IN THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, STATE CALIFORNIA
DIVISION SIX

DOUGLAS GILLIES, Plaintiff and Appellant, v. CALIFORNIA RECONVEYANCE CO., JP MORGAN CHASE BANK N.A., and DOES 1-20 Defendants and Respondents.	Case No. B224995 Santa Barbara Superior Court Case No. 1340786 **APPELLANT'S REPLY BRIEF**

Appeal from Judgment of Dismissal following Order Sustaining Defendants' Demurrer to First Amended Complaint Without Leave to Amend

Trial court: Hon. Denise de Bellefeuille and Hon. Thomas Anderle, presiding

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Plaintiff and Appellant *in pro per*

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1. INTRODUCTION – RESPONDENTS ARE NOT MORTGAGEES

Respondents' Brief is sprinkled with adjectives: "technical and strained linguistic interpretation," (inadvertently attributed to the trial court on page 7), "dubious interpretation," "strained interpretation" (page 10). Strained means stressed, tense, worried, nervous, anxious, or overwrought.

Perhaps suitable adjectives can be found in the recent case of *U.S. Bank National Assn. vs. Ibanez,* ___NE2d___, 458 Mass. 637, 2011 WL 38071 (January 7, 2011), where the Massachusetts Supreme Court held that U.S. Bank and Wells Fargo failed to prove that they owned the mortgages when they foreclosed on homes. Justice Gants wrote for the unanimous court, "the foreclosing entity must hold the mortgage at the time of the notice and sale in order accurately to identify itself as the present holder in the notice and in order to have the authority to foreclose under the power of sale." 2011 WL 38071, *9.

At the conclusion, Justice Gants wrote, "The legal principles and requirements we set forth are well established in our case law and our statutes. All that has changed is the plaintiffs' apparent failure to abide by those principles and requirements in the *rush* to sell mortgage-backed securities." 2011 WL 38071, *11. Justice Cordy added, "I concur fully in the opinion of the court, and write separately only to underscore that what is surprising about these cases is not the statement of principles articulated by the court regarding title law and the law of foreclosure in Massachusetts, but rather the utter *carelessness* with which the plaintiff banks documented the titles to their assets." 2011 WL 38071, *12.

An emerging issue in this case is that Chase, a self-described servicer, offers no proof that it is authorized to foreclose, or that it can identify the lender or holder of the note. Can Chase take plaintiff's home without offering a single fact to support its claim? Instead of offering documentary evidence

that would tend to show that they are authorized to foreclose, Respondents argue (1) that the notices were sufficient, even though they did not state the name of the trustor on the Notice of Default and the Notice of Trustee's Sale, and (2) they mailed a "copy" of a Notice of Default that differed from the recorded version.

Rushed and *careless* may describe the Notice of Default and the Notice of Trustee's Sale recorded by Respondents in this case. It is not a merely a technical defect to bungle the trustor's name on a Notice of Default when it is to be recorded in a Grantor/Grantee Index. The document cannot be located by anyone other than the person who filed it if the name is incorrect. The NOD disappears as soon as it is recorded, which explains the difficulties described in the Declaration of Douglas Gillies dated November 24, 2009 (CT 020:1-4) What seems dubious is the confidence expressed by JPMorgan Chase and its in-house trustee, California Reconveyance Co., as they touch briefly on the issue of fumbling the trustor's name at the end of Respondents' Brief. They suggest that the content of a NOD and a NOTS really doesn't matter so long as they put a copy of the notice in the mail, or tack a copy to the owner's front door, so that it is delivered to the homeowner.

A U.S. postage stamp can assure that an envelope will be delivered door-to-door on the far side of the world, from the Virgin Islands to Guam, for less than 50¢, but it cannot cure a defective notice. Delivery of a defective notice is not an act of absolution. Not just any name will do on a notice that serves as a substitute for judicial oversight of a foreclosure in a non-judicial state.

2. STANDARD OF REVIEW WHEN DEMURRER GRANTED WITHOUT LEAVE TO AMEND

A demurrer both tests the legal sufficiency of the complaint and involves

the trial court's discretion. An appellate court employs two separate standards of review on appeal. Appellate courts first review the complaint de novo to determine whether or not the complaint alleges facts sufficient to state a cause of action under any legal theory, to determine whether or not the trial court erroneously sustained the demurrer as a matter of law. Second, if a trial court sustains a demurrer without leave to amend, appellate courts determine whether or not the plaintiff could amend the complaint to state a cause of action. *Cantu v. Resolution Trust Corp.* 4 Cal.App.4th 857, 879 (1992).

