

Case No: _____

In the Supreme Court of Illinois

U.S Bank National Trust National Association, not in its
Individual capacity but solely as Owner Trustee for
Queen's Park Oval Asset Holding Trust,

Plaintiff - Appellee

vs.

Mario Lopez; Martha Lopez.

Defendant - Appellants

On Petition for Leave to Appeal from the Illinois Appellate Court, Second District

No. 02-16-0967

There heard on appeal from the Eighteenth Judicial Circuit of DuPage County, Illinois

Case No. 14-CH-000473

The Honorable Robert G. Gibson presiding

MARIO LOPEZ & MARTHA LOPEZ PETITION FOR LEAVE TO APPEAL TO THE ILLINOIS SUPREME COURT

ORAL ARGUMENT REQUESTED IF PETITION IS ALLOWED

Daniel Khwaja, Esq.

1115 N. Ashland

Chicago, Illinois 60622

(312) 933-4015

dsk@ilforeclosurelawyer.com

Attorney for Defendant – Appellants

Mario Lopez and Martha Lopez

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Carolyn Taft Grosboll

SUPREME COURT CLERK

PRAYER FOR RELIEF

Pursuant to Illinois Supreme Court Rule 315, the Defendant-Appellants, Mario Lopez and Martha Lopez (“Defendants”), respectfully request that this Court grant them leave to appeal from the May 4, 2018, decision of the Illinois Appellate Court, Second District, which affirmed in part, and vacated in part, the decision of the Eighteenth Judicial Circuit.

STATEMENT OF JURISDICTION

Illinois Supreme Court Rule 315 confers jurisdiction upon this Court. The Appellate Court issued its first opinion on November 14, 2017, reversing the judgment, vacating all orders, and dismissing Plaintiff, U.S. Bank’s foreclosure action for lack of standing. On December 15, 2017, Plaintiff’s Petition for Rehearing was allowed. On May 4, 2018, the Appellate Court issued its second opinion, which affirmed in part, vacated in part, the trial court’s orders. The filing of this petition for leave to appeal on June 7, 2018, is timely.

POINTS RELIED UPON

This case presents a matter of significant importance regarding Supreme Court Rule 113 promulgated by this Court; the proper test for a non-holder with rights of a holder under the Uniform Commercial Code, and whether a Plaintiff can retroactively cure its standing by amendment. The issues are a case of first impression in this state, although it is noteworthy that these issues have been ruled upon differently than the Second District’s Second Opinion in other states. If the Appellate Court’s decision stands, a specific endorsement on a promissory note is meaningless, the application of the non-holder with rights of a holder test will not be uniformly applied, and Rule 113 has no practical application.

STATEMENT OF FACTS

On March 11, 2014, Plaintiff, U.S. Bank Trust, National Association (“U.S. Bank”) filed its original Complaint to Foreclose Mortgage (“Complaint”). The action was filed by U.S. Bank not in its individual capacity but solely as Owner Trustee for Queen’s Park Oval Asset Holding Trust. (V1, R. C2). The Mortgage and Note, as it currently existed, was attached to the Complaint. The Note was specifically endorsed to the “Secretary of Housing and Urban Development.” (“HUD”). There were no endorsements, or assignments of the Note to the Plaintiff when the Complaint was filed. (V1, R. C2-C16). In its original Complaint, Plaintiff alleged that it was the “legal holder of the indebtedness.” (V1, R. C3).

On May 12, 2014, Defendants filed their Answer and three (3) Affirmative Defenses; (1) Lack of Standing, (2) Violation of Supreme Court Rule 113, and (3) Non-Compliance with 24 C.F.R. §203.604. (V1 R. C33-C52). On October 27, 2014, a briefing schedule and hearing date was set on Plaintiff’s Motion to Strike. (V1, R. C61-C66, C78). On the hearing date, Plaintiff made an oral motion to amend its Complaint which the court granted. Defendants objected to the filing of an amended Complaint and argued a Rule 113 violation would occur. (V1, R. C106).

On November 7, 2014, Plaintiff filed an amended Complaint. (V1, R. C107-C123). Plaintiff now alleged that “on March 11, 2014 Plaintiff was a non-holder in possession of the Note with rights of a holder. Plaintiff is currently the legal holder of the note.” (V1, R. C108). The amended Complaint attached an undated allonge which was not filed with the original Complaint. (V1, R. C122). The Allonge contained an endorsement that was executed after March 11, 2014, the filing of the foreclosure complaint. These facts were

adduced by the judicial admissions of the Plaintiff in its pleadings and in an affidavit of one of Plaintiff's attorneys, Robert Rappe Jr. (V2, R. 361).

The Allonge contained a special endorsement to "Queens Park Oval Asset Holding Trust." (V1, R. C122). Defendants argued in the trial court that the allonge attached to the amended Complaint was a violation of recently enacted Supreme Court Rule 113. On January 8, 2015, Defendants presented a combined Motion to Dismiss Plaintiff's Amended Complaint pursuant to 735 ILCS 5/2-619.1 and Supreme Court Rule 113. (V1, R. C124). Defendants argued that Plaintiff lacked standing to file the foreclosure action, and that it violated Supreme Court Rule 113, as the Note was endorsed to a non-party to the case and not to the Plaintiff. On March 18, 2015, the trial court denied Defendants' Combined Motion to Dismiss, with leave granted to file an Answer. (V1, R. C274).

On April 16, 2015, Defendants filed an Answer with Affirmative Defenses to Plaintiff's Amended Complaint to Foreclose Mortgage. (V1-V2, R. C275-C306, C307-C339). Defendants specifically denied Plaintiff's new legal allegation as to paragraph 3N, raised the Affirmative Defenses of lack of standing and non-compliance with 24 C.F.R § 203.604. Defendants reiterated within their standing defense that Supreme Court Rule 113 was violated. The Plaintiff admitted they were not in possession of an endorsed note at the original filing. (V1, R.264).

On August 26, 2015, Plaintiff presented its 735 ILCS 5/2-619.1 Motion to Strike Defendants' Affirmative Defenses. (V2, R. C404). The Motion to Strike contained exhibits including an assignment of the mortgage, without the note, various affidavits, and a Federal Express tracking label. (V2, R. C355 - C401). Plaintiff maintained that the mortgage assignment established its legal capacity as a "non-holder with rights of a holder" when the

Complaint was filed. The mortgage assignment did not attempt to assign the Note. (V2. R. 358). On September 24, 2015, Defendants filed their Response to Plaintiff's 735 ILCS 5/2-619.1 Motion to Strike. (V2, R. C406-C500). Defendants maintained that Plaintiff's Motion was procedurally improper, in that, it utilized a 735 ILCS 5/2-619 which is available only to a Defendant, that Plaintiff lacked standing, and violated Supreme Court Rule 113. Defendants further maintained that Plaintiff failed to follow mandated servicing guidelines under 24 C.F.R § 203.604.

On November 4, 2015, the trial court granted Plaintiff's Motion to Strike and struck the Defendants' Affirmative Defenses with prejudice, thereby precluding Defendants from correcting any deficiencies in their affirmative defenses. (V2. R. C508). The trial court held that the Plaintiff was a "non-holder with rights of a holder." (ROP 11-12, L13-L24, L1-L10). Subsequently, with Defendants' Affirmative Defenses stricken, Summary Judgment, and a Judgment of Foreclosure and Sale was granted in favor of the Plaintiff on July 18, 2016. (V2, R. C621-C629). On November 7, 2016, Plaintiff's Motion to Confirm Sale was granted. A personal deficiency was awarded against the Defendants in the amount of \$144,857.75. (V3, R. C651-C653).

On November 16, 2016, the Defendants file a timely notice of appeal pursuant to Supreme Court Rule 301 and 303. Defendants appealed to the Appellate Court, the orders granting Plaintiff its Oral Motion to Amend the Complaint on October 27, 2014; the March 18, 2015, order denying the Defendants' Combined Motion to Dismiss pursuant 735 ILCS 5/2-619.1 and Illinois Supreme Court Rule 113; the November 4, 2015, order granting Plaintiff's Motion to Strike Defendants' Affirmative Defenses; the order of July 18, 2016, granting Plaintiff's Motion for Summary Judgment, and a Judgment of Foreclosure and

Sale, and the order entered on November 7, 2016, granting Plaintiff's Motion to Confirm the Sherriff's Report of Sale and Distribution. (V3, R. C655-C657). Subsequently, the Appellate Court granted the Defendants' request for Oral Argument, and the matter was heard before the Appellate Court on October 3, 2017.

On November 14, 2017, the Second District Appellate Court of Illinois, issued its first opinion ("first opinion") with a unanimous panel, reversing the trial court decision, vacating all orders, and dismissing the foreclosure action for Plaintiff's lack of standing. The Court ruled that the Note on its face showed it was not endorsed to the Plaintiff at the original filing, and that the allonge was endorsed to the Plaintiff after the filing of the original Complaint. The Court also held that the assignment of mortgage created no rights on behalf of the assignee, because it was merely a transfer of the mortgage, and not a transfer of the Note. (A1).

On December 5, 2017, the Appellate Court withdrew its opinion on its own motion and stated that a new opinion would be issued in due course. (A10). Sometime thereafter, the Plaintiff filed a Petition for Rehearing. On December 15, 2017, the Appellate Court entered an order allowing the Petition for Rehearing and setting a briefing schedule on the matter. (A11). On January 10, 2018, the Defendants filed their Response to Plaintiff's Petition for Rehearing.

On May 4, 2018, the Appellate Court issued its second opinion ("second opinion") in this matter. The Appellate Court affirmed in part, and vacated in part, the decision of the trial court. The Appellate Court determined that the Plaintiff had standing and affirmed the trial court order striking Defendants' Affirmative Defense with prejudice. The Appellate Court vacated the order granting Plaintiff's Motion to Strike Defendant's

affirmative defense concerning Plaintiff's non-compliance with 24, C.F.R. 203.604, and the judgment of foreclosure and sale. (A12).

