Book Entry System

So how do the members of a book entry system use the UCC and use ESIGN to accomplish what they do? As evidenced in most public records, these members seeming use ESIGN instead of other laws. Political subdivisions have argued about the book entry system and yet they are defeated due to a lack of understanding of that book entry system along with a combined lack of understanding that the old paper way is not the same as the electronic way of the book entry system members. Take for instance the following definition; (31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium. According to the definition chattel paper is only information stored in an electronic medium. However, this electronic information is no replacement of the things recorded in an electronic medium. This “electronic chattel paper” resembles the “electronic record” in UETA, 322.002(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

This leads us to the meat of the law governing the book entry system members, 15 USC 7001. Why would this be of importance? If you have never read the in re: amendments to rules of civil procedure and forms for use with rules of civil procedure in the Florida Supreme court[23], you should read it to verify what I am about to provide.

They Admitted It

According to the Florida Bankers Association’s admissions of commercial banking practices, they have created a repugnance to the very law they claim to use by their acts and omissions. The following are excerpts from the comments;

Page 3

> In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from

23 IN THE SUPREME COURT OF FLORIDA, CASE NO.: 09-1460

> the **form** in which the note is transferred. It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed. Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database

Page 4

> The reason "many firms file lost note counts as a standard alternative pleading in the complaint" is because the physical document was deliberately eliminated to avoid confusion immediately upon its conversion to an electronic file.
>
> The process for re-establishment of a lost or destroyed instrument by law imposes a strict burden of proof and instructs the court to protect the obligor from multiple suits on the same instrument.

As the banker's association has admitted they deliberately destroyed the instruments, they seem to have admitted the violated the deed of trust, and ESIGN.

15 USC 7001(d)(3)

15 U.S. Code § 7001. General rule of validity

(d) Retention of contracts and records

(3) Originals

> If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

Lawlessness

We Make documents up; We turn a blind eye

Meeting of the task force on judicial foreclosure rules, November 7, 2007

> Taken before D'Lois L. Jones, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand method, on the 7th day of November, 2007, between the hours of 9:36 a.m. and 11:46 a.m., at the Winstead, Sechrest & Minick, 401 Congress, Suite 2400, Austin, Texas 78701.

Reporter's page 11

> MR. BARRETT: Hi, I'm Mike Barrett. I'm 18 chairman at Barrett Burke Wilson Castle Daffin & Frappier.
>
> MR. BASTIAN: I'm Tommy Bastian, and I'm the peon at Barrett Burke Wilson Castle Daffin & Frappier.

Reporter's page 27

> MR. BARRETT: Judge, I think that's a very good point. This is Mike Barrett, and I know we've had this difficulty. There really isn't such a document, and maybe, Larry, you might explain mortgage servicing rights because the servicer usually acquired their position in the file through the purchase of MSRs.
>
> So finding a document that says, "I am the owner and holder, and I hereby grant to the servicer the right to foreclose in my name" is an impossibility in 90 percent of the cases.

Reporter's page 28

> HONORABLE BRUCE PRIDDY: And what the – happens is they just execute a document like Mr. Barrett says doesn't exist. They just create one for the most part sometimes, and the servicer signs it themselves saying that it's been transferred to whatever entity they name as the applicant.

Reporter's page 34

> MR. BASTIAN: Well, part of that in Florida, their foreclosure statute says only the owner and holder of the note can bring the foreclosure, and MERS wasn't the owner and holder of the note, and yet everybody was pleading them as the

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> owner and holder of note. All they were was the mortgagee of record in the land title records, and it got everybody confused, and like anything new, it just created problems.

All these alleged attorneys as members of an agency of the State of Texas are also members of mortgage banking associations. What they accomplish in one state they set out to accomplish in another states. These commercial customs were noted in a U.S. Supreme Court opinion, and yet as it appears, judges, not the courts, are overturning Supreme Court case law.

US v. Hibernia Nat. Bank, 841 F. 2d 592 - Court of Appeals, 5th Circuit 1988

> Hibernia's reliance on commercial custom is misplaced. Commercial custom does not apply where the U.C.C. provides otherwise. See U.C.C. § 1-103; also U.C.C. § 3-104, Official Comment 2 ("[A] writing cannot be made a negotiable instrument within this Article by contract or by conduct.") Moreover, it would be inequitable to apply the banking industry's unilateral "custom" to a maker, such as the Army, that is unaware of or may not recognize such a custom.

