IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Docket No. 11-55423

MARGARET CARSWELL
Plaintiff-Appellant

vs.

JPMORGAN CHASE BANK, N.A., CALIFORNIA RECONVEYANCE CO.
Defendants-Appellees

On Appeal from an Order of the United States District Court
for the Central District of California – Los Angeles
Case No. 2:10-cv-05152-GW-PLA

REPLY BRIEF OF APPELLANT

DOUGLAS GILLIES (SBN 53602)
3756 Torino Drive,
Santa Barbara, CA 93105
(805) 682-7033

Attorney for Appellant MARGARET CARSWELL

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STATEMENT OF THE CASE

Chase's Statement of The Case asserts that Appellant seeks to rescind the subject loan because she contends that the party initiating foreclosure must be in possession of the original promissory note (Answ. Brief , pp. 2-3). Chase's Summary of Argument repeats the claim that "Carswell premises her FAC" on possession of the note (Answ. Brief p. 8).

"Show me the Note" is not the premise of Appellant's case.

Chase supports its assertion on page 3 of its Brief by citing ¶18 of the First Amended Complaint (EOR p. 67). Possession of the note is not mentioned in ¶18 of the FAC. Appellant contends that the contract language in the Note and Deed of Trust (DOT) must be followed.

Paragraph 17 of the FAC recites the procedure proscribed in the DOT for appointing a substitute trustee. Paragraph 18 then states:

> Chase does not have standing to enforce the Note because Chase is not the owner of the Note, Chase is not a holder of the Note, and Chase is not a beneficiary under the Note. Only a noteholder or beneficiary under the DOT has the capacity to exercise a power of sale. Chase does not claim

> to be a holder of the note or a beneficiary. Chase merely states in the Notice of Trustee's Sale a hearsay assertion that it is a servicer. If Chase can prove that it is a servicer, which it asserts without proof, Chase cannot foreclose on Plaintiff's property without joining the owner of the note because Chase is not a real party in interest. An action must be prosecuted in the name of the real party in interest under Fed. Rule Civ. Proc. 17.

In its Summary of Argument, Chase states on page 9, "No wrongful foreclosure has occurred because JPMorgan acquired all of WaMu's servicing rights when it purchased WaMu's assets from the FDIC." This assumes that WaMu retained any servicing rights to Carswell's loan. On page 12, Chase argues that the P&A "documents establish that JPMorgan has acquired the servicing rights to the Subject Loan from the FDIC." This is a conclusion that is based on the assumption that WaMu was a servicer of the loan on September 25, 2008. Do WaMu's records show that it was servicing Carswell's loan? Chase would like the court to believe so, but Chase refuses to open the books in its possession.

Appellant's Statement of the Case maintains that the efforts of

Chase and CRC to sell her property were illegal because they were not the Lender, the Beneficiary, or authorized agents of the Lender or Beneficiary, as required by the terms of Appellant's promissory note and deed of trust (Opening Brief p. 2). Appellees can't sell the home because they have no right, not because they have no note.

Only the Lender can exercise a power of sale under ¶22 of the Deed of Trust. EOR p. 202 (Deed of Trust ¶22). According to ¶7(c) of the Adjustable Rate Note, the power to accelerate the loan rests with the "Note Holder." EOR p. 164 (Adjustable Rate Note ¶ 7c). Chase does not claim to be a Lender, a Note Holder, or a Beneficiary. A court cannot rewrite a contract and discard its procedural safeguards when ruling on a Motion to Dismiss.

Chase mentions twice in the opening paragraph of its Statement of Facts that Carswell borrowed $2,500,000.00. The FHFA complaint against Chase alleges that $33,000,000,000.00 is the grand total of mortgage-backed securities Fannie Mae and Freddie Mac purchased in 103 securitizations sponsored by J.P. Morgan and Washington Mutual Bank, including the investment trust in which the Carswell mortgage was bundled: WaMu Pass-Through Certificates, Series 2007-OA1 Trust. See ¶2 of the Complaint in *Federal Housing*

Financing Authority v. JPMorgan Chase, et al, Case 1:11-cv-06188-PKC (SDNY).