Under the de novo review, “we examine the complaint's factual allegations to determine whether they state a cause of action on any available legal theory. We treat the demurrer as admitting all material facts which were properly pleaded. However, we will not assume the truth of contentions, deductions, or conclusions of fact or law, and we may disregard any allegations that are contrary to the law or to a fact of which judicial notice may be taken.” *Ellenberger v. Espinosa* 30 Cal.App.4th 943, 947 (1994).

3. "NEW" ISSUES AND "NEW" CONTENTIONS WERE PRESENTED ORALLY AND IN WRITING TO THE TRIAL COURT

Respondents argue on page 13, "Appellant set forth a host of new issues that purportedly arise in the FAC. However, none of these new contentions justify reversing the Trial Court's ruling."

The "host of new issues" and "new contentions" adds up to three. All three were addressed in the trial court, so the characterization as "new" is dubious. Adopting Respondents' numerals:

(a) A Misspelled Name on a Notice of Default and Notice of Trustee's Sale is a Substantial Error

1) Respondents first address their own troublesome conduct of recording a Notice of Default and a Notice of Trustee's Sale that did not state the name of

the Trustor, as required by Cal. Civ. Code §2924. This made it impossible for two attorneys and a clerk in the County Recorder's officer to find the notices in the Official Records of Santa Barbara County (RT 005:4-15).

Plaintiff alleged in the First Cause of Action of his FAC that defendants are not entitled to sell the residence on the grounds that they did not record a notice of default (FAC ¶ 9). As it turned out, defendants recorded a notice that could not be found. When the defect was finally detected (without the benefit of an Answer from Defendants or any opportunity for discovery) Plaintiff raised the issue in his Points and Authorities in Opposition to Demurrer (CT 0121:7-17) and during oral argument (RT 005:4-19). He argued that the NOD and the NOTS did not state the name of the trustor in a manner that would allow them to be properly indexed or located in the county's Grantor/Grantee index. Plaintiff requested leave to amend the complaint to describe this defect (CT 0121:15-17) (RT 008:2-5). The court did not speak to this issue, acknowledge the defect, or grant Plaintiff leave to amend.

Now Chase and CRC argue that failure to state the trustor's name in a NOD is immaterial (p. 13). CRC, a trustee that files foreclosure documents for Chase every day in California, seeks the court's blessing for notices that will never be found in the Official Records.

Hitler was a German politician. Mitler is an American actor. One letter can make a substantial, material difference when real property is being transferred.

(b) Copy Means Identical, Not More or Less Similar

2) Respondents claim that Appellant sets forth a new issue is his Opening Brief that a true copy of the recorded NOD was not mailed to the trustor. The FAC alleged in ¶15, "no beneficiary or authorized agent has *delivered*, *served*, or recorded a notice of default that complies with Cal. Civ. Code §2923.5" (CT 0030:19-23). Respondents argue that the differences between the recorded

notice and the copy of the notice are not material or substantial. Those qualifiers do not appear in the statute. Civ. Code §2924 does not require that a substantially similar copy be mailed to the trustor, or that immaterial defects, such as the name of the trustor, can be overlooked. The differences between the notices suggest that something was amiss at California Reconveyance, but their litigation strategy appears to be avoidance of discovery. Why were two different notices manufactured by CRC? Anyone who uses a computer knows that it takes considerable effort to generate two entirely different versions of a document. Acknowledging that the notices differ, Respondents offer a new standard for copies of recorded documents. Substantial materiality. Title companies may find reasons to object.

To test the feasibility of Respondents' dubious standard for "copy," one can simply attempt to determine if the NOD at CT 0036 – 0037 is identical to the NOD at CT 0110 – 0111. The fonts are different (compare the phone numbers top-left or compare signature blocks), the content is different ("space above this line for recorder's use only" appears on only one), justification is different (see bottom paragraph on first page), the lines on page two do not line up when comparing versions, the signature and name of the person signing the notice is missing from the copy. These differences required time and effort on the part of CRC. One question for discovery: did anyone at CRC take the time to compare versions to assure that they were identical?

Court rules require that Appellant deliver a copy of his Reply Brief to each Respondent. Appellant requests the court to consider whether a copy of this Reply Brief would satisfy the requirement if both briefs conformed to Rule 8.204 (b), but the differences between them were font, justification, spacing, content, and signature. Is "substantial materiality" a standard the court would adopt for copies of briefs served to Respondents in the Court of Appeal?