The Defendants now Petition for Leave to Appeal to the Illinois Supreme Court, requesting review of the Appellate Court's orders affirming the striking of Defendants' Affirmative Defense of Lack Standing, their procedural challenge under Supreme Court Rule 113, the proper test for an alleged non-holder with rights of a holder, and the improper use of a Section 2-619 to strike the Defendants' Affirmative Defense with prejudice.

ARGUMENT

I. Supreme Court Rule 113 promulgated by this Court requires compliance; not evasion, and this Court should grant review to aid the lower courts in its application.

“You would think that with the number of cases – we had over 6600 cases at one point – that there wouldn't be new fact situations when it comes to standing”

The Hon. Judge Gibson. (ROP 11, L19-L21).

On May 1, 2013, this Court promulgated Supreme Court Rule 113 as applied to practice and procedure in mortgage foreclosure actions.

The rule states in part:

Rule 113. Practice and Procedure in Mortgage Foreclosure Cases:

(a) Applicability of the Rule. The requirements of this rule supplement, but do not replace, the requirements set forth in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) and are applicable only to those foreclosure actions filed on or after the effective date of May 1, 2013.

(b) Supporting Documents for Complaints. In addition to the documents listed in section 15-1504 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504), a copy of the note, as it currently exists, including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing.

Supreme Court Rule 113 is an additional requirement to the documents listed in section 15-1504 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504). *Ill. S. Ct. R*

113(b). Thus, a Complaint that does not comply with Supreme Court Rule 113 is *defective as a matter of law*. The Rule further states, “The requirements of this rule supplement, but do not replace the requirements set forth in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 -1101 *et seq.*) *Ill. S. Ct. R. 113*. The Rule contains mandatory “shall” language. Our Appellate Courts have repeatedly held when interpreting the Illinois Mortgage Foreclosure Law “shall” means “mandatory” and not permissive.” 735 ILCS 5/15-1105(b). *See Bank of Am., N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶100. (Grace-period-notice prerequisite in the foreclosure law was mandatory because it used the word “shall”). Rule 113(b)’s employment of the words “as it currently exists...at the time of filing” precludes reliance upon an allonge executed after the Complaint was filed.

This Court seemed to envision at the heart of this rule judicial economy and a reduction in the pleading defects filed by Plaintiffs. This Court stated in *Wells Fargo Bank v. McCluskey*:

“Additionally, we note that the new supreme court rules on mortgage foreclosure aim to alleviate many of the problems arising with regard to potential pleading defects in the underlying foreclosure proceeding, thereby resolving these issues at the earliest possible time.” *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 25.

However, unless the rule is strictly interpreted and applied, the problem has not been alleviated, and the instant matter demonstrates why review is necessary. The record reflects that on March 11, 2014, Plaintiff, U.S. Bank, filed its original Complaint to Foreclose Mortgage against Defendants in the *Circuit Court of DuPage County*. The Complaint was subject to Supreme Court Rule 113(b) because it was filed after May 1, 2013. The Note contained a special endorsement to HUD, *a non-party to the case*. The Code of Federal Regulations mandates assignment (of the Note) to Secretary of HUD

where the mortgagee has filed a claim for insurance benefits. *See 24 C.F.R. § 203.351*. There were no endorsements, or assignments of the Note to the Plaintiff attached to the original Complaint. (V1, R. C2-C16).

In its Complaint, Plaintiff alleged it was the “legal holder of the indebtedness.” (V1, R. C3). The statement constituted judicial admission. Under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) (“IMFL”) a Mortgagee, is defined as the holder of an indebtedness secured by a Mortgage or one claiming through a Mortgagee as a successor (735 ILCS 5/15 -1208 (West 2018)). Plaintiff’s contention that it was the “legal holder of the indebtedness” was not supported by the documents attached to its own Complaint; in fact, it was directly contradicted by them. The evidence introduced in the trial court demonstrated the Secretary of HUD had standing to enforce the Note at the time the original Complaint was filed. (V1. R. C16).

On October 27, 2014, Plaintiff made an Oral Motion to amend its Complaint at the time of the hearing on its Motion to Strike. The Defendants objected to the filing of an Amended Complaint and argued a Rule 113 violation would occur.

MR. KHWAJA: And I would like that over my objection, your Honor. (ROP 7, L17-L18).

THE COURT: Over your objection that they file an amended complaint? (ROP 7, L19-L20).

MR. KHWAJA: Yes, because I don’t see how it can be remedied, especially in violation of Supreme Court Rule 113, if they’re coming in with another endorsed note and additional endorsement. Also, like I said, what could they possibly state in their capacity as to that government agency who is the holder of the note? That they’re the agent or their servicer? I don’t see the relation. So I’m just generally requesting it’s over my objection because I don’t see what they could possibly amend and Plaintiff’s Counsel hasn’t stated that reason. (ROP 7-8 L21-L24; L1-L7).

THE COURT: All right. Well, you can note in the order that's over Mr. Khwaja's objection. (ROP 8, L11-L12).

If any violation of Rule 113 could be cured by amendment and by way of an oral motion, foreclosing lenders would have no incentive to comply with Rule 113's specific and mandatory obligations. Rule 113's mandate is clear from the language which it employs: "a copy of the note, as it currently exists, including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing." *Ill. S. Ct. R. 113*.

On November 7, 2014, Plaintiff filed an Amended Complaint. (R. C107-C123). The Amended Complaint *attached a new allonge which was not filed with the original Complaint*. (V1, R. C122). The recent enactment of Supreme Court Rule 113 created a procedural requirement. The Rule was designed to supplement the Illinois Mortgage Foreclosure Law, and thus, became fundamental to the filing of a mortgage foreclosure complaint. *Ill. Sup. Ct. R. 113*. The second part of Supreme Court Rule 113(b)... including all indorsements and allonges is of particular consequence and why review is necessary to determine this Court's intent...

Courts in this state have noted that Supreme Court Rule 113 could create issues for mortgage lenders if they elected not to comply. *See e.g. Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 14. The Appellate Court did not find Rule 113 applicable. This Court should reconsider that ruling, or Rule 113 in essence, is a mere suggestion. Such a result is not consistent with the spirit of the Rule.

According to the *Chancery Division of the Circuit Court of Cook County*, as of 2018 there are 18,606 foreclosures pending in Cook County alone. Therefore, the application of the Rule has great importance in this State. Moreover, it is irrational that 113 supplemental to the IMFL requires Plaintiff's to be a "holder" of the Note but does not address "non-

holders.” Therefore, either Rule 113 must be strictly applied, or it is unworkable and cannot provide guidance to practitioners and the courts. Compare the specificity found in Florida Rule of Civil Procedure which states in relevant part:

Rule 1.115. Pleading Mortgage Foreclosures

- (a) Claim for Relief. --A claim for relief that seeks to foreclose a mortgage or other lien which secures a promissory note on residential real property, including individual units of condominiums and cooperatives designed principally for occupation by one to four families, must: (1) contain affirmative allegations expressly made by the claimant at the time the proceeding is commenced that the claimant is the holder of the original note secured by the mortgage; or **(2) allege with specificity the factual basis by which the claimant is a person entitled to enforce the note** under section 673.3011, Florida Statutes. Fla. R. Civ. P. 1.115 (Emphasis added).

Therefore, Rule 113, if not strictly applied and enforced, it cannot and will not fulfill its stated purpose. This Court should grant review to clarify Rule 113 and consequences for non-compliance.

II. The Second District Appellate Court’s ruling allows standing to be cured retroactively by amendment obliterating well-established Illinois case law that standing must be determined at the inception of the case.

On November 14, 2017, the Second District Appellate Court, unanimously, reversed and dismissed this case based on Plaintiff’s lack of standing and stated:

“Similarly here, the note attached to the original complaint showed on its face that it was not indorsed to plaintiff. At the hearing on defendants’ motion to dismiss plaintiff amended complaint, plaintiff conceded that the note was not indorsed to plaintiff on the date the original complaint was filed. Plaintiff alleged that the copy of the note attached to its original complaint was a “copy of the note as it currently exists.” Thus, the allonge, which has no date of execution, must have been executed after the filing of the original complaint. As defendants observe, plaintiff’s admission that the note attached to its complaint was in its current form leaves no other possible interpretation. As in *Gilbert*, defendants have made a prima facie showing of a lack of standing, and plaintiff has failed to rebut it.” *United States Bank Trust Nat’l Ass’n v. Lopez*, 2017 IL App (2d) 160967 ¶22. (first opinion).

On May 4, 2018, without dissent, the Appellate Court reversed their own decision, and found the Plaintiff had standing. The instant matter is the first of its kind in Illinois, where an Appellate Court openly recognizes that: 1) When the Complaint was filed the Note was endorsed to someone other than the Plaintiff; 2) That no version of the Note existed at the time the Complaint was filed that was made payable to the Plaintiff; and 3) The Allonge that was attached to the Amended Complaint was endorsed to the Plaintiff, after the case was filed. *U.S. Bank Trust N.A. v. Lopez*, 2018 IL App (2d) 160967 ¶¶4-6, 29.

The ruling is in conflict with several decades of well-established Illinois case law that standing must be determined when the Complaint was filed. In this case, Plaintiff's standing was conferred much later, and certainly after the Complaint was filed. A post-filing endorsement simply cannot retroactively confer standing.

A plaintiff must have standing when it files its complaint; later events will not confer standing "retroactively." *See Innovative Therapies, Inc. v. Kinetic Concepts, Inc.*, 599 F.3d 1377, 1384-85 (Fed. Cir. 2010); *Prasco*, 537 F.3d at 1337; *see also Paradise Creations, Inc. v. U V Sales, Inc.*, 315 F.3d 1304, 1309-10 (Fed. Cir. 2003) (state law that purportedly vested title retroactively did not create standing where the plaintiff did not actually own the patents when it filed suit); *Enzo*, 134 F.3d at 1093-94 (post-complaint "nunc pro tunc" license did not confer standing) "[A] plaintiff must establish standing at the time suit is filed and cannot manufacture standing afterwards."; *Perry v. Vill. of Arlington Heights*, 186 F.3d 826, 830 (7th Cir. 1999) ("The requirements of standing must be satisfied from the outset.")