The FHFA complaint states that for each securitization, a prospectus and prospectus supplement were filed with the SEC as part of the Registration Statement for that Securitization. "Unbeknownst to Fannie Mae and Freddie Mac, these statements were materially false," and their falsity violated §§11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. §77a.

Chase and WaMu lied about the loans, they collected thirty-three billion dollars in payments backed by U.S. taxpayers, and now they use the courts to dispossess millions of homeowners so that they can double their money without producing paperwork to show that they are authorized to foreclose under the Promissory Notes and Deeds of Trust.

STANDARD OF REVIEW

A claim is plausible if its factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

A court should freely give leave to amend when justice requires.

Fed. R. Civ. P. 15. An amendment would be "futile" only if no set of facts can be proved which would constitute a valid claim or defense. *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

STATEMENT OF EVIDENTIARY FACTS

Appellant alleges sufficient evidentiary facts in her verified First Amended Complaint (EOR pp. 61-82), declarations (EOR pp. 140-148), and Offer of Proof (EOR pp. 149-263) to show that she is entitled to relief. Chase relies solely on the inferences it draws from a Purchase & Assumption Agreement that is silent about Appellant's property and does not indicate whether or not the property was ever an asset of WaMu.

Judge Wu found that documentation attached to the Notice of Default identified JPMorgan Chase as the mortgagee, beneficiary, or authorized agent. This finding of fact, deduced from the pleadings, was based on a hearsay declaration by an employee of defendant CRC, which Appellant is informed and believes is a subsidiary of Chase. EOR p. 16 (Tentative Ruling Sept. 30, 2010).

Appellees argue that Carswell could identify the owner or the beneficiary of the note by referring to the Assignment of Deed of

Trust (EOR p. 170), a document which has no meaning since Chase's alleged role as a servicer of the loan did not authorize it to assign a beneficial interest in the Deed of Trust to Bank of America. Servicers cannot assume the powers of the Lender.

A common thread in Appellees' brief is the word *conclusory*. Conclusory adj. (1923) means: Expressing a factual inference without stating the underlying facts on which the inference is based. *Black's Law Dictionary* 9th ed.

In the Statement of Facts in their Answering Brief, Appellees abruptly make this statement on page 5: "As successor in interest to WaMu, JPMorgan had the Assignment recorded on September 2, 2009, which transferred all beneficial interest under the deed of trust to Bank of America..."

In its Motion to Dismiss in a pending federal case, Chase argued that it was *not* a successor in interest to WaMu. It wrote, "Here, to the extent that there is an actual controversy, it is ripe for immediate summary judgment because this claim involves the interpretation of one unambiguous provision of the P&A Agreement. Under the plain terms of that agreement, JPMC did not become WMB's successor in interest. Since its closure, the FDIC as receiver has controlled WMB."

Deutsche Bank v. FDIC, JPMorgan Chase, et al, Case 1:09-cv-01656, Document 55-1 (Motion to Dismiss filed 11/22/2010, p. 33).

Chase contends that it recorded an Assignment on September 2, 2009, which transferred all beneficial interest under the deed of trust to Bank of America. Chase is referring to Exhibit 2 of Appellant's Offer of Proof (EOR p. 170), the Assignment of Deed of Trust. However, Chase's role as successor in interest, if proven despite its assertions to the contrary, would not authorize it to assign a beneficial interest in Appellant's Deed of Trust to Bank of America. WaMu did not retain any beneficial interest in the loan and therefore could not have transferred a beneficial interest to Chase. EOR p. 66 (FAC ¶16). The FHFA complaint confirms that the sale was consummated of the trust in which Carswell's note was bundled.

The Deed of Trust states in Paragraph 24 that only the Lender can substitute the Trustee.

> 24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder.

Chase does not claim to be the Lender. EOR p. 67 (FAC ¶18). The trial judge wrote, "JPMorgan obtained WaMu's servicing interests in the Subject Loan pursuant to the P&A Agreement with the FDIC. Accordingly, JPMorgan and CRC have properly initiated the foreclosure proceedings with respect to the Subject Property. EOR p.11 (Ruling on Motion to Dismiss FAC). Yet the court concluded, "Though the possibility that WaMu was not a servicer of Plaintiff's loan at the time of the FDIC receivership is perhaps troubling (though no facts are set out that suggest this inference would be in any way plausible), leave to amend should not be granted. EOR p. 14 (Ruling on Motion to Dismiss FAC).