Texas UETA

> Sec. 322.003. SCOPE. (a) Except as otherwise provided in Subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.
>
> (b) This chapter does not apply to a transaction to the extent it is governed by:
>
> > (1) a law governing the creation and execution of wills, codicils, or testamentary trusts; or
> >
> > (2) the Uniform Commercial Code, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.
>
> (c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under Subsection (b) when used for a transaction subject to a law other than those specified in Subsection (b)

Sec. 322.006. CONSTRUCTION AND APPLICATION. This chapter must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 322.009. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE. (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Sec. 322.017. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES. (a) Except as otherwise provided by Section 322.012(f), each state agency shall determine whether, and the extent to which, the agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a state agency uses electronic records and electronic signatures under Subsection (a), the Department of Information Resources and Texas State Library and Archives Commission, pursuant to their rulemaking authority under other law and giving due consideration to security, may specify:

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(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in Section 322.012(f), this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

Trigger for State Action

Sec. 322.019. EXEMPTION TO PREEMPTION BY FEDERAL ELECTRONIC SIGNATURES ACT. This chapter modifies, limits, or supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002).

Trigger for State Criminal Action

Sec. 322.020. APPLICABILITY OF PENAL CODE. This chapter does not authorize any activity that is prohibited by the Penal Code.

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Computer Hearsay

Computer data as hearsay: Rule 8012 "Computer data that is compilation of information entered by a person is hearsay."[24]

Impeachment: Rule 801 4 (3)

Vicarious admissions : Rule 801 (e) (2) (D) A statement made by an agent or employee is admissible against a party if (1) the statement is made by the party's agent or employee, (2) the statement concerns a matter within the scope of the agency ore employment, and (3) the statement is made during the existence of the relationship.[25]

Hearsay Exceptions; Availability of Declaratory Immaterial: Rule 803 (6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnose, made at or near the time by, or form information transmitted by, a person with knowledge, if kept in the course of a regularly conduced business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by affidavit that complies with Rule 902 (10), unless the source information or the method or circumstances of preparation indicate lack of trustworthiness.

Hearsay Exceptions; Availability of Declaratory Immaterial: Rule 803 (15) Statements Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealing with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

Rule 803

Unreflective Statements

Rule 803 (1)

Present sense impression.

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24 Murray, 804 S.W2d at 284 (computer printout is often simply "the feeding back of data placed into a computer by a person; although the data may be in a different form than it was when it was fed into the computer, it retains its status as the statement or statements made by a person" and thus fits the definition of hearsay).

25 Big Mack Trucking Co. v. Dickerson, 497 S.W2d 283, 287-88 (Tex. 1973)

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> A hearsay statement is admissible under the present sense impression exception if the statement (1) describes or explains an event or condition and (2) was made while the declarant was perceiving the event or condition or immediately thereafter.[26]
>
> (1)Statement describes or explains event. The exception encompasses only statements that describe or explain an event or condition.

A. Statement made while declarant was perceiving event or condition or "immediately thereafter". Obviously, what constitutes "immediately" requires judicial discretion, but Texas courts have both admitted and excluded declarations made 30 minutes after the event.[27]

Reliable Documents

Rule 803 (5): Recorded recollection

Rule 803 (5) created a hearsay exception for memoranda and records that contain a witness's recollection about a matter at issue. There are four prerequisites to admissibility under this exception: (1) the witness must once have had personal knowledge but now does not recall the matter well enough to testify fully and accurately, (2) the statement contained in the recorded recollection must have been either made or adopted by the witness, (3) the recorded recollection must accurately reflect the witness's prior knowledge, and (4) the recollection must have been recorded when the event was fresh in the witness's memory.[28]

Rule 803 (6): Records of regularly business conducted activity.

> Rule 803 (6) creates an exception to the hearsay rule fore records of "acts, events, conditions, opinions, or diagnoses" if those records were made at or near the time of events described and were made by a person with knowledge of the events (or from information transmitted by a person with such knowledge).

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26 Implicit in the requirement that the statement be made while the declarant was perceiving the event or condition or immediately there after is that the declarant have personal knowledge of the facts contained in the statement.
27 Harris v. State, 736 S.W.2d 166,167 (Tex. App. – Houston {14th Dist.] 1987, no pet.),Moore v Drummet, 478 S.W.2d 177, 182 (Tex. Civ. App. – Houston [14 the District] 1972, no writ)
28 Tex. R. Evid. 803 (5); Johnson v. State, 967 S.W.2d 410, 416 (Tex. Crim. App. 1998)

A business record may nonetheless be ruled inadmissible if "the source of information or the method or circumstances of preparation indicate lack of Trustworthiness."[29]

Rule 803 (6) (4) Record made by a person with knowledge of the event or from on formation transmitted by a person with knowledge. The source of information must be someone with personal knowledge of the events contained within the record.[30] The party opposing the admission of the business records has the burden to show lack of trustworthiness.

Rule 803 (6) (9) Reasons to exclude business records. Even if the components of Rule 803 (6)'s evidentiary foundation have been established, business records (or certain statements within those records) may still be excluded for the following reasons.