The Appellate Court in this case openly recognized that the Note was endorsed after the filing of the complaint. "Plaintiff attached to the original complaint all the necessary

documents that existed at the time of filing. **These did not include the allonge, as it did not exist at that time.**” *United States Bank Trust Nat'l Ass'n v. Lopez*, 2018 IL App (2d) 160967 ¶29 (Emphasis added). The Appellate Court’s second ruling in this instance simply did not appreciate that the Plaintiff was not the party who had the right to bring this cause of action when the Complaint was filed. If the facts alleged in a complaint differ from the facts stated in an exhibit, the exhibit controls. *De Vito v. Elburn*, 37 Ill. App. 2d 59, 60-61. (2nd Dist. 1962). Yet, here, that long-standing rule was ignored.

This case is fundamentally at odds with the requirements of a *prima-facie* case. Generally, the attachment of a note and mortgage establishes a *prima-facie* case. But the same is not true where the Note is made specifically payable to someone other than the Plaintiff who filed suit. Here, the Note was made specifically payable to HUD. **HUD was not the Plaintiff.** Title to a promissory note is transferred when the note is negotiated. *In re Diamond Mortgage Corp.*, 78 B.R. 196, 198-99 (Bankr. N.D. Ill. 1987). A promissory note, payable to order, is negotiated by both indorsement **and** delivery. *Id at 199.* (Emphasis added); *See also 810 ILCS 5/3-201(b)*. But the negotiation of the Note here occurred to the Plaintiff **after** the Complaint was filed.

As one court has stated:

“Even if Plaintiffs are able to obtain an assignment, the court is not convinced it will cure standing. "A plaintiff's standing to sue is determined as of the time the complaint is filed." If the Moving Plaintiffs obtain an assignment now, it will mean that standing to sue is not determined as of the filing of the complaint, but as of the time the assignment is executed. This has been rejected by courts in other situations....As a general matter, parties should possess rights before seeking to have them vindicated in court. Allowing a subsequent assignment to automatically cure a standing defect would unjustifiably expand the number of people who are statutorily authorized to sue.....The court is unwilling to oppose precedent to allow a post-complaint assignment to confer standing on a plaintiff who has already filed a complaint.” *Schwab v. Oscar* (In re SII Liquidation Co.), 2014 Bankr. LEXIS 291, *7-8, 2014 WL 232113.

The Appellate Court in its first opinion, correctly, recognized that the assignment of the Note to the Plaintiff occurred after Complaint was filed, and properly dismissed the action. According to the second opinion standing is not determined when the complaint is filed but, rather, at a later date, whenever the Plaintiff's manufacturing process is complete. In this case, eight months after the Complaint was filed.

The Courts that interpreted the first opinion, even when distinguishing it, understood the note being transferred after the complaint was filed (i.e. endorsed) was relevant to standing.

“In reply, defendant argues that standing must exist when the suit is filed, citing Deutsche Bank Nat'l Trust Co. v. Gilbert, 2012 IL App (2d) 120164, 982 N.E.2d 815, 367 Ill. Dec. 665, U.S. Bank Trust Nat'L Ass'n for Queen's Park Oval Asset Holding Trust v. Lopez 2017 IL App (2d) 160967.... We find the cases cited by defendant to be inapposite.... Second, in Gilbert and Lopez, the defendants presented documentary evidence that the note and mortgage were assigned to the plaintiff-mortgagee after the lawsuit commenced. See Gilbert, 2012 IL App (2d) 120164, ¶ 17; Lopez, 2017 IL App (2d) 160967, ¶20. These matters did not involve ownership via a purchase and assumption agreement, which is the issue in the case at bar.” Northbrook Bank & Trust Co. v. Abbas, 2018 IL App (1st) 162972, ¶¶55-56.

The first opinion has even been the subject of continuing legal education (“CLE”).

<https://www.iicle.com/blog/financial-services-flashpoints-january-2018/>

The course summary defines the case as follows:

“In U.S. Bank Trust National Ass'n v. Lopez, 2017 IL App (2d) 160967, the issue was whether the foreclosing mortgagee had to be the payee of a mortgage note when the foreclosure action was filed. It wasn't, but it did obtain an endorsement afterwards. The court said that was too late and sustained an affirmative defense asserted by the mortgagor.”

The CLE summary, though not relevant to the merits, properly reflects the facts of this case, and why the implications of the second opinion is highly problematic. In this case, the Plaintiff admitted and continued to argue that the Note was not endorsed to it when the

Complaint was filed. (V1, R. C264, ROP 3, L14-24; 1-10). This remained undisputed even at oral arguments on October 3, 2017 before the Second District Appellate Court.

JUSTICE BURKE: Can we talk a little bit about standing here?...When you filed the original Complaint you filed it as the holder of the indebtedness, correct?

MARGARET MANETTI: Correct

JUSTICE BURKE: That was incorrect.

MARGARET MANETTI: Correct.

JUSTICE BURKE: So how did you have standing when you filed a defective complaint that doesn't state how you are actually involved in this case...?

JUSTICE BURKE: The note itself is very clear, that it's specifically endorsed, it's not a blank endorsement, its specifically endorsed to another party, completely separate than your client, correct?...and the assignment was only of the mortgage was it not?

And the Appellate Court recognized that that the Note endorsed to an entirely different party was troubling.

JUSTICE BURKE: Is possession of the note enough then? If I am holding a note that is not mine and it's a specific assignment to Justice McLaren and I am holding it., I can come in and foreclose.... is that what you are telling me?

(Oral Argument: 19:40-22:25)

http://multimedia.illinois.gov/court/AppellateCourt/Audio/2017/2nd/100317_2-16-0967.mp3.

The Appellate Court recognized and correctly ruled in its first opinion that standing must exist when the Complaint was filed. *See Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App 3d 783, 785-786 (2nd Dist.1988). When a plaintiff lacks standing in a foreclosure action, the trial court's entry of summary judgment and orders of foreclosure and sale are improper as a matter of law. *Bayview Loan Servicing, L.L.C. v. Nelson*, 382

Ill. App. 3d 1184 (5th Dist. 2008). *Bayview*, reflects the necessity of a valid assignment where the plaintiff in a foreclosure case is the not the original mortgagee. However, the Allonge that was ultimately attached to Plaintiff’s Complaint did not and could not cure the standing problem, because it was executed *after* the Complaint was filed and endorsed to HUD. *Id at 87*. (“That assignment is to the Partnership, which is clearly a legal entity separate and distinct from Bayview”). The Appellate Court in its second opinion, chose to adopt Plaintiff’s theory of the case – that it was a “non-holder with rights of a holder.” However, those rights were never proven, and the documents showed on its face that Plaintiff had no right to file the foreclosure – HUD did. This Court should grant review as the matters raised herein reach far beyond mortgage foreclosure cases.

III. The Second District Appellate Court misapplied the “non-holder with rights of a holder” test under the Uniform Commercial Code (“U.C.C.”) and leave should be granted to correct this application.

“Pursuant to Section 3-301 of the UCC, a person can enforce a negotiable instrument as a holder or nonholder in possession of the instrument who has rights of a holder 810 ILCS 5/3-301. The fact that here the note was indorsed to HUD, and not to Plaintiff, when the original complaint was filed proves only that Plaintiff was not the holder of the note at that time...Further the assignment of the mortgage from HUD to plaintiff, which predated the filing of the original complaint, showed that plaintiff had the right to enforce the note at that time.” *United States Bank Trust Nat’l Ass’n v. Lopez*, 2018 IL App (2d) 160967 ¶23.

On May 4, 2018, in reversing their own ruling, the Appellate Court affirmed the trial court’s decision to strike the Defendants’ Lack of Standing Affirmative Defense. The Appellate Court then ruled that Plaintiff was a “non-holder with rights of a holder,” and subsequently became a “holder” at the time the Allonge was executed, even though the Appellate Court recognized that this endorsement occurred after the filing of the Complaint and the mortgage assignment *did not* assign the Note.

The ILCS states the following as to this section:

810 ILCS 5/3-301:

"Person entitled to enforce" an instrument means:

- (i) the holder of the instrument,
- (ii) a nonholder in possession of the instrument who has the rights of a holder, or
- (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument. *810 ILCS 5/3-301* (West 2018)

There are various problems with the Appellate Court's analysis. First, U.S. Bank attached a note to its Complaint that made no reference to it, demonstrating HUD was the "holder" with the rights provided therein. Second, the mortgage assignment in this case is a red herring. It did not establish Plaintiff was a "non-holder with rights of a holder" at the original filing, nor did it establish Plaintiff's standing. To the contrary, it bestows no enforcement rights upon the Plaintiff, and merely assigns the mortgage, without the Note. Therefore, it is a nullity.

The Court fully recognized this in the first opinion and stated:

"Plaintiff's argument rests on the January 16, 2014, assignment of the mortgage, from HUD to plaintiff. However, "[a]n assignment of the mortgage without an assignment of the debt creates no right in the assignee." *Bristol v. Wells Fargo Bank, National Ass'n*, 137 So. 3d 1130, 1133 (Fla. Dist. Ct. App. 2014) ... **Without the assignment of the debt to plaintiff, which must have occurred after the foreclosure complaint was filed, when the allonge was executed**, the assignment of the mortgage did not give plaintiff the rights of a holder. *United States Bank Trust Nat'l Ass'n v. Lopez*, 2017 IL App (2d) 160967, ¶23. (Emphasis added).