Here are some of the evidentiary facts alleged in the FAC.

Fact: WaMu securitized Plaintiff's note through Washington Mutual Mortgage Securities Corp. The WaMu Mortgage Pass-Through Certificates, Series 2007-OA1 Trust was terminated on October 15, 2010, and the lawful beneficiary was paid in full. EOR p. 65 (FAC ¶12).

Fact: Chase offers no proof that it is a holder of the note, a beneficiary, or a servicer of the loan that is the subject of this complaint. It offers no evidence that it is a Lender, or is authorized by

the Lender to foreclose. EOR p. 7 (FAC ¶18)

Fact: On July 1, 2010, Defendant CRC recorded a Notice of Trustee's Sale ("NOTS") stating that the Property would be sold at public auction on July 22, 2010. The NOTS included a declaration of compliance with Cal. Civil Code 2923.5 bearing the forged signature of robo-signer Deborah Brignac, Vice President of CRC. EOR pp. 187 and 214 (Notice of Trustee's Sale).

Fact: Various renditions of Brignac's signature on recorded documents are presented in Plaintiff's Exhibits 13-17. EOR pp. 212-236 (Plaintiff's Offer of Proof). Anyone who looks at Exhibits 13-17 can recognize the differences in the signatures. Forgery is a rampant practice in foreclosure litigation and it is a triable issue.

Fact: After WaMu originated the loan, it transferred all beneficial interest in the loan through Washington Mutual Mortgage Securities Corp., evidenced by Prospectus Supplement to Prospectus dated January 11, 2007, WaMu Mortgage Pass-Through Certificates, Series 2007-OA1 Trust—which surfaced in a pool of fraud in *Federal Housing Financing Authority v. JPMorgan Chase, et al,* Case 1:11-cv-06188-PKC (SDNY).

Fact: WaMu retained no beneficial interest in the loan that

could be transferred to Chase twenty-one months later on September 25, 2008, when Chase acquired from the FDIC "*certain* assets and liabilities of WaMu." EOR pp. 63, 66 (FAC ¶¶ 2, 16*). Certain,* as used by Chase, is conclusory, and remains anything but certain so long as Chase refuses in every foreclosure proceeding to reveal what those certain assets may happen to be.

Fact: On September 1, 2009, Deborah Brignac executed an Assignment of Deed of Trust which included a hearsay declaration that she was a Vice President of Chase. The Assignment pretended to grant to Bank of America all beneficial interest in Plaintiff 's Deed of Trust, "together with the note or notes therein described and secured thereby, the money due or to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust." WaMu's beneficial interest was transferred to the investment trust in January 2007, so there was nothing for Deborah Brignac to assign to Bank of America. Brignac's title as Vice President of Chase is not a fact, it is hearsay, as is the assertion in the Assignment that LaSalle bank NA is a trustee for WaMu Mortgage Pass-Through Certificates, Series 2007-OA1 Trust. EOR p. 169 (Assignment of Deed of Trust, Plaintiff's Offer of Proof, Exhibit 2).

Fact: On January 29, 2010, Plaintiff visited the manager of a Santa Barbara branch of Bank of America and was told unequivocally that Bank of America had no interest in her mortgage. EOR p. 145 (Declaration of Margaret Carswell ¶17). This is a fact not an inference.

Fact: Plaintiff submitted to the court a declaration that stated:

> On April 30, 2010, I sent a Qualified Written Request (QWR) to defendant CRC and WaMu pursuant to §6 of the Real Estate Settlement Procedures Act. I received an acknowledgment from Chase dated May 6, but I have not received any of the requested items.

EOR p. 141 (Declaration of Margaret Carswell, July 19, 2010).

