

Affidavit

Michael J Sparks Revocable Living Trust Date December 21, 2001 Securitization Analysis and County Records Report

For a loan given on February 02, 2006, bearing the original loan #146984 for the property commonly known as 16816 Bakersville Rd Boonsboro, Maryland 21713.

I, Selena Nieman, a citizen of the United States, being of majority in age, declare as follows, under penalty of perjury of the laws of the United States of America, the District of Columbia and State of Maryland that the facts stated herein are true, correct and complete in all material fact, except as to those matters that are herein, made upon information and belief. And as to those claims or facts, the undersigned believes them to be true and admissible as evidence in a court of law, and if called upon as a witness, I will testify to the veracity of my statements:

1. The contents of this report are factual, but it is provided for informational purposes only and is not to be construed as "legal advice."¹
2. I am a Mortgage Securitization Analyst and my qualification, expertise and experience provide me with the background necessary to be qualified as an expert in this field.
3. I am a subscriber to the ABSNet Financial Service, licensed to use such service. I have completed the required training and engaged in continual education through the Professional Service, to stay abreast of the Professional Service's latest progress and developments. I have the requisite knowledge and the trained ability to navigate and perform effective searches on the Professional Service Terminal.
4. At the request of Michael J Sparks Revocable Living Trust Date December 21, 2001, and during the dates of February 22 through March 11, 2013, I researched all of the following:
 - a. ABSNet Financial Research Platforms, Fannie Mae loan finder, Freddie Mac loan finder, Mortgage Electronic Registration System, Securities & Exchange Commission – Edgar, the Official Records of the Office of the Register of Deeds of Washington County, State of Maryland and other various public information resources, which have been identified in the accompanying Securitization Analysis and County Records Report.
 - b. I also conducted a complete review of all documentation provided to me for the borrower's property address stated above, which has been detailed in the accompanying Securitization Analysis and County Records Report.

¹ The client has been strongly advised to seek legal consultation from a competent legal professional in connection with the content of this report and how to properly use it.

Based upon the research and information review, I conclude the following:

The chain of title has been broken. There is no clear proof of ownership and possession of the Note by Wells Fargo Bank, N.A. because they allegedly endorsed it in blank. The Deed of Trust was split off from the Note at the point of origin when it was registered as an MOM loan. The Note most likely has been securitized into a private placement Trust. There is no clear information to confirm Fannie Mae's claim that is the current holder of the Note, only websites owned and operated by Fannie Mae. Wells Fargo Bank, N.A. is the present servicer, according to the MERS database.

It would not be possible for anyone to foreclose unless Fannie Mae could prove that it acquired the Note and reestablished a Mortgage in keeping with its Master Trust Agreement, which is most unlikely because there are missing Assignments and the Trust would not have allowed for a valid securitization of the Note without those Assignments.

Fannie Mae also needs to provide proof through a complete chain of endorsements that it purchased the Note from Wells Fargo Bank, N.A.

At this point, this Mortgage could be completely unenforceable. If Fannie Mae had any chance to enforce the terms of the Mortgage at all, it would need to show a valid chain of endorsements to the terms and a valid chain of title.

An Assignment from Wells Fargo Bank, N.A. to Fannie Mae at this point would be useless.

Note

On February 2, 2006, Michael J Sparks Revocable Living Trust Date December 21, 2001, executed a negotiable promissory Note in the amount of \$280,000.00 for 16816 Bakersville Rd Boonsboro, Maryland 21713.

Through research conducted on the ABSNet Financial Research Platform, the loan was not found to be in any non-agency publically traded Trust. It was found to be claimed by Fannie Mae – on their website.

The Note copy provided did contain an endorsement to Wells Fargo Bank, N.A. and then another alleged blank endorsement by Wells Fargo Bank, N.A., but to whom and on what date is unknown. However, a full chain of endorsements would need to be obtained and reviewed during the legal discovery process to gauge the enforceability of the Note.

A MIN (Mortgage Identification Number) was located on the Note, which indicates that this is a MOM loan – MERS as Original Mortgagee, and thus the Note and Mortgage were separated at the time of origination.

The Master Trust Agreement shows that true sales and valid document transfers and recordings are required by the Fannie Mae Master Trust Agreement.

The promissory Note, in this case, allegedly would have become Trust property in compliance with the requirements set forth in the Fannie Mae Agreement. The Trust agreement is filed under oath with the Securities and Exchange Commission. The assets of the Trust, as well as their acquisition by the Trust are governed under the law.

