

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,
FKA BANK OF NEW YORK,
Respondent.

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AFFIDAVIT OF LANE HOUK

I, Lane Houk, declare the following under penalty of perjury, based on my personal knowledge:

1. I am a subject matter expert on foreclosure litigation and the secondary mortgage market and am employed as a Mortgage Originator and a Mortgage Loan Compliance and Securitization Analyst. *See Exhibit A.* I have nine years experience in the mortgage banking and finance profession along with over one thousand hours of research and study in the areas of the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), Foreclosure Litigation, Asset-Backed Securitization and its effects and applications in Foreclosure and Loss Mitigation.
2. I maintain regular continuing education in banking and finance in the state of Florida and am registered with the Nationwide Mortgage Licensing System, NMLS No. 374936, and am highly competent with the state and federal disclosure requirements in federally related mortgage loan transactions and am required to regularly prove such competency along with maintaining a high degree of

knowledge in the mortgage-backed securitization process and transfer/conveyance aspects of mortgage loans after loan closing.

3. As a mortgage industry expert, I have been hired in dozens of foreclosure cases by defense attorneys in Lee County and in other jurisdictions in and outside of Florida. I have provided affidavits of expert opinion on at least ten foreclosure cases in Lee County alone and have reviewed documents for well over one hundred foreclosure cases in Lee County. As a mortgage industry expert, I investigate and analyze mortgage loan and related documents such as the assignment and conveyance documents and any documents produced in discovery related to the mortgage loan in any way. I render a report on the origination of the loan and the extent of its compliance with federal laws which I am required to comply with in the daily practice of originating and closing mortgage loans. I also investigate whether the lender engaged in any possible predatory lending, fraudulent inducement or misrepresentation at the time of origination depending on the testimony of the borrower during the process of my examination.
4. I developed Course No. 2567 with the Lee County Bar Association and Florida Bar Association to provide continuing legal education to attorneys, industry professionals and paralegals on the Truth in Lending Act, TILA Rescission Rights, foreclosure litigation, mortgage-backed securitization and how these issues find applicability in judicial foreclosure actions.
5. I was also the Co-Chair of the Lee County Foreclosure Taskforce (hereinafter “the Taskforce”) and held that position starting in August 2008. The Taskforce was commissioned by the Lee County Bar Association in July 2008, with a one-year

grant from the Florida Bar Association. The Taskforce was convened in order to address the foreclosure crisis that had erupted in Lee County. Its primary goal was to educate the public about the foreclosure process, and to that end we held a series of foreclosure seminars taught by attorneys, which discussed the legal rights of persons facing foreclosure.

6. In late 2008, I and several other Taskforce members became extremely concerned about the level of what appeared to be fraudulent assignments and affidavits we were witnessing in Lee County cases and requested a meeting with Chief Judge Cary to relay and address our concerns.
7. In response to our request, Nancy Aloia of the 20th Judicial Circuit, setup a meeting with Chief Administrative Judge Carlin. We met face to face with Judge Carlin, to discuss the Taskforce's concerns about fraudulent activity taking place in Lee County foreclosure courts and also the limited amount of time in hearings to actually consider the issues being presented. At that meeting, in chambers, we told Judge Carlin that we were concerned about the surge in flawed and fraudulent paperwork in foreclosure cases and I told him directly that it was highly likely that fraud was being committed in a great amount of cases to wrongfully foreclose on homeowners and that the fraud might even go as far as being labeled as systemic. We discussed lost note claims, defective affidavits, fraudulent assignments, and filing by plaintiffs who lacked standing to foreclose and were not even being held to the standard of documenting their allegations of standing in the process of legally seizing citizens' homes through foreclosure and the legal system. In addition, we told Judge Carlin that if he and/or the civil

judges selected ten to one hundred foreclosure cases at random from the Lee County docket, the Taskforce would go through those selected cases to highlight for the judiciary examples of fraud and misrepresentations.

8. At that meeting, Judge Carlin did not respond to our concerns about fraud. In fact, he noticeably avoided the issue. He told us he was “unwilling to state an opinion on the committee’s allegations of foreclosure fraud in the Lee County court system” and quickly moved on. He then proceeded to tell us that the job of a Chief Justice is the efficient disposition of cases and that he needed to dispose of all cases as quickly as possible.
9. At the time of our conversation, the foreclosure docket had already been separated from the regular civil docket in Lee County. However, the following summer, in complete deference to our raising the red flag to the systemic problems already occurring in the foreclosure dockets, Lee County implemented a new docket sounding system, further speeding up the dispensation of foreclosure cases and drastically increasing the number of summary judgment orders and final dispositions in favor of Plaintiffs.
10. I was also asked to personally call Judge Hugh Starnes on behalf of the Taskforce because Judge Starnes wanted to know more about these issues. I personally spoke with Judge Starnes via telephone for over 30 minutes during which I frankly informed him that I believed fraud and misrepresentation by mortgage servicing institutions was running rampant through the Lee County System and again offered to assist him in randomly selecting 10-100 foreclosure cases wherein a team of attorneys and industry professionals could actually examine

these files and point out the procedural and documentable issues one by one and I assured him that we would find fraud in more cases than he would think.

11. It is my firm belief that Judge Carlin and the civil judges of Lee County were aware of fraud perpetrated in Lee County foreclosure filings at least by the summer of 2009 and chose not to heed our warnings. The judiciary knew about lost note counts, false allegations of standing and fraudulent affidavits and were highly aware of the fact that in no other civil docket or proceeding in Lee County did Lee County judges award summary judgment at such a high percentage. However, rather than slowing down the foreclosure process and investigating our allegations, the judiciary instead chose to institute the docket sounding system in the summer of 2010 in order to speed up the process and dispose of foreclosure cases as quickly as possible.
12. Further, as an expert in Lee County foreclosure cases, I have reviewed files in well over one-hundred Lee County foreclosure cases. In all Lee County cases in which I was hired to investigate and evaluate, none of them had supporting documents attached to the affidavits filed in support of the Plaintiff's Motion for Summary Judgment, as required by Fla R Civ. Pro 1.1510(e). Accordingly, it is my belief that Fla. R Civ. Pro 1.510(e) is simply not being enforced in Lee County and Plaintiff's are not being required in any way to attach sworn to or certified copies any documents or records referred to in supporting affidavits.
13. It is further my belief that borrower/defendants in Lee County courts do not have access to a meaningful, fair and equitable tribunal, and are deprived of their basic constitutional rights to due process to defend the seizure of their homes by the

plaintiff and, in many cases, a plaintiff party that has merely alleged, not documented, the legal right to pursue such drastic remedy as seizure of a citizen's property through foreclosure while using the courts of the 20th Judicial Circuit as the conduit.

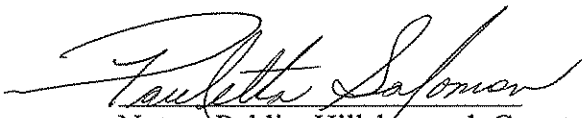
14. I believe this is being carried out even though the judiciary (and even the general public) is well aware of the massive fraud that has already made national headlines along with a progressively increased awareness of the possible systemic nature of millions of mortgage loans not being properly transferred in the securitization process. Regardless of these issues, the Lee County Court System has responded by dramatically reducing time to final disposition through its docket sounding administrative procedure in reckless disregard for the public interest and the constitutional rights of Lee County citizens.

FURTHER AFFIANT SAYETH NOT.

April 5, 2011
Date


Lane Houk

Subscribed and sworn to me on this
5th day of April 2011.


Notary Public, Hillsborough County, Florida

My commission expires: August 16, 2014