Fact: Paragraph 7(c) of Margaret Carswell's Note states that if the Borrower is in default, the Note Holder may require the Borrower to pay the full amount of the Principal. EOR p. 164 (Plaintiff's Offer of Proof, Exhibit 1). The Note states that the Lender under the Note "or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the Note Holder." EOR p. 164 (Adjustable Rate Note ¶ 1).

Fact: Paragraph 22 of the Deed of Trust empowers only the Lender to initiate a foreclosure: "If Lender invokes the power of sale,

Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the property to be sold." EOR p. 202 (Deed of Trust ¶ 22).

Fact: Paragraph 23 of the Deed of Trust states, "Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee." EOR p. 202 (Deed of Trust ¶ 23).

Fact: The WaMu Mortgage Pass-Through Certificates, Series 2007-OA1 Trust was terminated on October 15, 2010, and the lawful beneficiary was paid in full. CRC owes a duty under the DOT to reconvey the DOT to Plaintiff. The DOT does not state that Plaintiff must make full payment, only that all secured sums must be paid. Plaintiff demanded full reconveyance in her letter to CRC on March 17, 2010. EOR p. 76 (FAC ¶ 57); EOR p. 173 (FAC, Exhibit 3) .

Fact: The Deed of Trust was held by CRC on behalf of WaMu, even though the Note left WaMu's possession immediately after the closing, when it was securitized. Therefore the Note and its collateral were separated. CRC filed an Assignment of Deed of Trust EOP p. 170 (Plaintiff's Offer of Proof, Exhibit 2) almost three years later,

assigning all its beneficial interest to Bank of America. However, the Pooling and Servicing Agreement (PSA) indicates the pool was closed on January 25, 2007, when SEC Form 8-K was filed. No changes were permitted after the date of filing. The Deed of Trust and the Note remained separated, contrary to the "Important Notice" at the top of the Assignment which reads: "After having been recorded, this Assignment should be kept with the Note and the Deed of Trust hereby assigned." The REMIC Trust was terminated October 15, 2010. EOR pp. 263-264 (Plaintiff's Offer of Proof, Exhibit 20)

Chase has exercised its right to remain silent about these facts. One might infer that Chase could be trying to steal Carswell's home, given the alleged fact (EOR p. 65 – FAC ¶12) that WaMu sold the loan to a trust over five years ago in January 2007 and deposited the balance of the Loan, and later Fannie or Freddie paid off the trust. WaMu got the money; now Chase wants the home.

ARGUMENT

- WRONGFUL FORECLOSURE

Appellees begin their argument, "Carswell challenges JPMorgan's authority to foreclose on the Subject Loan based on her

allegation that JPMorgan 'does not have standing to enforce the [Promissory Note] because [JPMorgan] is not the owner of the [Promissory Note].' See ER, vol. 2, pg. 67 (FAC, ¶ 18)."

Paragraph 18 of the FAC states:

> 18. Chase does not have standing to enforce the Note because Chase is not the owner of the Note, Chase is not a holder of the Note, and Chase is not a beneficiary under the Note. Only a noteholder or beneficiary under the DOT has the capacity to exercise a power of sale. Chase does not claim to be a holder of the note or a beneficiary. Chase merely describes itself as a servicer in the Notice of Trustee's Sale. EOR p 67 (FAC ¶18)

Appellees then argue that a servicer is authorized to initiate foreclosure—even if they appointed Bank of America as Beneficiary in Exhibit 2 (EOR p. 170) several years after WaMu transferred all beneficial interest in the loan through Washington Mutual Mortgage Securities Corp and it eventually landed in Fannie or Freddie's lap.

In support of this proposition, Chase cites *Caravantes v. California Reconveyance Co., Washington Mutual Bank, FA, Chase Home Finance LLC, et al,* 2010 WL 4055560 (S.D. Cal. 2010). *Caravantes* is cited in Chase's brief eight times—twice as often as any

other case. In this complex and rapidly evolving field of foreclosure law, involving just about every attorney general, bank regulator, Congressional oversight committee, state and federal district court, bankruptcy court, and court of appeal, one might expect JPMorgan Chase to rely on a published case of some significance. *Caravantes* is an unreported order in a pending case in San Diego Federal District Court granting in part and denying in part a motion to dismiss.