The Appellate Court's significant change in its analysis of the assignment of mortgage from the first opinion to the second opinion is striking. The Appellate Court's second opinion attempted to distinguish between "holders" and "non-holders," but the record is replete with uncontroverted evidence that the Note was not endorsed to the Plaintiff. Not a single piece of evidence in the record established *that the rights of the Note* were assigned

to the Plaintiff before the filing of the Complaint, and the Appellate Court's use of improper evidence (the mortgage assignment) to arrive at that conclusion is erroneous. The Appellate Court's reversal of its own ruling is extreme, to say the least, but the procedural anomalies are not the problem. Despite the Appellate Court reversing itself, the fact remains that it would have been impossible for the Plaintiff to have been a "non-holder with rights of a holder" with the evidence submitted and is contrary to established law in other states.

The Maryland Supreme Court has stated:

A nonholder in possession, however, cannot rely on possession of the instrument alone as a basis to enforce it. The transferee's right to enforce the instrument derives from the transferor (because by the terms of the instrument, it is not payable to the transferee) and therefore those rights must be proved. Com. Law § 3-203 cmt. 2; accord *Leavings v. Mills* 175 S.W.3d 301 (Tex. Ct. App. 2004) ("A person not identified in a note who is seeking to enforce it as the owner or holder **must prove the transfer by which he acquired the note.**") citing Com. Law § 3-203 cmt. 2. If there are multiple prior transfers, the transferee must prove each prior transfer. . . . Once the transferee establishes a successful transfer from a holder, he or she acquires the enforcement rights of that holder. See Com. Law § 3-203 cmt. 2. Thus, the Substitute Trustees here, who possess an unindorsed note and wish to enforce it, had the burden of proving their status as nonholder in possession. *Anderson v. Burson*, 35 A.3d 452, 462-463, 424 Md. 232, 248-249, 2011 Md. LEXIS 777, *29-31, 76 U.C.C. Rep. Serv. 2d (Callaghan) 255. (Emphasis added).

Proof that the mortgage had been assigned to the Plaintiff prior to when the case was filed without other proof showing a transfer of the Note falls far short of proving the transfer by which Plaintiff acquired the Note. It is not incumbent upon Defendant to prove the Plaintiff's case where the Note is endorsed to HUD. The Plaintiff needed to be able to provide evidence that the note was negotiated to it prior to when the case was filed or in the alternative needed to prove that the note was sold to the Plaintiff before the complaint was filed. *See e.g. Anderson v. Burson*, 424 Md. 232, 35 A.3d 452, 2011 Md. LEXIS 777, 76 U.C.C. Rep. Serv. 2d (Callaghan) 255; *Murray v. HSBC Bank USA*, 157 So. 3d 355, 2015 Fla. App. LEXIS 725, 40 Fla. L. Weekly D 239; *PennyMac Corp. v. Frost*, 214 So.

3d 686, 2017 Fla. App. LEXIS 3441, 92 U.C.C. Rep. Serv. 2d (Callaghan) 169, 42 Fla. L. Weekly D 614, 2017 WL 1013192.

Similarly, the comment section in Illinois under 810 ILCS 5/3-203 (Transfer of the instrument; rights acquired by transfer) state that, "The instrument, by its terms is not payable to the transferee, and the transferee must account for possession of the unindorsed instrument **by proving the transaction through which the transferee acquired it.**" See *810 ILCS 5/3-203* (Emphasis added). This Court has a duty to uniformly apply the U.C.C. consistent with other jurisdictions and correct the Appellate Court's wrongful interpretation of the U.C.C. See *International Harvester Credit Corp. v. American Nat'l Bank*, 296 So. 2d 32, 35-37, 1974 Fla. LEXIS 3816, *11-15, 85 A.L.R.3d 1015, 14 U.C.C. Rep. Serv. (Callaghan) 19, 14 U.C.C. Rep. Serv. (Callaghan) 1434. The Appellate Court's ruling is inconsistent with other jurisdictions.

The Plaintiff never produced any evidence in the trial court that it acquired this loan through any particular transaction – and the mortgage assignment in this case is a nullity because it was executed prior to the Note being endorsed to the Plaintiff. A transfer of a mortgage without an assignment of the underlying debt is treated as a nullity as the transferee must receive an interest in the mortgaged debt. *Commercial Products Corp. v. Briegel*, 101 Ill. App. 2d 156, 162-163 (3rd Dist. 1968). The Defendants met their burden by pointing specifically to the Note endorsed to HUD and demonstrating the assignment only transferred the Mortgage. "A "prima facie" defense is sufficient at law unless and until rebutted by other evidence." *Cordeck Sales, Inc. v. Constr. Sys.*, 382 Ill. App. 3d 334, 366 (1st Dist. 2008); See also *Deutsche Bank Nat'l Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, ¶ 21.

The Appellate Court also makes a profoundly sweeping statement of first impression completely unsupported by any case law in Illinois which is likely to effect mortgage foreclosures throughout the State.

“Defendants attempt to distinguish *Hardman* and *Tucker* by arguing that the notes in those were unendorsed, whereas the note in the present case was indorsed to HUD. We fail to see any distinction between a note payable under its terms to an entity that is not the plaintiff and a note payable through indorsement to an entity that is not the plaintiff.” *United States Bank Trust Nat'l Ass'n v. Lopez*, 2018 IL App (2d) 160967, ¶24.

The Court’s disregard for the fact that the Note was endorsed to HUD, and therefore they were the “holder” with rights of enforcement prior to the filing of the foreclosure is worrisome. Particularly troublesome is the fact that record is devoid of any evidence whatsoever that the Plaintiff *had any rights to enforce the Note before the filing of the foreclosure action.* The rights of one party cannot supplant the rights of another when they do not exist.

Moreover, the Appellate Court could not have even considered Plaintiff’s 735 ILCS 5/2-619.1 Motion to Strike Defendants’ affirmative defenses because it used a procedural tool, namely, a Section 2-619 which is only available to a defendant and not a plaintiff. The Defendants raised this issue repeatedly in the trial court, their appellate brief, in oral arguments before the Appellate Court, and in their response to Plaintiff’s Petition for Rehearing. (V2. R. C408-C409; ROP 34-35, L23-24, L1-L14). It is hard to imagine what more the Defendants could have done to draw the court’s attention to this issue. The Appellate Court did not address this important issue, choosing instead to ignore it, and the authority interpreting this rule originates from the very same court. *Federated Equipment & Supply Co. v. Miro Mold & Duplicating Corp.*, 166 Ill. App. 3d 670, 675-678 (2nd Dist. 1988). The Appellate Court’s ruling was error and should be reversed on this basis alone.

Lastly, the Appellate Court states, “Plaintiff filed a timely petition for rehearing, disputing that holding. We granted the petition for rehearing and withdrew our opinion.” *U.S. Bank Trust N.A. v. Lopez*, 2018 IL App (2d) 160967, ¶1. This cannot be true. On December 5, 2017, the Appellate Court withdrew its opinion and stated a new opinion would be issued in due course. The court order made no reference to a Petition for Rehearing. Ten days later, on December 15, 2017, Plaintiff’s Petition for Rehearing was allowed. The events surrounding this case are unusual. Abnormality aside, further review of the Appellate Court’s decision is warranted. The facts and the law were misapplied and misapprehended by the Appellate Court. Further review is of significant importance and will serve as a guide to trial courts across this State grappling with these issues.

CONCLUSION

For the foregoing reasons, the Defendant-Appellants, Mario Lopez and Martha Lopez, requests that the Court grant this Petition for Leave to Appeal.

Respectfully Submitted,

Mario Lopez and Martha Lopez

/s/ Daniel Khwaja

Daniel Khwaja, Esq.
Attorney for Defendants-Appellants

Daniel Khwaja, Esq.
1115 N. Ashland
Chicago, IL 60622
(312)-933-4015
ARDC#6305287

CERTIFICATE OF COMPLIANCE

I certify that this Petition for Leave to Appeal pursuant to Supreme Court Rule 315 conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding pages or words contained in the Rule 341(d) cover, the rule 341(c) the certificate of compliance and those matters to be appended to the brief under rule 342(a) is 20 pages.

Dated: June 8, 2018.

Respectfully Submitted,

/s/ Daniel Khwaja

Daniel Khwaja, Esq.
Attorney for Defendant-Appellants

Daniel Khwaja, Esq
1115 N. Ashland
Chicago, IL, 60622
ARDC#6305287
dsk@ilforeclosurelawyer.com

Case No: _____

In the Supreme Court of Illinois

U.S Bank National Trust National Association, not in its
Individual capacity but solely as Owner Trustee for
Queen's Park Oval Asset Holding Trust,

Plaintiff - Appellee

vs.

Mario Lopez; Martha Lopez.

Defendant - Appellants

On Petition for Leave to Appeal from the Illinois Appellate Court, Second District
No. 02-16-0967
There heard on appeal from the Eighteenth Judicial Circuit of DuPage County, Illinois
Case No. 14-CH-000473
The Honorable Robert G. Gibson presiding

MARIO LOPEZ & MARTHA LOPEZ PETITION FOR LEAVE TO APPEAL TO THE ILLINOIS SUPREME COURT

NOTICE OF FILING

See attached Service List:

PLEASE TAKE NOTICE that on **June 8, 2018**, the undersigned filed the *Defendant Appellants' Petition for Leave to Appeal* electronically with the Clerk's Office for the Supreme Court of Illinois a true and correct copy of which is attached to this notice and served upon you.

/s/ Daniel Khwaja

Daniel Khwaja, Esq.
Attorney for Mario Lopez and Martha Lopez

CERTIFICATE OF SERVICE

I Daniel Khwaja, an attorney under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, certify that the statements set forth in the instrument are true and correct, and state that on June 8, 2018 I served copies of the Petition for Leave to Appeal upon the parties indicated above first-class postage prepaid to Codilis & Associates 15W030 N. Frontage Road, Burr Ridge, IL 60527 Suite 100 and email transmission to pleadings@il.cslegal.com.