Rule 803 (6) (9) (a) lack of trustworthiness. Rule 803 (6) states that a business record may be ruled inadmissible if "the source of information or the method or circumstances of preparation indicate a lack of trustworthiness."[31]

Lack of trustworthiness is most frequently found when the record was prepared in anticipation of litigation.

Rule 803 (10): Absence of public record or entry. As with Rule 803 (7), dealing with the absence of business records, Rule 803 (10) permits the absence of a public record to be evidence of the nonoccurrence of an event of a fact that would have been found in the particular public record had it occurred or existed.

Article IX: Authentication & Identification

Rule 901 (b) (1) However, a bare assertion that a particular document is a specifically described item is insufficient authentication.[32]

Rule 902 (10) Business records accompanied by affidavit

The prerequisites to authentication by affidavit under Rule 902 (10) include (1) the records and the affidavit must be filed with the court clerk at least 14 days before trial, (2) notice of such filing must be given

29 Crane v. State, 786 S.W.2d 338, 353-54 (Tex. Crim App. 1990):Philpot v. State, 897 S.W.2d 848,852 (Tex App. Dallas 1995, pet. Ref'd); Porter v. State, 578 S.W.2d 742, 746 (Tex. Crim. App. 1979)

30 Venable v. State, 113 S.W.3d 797, 800-01 (Tex. App. – Beaumont 2003, pet. Ref')

31 Crane v. State, 786 S.W.2d 338, 353-54 (Tex. Crim App. 1990):Philpot v. State, 897 S.W.2d 848,852 (Tex App. Dallas 1995, pet. Ref'd); Porter v. State, 578 S.W.2d 742, 746 (Tex. Crim. App. 1979)

32 Mega Child Care, 29 S.W.3d at 308 (witness's testimony that an exhibit was a copy of administrative judge's order opinion and order was insufficient authentication when "she was not the author of the opinion and order; neither did she purport to have any personal knowledge of the opinion and order by which she could confidently authenticate a copy".

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> to all parties, (3) the records must be made available for inspection and copying, and (4) the affidavit must conform to the Rules 803 (6) and 803 (7).

You Decide

This writer has now provided sources for the reader to look into to help understand how real property is being confiscated by actors of a state agency of the State of Texas using law enforcement to force Texas citizens from their rightful homes under the color of law. When law enforcement realizes this crime, it would not be difficult to assign officers to a court to witness a crime whether it be by the attorney, or the judge who defies Article 6, United States Constitution?

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding

And then there are court opinions regarding judges failing to do their duties.

18 U.S. Code § 2382. Misprision of treason

> Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.

Because “governing law” in the deed of trust includes the constitution, state or federal, and both state and federal laws, violating the deed of trust violates the constitutional rights of the deed of trust, and those named within it. Due process can be violated in civil acts or criminal acts.

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Lawlessness

In Volt[33], the U.S. Supreme court stated the governing law as ("[T]he Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and Constitution").

> Contract and real property law are traditionally the domain of state law. *Aronson v. Quick Point Pencil Co*., 440 U. S. 257, 262 (1979); *Butner v. United State*s, 440 U. S. 48, 55 (1979)[34].

Who is the Enforcement Officer?

Would it be the duty of law enforcement to turn a blind eye to the constitution? Would it be the duty of law enforcement to turn a blind eye to avoid protecting the citizens of the state of Texas? If lawyers make up documents[35], and judges turn a blind eye, and law enforcement rejects the truth of the matter, and possibly turn a blind eye also, would this be a matter for the U.S. Department of Justice? This would be up to each citizen of Texas affected by this alleged foreclosure activity, or attempted to file a complaint about this activity and was denied to decide what they do, not this writer. This writer suggest forgiveness because they knew not what they were doing. Nonetheless, ignorance is no excuse for law, and the courts say so.

Federal Matter

Has anyone ever wondered why these book entry system members attempt to move a state court case to federal court? Or why these book entry system members move for a Rule 12(b)(6) motion to dismiss once they get there?

What happens when Rule 60(b)(3) comes into play? This would be an action in federal court not state court due to the Rooker-Feldman doctrine which the U.S. Supreme Court said that lower federal courts lack jurisdiction to entertain appeals from state court judgments because that power is re-served to the Supreme Court. Hence in Texas, the Texas Supreme

33 Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. U., 489 US 468 - Supreme Court 1989
34 Fidelity Fed. Sav. & Loan Assn. v. De la Cuesta, 458 US 141 - Supreme Court 1982
35 Meeting of the task force on judicial foreclosure rules, November 7, 2007, Texas Supreme Court, Taken before D'Lois L. Jones, Certified Shorthand Reporter in and for the State of Texas,

Court. However, rule 60(b)(3) does apply to those whom have already attempted litigation in the federal courts. "Under the Rule 60(b) standards that properly govern petitioner's motion"[36]

> "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U. S. C. § 455(a), as amended.[37]

footnote #10[38]

> [10] Federal Rule of Civil Procedure 60(b) provides in relevant part:
>
> > "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or other misconduct of an adverse party;. . . or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken."