David Caravantes is a *pro se* plaintiff who is suing a 2-trillion dollar corporation—Chase. The court did not refer to the language of Caravantes' Note. Caravantes' alleged in paragraph 22 of his Complaint that he assumed Chase was a servicer (Case No. 3:10-cv-01407 USDC, SDCA, Document 1). CRC and Chase were represented in that case at the time by Adorno Yoss Alvarado and Smith (renamed AlvaradoSmith after Mr. Adorno was suspended by the Florida Supreme Court). Judge Irma Gonzalez found that Chase was a servicer. *Caravantes v. California Reconveyance Co.*, 2010 WL 4055560 at p. 9. In a recent development, on October 17, 2011, the Magistrate invited Caravantes to file a second amended complaint.

Margaret Carswell, whose first amended complaint was dismissed without leave to amend, does not allege that Chase is the

servicer of her loan. She alleges in Paragraph 18 of her FAC, "Chase merely describes itself as a servicer in the Notice of Trustee's Sale. If Chase can prove that it is a servicer, as it asserts without disclosing any document as proof, Chase cannot foreclose on Plaintiff's property without joining the owner of the note because Chase is not a real party in interest." EOR p. 67 (FAC ¶18).

Chase's relationship to Carswell's property is a disputed fact, which distinguishes this case from *Caravantes*.

- RESPA

Judge Wu ruled, "Plaintiff's Fourth Claim for RESPA violations...would be barred as to JPMorgan to the extent that (it is) based on conduct that occurred prior to September 25, 2008." EOR p. 19-20 (Tentative Ruling Sept. 30, 2010). However, Appellant's RESPA claim was based on failure of Appellees to respond to her QWR sent on April 30, 2010.

Contrary to Appellees' assertions, her damages were actual and substantial. She could not determine if defendants had any right to her payments to Chase of over $100,000, nor could she ascertain the basis for their claims to her property, and she faced the constant

threat of losing her home. (Opening Brief pp. 27, 35). If a bandit waves a gun in a crowd and shouts, "This is a stickup!" the victims are injured regardless of whether or not he squeezes the trigger. Lawyers may disagree as to the extent of the injury, but it is a matter to be resolved at trial, not with a dismissal on the pleadings.

Appellees argue that they did not "have any duty to disclose any of the purported facts that Carswell claims were allegedly not disclosed. (Answ. Brief p. 10, ¶1). The duty to disclose was formed when Carswell sent her QWR.

Appellees refute Carswell's claim that their failure to comply with RESPA precluded her from identifying the owner or beneficiary of the Note. In support of their contention, they cite an Assignment of Deed of Trust executed by a robosigner years after WaMu sold the loan. The assignment is not timely, it was not made by a beneficiary, and it had been refuted by Bank of America. EOR p. 145 (Declaration of Margaret Carswell ¶17).

As for showing a pattern of RESPA violations, Appellees' Answering Brief cites several unreported cases in which the plaintiff alleged failure of Chase to respond to a timely QWR.

- QUIET TITLE

Quiet title is an appropriate remedy when a stranger publishes a Notice of Trustee's Sale and declares that he will sell your home in less than a month. The right of sale provided by the deed of trust is an interest in real property. *Yulaeva v. Greenpoint Mortg. Funding, Inc.*, 2009 WL 2880393, *9 (E.D.Cal. 2009). "When a debtor defaults on a secured real property loan, the lender-beneficiary may institute nonjudicial foreclosure proceedings to trigger a trustee's sale of the property to satisfy the obligation." *South Bay Building Enterprises, Inc. v. Riviera Lend-Lease, Inc.*, 72 Cal.App.4th 1111, 1120 (1999); *Moeller v. Lien*, 25 Cal.App.4th 822, 830 (1994). The beneficiary's power to cause a sale of the property is effectively a lien on the property. *Monterey S.P. P'ship v. W.L. Bangham*, 49 Cal.3d 454, 460(1989).

Cal. Code Civ. Pro. § 760.010(a) provides that a lien may properly be the subject of a quiet title action. Appellant has therefore alleged each of the elements of a quiet title claim. *Yulaeva v. Greenpoint Mortg. Funding, Inc.*, 2009 WL 2880393, *9.