/s/ Daniel Khwaja

Daniel Khwaja, Esq.
Attorney for Mario Lopez and Martha Lopez

SERVICE LIST

Codilis & Associates
Counsel of Record for U.S. Bank Trust, National Association
15W030 N. Frontage Road, Suite 100
Burr Ridge, IL 60527
pleadings@il.cslegal.com

Daniel Khwaja, Esq.
1115 N. Ashland
Chicago, Illinois 60622
PH: (312) 933-4015
ARDC No.: 6305287
Service by email accepted at dsk@ilforeclosurelawyer.com

Case No: _____

In the Supreme Court of Illinois

U.S Bank National Trust National Association, not in its
Individual capacity but solely as Owner Trustee for
Queen's Park Oval Asset Holding Trust,

Plaintiff - Appellee

vs.

Mario Lopez; Martha Lopez.

Defendant - Appellants

On Petition for Leave to Appeal from the Illinois Appellate Court, Second District
No. 02-16-0967

There heard on appeal from the Eighteenth Judicial Circuit of DuPage County, Illinois
Case No. 14-CH-000473

The Honorable Robert G. Gibson presiding

APPENDIX

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A = APPENDIX

2017 IL App (2d) 160967
 No. 2-16-0967
 Opinion filed November 14, 2017

IN THE
 APPELLATE COURT OF ILLINOIS
 SECOND DISTRICT

U.S. BANK TRUST NATIONAL	)	Appeal from the Circuit Court
ASSOCIATION, Not in Its Individual	)	of Du Page County.
Capacity but Solely as Owner Trustee for)	
Queen's Park Oval Asset Holding Trust,)	
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 14-CH-473
)	
MARIO A. LOPEZ, a/k/a Mario Augusto)	
Lopez-Franco; MARTHA D. LOPEZ;)	
UNKNOWN OWNERS; and NONRECORD)	
CLAIMANTS,	)	Honorable
	)	Robert G. Gibson,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court, with opinion.
 Justices McLaren and Schostok concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, U.S. Bank Trust National Association, as owner trustee for Queen's Park Oval Asset Holding Trust, filed a foreclosure suit against defendants, Mario A. Lopez, a/k/a Mario Augusto Lopez-Franco, and Martha D. Lopez. Defendants raised the affirmative defense that plaintiff lacked standing when it filed the suit. Defendants also raised the affirmative defense that plaintiff violated Illinois Supreme Court Rule 113 (eff. May 1, 2013) and failed to comply with Title 24, section 203.604 of the Code of Federal Regulations (Code) (24 C.F.R. § 203.604

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(2014)). The trial court struck defendants' affirmative defenses, granted plaintiff summary judgment, and entered a judgment for foreclosure and sale. On appeal, defendants challenge the trial court's orders striking their affirmative defenses and granting plaintiff summary judgment. For the following reasons, we reverse the judgment of foreclosure, vacate the order approving the sale, and dismiss the foreclosure action.

¶ 2

I. BACKGROUND

¶ 3

A. Initial Foreclosure Proceedings and Amended Complaint

¶ 4 On March 11, 2014, plaintiff filed a complaint to foreclose the mortgage on property owned by defendants. The complaint contained a copy of the mortgage and the note. The note bore two indorsements, one from the original lender to Countrywide Bank, FSB (Countrywide), and the second from Countrywide to the Secretary of Housing and Urban Development (HUD), a nonparty to the case. The note included no indorsements or assignments to plaintiff. The complaint alleged in paragraph "n" that plaintiff was the "legal holder of the indebtedness."

¶ 5 Defendants filed an answer with affirmative defenses on May 12, 2014, claiming that plaintiff lacked standing because the note attached to the complaint was indorsed to HUD and not to plaintiff, that plaintiff failed to comply with Rule 113 because the note did not show an indorsement to plaintiff, and that plaintiff failed to comply with Title 21, section 203.604, of the Code.

¶ 6 On November 7, 2014, plaintiff amended its complaint to resolve any issue regarding the note. The allegations were substantially similar to those in the original complaint except that it alleged at paragraph "n" that "on March 11, 2014[,] Plaintiff was a non-holder in possession of the Note with rights of a holder. Plaintiff is currently the legal holder of the Note." Also, plaintiff attached to the pleading a copy of the note that bore the same two indorsements, one

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from the original lender to Countrywide and the second from Countrywide to HUD. The amended complaint included an “allonge to note” that was not filed with the original complaint. The allonge, which is undated, contains a special indorsement from HUD to Queen’s Park Oval Asset Holding Trust, the trust for which plaintiff was the named trustee.

¶ 7 B. Defendants’ Motion to Dismiss the Amended Complaint

¶ 8 On December 24, 2014, defendants filed a motion to dismiss plaintiff’s amended complaint, pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)). They repeated the arguments they raised in their affirmative defenses, that plaintiff lacked standing and that the foreclosure action was barred under Rule 113. Defendants claimed that the defect could not be cured by amendment. Following argument, the court denied defendants’ motion to dismiss, without prejudice.

¶ 9 C. Defendants’ Affirmative Defenses to the Amended Complaint

¶ 10 On April 16, 2015, defendants filed an answer to plaintiff’s amended complaint and repeated their previous affirmative defenses. They argued again that, when the case was filed, plaintiff lacked standing, as the note attached to the original complaint was indorsed to HUD and no assignment to plaintiffs was attached. Defendants maintained that the allonge attached to plaintiff’s amended complaint contained an indorsement executed after the filing of the original complaint. Defendants supported their answer with judicial admissions made by plaintiff throughout the proceedings that it was not in possession of an indorsed note at the time of the original filing. Defendants alleged that plaintiff violated Rule 113 when it amended the complaint to include the allonge. Defendants also alleged that plaintiff failed to comply with Title 24, section 203.604, of the Code because plaintiff did not provide for the required face-to-face meeting with defendants or offer defendants “an opportunity to conduct one.”

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¶ 11 D. Striking the Affirmative Defenses, Summary Judgment, and Judicial Sale

¶ 12 Plaintiff filed a motion to strike the affirmative defenses, pursuant to section 2-619.1. The motion attached a January 16, 2014, assignment of the mortgage without the note, various affidavits, and a Federal Express tracking label. Plaintiff argued that the standing defense was insufficiently pleaded because defendants did not properly articulate how plaintiff lacked standing and defendants failed to support their claim that a violation of Rule 113 compelled dismissal. Plaintiff maintained that the assignment established its legal capacity as a nonholder with the rights of a holder when the original complaint was filed.

¶ 13 At the hearing on the motion to strike, plaintiff produced the original note, and the trial court read a description of it into the record. The trial court determined that plaintiff was a nonholder with the rights of a holder. Following the hearing, the trial court granted plaintiff's motion and struck the affirmative defenses with prejudice.

¶ 14 With the affirmative defenses stricken, the trial court granted plaintiff's motion for summary judgment and entered a judgment of foreclosure and sale on July 18, 2016. The judicial sale occurred, and the court granted plaintiff's motion to confirm the sale on November 7, 2016. Defendants timely appeal from the trial court's orders granting plaintiff's motion to strike their affirmative defenses pursuant to section 2-619.1 and granting it summary judgment.

¶ 15 II. ANALYSIS

¶ 16 Defendants raise a number of arguments on appeal regarding plaintiff's legal standing to bring the foreclosure action, plaintiff's violation of Rule 113, and plaintiff's failure to strictly adhere to the mandated servicing guidelines of Title 24, section 203.604, of the Code. We initially examine the trial court's entry of the foreclosure judgment in plaintiff's favor, the validity of which rests on whether plaintiff had the ability to bring this suit against defendants.

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¶ 17 Plaintiff's motion to strike defendants' affirmative defense of standing was brought pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)). A motion under section 2-619.1 allows a party to combine a section 2-615 (735 ILCS 5/2-615 (West 2016)) motion to dismiss based upon insufficient pleadings with a section 2-619 (735 ILCS 5/2-619 (West 2016)) motion to dismiss based upon certain defects or defenses. 735 ILCS 5/2-619.1 (West 2016); *Carr v. Koch*, 2011 IL App (4th) 110117, ¶ 25 (citing *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003)). When the legal sufficiency of a complaint is challenged by a section 2-615 motion to dismiss, all well-pleaded facts in the complaint are taken as true and a reviewing court must determine whether the allegations of the complaint, construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11-12 (2005). On the other hand, a motion to dismiss under section 2-619 admits the legal sufficiency of the complaint, but asserts affirmative matter that defeats the claim. *Id.* at 12. If a cause of action is dismissed due to the affirmative matter asserted in a section 2-619 motion to dismiss, the question on appeal is whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 494 (1994). We review *de novo* an order striking a pleading pursuant to section 2-619.1. *Carr*, 2011 IL App (4th) 110117, ¶ 25.

¶ 18 The doctrine of standing requires that a party have a real interest in the action and its outcome. *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23 (2004). A party's standing to sue must be determined as of the time the suit is filed. *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, ¶ 24. "[A] party either has standing at the time the suit is brought or it does not." *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786 (1988). An action

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to foreclose upon a mortgage may be filed by a mortgagee or by an agent or successor of a mortgagee. *Gilbert*, 2012 IL App (2d) 120164, ¶ 15.

¶ 19 Typically, lack of standing to bring an action is an affirmative defense, and the burden of proving the defense is on the party asserting it. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010); *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 12.

¶ 20 To support their argument that plaintiff had no standing to sue them on the date the foreclosure action was filed, defendants point to the note attached to the original complaint. The original complaint alleged that plaintiff was the legal holder of the indebtedness of the attached note. However, the note establishes that it was indorsed to a nonparty to the case. When plaintiff filed the complaint, the note was indorsed to HUD, not to plaintiff. Indeed, plaintiff conceded that the note was not indorsed to plaintiff at that time.