If the chain of securitization had been done properly, there would have been a true sale from the original lender to Fannie Mae as Sponsor/Seller and then potentially another true sale from Fannie Mae to Fannie Mae in the roles of Depositor/Trustee. Then when Fannie Mae actually placed it into a REMIC, there should have been another series of true sales.

There is no evidence to support that this occurred.

Deed of Trust

On February 2, 2006, Michael J Sparks Revocable Living Trust Date December 21, 2001 executed a security interest in the form of a Deed of Trust in the amount of \$280,000.00 for 16816 Bakersville Rd, Boonsboro, Maryland 21713.

While Fannie Mae claims to have the Note, the Deed of Trust has remained with the original lender, 1st Mariner Bank. There have been no Assignments of the Deed of Trust from 1st Mariner Bank to Wells Fargo Bank, N.A. or any other entity.

Thus, any failure to deliver the Deed of Trust or delivery of the Deed of Trust without its Assignments as regulated by these Trusts in general could be a void act for the reason that it violated the express terms of the Trust instrument.

Further, MERS was made as the Original Mortgagee, which split the Note from the Deed of Trust.

The Note was claimed by Fannie Mae but there are no corresponding Assignments recorded with the Public Land Records.

MERS

The Deed of Trust shows MIN: 100212504000249121, with a MIN status of inactive, the Servicer shows as Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. and the Investor as Unknown.

As has been shown, MERS has been challenged in many courts of law for its practices and involvement in the tracking and transferring of loans on its "members only" system, which breaks the chain of title and prevents a borrower from knowing who they truly are indebted to.

One of the most significant cases that shows the truth of MERS from MERS itself helps to shed light on the inherent problems with MOM loans in general:

In 2005, MERS was trying to foreclose in South Carolina. The South Carolina court, citing *MERS v. Nebraska Dept. of Banking and Finance*, held that because MERS had no independent right to

collect on any debt because MERS itself had not extended any credit, and none of the Mortgage (Deed) debtors owed MERS any money, MERS does not have standing to foreclose. This Nebraska ruling is an important ruling because of the assertions made wholly and specifically by MERS.

MOM stands for MERS as Original Mortgagee. As has been covered in this report, for MERS to be an original Mortgagee, then MERS would have been the entity that funded the loan. It did not.

Thus, MERS as Nominee or as Original Mortgagee has no authority to assign: There is no contractual language in the Deed of Trust that gives MERS the independent right to enforce the Note and the Deed of Trust, or even to assign its position in the Deed of Trust without the express authorization of the lender or the lender's successors and assigns.

Regardless of whether or not MERS is involved in a nominal capacity, the Deed of Trust must follow both the Note pursuant to the language of the contract between the lender and the borrower and well-established law.

Irrespective of the role that MERS has established and played, and regardless of its actions to avoid the recording of Assignments in public records, the lender or the lender's successor and assigns are bound to do so under the terms of the Deed of Trust and all applicable laws including statutes of fraud.

Finally, it should be noted that whatever interest the original lender could claim in the subject Note was released shortly after the origination date of the Trust when they signed the Note in blank in an attempt to deliver the Note to the Trust Fund.

County Records

An Appointment of Substitute Trustees was filed in the Official Records of the Clerk of Circuit Court, Washington County, Maryland on June 29, 2010. Said document states that Wells Fargo Bank, N.A. as present holder or authorized agent of the holder of the Note secured by the Deed of Trust does so remove the Original Trustee, George Mantakos and does hereby appoint John S. Burson, William M. Savage, Gregory N. Britto, Jason Murphy, Kristine D. Brown and Erik W. Yoder, any one of whom may act in respect to the provisions of the Deed of Trust. The document has a typewritten date of 17 day of June, 2010. There are no signatures or notarizations on the copy received and reviewed.

No defects could be identified from this copy. No Robosigning could be identified from this copy due to the missing signatures. Of note is that there have been no assignments of the Deed of Trust from the originating lender, 1st Mariner Bank to Wells Fargo Bank, N.A. - only the endorsement of the Note to Wells Fargo Bank, N.A.