The following page is a "substantially similar" copy of this page:

and the copy of the notice are not material or substantial. Those qualifiers do not appear in the statute. Civ. Code §2924 does not prescribe that a substantially similar copy be mailed to the trustor, or that immaterial defects, such as the name of the trustor, can be overlooked. The differences between the notices suggest that something was amiss at California Reconveyance, but their litigation strategy appears to be avoidance of discovery. Why were two different notices manufactured by CRC? Anyone who uses a computer knows that it takes considerable effort to generate two entirely different versions of a document. Acknowledging that the notices differ, Respondents offer a new standard for copies of recorded documents. Substantial materiality. Title companies may find reasons to object.

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By changing the font from Times 13-point to Courier 14-point, this brief grows from 17 pages to 26 pages. The only way to determine whether the second brief is a true copy would be to compare the versions word for word, and it takes two people. This is the standard for "copy" Respondents ask the court to adopt in a matter of equal importance—notices that result in evicting homeowners and selling their homes. The only way to determine whether Respondents' copy of the Notice of Default is a true copy of the recorded version is be to compare them word for word.

(c) If a Contract Never Formed Between Appellant and WaMu, FDIC Cannot Fabricate a Contractual Duty to Pay In Favor of Respondents

3) The third "new issue" that Respondents contend first appeared in Appellant's Opening Brief is whether the FDIC or Congress have the power to grant Chase the assets of WaMu for half a cent on the dollar—$1.88 billion for $307 billion in assets (CT 0061, 0088) while absolving Chase of all of WaMu's liabilities. Respondents asked the trial court to take judicial notice of the Purchase and Assumption Agreement when they demurred. This issue was raised in the trial court, where Plaintiff argued in his Opposition to Demurrer (CT 0119:5-25):

> Defendants hasten to call attention (to) paragraph 2.5 of the agreement between FDIC and Chase, quoting paragraph 2.5 in a footnote attached to the first reference to Chase in the Notice of Demurrer, as if to suggest that the Federal Government, through one of its of administrators, has the power to grant Chase all the benefits of a contract between Plaintiff and WaMu while leaving all of the obligations and liabilities with the bankrupt shell of a holding corporation. This would constitute a taking, which is not within the power of the Administration, the Congress, or the courts.

The court did not rule on Respondents' request for judicial notice of the

Purchase and Assumption Agreement. The question of whether Chase can take title to Plaintiff's house based on nothing but a Purchase and Assumption Agreement, which has not been received into evidence, is an issue that cannot be resolved on demurrer. Chase offers no note, no assignment of beneficial interest, and no hint of where the money goes when it collects monthly payments from Appellant.

4. CIVIL CODE §2924 REQUIRES THE CORRECT NAME OF THE TRUSTOR(S) ON A NOTICE OF DEFAULT

At no time did Appellant suggest that the Notice of Default and the Notice of Trustee's Sale be "invalidated," as asserted by Respondents in their brief at page 13. The notices were not valid in the first place under §2924.

Cal. Civ. Code §2924 prescribes the requirements of notice when a party seeks to foreclose on real property in California:

> (1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:
>
> (A) A statement identifying the mortgage or deed of trust **by stating the name or names of the trustor or trustors** and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.

Respondents' NOD and NOTS did not state the name of the trustor, Douglas Gillies. The NOD was invalid because it did not conform to §2924. Neither notice turns up in a search of the Official Records, and any attempt to transfer title at a Trustee's Sale would be defective. Even if the bank takes title to the property as REO, it will hold it with a break in the chain of title.

5. CIVIL CODE §2924C (B)(1) REQUIRES THE NAME OF THE BENEFICIARY ON A NOTICE OF DEFAULT

Cal. Civ. Code §2924c (b)(1) requires that the beneficiary or mortgagee be identified on the Notice of Default. This is consistent with the rule that only the holder/owner of the note and mortgage can institute a foreclosure action if the homeowner stops making their mortgage payments.

> **§2924c (b)(1)** The notice, of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:
> ...
> To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:
>
> _____
> (Name of beneficiary or mortgagee)
>
> _____
> (Mailing address)
>
> _____
> (Telephone)

The Notice of Default recorded by Defendants recites the name of JPMorgan Chase Bank, National Association in the line where §2924c (b)(1) requires the name of beneficiary or mortgagee. See Defendants' Request for Judicial Notice in Support of Demurrer, Exhibit 3 (CT 0110-0111). Chase is not a beneficiary or mortgagee, so the NOD is misleading and inaccurate. It is merely a servicer.