¶ 21 In *Gilbert*, the defendant raised standing as an affirmative defense. In support, the defendant showed that the note and the mortgage attached to the original complaint identified not the plaintiff but another mortgagee. Also, the assignment attached to the amended complaint showed that the interest in the mortgage was not assigned to the plaintiff until several months after the foreclosure action was filed. *Gilbert*, 2012 IL App (2d) 120164, ¶ 17. We held that this evidence met the defendant's burden to show that the plaintiff lacked standing when the suit was filed, because the plaintiff was not identified on either the note or the mortgage. The documents attached to the complaint contradicted the plaintiff's allegation that it was "the mortgagee" and they supported the defendant's argument that the plaintiff did not have an interest in the mortgage that would confer standing. Because the defendant made a *prima facie* showing that the plaintiff lacked standing, the burden shifted to the plaintiff to refute this evidence or demonstrate a question of fact. *Id.* ¶ 21.

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¶ 22 Similarly here, the note attached to the original complaint showed on its face that it was not indorsed to plaintiff. At the hearing on defendants' motion to dismiss plaintiff's amended complaint, plaintiff conceded that the note was not indorsed to plaintiff on the date the original complaint was filed. Plaintiff alleged that the copy of the note attached to its original complaint was a "copy of the note as it currently exists." Thus, the allonge, which has no date of execution, must have been executed *after* the filing of the original complaint. As defendants observe, plaintiff's admission that the note attached to its complaint was in its current form leaves no other possible interpretation. As in *Gilbert*, defendants have made a *prima facie* showing of a lack of standing, and plaintiff has failed to rebut it.

¶ 23 Defendants further contend that "equally inaccurate" is plaintiff's position that it was a "non-holder with rights of a holder" when the action was filed. Plaintiff's argument rests on the January 16, 2014, assignment of the mortgage, from HUD to plaintiff. However, "[a]n assignment of the mortgage without an assignment of the debt creates no right in the assignee." *Bristol v. Wells Fargo Bank, National Ass'n*, 137 So. 3d 1130, 1133 (Fla. Dist. Ct. App. 2014) (quoting *Vance v. Fields*, 172 So. 2d 613, 614 (Fla. Dist. Ct. App. 1965); see also *Elvin v. Wuchetich*, 326 Ill. 285, 288-89 (1927) (assignment of mortgage on truck without transferring note transferred no interest in truck authorizing replevin). Without the assignment of the debt to plaintiff, which must have occurred after the foreclosure complaint was filed, when the allonge was executed, the assignment of the mortgage did not give plaintiff the rights of a holder.

¶ 24 Plaintiff also attempts to rebut defendants' argument by stating that "it proved it possessed the original note before it filed the lawsuit." Plaintiff points to its counsel's affidavit that established that he possessed the note on plaintiff's behalf before it filed the foreclosure suit. A similar contention was raised by the plaintiff in *Gilbert*. The plaintiff endeavored to challenge

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the standing argument by noting that, in an affidavit of an employee of a company that serviced loans for the plaintiff, he averred that, based on his review of “ ‘the documents contained in the Gilbert loan file,’ ” the interest was assigned to the plaintiff before the filing of the initial complaint. *Gilbert*, 2012 IL App (2d) 120164, ¶ 7. The plaintiff argued that this statement must be taken as true in the absence of contrary evidence. *Id.* ¶ 19. Noting that this principle applies only to admissible evidence, we held that the statement about the date of the assignment was inadmissible because it was unsupported by any foundation. *Id.* (citing *Complete Conference Coordinators, Inc. v. Kumon North America, Inc.*, 394 Ill. App. 3d 105, 108 (2009)).

¶ 25 In this case, plaintiff points to the affidavit of Robert H. Rappe, Jr., managing attorney of the law firm representing plaintiff. He attached three exhibits to his affidavit. Exhibit 1 is an image of a computer screen reflecting that the original indorsed note was scanned and imaged into the firm’s case management system on March 10, 2014, the day before the original complaint was filed. Exhibit 2 is a copy of the original note, which was also imaged and electronically stored. Exhibit 3 is the allonge to the note. However, because plaintiff’s name does not appear on the original note and because the assignment of the note occurred after the original complaint was filed, these items do not rebut defendants’ standing argument.

¶ 26 Plaintiff cites *Cornejo*, 2015 IL App (3d) 140412, in support of its argument that attaching a copy of the note to the foreclosure complaint was *prima facie* evidence that it owned the note. In *Cornejo*, the note attached to the foreclosure complaint was held to be *prima facie* evidence that the plaintiff owned the note, even though it lacked an indorsement in blank. *Id.* ¶ 13. The Third District Appellate Court held that the defendants failed to present any evidence that the transfer did not occur before the complaint was filed and that the defendants thus failed to meet their burden of showing that the plaintiff lacked standing. *Id.* ¶ 14. Here, as in *Gilbert*,

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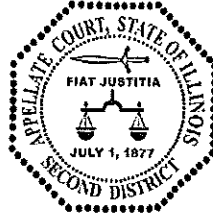
defendants presented evidence that showed that the assignment of the debt actually took place after the original complaint was filed and that plaintiff thus lacked standing when the complaint was filed.

¶ 27 Based on our determination that plaintiff lacked standing, we need not address the other issues defendants raise.

¶ 28 III. CONCLUSION

¶ 29 For the preceding reasons, we reverse the judgment of foreclosure, vacate the order approving the sale, and dismiss the foreclosure action.

¶ 30 Judgment reversed; order vacated; action dismissed.



STATE OF ILLINOIS
APPELLATE COURT
SECOND DISTRICT
55 SYMPHONY WAY
ELGIN, IL 60120

CLERK OF THE COURT
(847) 695-3750

TDD
(847) 695-0092

December 5, 2017

Daniel S. Khwaja
North Legal Services
1701 N. Damen, Suite 201
Chicago, IL 60647

RE: US Bank Trust, et al. v. Lopez, Mario A. et al.
General No.: 2-16-0967
County: DuPage County
Trial Court No: 14CH473

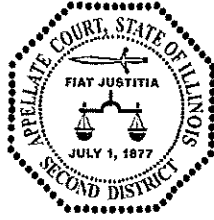
The court has this day, December 05, 2017, entered the following order in the above entitled case:

On the Court's own motion, the opinion filed November 14, 2017, is hereby withdrawn and a new opinion will issue in due course.

Robert J. Mangan
Clerk of the Appellate Court

cc: Lauren Tracy Riddick
Louis Joseph Manetti, Jr.
Margaret Ann Manetti

A10



STATE OF ILLINOIS
APPELLATE COURT
SECOND DISTRICT
55 SYMPHONY WAY
ELGIN, IL 60120

CLERK OF THE COURT
(847) 695-3750

TDD
(847) 695-0092

December 15, 2017

Louis Joseph Manetti, Jr.
Codilis & Associates, P.C.
15W030 N. Frontage Rd., Suite 100
Burr Ridge, IL 60527

RE: US Bank Trust, et al. v. Lopez, Mario A. et al.
General No.: 2-16-0967
County: DuPage County
Trial Court No: 14CH473

The court has this day, December 15, 2017, entered the following order in the above entitled case:

The Petition for Rehearing filed by Plaintiff, U.S. Bank Trust National Association, is hereby allowed. The appellants' response by Mario and Martha Lopez is due no later than January 5, 2018. The appellee's reply is due no later than January 19, 2018.

(Burke, McLaren, Schostok, JJ).

Robert J. Mangan
Clerk of the Appellate Court

cc: Daniel S. Khwaja
Lauren Tracy Riddick
Margaret Ann Manetti

All

2018 IL App (2d) 160967
 No. 2-16-0967
 Opinion filed May 4, 2018

IN THE
 APPELLATE COURT OF ILLINOIS
 SECOND DISTRICT

U.S. BANK TRUST NATIONAL	)	Appeal from the Circuit Court
ASSOCIATION, Not in Its Individual	)	of Du Page County.
Capacity but Solely as Owner Trustee For)	
Queen's Park Oval Asset Holding Trust,)	
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 14-CH-473
)	
MARIO A. LOPEZ, a/k/a Mario Augusto)	
Lopez-Franco; MARTHA D. LOPEZ; and)	
UNKNOWN OWNERS and NONRECORD)	
CLAIMANTS,	)	Honorable
	)	Robert G. Gibson,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court, with opinion.
 Justices McLaren and Schostok concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, U.S. Bank Trust National Association, as owner trustee for Queen's Park Oval Asset Holding Trust, filed a foreclosure suit against defendants, Mario A. Lopez, a/k/a Mario Augusto Lopez-Franco, and Martha D. Lopez. Defendants raised the affirmative defense that plaintiff lacked standing when it filed the suit. Defendants also raised the affirmative defenses that plaintiff violated Illinois Supreme Court Rule 113(b) (eff. May 1, 2013) and failed to comply with Title 24, section 203.604, of the Code of Federal Regulations (Code) (24 C.F.R. §

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203.604 (2014)). The trial court struck defendants' affirmative defenses, granted plaintiff summary judgment, and entered a judgment of foreclosure and sale. On appeal, defendants challenged the trial court's orders striking their affirmative defenses and granting plaintiff summary judgment. On November 14, 2017, this court filed its opinion. We reversed the judgment of foreclosure and sale, vacated the order approving the sale, and dismissed the foreclosure. Specifically, we determined that plaintiff lacked standing. Plaintiff filed a timely petition for rehearing, disputing that holding. We granted the petition for rehearing and withdrew our opinion. For the reasons that follow, we hold that the trial court did not err in striking the affirmative defenses concerning standing and Rule 113(b). However, we hold that there are factual issues regarding plaintiff's compliance with section 203.604 and that the trial court erred in striking that affirmative defense. Therefore, we vacate the judgment of foreclosure and sale and remand the cause for further proceedings.

¶ 2

I. BACKGROUND

¶ 3

A. Initial Foreclosure Proceedings and Amended Complaint

¶ 4 On March 11, 2014, plaintiff filed a complaint to foreclose the mortgage on property owned by defendants. The complaint attached the mortgage and the note. The note bore two indorsements, one from the original lender to Countrywide Bank, FSB (Countrywide), and the second from Countrywide to the Secretary of Housing and Urban Development (HUD), a nonparty to the case. The note included no indorsements or assignments to plaintiff. The complaint alleged in paragraph "n" that plaintiff was the "legal holder of the indebtedness."