State Matter

> According to the federal courts a similarity arises from Rule 60(b)(3) in a state like Texas, or a Rule 9(b) as if it were used in Texas.
>
> > Under Texas law, constructive fraud involves "the breach of some legal or equitable duty .. . that the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests." Archer v. Griffith, 390 S.W.2d 735, 740 (Tex. 1965). Unlike actual fraud, constructive fraud does not require any intent to deceive.[39]
> >
> > ("At a minimum, Rule 9(b) requires that a plaintiff set forth the `who, what, when, where, and how' of the alleged fraud.") If a complaint fails to adhere to this standard in pleading a claim of fraud, it may be dismissed at the pleading stage for failure to plead with particularity.[40]

36 Gonzalez v. Crosby, 545 US 524 - Supreme Court 2005
37 Liljeberg v. Health Services Acquisition Corp., 486 US 847 - Supreme Court 1988
38 Liljeberg v. Health Services Acquisition Corp., 486 US 847 - Supreme Court 1988
39 Schroeder v. WILDENTHAL, Dist. Court, ND Texas 2011
40 Schroeder v. WILDENTHAL, Dist. Court, ND Texas 2011

Broken Chain

For my last item I suggest you ponder would be the “power of sale” clause. If the deed of trust contract was originally breached prior to being recorded, how is the power of sale legal? Since the mortgage banking association has admitted the note and security instrument were scanned after the alleged “borrower”signed the instruments, and then registered the scanned images in an electronic database, and the originals were deliberately, intentionally destroyed? And the scanned image is printed out and used for filing purposes in county land records? It is wise to take note that there are very sophisticated imaging systems in today’s technology and this *factor* should not be overlooked. So, how was the original instrument titled deed of trust valid when it was recorded after it was allegedly securitized?

> Absent affirmative evidence that state-court judges are ignoring their oath, we discount petitioner's argument that courts will respond to our ruling by violating their Article VI duty to uphold the Constitution.[41]

I can’t seem to see where very many recognize this crime taking place that is causing harm to everyone, including law enforcement. But I have faith in justice.

Sources:

#1 Proposal for a National Mortgage Registry: MERSDone Right, A

#2 How Negotiability Has Fouled Up theSecondary Mortgage Market, andWhat to Do About It

#3 Foreclosing on Nothing: The Curious Problem of the Deed of Trust Foreclosure Without Entitlement To Enforce the Note

#4 Searching for Negotiability Payment and CreditSystems

#5 Texas Constitution, Bill of Rights

#5a Texas Constitution, Powers of the government

#5b Texas Constitution, Legislative department

6 Texas UETA

41 Brecht v. Abrahamson, 507 US 619 - Supreme Court 1993

Lawlessness

7 Texas Property Code, Chapter 51

#8 Texas Penal Code, Chapter 7

#9 US DOJ Federal Criminal Law

#10 US DOJ Addressing Police Misconduct Laws Enforced By The Department Of Justice

Texas Law

> Texas law recognizes two types of fiduciary relationships. The first is a formal fiduciary relationship, such as between attorney and client, principal and agent, partners, and joint venturers. Ins. Co. of N. Am. v. Morris, 981 S.W.2d 667, 674 (Tex. 1998). The second is an informal or confidential relationship that "may arise from a moral, social, domestic, or purely personal relationship of trust and confidence." Associated Indem. Corp. v. CAT Contracting Co., 964 S.W.2d276, 287–88 (Tex. 1998). Such an informal or confidential relationship "may arise when the parties have dealt with each other in such a manner for a long period of time that one party is justified in expecting the other to act in its best interest." Morris, 981 S.W.2d at 674. It may also arise in cases in which "influence has been acquired and abused, in which confidence has been reposed and betrayed." Associated Indem. Corp., 964 S.W.2d at 287. Texas courts do not recognize or create such an informal or confidential fiduciary relationship lightly. K3C Inc. v. Bank of Am., N.A., 204 7F. App'x 455, 461 (5th Cir. 2006); Schlumberger Tech. Corp. v. Swanson, 959 S.W.2d 171, 177(Tex. 1997).[42]

Will the world recognize the crime? In due time.

Read, Learn, Understand, it is the only way you'll know for yourself.

Peace be with you,

42 GLENDA ANDERSON v.NATIONAL CITY MORTGAGE, et al., Civil Action No. 3:11-CV-1687-N