Appellees assert that a mortgagor cannot quiet title against the mortgagee without paying his debt, and then claim on pp. 9-10, "she

has failed to allege that she has the ability to tender the amount owing under the Subject Loan." The FAC states, "Chase Bank has no right to receive payment under Plaintiff's mortgage and has no right to foreclose on her property. Plaintiff does not seek rescission of the contract and therefore she is not required to tender the loan balance. She alleges that the contract was void *ab initio*. If a real party in interest appeared in this action, Plaintiff would offer to make the necessary payment to that party." EOR p. 74 (FAC ¶49).

A principal issue in this case is the identity of the mortgagee. Chase asks the court to assume a fact it has the burden to prove. The FAC alleges that Chase is not the mortgagee or beneficiary. EOR p. 67 (FAC ¶18). A self-appointed mortgagee cannot simply record a notice of trustee's sale, seize a residence, and then demand that the owner tender the balance of the note before they can take their case to court.

- THE BALANCE OF THE NOTE HAS BEEN PAID

The FAC alleges that the debt has been paid: "The DOT states that all secured sums must be paid. Plaintiff alleges that the obligations under the DOT were fulfilled when WaMu received funds in excess of the balance on the Note as a result of proceeds of sale

through securitization(s) of the loan and insurance proceeds from Credit Default Swaps. EOR p. 70 (FAC ¶29).

The Deed Of Trust states in paragraph 23:

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it...EOR pp. 76-77 (FAC ¶57); EOR p. 202 (DOT ¶23).

Judge Wu made no reference to these contract issues in his rulings on Chase's Motion to Dismiss.

The FAC alleges that WaMu was paid when it sold the loan to the investment trust and the beneficiaries were paid when the trust terminated. Why should Chase get a free house?

- SLANDER OF TITLE

Appellees argue, "No 'slander of title' is stated because the foreclosure proceedings were justified; furthermore, under California Civil Code § 2924 (d), the proceedings were privileged. " (Answ. Brief

p. 10). That the foreclosure proceedings were justified is a conclusion which appellees hope a judge or jury will reach in a trial. At the outset, it is a conclusory allegation. As for privilege under Cal. Civ. Code § 2924(d), it only applies if the beneficiary elects to sell [§ 2924 (a)(1)(c)] and the trustee relies in good faith on information provided in good faith by the beneficiary [§ 2924(b)]. Since Chase is not a beneficiary, the privilege is not available.

- JUDICIAL NOTICE

The following quotation appeared at the end of Appellant's Opening Brief on pages 41 and 42, but the casevcitation was missing:

"The Substitution of Trustee recites that the Bank is the present beneficiary under the 2003 deed of trust. As in *Poseidon*, this fact is hearsay and disputed; the trial court could not take judicial notice of it. Nor does taking judicial notice of the Assignment of Deed of Trust establish that the Bank is the beneficiary under the 2003 deed of trust. The assignment recites that JPMorgan Chase Bank, 'successor in interest to Washington Mutual Bank, Successor in Interest to Long Beach Mortgage Company' assigns all beneficial interest under the 2003 deed of trust to the Bank. The recitation that JPMorgan Chase

Bank is the successor in interest to Long Beach Mortgage Company, through Washington Mutual, is hearsay. Defendants offered no evidence to establish that JPMorgan Chase Bank had the beneficial interest under the 2003 deed of trust to assign to the Bank. *Herrera v. Deutsche Bank National Trust Company*, 196 Cal.App4th 1336, 1375 (2011).

CONCLUSION

Margaret Carswell requests the district court's order of dismissal be reversed.

Date: November 4, 2011

/s/_____
Douglas Gillies
Attorney for MARGARET CARSWELL

CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P. 32(a)(7)(C) AND CIRCUIT RULE 32-1 FOR CASE NO. 11-55423

I certify, pursuant to Fed. R. App. P. 32(a)(7)(C) and Circuit Rule 32-1 that the foregoing brief is proportionately spaced, has a typeface of 14 points, and contains 4,325 words.

November 4, 2011

/s/_____
Douglas Gillies
Attorney for MARGARET CARSWELL