¶ 5 On May 12, 2014, defendants filed an answer with affirmative defenses, claiming that plaintiff lacked standing because the note attached to the complaint was indorsed to HUD and not to plaintiff, that plaintiff failed to comply with Rule 113(b) because the note did not show an

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indorsement to plaintiff, and that plaintiff failed to comply with Title 24, section 203.604, of the Code.

¶ 6 On November 7, 2014, plaintiff amended its complaint to resolve any issue regarding the note. The allegations were substantially similar to those in the original complaint except that it alleged in paragraph “n” that “on March 11, 2014[,] Plaintiff was a non-holder in possession of the Note with rights of a holder. Plaintiff is currently the legal holder of the Note.” Also, plaintiff attached a copy of the note bearing the same two indorsements, one from the original lender to Countrywide and the second from Countrywide to HUD. The amended complaint included an “allonge to note” that was not filed with the original complaint. The allonge, which is undated, contains a special indorsement from HUD to Queen’s Park Oval Asset Holding Trust, the trust for which plaintiff was the owner trustee.

¶ 7 B. Defendants’ Motion to Dismiss the Amended Complaint

¶ 8 On December 24, 2014, defendants filed a motion to dismiss plaintiff’s amended complaint, pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)). They repeated the arguments they raised in their affirmative defenses that plaintiff lacked standing and violated Rule 113(b). Defendants claimed that the defect could not be cured by amendment. Following arguments, the court denied defendants’ motion to dismiss, without prejudice.

¶ 9 C. Defendants’ Affirmative Defenses to the Amended Complaint

¶ 10 On April 16, 2015, defendants filed an answer to plaintiff’s amended complaint and repeated their previous affirmative defenses. They argued again that, when the case was filed, plaintiff lacked standing, as the note attached to the complaint was indorsed to HUD and no assignment to plaintiff was attached. Defendants maintained that the allonge attached to

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plaintiff's amended complaint contained an indorsement executed after the filing of the original complaint. Defendants supported their answer with judicial admissions made by plaintiff throughout the proceedings that it was not in possession of an indorsed note at the time of the original filing. Defendants alleged that plaintiff violated Rule 113(b) when it amended the complaint to include the allonge. Defendants also alleged that plaintiff failed to comply with Title 24, section 203.604, of the Code, because plaintiff did not provide the required face-to-face meeting or offer defendants "an opportunity to conduct one."

¶ 11 D. Striking the Affirmative Defenses, Summary Judgment, and Judicial Sale

¶ 12 Plaintiff filed a motion to strike the affirmative defenses, pursuant to section 2-619.1. The motion attached a January 16, 2014, assignment of the mortgage from HUD to plaintiff (without the note), various affidavits, and a Federal Express (FedEx) tracking label. Plaintiff argued that the standing defense was insufficiently pleaded because defendants did not properly articulate how plaintiff lacked standing and defendants failed to support their claim that a violation of Rule 113 compelled dismissal. Plaintiff maintained that the assignment established its legal capacity as a nonholder with the rights of a holder when the original complaint was filed.

¶ 13 At the hearing on the motion to strike, plaintiff produced the original note, and the trial court read a description of it into the record. The trial court determined that plaintiff was a nonholder with the rights of a holder. Following the hearing, the trial court granted plaintiff's motion and struck the affirmative defenses with prejudice.

¶ 14 With the affirmative defenses stricken, the trial court granted plaintiff's motion for summary judgment and entered a judgment of foreclosure and sale on July 18, 2016. The judicial sale occurred, and the court granted plaintiff's motion to confirm the sale on November

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7, 2016. Defendants timely appeal from the court's orders striking their affirmative defenses and granting plaintiff summary judgment.

¶ 15

II. ANALYSIS

¶ 16 Defendants argue that plaintiff lacked standing to sue, violated Rule 113(b), and failed to strictly adhere to the mandated servicing guidelines of Title 24, section 203.604, of the Code. We examine each issue in turn.

¶ 17 Plaintiff's motion to strike defendants' affirmative defense of standing was brought pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)). A motion under section 2-619.1 allows a party to combine a section 2-615 (735 ILCS 5/2-615 (West 2016)) motion to dismiss based upon insufficient pleadings with a section 2-619 (735 ILCS 5/2-619 (West 2016)) motion to dismiss based upon certain defects or defenses. 735 ILCS 5/2-619.1 (West 2016); *Carr v. Koch*, 2011 IL App (4th) 110117, ¶ 25 (citing *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003)). When the legal sufficiency of a complaint is challenged by a section 2-615 motion to dismiss, all well-pleaded facts in the complaint are taken as true and a reviewing court must determine whether the allegations of the complaint, construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11-12 (2005). On the other hand, a motion to dismiss under section 2-619 admits the legal sufficiency of the complaint but asserts an affirmative matter that defeats the claim. *Id.* at 12. If a cause of action is dismissed due to the affirmative matter asserted in a section 2-619 motion to dismiss, the questions on appeal are whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Illinois*

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Graphics Co. v. Nickum, 159 Ill. 2d 469, 494 (1994). We review *de novo* an order striking a pleading pursuant to section 2-619.1. *Carr*, 2011 IL App (4th) 110117, ¶ 25.

¶ 18 The doctrine of standing requires that a party have a real interest in the action and its outcome. *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23 (2004). A party's standing to sue must be determined as of the time the suit is filed. *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, ¶ 24. "[A] party either has standing at the time the suit is brought or it does not." *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786 (1988). An action to foreclose upon a mortgage may be filed by a mortgagee or by an agent or successor of a mortgagee. *Gilbert*, 2012 IL App (2d) 120164, ¶ 15.

¶ 19 Typically, lack of standing to bring an action is an affirmative defense, and the burden of proving the defense is on the party asserting it. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010); *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 12. In *Gilbert*, however, we stated that, once the defendant "made out a *prima facie* showing that [the plaintiff] lacked standing, the burden shifted to [the plaintiff] to refute this evidence or demonstrate a question of fact." *Gilbert*, 2012 IL App (2d) 120164, ¶ 17 (citing *Triple R Development, LLC v. Golfview Apartments I, L.P.*, 2012 IL App (4th) 100956, ¶ 12). In *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 28, the First District criticized our statement in *Gilbert* as violating the principle that "lack of standing is an affirmative defense, which [the] defendant alone has the burden to plead and prove." The First District noted that *Triple R Development* "concerned neither standing nor foreclosure proceedings" but, rather, "the burden of *persuasion* on a motion for summary judgment." (Emphasis in original.) *Id.* The First District concluded, "It is unclear what result the *Gilbert*

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court would have reached had it required [the] defendant, rather than [the] plaintiff, to bear the ultimate burden.” *Id.*

¶ 20 We are puzzled by the First District’s criticism. In *Gilbert*, the plaintiff’s lack of standing was asserted in the defendant’s motion for summary judgment. *Gilbert*, 2012 IL App (2d) 120164, ¶ 7. On a motion for summary judgment, the burden of *persuasion* is always on the movant, but the burden of *production* can shift. *Triple R Development*, 2012 IL App (4th) 100956, ¶ 12. When we ruled that the defendant had “made out a *prima facie* showing that [the plaintiff] lacked standing” (*Gilbert*, 2012 IL App (2d) 120164, ¶ 17), we shifted to the plaintiff not “the ultimate burden” to show its standing (*Rosestone*, 2013 IL App (1st) 123422, ¶ 28) but merely the burden of production on the motion for summary judgment: to “refute [the movant’s] evidence or demonstrate a question of fact” (*Gilbert*, 2012 IL App (2d) 120164, ¶ 17). Indeed, we specifically declined to decide whether, by statute (735 ILCS 5/15-1504(a)(3)(N) (West 2008)), the legislature had placed the ultimate burden on the plaintiff. *Gilbert*, 2012 IL App (2d) 120164, ¶ 16. Thus, though the First District accused us of concocting a baseless “burden-shifting scheme” (*Rosestone*, 2013 IL App (1st) 123422, ¶ 28), the “scheme” was merely that which applies on a motion for summary judgment, which was the procedural posture of the case before us.

¶ 21 That said, the disagreement in the above cases has no bearing on this case. Here, the procedural posture was plaintiff’s section 2-619.1 motion to strike defendants’ affirmative defense of lack of standing. Regardless of where the burden (or burdens) lay, the trial court properly granted that motion.

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¶ 22 Defendants' standing defense attacks plaintiff's position only as the holder of the note when the original complaint was filed.¹ Plaintiff's amended complaint (with the allonge attached) indicates that it is presently the holder of the note, but it alleges that, when the original complaint was filed, it was a nonholder in possession of the note with the rights of a holder. The standing defense never challenged this assertion. Further, plaintiff's contention that it had the rights of a holder when the original complaint was filed was supported by the assignment from HUD to plaintiff, which predated the filing of that complaint.

¶ 23 Pursuant to section 3-301 of the UCC, a person can enforce a negotiable instrument as a holder or as a nonholder in possession of the instrument who has the rights of a holder. 810 ILCS 5/3-301 (West 2014). The fact that here the note was indorsed to HUD, and not to plaintiff, when the original complaint was filed proves only that plaintiff was not the holder of the note at that time. By attaching a copy of the note to the original complaint, and later presenting the original note in open court, plaintiff validated that it was a nonholder in possession of the note. Further, the assignment of the mortgage from HUD to plaintiff, which predated the filing of the original complaint, showed that plaintiff had the right to enforce the note at that time. See *HSBC Bank USA, N.A. v. Hardman*, No. 12 C 00481, 2013 WL 515432, at *4 (N.D. Ill. Feb. 12, 2013) (note was not indorsed to plaintiff, but plaintiff had rights of a holder through the assignment of the mortgage); *Deutsche Bank v. Tucker*, No. 11 C 8062, 2012 WL

¹ The Uniform Commercial Code (UCC) defines "holder" to mean "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." 810 ILCS 5/1-201(21)(A) (West 2014).