6. DEFENDANTS DID NOT COMPLY WITH CIV. CODE § 2923.5

The Court of Appeal in *Mabry v. Superior Court of Orange County*, 185 Cal.App.4th 208 (4th Dist. June 2, 2010) found that a borrower has a private right of action under Cal. Civ. Code §2923.5 and is not required to tender the

full amount of the mortgage before filing suit, since that would defeat the purpose of the statute. The statute adds a procedural step in the foreclosure process, but since the statute is not substantive, *Mabry* found that it is not preempted by federal law. The *Mabry* appellate court held that the declaration required by §2923.5 does not have to be signed under penalty of perjury. The California Supreme Court denied a Petition for Review on August 18, 2010.

Mabry has been followed by various Federal District Courts in California. In *Das v. WMC Mortgage* No. C10-0650 (N.D. Cal. Oct. 29, 2010), the magistrate found that tender was not required.

> The whole purpose of this section (Civ.Code §2923.5) is to allow a homeowner an opportunity to at least discuss with the lender the possibility of loan modification. Where such communication does result in loan modification, the homeowner can avoid foreclosure even if he or she would not otherwise be in a position to fully "redeem" the property at a foreclosure sale. In situations like this, a requirement that the homeowner tender the entire amount of the secured indebtedness would actually defeat the purpose of the statute.(page 5-6).

On remand after appeal, the *Mabry* trial court found in *Mabry v. Aurora Loan Services*, Orange County Superior Court Case No. 30-2009-00309696 (Dec. 17, 2010), "that the Notice of Default does contain the statutorily required form language that the Lender contacted the Borrower, tried with due diligence to contact the Borrower, etc. However, the declaration on the NOD is not made under penalty of perjury, and therefore has no evidentiary value concerning whether the Defendant otherwise satisfied the provisions of Civil Code Section 2923.5." (page 2-3).

The Hon. David Velazquez found that Aurora did not adequately fulfill the due diligence requirements that are necessary to benefit from the exceptions of subdivision (a) of Civil Code §2923.5, and that "due diligence" under the statute requires compliance with all of the requirements of 2923.5(g).

The trial judge found that Aurora did not comply with the requirements of Civil Code § 2923.5(a)(2) in that they did not inform Plaintiff that he had a right to request a subsequent meeting, and that if requested, the mortgagee, beneficiary or authorized agent would schedule the meeting to occur within 14 days. Nor did Respondents post a prominent link on the home page of its Internet website containing all the information required under Civil Code §2923.5(g)(5)(A) through (D).

The court stayed all foreclosure proceedings concerning the Mabry's residence until defendant Aurora complied with the requirements of §2923.5.

Appellant requests that the court take judicial notice of the *Mabry* trial court's order in November 2010 granting Mabry's motion for preliminary injunction and staying foreclosure proceedings until the defendant has complied with the requirements of §2923.5.

Continuing Education for the Bar (CEB) recommends the following form for a Notice of Default in its practice guide, *Mortgages, Deeds of Trust, and Foreclosure Litigation*, (4th ed. 2011):

DECLARATION UNDER CC §2923.5

I declare that:

I am _ _[the beneficiary/an authorized agent of the beneficiary]_ _ of the foregoing deed of trust. I initially attempted to contact the borrower (trustor under the deed of trust) by sending a first-class letter that included the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency.

I contacted the borrower _ _[in person/by telephone]_ _ on _ _[date]_ _ to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, I advised the borrower that he or she had the right to request a subsequent meeting and, if requested, that it would be scheduled within fourteen (14) days. The borrower _ _[did/did not]_ _ request the subsequent meeting. I also gave

the borrower the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

I attempted to contact the borrower _ _[in person/by telephone]_ _ on the following dates _ _[list all dates of attempted contact and results of each attempt]_ _. This was done to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. I exercised due diligence to further contact the borrower as follows: _ _[list all actions taken to contact borrower and results as required by *CC §2923.5(g)*]_ _.

No contact with the borrower was required because the borrower surrendered the property on _ _[date]_ _ to the _ _[trustee/beneficiary/authorized agent]_ _, the borrower contracted with an organization, person, or entity whose primary business is advising how to extend the foreclosure process, or the borrower filed a bankruptcy petition and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case or granting stay relief.