A Notice of Assignment was filed in the Official Records of the Clerk of Circuit Court, Washington County, Maryland on June 21, 2011. Said document states Mortgage Electronic

Registration Systems, Inc. as nominee for 1st Mariner Bank, its successors and assigns hereby transfers and assigns to Wells Fargo Bank, NA all right, title and interest of the Deed of Trust dated February 2, 2006, which secures its indebtedness in the original amount of the Note of \$280,000.00 which was recorded on April 3, 2006. Said document is signed by Samuel Kremer, Assistant Secretary, Mortgage Electronic Registration Systems, Inc. as nominee for 1st Mariner Bank, its successors and assigns with a handwritten date of 9 day of June, 2011. Said document is notarized by Viet Tran, commissioned Notary Public with a handwritten date of June 9th, 2011, in which Samuel Kremer appeared in front of to sign in the County of Dakota, State of Minnesota.

The document has been notarized in Dakota County, Minnesota. You cannot read the signature of the signor even though the name is handwritten out on the document. Some people refer to these as "squiggle marks." The bottom line is you cannot decipher any name or word from the same. For any document signed by an officer of MERS, MERS states at www.mersinc.org that: "Employees of the servicer will be certifying officers of MERS." This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution from MERS. In other words, the same individual who signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS. The signor is an "Assistant" anything. The mortgage Note is endorsed from the originator to the current mortgage servicer. Samuel Kremer, Assistant Secretary, Mortgage Electronics Registration Systems, Inc., as nominee for 1st Mariner Bank, its successors and assigns - Nothing could be found regarding the employment of Samuel Kremer by anyone. Nothing could be found identifying Samuel Kremer as an alleged Robosigner. Viet Tran, Commissioned Notary Public - Viet Tran is a commissioned Notary Public in the State of Minnesota according to the Minnesota State website. Nothing could be found to identify Viet Tran as an alleged Robosigner.

A total of five fatal defects were identified from the Max Gardner Guidelines. MERS assigned the Deed of Trust to Wells Fargo Bank, NA, over five years after the origination of the loan. It was signed by Samuel Kremer on June 9, 2011. Nothing was found to show that Samuel Kremer is actually an employee or an Assistant Secretary of MERS. There is a serious issue here in that MERS assigned the document.

An Appointment of Substitute Trustees was filed in the Official Records of the Clerk of Circuit Court, Washington County, Maryland on November 16, 2011. Said document states that Wells Fargo Bank, NA as present holder or authorized agent of the holder of the Note secured by the Deed of Trust does so remove the Original Trustee, George Mantakos and does hereby appoint John S. Burson, William M. Savage, Gregory N. Britto, Kristine D. Brown, Jessica L. Harrington and Michael A. Coogen, Jr. any one of whom may act in respect to the provisions of the Deed of Trust. The document has a typewritten date of 31st day of October, 2010. There are no signatures or notarizations on the copy received and reviewed. No defects could be identified from this copy. No Robosigning could be identified from this copy due to the missing signatures.

Of note in that the previously recorded Assignment, recording date of June 29, 2010, states that Wells Fargo Bank, NA removes the Original Trustee, George Mantakos and assigns the successor Trustees and then again in this recorded Assignment states the Original Trustee is still George Mantakos and assigns new successor Trustees.

An Appointment of Substitute Trustees was presented to the Court of Washington County as Exhibit D. It is unknown if this document is recorded in the Official Records of the Clerk of Circuit Court, Washington County, Maryland. Said document states that Wells Fargo Bank, NA, as present holder or authorized agent of the holder of the Note secured by the Deed of Trust does so remove the Original Trustee, George Mantakos and does hereby appoint John E. Driscoll, III or Robert E. Frazier or Jana M. Gantt or Laura D. Harris or Daniel J. Pesachowitz or Deena L. Reynolds, any one of whom may act in respect to the provisions of the Deed of Trust. The document has a typewritten date of 22nd day of June, 2012 and it is signed by Tamara G. Garris, Vice President of Loan Documentation, Wells Fargo Bank, N.A. Said document is notarized by Lisa F. Hayes, Commissioned Notary Public, County of York, State of South Carolina, with a typewritten date of June 22, 2012. Further there is a signature of Robert E. Frazier, Esquire stating that he certifies that this instrument was prepared by or under the supervision of an Attorney. No defects could be identified from this copy. Tamara G. Garris, Vice President of Loan Documentation, Wells Fargo Bank, N.A. - a. Tamara G. Garris's employment and status could not be verified, but there are several legal documents she has signed that allegedly link her to her stated position with Wells Fargo Bank, N.A. as well as the signatures allegedly appear to match, but this would need to be verified by a handwriting expert. Lisa F. Hayes, Commissioned Notary Public, County of York, State of South Carolina - according to the State of South Carolina, Lisa F. Hayes is a commissioned Notary Public.