__[Signature of declarant]__
_ _[Declarant's typed name]_ _

Compare the CEB form to the mailed copy of Respondent CRC's §2923.5 declaration of the Notice of Default (CT 0036 – 0037; CT 0110 – 0111):

The beneficiary or its designated agent declares that it has contacted the borrower, tried with due diligence to contact the borrower as required by California Civil Code 2923.5, or the borrower has surrendered the property to the beneficiary or authorized agent, or is otherwise exempt from the requirements of §2923.5.

Date: 8/12/2009

California Reconveyance Company, as Trustee

Original document signed

No evidence has been introduced to show that Respondents contacted Appellant and informed him that he had a right to request a subsequent meeting, and that if requested, the beneficiary or authorized agent would schedule the meeting to occur within 14 days, or that Respondents posted a

prominent link on the home page of their Internet website. It is their burden to show §2923.5 compliance, and a "declaration" that is not signed under penalty of perjury has no evidentiary weight. However, if Appellant is given an opportunity to amend his complaint, which was hastily drafted in 2009 before any case law had developed around §2923.5, he will allege that neither Chase nor CRC contacted Appellant as required by §2923.5.

Respondents argue on page 7 of their Brief that there is no requirement in Civ. Code §2923.5 that the declaration in the NOD specify who made the declaration. This startling interpretation of legislative intent is offered with only one citation—the trial judge.

Respondents testify on page 6 that the original document was signed by an employee of CRC, acting as a trustee of the Subject Loan. Appellant moves to strike Respondents' testimony until he is afforded an opportunity to cross-examine the witness.

7. NAME OF TRUSTOR IS MATERIAL AND NECESSARY

The system for recording and indexing documents in California is spelled out in Miller & Starr, *California Real Estate* (3d ed.) § 11:19. The recorder must describe the instrument in an index so that the document can be located. Cal. Gov. Code, §§27232 to 27263. The recorder has a choice of two indexing systems, and an instrument that is not recorded and indexed in a book or record recognized by one of these two systems does not constitute notice of its contents. *Hochstein v. Robero*, 219 Cal. App. 3d 447, 452 (1990).

Santa Barbara County uses a grantor/grantee index, the more commonly used general indexing system, in which two indexes are maintained by the recorder–one for "grantors" and one for "grantees." The "grantors" index lists the names of grantors of deeds, mortgagors, trustors of deeds of trust, defendants in recorded judgments, lessors, and all other persons who, by the

face of a recorded document, have conveyed, transferred or lost some lien, interest, or estate in real property. Cal. Gov. Code §27833.

On exercise of the power of sale, the trustee's deed is indexed under the name of the trustor and the grantee. Cal. Gov. Code §27263.

Respondents did not satisfy the requirement in Cal. Civ. Code §2924 that the NOD and NOTS state the name of the Trustor. Chase suggests that so long as the bank gives a homeowner notice that it intends to take the house, they can put the wrong name on the Notice of Default and the Notice of Trustee's Sale.

In the current tsunami of foreclosures, as the United States approaches nine million foreclosures in 2009-2012, all the banks would need to do is type up various versions of a NOD and a NOTS bearing any name—John Doe, Jane Smith—and bring it to the attention of the homeowner, however that may be—paste it to the windshield of their car, nail it to the front of the house, crinkle it up in a ball and bounce it off the homeowner's hat—a notice that doesn't even recite the homeowner's name.

Chase states that a NOD was recorded on August 13, 2009 in the official records and argues that the only basis for the first cause of action for declaratory relief is the erroneous allegation regarding the non-recordation of the NOD. It was the NOD that was erroneous, not Appellant's allegation.

8. INJUNCTIVE RELIEF IS WARRANTED IN THIS CASE

An injunction will issue if a Plaintiff demonstrates:

1) a likelihood of success on the merits.

Respondents cannot convey clear title based on a fictitiously named trustor, and Respondents have not shown that they are lenders or beneficiaries, so plaintiff is likely to win. Any deed Chase issues at a trustee's sale will be uninsurable.

2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is denied.

Taking somebody's house, moving them into the street, hauling away their possessions, and selling the house to strangers will cause suffering.

3) the threatened injury to Plaintiff outweighs any damage the injunction might cause to defendant.

Respondents will be burdened with an empty house they cannot sell.

4) the injunction will not disserve the public interest.

Abandoned homes and homeless millions on the streets do not serve the public interest.

The Center for Responsible Lending reported 2,800,000 foreclosures in the United States in 2010, and projects a total of 9,000,000 foreclosures between 2009-2010. The total number of past due mortgages at the end of the first quarter in 2010 was 6,215,249. Lost home equity wealth in the U.S. due to nearby foreclosures is projected to be $1.9 trillion (2009-2012).

In California, the Center projects that lost home equity between 2009 and 2012 will be $627 billion. There were 532,000 state foreclosures in 2010. The total will reach 1,888,716 between 2009-2012. The total number of past due mortgages in California at the end of the first quarter in 2010 was 944,081. www.responsiblelending.org/mortgage-lending/tools-resources/factsheets/california.html

A recent article in McGeorge Law Review reported that California now leads the nation in the housing bust, as reflected in sharply decreasing values and high foreclosure rates. The median price of a California home declined by 38.2 percent between 2007 and 2008 and continues to decline. As of January 2009, “California had the second-highest state foreclosure rate” in the country, with one in every 173 homes receiving a filing. Furthermore, California is home to “six of the country's top ten metropolitan areas with the highest

foreclosure rates.” Michael F. Hearn, "Does Opportunity Knock? The California Foreclosure Prevention Act of 2009," McGeorge Law Review (2010).

Reining in illegal foreclosures in California will serve the public interest.

9. QUIET TITLE DOES NOT REQUIRE TENDER OF THE DEBT TO ALL CHALLENGERS WHO FILE A NOTICE OF DEFAULT

The trial court stated that the mortgagor cannot quiet the title against the mortgagee without first paying the underlying debt (CT 0147:1-3), but neither defendant has alleged that it is the mortgagee. Chase asserts on the NOTS that it is a servicer. In its pleadings it describes itself as an acquirer of certain (undefined) assets, but offers no evidence to show that Appellant 's note was an asset of Washington Mutual when Chase acquired "certain" undefined assets in September 2008. CRC claims to be a trustee. Appellant is not indebted to either defendant, yet they have published notices of their intention to sell his property.

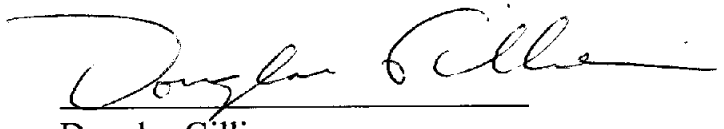
Defendants assert that quiet title is not available as a remedy to a California homeowner against an out-of-state bank that presumes to sell title to his property on the courthouse steps at a fraction of its value and to a bona fide purchaser, i.e. anyone with a cashier's check, despite the fact that the homeowner and the bank have never done business with each other, the bank has made no effort to produce a note or any evidence of authorization from a lender to support its claim, and it has not given the homeowner any assurance that his payments are being forwarded to the lender. The requirement of tender can't be imposed on homeowners to the enrichment of every carpetbagger, con man, or East Coast city slicker who files a notice with the County Recorder to stake his claim.

Respondents argue that recording a notice of default or a notice of trustee's

sale does not affect Plaintiff's ownership right in the property. Selling it does.

Respectfully submitted,

Date: February 15, 2011

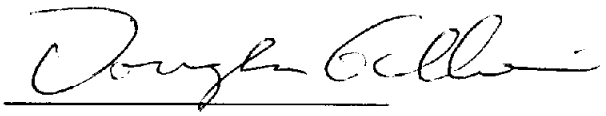


Douglas Gillies
Plaintiff and Appellant

CERTIFICATE OF COMPLIANCE

Plaintiff and Appellant hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of Douglas Gillies is produced using 13-point Roman type, including footnotes and contains approximately 4,893 words, which is less that the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program us3ed to prepare this brief.

Date: February 15, 2011



Douglas Gillies
Plaintiff and Appellant *in pro per*

PROOF OF SERVICE

I am at least 18 years of age and not a party to the above-entitled action. My address is 3756 Torino Drive, California; I am a resident of Santa Barbara County, California.

On February 16, 2011, I served the foregoing APPELLANT'S REPLY BRIEF by depositing a copy thereof in the United States mail in Santa Barbara, California, enclosed in a sealed envelope, with postage fully prepaid, addressed to:

Michael B. Tannatt
Adorno Yoss Alvarado & Smith
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Clerk
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Santa Barbara, CA 93121

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
(via electronic brief submission)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 16, 2011, at Santa Barbara, California

_____
Linda Folk