It is unknown by the document presented if this document is indeed recorded in the Official Records of the Clerk of Circuit Court, Washington County, Maryland. This document was included only to show the transactions and potential fraud on the lender and its representing entities' behalf.

Servicer

The servicer is the original lender, but has no beneficial interest in the Note should it attempt to foreclose.

There is a practice with Fannie Mae that has been shown in this report where Fannie Mae now allows the servicer to "hold the documents" on behalf of this Trust. As a part of "holding" these documents, the servicer is also conducting foreclosure proceedings. In many cases to the untrained eye, this is perfectly "valid" because the servicer and original lender appear to be the same, which is not the case with this loan.

These findings are supported by the following case law.

U.S. Bank National Association, etc., v. Dellarmo - The Judge determined "*In a Mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject Mortgage and the holder or assignee of the underlying Note at the time the action is commenced*" (*Bank of N.Y. v Silverberg*, 86 AD3d 274, 279; see *Countrywide Home Loans, Inc. v Gress*, 68 AD3d 709). Where a defendant raises the issue of standing, the plaintiff must prove its standing to be entitled to relief (see *CitiMortgage, Inc. v Rosenthal*, 88 AD3d 759; *U.S. Bank, N.A. v Collymore*, 68 AD3d 752, 753). Moreover, while Assignment of a promissory Note also effectuates Assignment of the Mortgage (see *Bank of N.Y. Silverberg*, 86 AD3d at 280; *U.S. Bank, N.A. v Collymore*, 68 AD3d at 753-754; *Mortgage Elec. Registration Sys., Inc. v Coakley*, 41 AD3d 674), the converse is not true: since a Mortgage is merely security for a debt, it cannot exist independently of the debt, and thus, a transfer or Assignment of only the Mortgage without the debt is a nullity and no interest is acquired by it (see *Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636; *Bank of N.Y. v Silverberg*, 86 AD3d at 280). The failure to record an Assignment prior to the commencement of the action is not necessarily fatal since "an Assignment of a Note and Mortgage need not be in writing and can be effectuated by physical delivery" (*Bank of N.Y. v Silverberg*, 86 AD3d at 280; see *Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636; *U.S. Bank, N.A. v Collymore*, 68 AD3d at 754; *LaSalle Bank Natl. Assn. v Ahearn*, 59 AD3d 911, 912)." The court went on to state with regard to an unrecorded Assignment and a later recorded corrective Assignment: "Moreover, both the unrecorded April 11, 2006, Assignment and the recorded corrective Assignment indicate only that the Mortgage was assigned to the plaintiff. Since an Assignment of a Mortgage without the underlying debt is a nullity (see *Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636; *Bank of N.Y. v Silverberg*, 86 AD3d at 280), the plaintiff has failed to demonstrate that it had standing to commence this action (see *Bank of N.Y. v Silverberg*, 86 AD3d at 280; *U.S. Bank, N.A. v Collymore*, 68 AD3d at 754)."

Downey Savings & Loan v. Trujillo – Judge Scheck learned that the attorney for the lender filed a fraudulent affidavit, he threw out the foreclosure suit *with prejudice* in favor of the homeowner and further ordered "*Therefore, the Court will examine the conduct of Margaret E. Carucci, Esq. and DRUCKMAN LAW GROUP PLLC in a hearing, pursuant to 22 NYCRR § 130-1.1, to: determine if Margaret E. Carucci, Esq. and DRUCKMAN LAW GROUP PLLC engaged in frivolous conduct; and, allow Margaret E. Carucci, Esq. and DRUCKMAN LAW GROUP PLLC a reasonable opportunity to be heard.*"

As has been previously stated and supported in this report, generally, if the Deed of Trust and the Note are not together with the same entity, there can be no legal enforcement of the Note. The Deed of Trust enforces the Note and provides the capability for the lender to foreclose on the property. Thus, if the Deed of Trust and the Note are separated, foreclosure legally cannot occur: conversely, the Note cannot be enforced by the Deed of Trust if each contains a different mortgagee/beneficiary; and, if the Deed of Trust is not itself a legally enforceable instrument, there can be no valid foreclosure on the homeowner's property.

I supply this report as written testimony and am available for oral testimony.



Selena Nieman
Mortgage Securitization Analyst