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2872456, at *2-3 (N.D. Ill. July 12, 2012) (note was not indorsed to plaintiff, but plaintiff had rights of a holder to enforce through a pooling and servicing agreement).

¶ 24 Defendants attempt to distinguish *Hardman* and *Tucker* by arguing that the notes in those were unindorsed, whereas the note in the present case was indorsed to HUD. We fail to see any distinction between a note payable under its terms to an entity that is not the plaintiff and a note payable through indorsement to an entity that is not the plaintiff. Both situations establish only that the plaintiff is not the holder of the note. Plaintiff concedes that it was not the holder of the note when the original complaint was filed. Defendants' argument sheds no light on whether plaintiff was in possession with the rights of a holder.

¶ 25 Similarly, defendants cite section 3-201 of the UCC (810 ILCS 5/3-201 (West 2014)) to demonstrate that negotiation of a note requires an indorsement by the holder. Section 3-201 simply details how one becomes a holder and, again, has nothing to do with a nonholder's potential ability to enforce an instrument under section 3-301.

¶ 26 Defendants rely on *Gilbert and Bayview Loan Servicing, L.L.C. v. Nelson*, 382 Ill. App. 3d 1184 (2008), where both plaintiffs claimed standing as holders of the notes. In *Gilbert*, the note and mortgage identified as the mortgagee Mortgage Electronic Registration Systems, Inc. (MERS), not the plaintiff. *Gilbert*, 2012 IL App (2d) 120164, ¶ 17. The assignment of the mortgage to the plaintiff was executed *after* the complaint had been filed, and the plaintiff's attempt to show an earlier assignment through affidavit was inadmissible. *Id.* ¶¶ 17, 19. In *Nelson*, there was no assignment to the plaintiff of any interest in the mortgage or the note before the complaint was filed. *Nelson*, 382 Ill. App. 3d at 1187-88. In neither case was there competent evidence establishing the plaintiff as the holder of the note. In this case, the mortgage clearly was assigned to plaintiff before the original complaint was filed, and the complaint

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attached a copy of the note. Thus, there was evidence establishing that plaintiff was in possession of the note with the rights of a holder to enforce the note. Striking defendants' affirmative defense on standing was proper.

¶ 27 Defendants next contend that the trial court erred in denying their section 2-619.1 motion to dismiss based on a violation of Rule 113(b). Defendants argue that plaintiff violated Rule 113(b) because it attached to the original complaint a note that was indorsed to HUD and that the later production of the allonge transferring the note to the trust established the violation, because the allonge was not attached to the original complaint.

¶ 28 Rule 113(b) provides that, in addition to the documents listed in section 15-1504 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504 (West 2014)), "a copy of the note, as it currently exists, including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing." Ill. S. Ct. R. 113(b) (eff. May 1, 2013).

¶ 29 Plaintiff attached to the original complaint all the necessary documents that existed at the time of filing. These did not include the allonge, as it did not exist at that time. It might have been prudent for plaintiff to attach the assignment, which was executed before the original complaint was filed, but that was not called for under the rule. Accordingly, plaintiff did not violate Rule 113(b).

¶ 30 Finally, defendants contend that granting plaintiff's section 2-619.1 motion to strike was inappropriate on the issue of plaintiff's compliance with Title 24, section 203.604, of the Code.

¶ 31 Defendants' mortgage was insured by HUD, and therefore it is subject to specific servicing requirements. See 24 C.F.R. § 203.500 (2014); *Federal National Mortgage Ass'n v. Moore*, 609 F. Supp. 194, 196 (N.D. Ill. 1985). The failure to comply with HUD's servicing

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requirements is a defense to a mortgage foreclosure action. *PNC Bank, National Ass'n v. Wilson*, 2017 IL App (2d) 151189, ¶ 18.

¶ 32 Section 203.604(b) requires that “[t]he mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid.” 24 C.F.R. § 203.604(b) (2014). “A reasonable effort to arrange a face-to-face meeting with the mortgagor” has two elements. *Id.* § 203.604(d). The first element “shall consist at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched.” *Id.* The second element “shall also include at least one trip to see the mortgagor at the mortgaged property.” *Id.* A mortgagor may not institute foreclosure proceedings before complying with section 203.604. See *id.* § 203.500.

¶ 33 Defendants contend (in their original appellants’ brief) that plaintiff never sent a letter, certified by the postal service as having been dispatched, offering a meeting with plaintiff as required by section 203.604. Defendants offered the affidavit of Mario Lopez declaring nonreceipt of any *certified* letter offering a face-to-face meeting.

¶ 34 Plaintiff asserted in the trial court and on appeal that a letter was sent (albeit through FedEx) to defendants on August 5, 2011, and that a field representative visited the subject property on August 9 and August 16, 2011, and met with Mario Lopez. According to plaintiff, this assertion, which was supported by affidavit, demonstrates substantial compliance with the mandated servicing guidelines of section 203.604. Plaintiff attached to its affidavit an exhibit purporting to be the letter sent to defendants on August 5, 2011, and an exhibit purporting to be the FedEx shipping label.

¶ 35 Defendants maintain that there was no visit to the property and no meeting with a representative of plaintiff. They assert that, without receiving a certified letter, they could not

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have known that a visit to the property would have occurred. Furthermore, defendants contend that whether plaintiff ever visited the property is inconsequential, as section 203.604 requires both the sending of a certified letter and a personal visit to constitute a reasonable effort at arranging a face-to-face meeting. Plaintiff maintains that sending the letter via FedEx is merely a technical defect in the notice, because it is a reliable way of sending documents, sharing characteristics with certified mail. Plaintiff correctly notes that section 201.64 does not require proof of delivery. Rather, it requires only that the letter be certified as “having been dispatched.”

¶ 36 Since the filing of this appeal, this court in *U.S. Bank Trust National Ass’n v. Hernandez*, 2017 IL App (2d) 160850, ¶¶ 32-33, held that the plaintiff failed to prove, as a matter of law, that it fulfilled section 203.604(d)’s “attempt-by-letter” requirement, because the FedEx shipping label did not demonstrate conclusively that the plaintiff sent the defendants a letter offering a face-to-face meeting. Notably, we did not decide “whether use of a private carrier can constitute substantial compliance with the ‘attempt-by-letter’ requirement of section 203.604(d), for even if we construed the section in [the bank’s] favor, we would hold that [the bank] failed to comply with its requirements.” *Id.* ¶ 32.

¶ 37 As in *Hernandez*, plaintiff here has failed to offer proof of dispatch as a matter of law. Plaintiff presented only the shipping label, which does not demonstrate irrefutably that plaintiff sent defendants a letter offering a face-to-face meeting. See *id.* Plaintiff cites a 55-page record of a “screenprint,” which purportedly shows a dispatch. But plaintiff does not identify the specific page showing the dispatch. The various notations on the screenprint do not explicitly identify the dispatch, and plaintiff does not identify the relevant notation to support its position. Further, the affidavit of Kacy Prather does not explain how the screenprint establishes the dispatch.

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¶ 38 Furthermore, in his affidavit, Mario Lopez specifically denied that he received a letter by certified mail from plaintiff and denied being “offered a face-to-face meeting at a local Housing and Urban Development office, one of plaintiff’s local banks, or other H.U.D. related servicing office.” Construing his affidavit in the light most favorable to defendants, as we must (see *Floyd v. Rockford Park District*, 355 Ill. App. 3d 695, 699 (2005)), we read it as denying that he received any letter offering defendants a face-to-face meeting. See *Hernandez*, 2017 IL App (2d) 160850, ¶ 34.

¶ 39 In its petition for rehearing, plaintiff argues that the “Assignment of Mortgage from HUD to Plaintiff pre-dates the filing of the complaint and thereby illustrates the removal of HUD requirements from the loan—*i.e.*, a non-HUD insured loan cannot logically be said to have HUD-mandated requirements.” Plaintiff did not raise this argument in the trial court or in its original response brief filed in this appeal, and we find that it is forfeited. See *IPF Recovery Co. v. Illinois Insurance Guaranty Fund*, 356 Ill. App. 3d 658, 666 (2005). We express no opinion as to the merits of this claim.

¶ 40 Accordingly, we conclude that granting plaintiff’s motion to strike was improper because plaintiff did not establish as a matter of law that it complied with section 203.604.

¶ 41 III. CONCLUSION

¶ 42 For the preceding reasons, we affirm the order granting plaintiff’s motion to strike defendants’ affirmative defenses relating to standing and Rule 113(b). We vacate the order granting plaintiff’s motion to strike defendant’s affirmative defense concerning plaintiff’s compliance with Title 24, section 203.604, of the Code. Further, we vacate the judgment of foreclosure and sale, and we remand the cause for further proceedings.

¶ 43 Affirmed in part and vacated in part.

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¶ 44 Cause remanded.

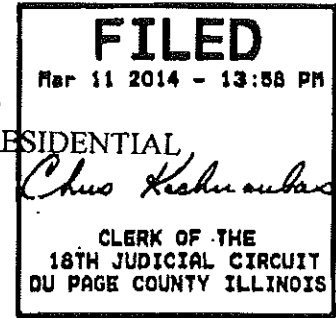
IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY - WHEATON, ILLINOIS

U.S. Bank Trust National Association, not in its
individual capacity but solely as Owner Trustee
Queen's Park Oval Asset Holding Trust

PLAINTIFF

Status Date: 07/08/14

Assigned To: 1003



Vs.

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco;
Martha D. Lopez; Unknown Owners and Nonrecord
Claimants

DEFENDANTS

COMPLAINT TO FORECLOSE MORTGAGE

NOW COMES the Plaintiff, U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN IT IS
INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR QUEEN'S PARK OVAL
ASSET HOLDING TRUST, by and through its attorneys, CODILIS & ASSOCIATES, P.C.,
complaining of the defendants herein and, pursuant to 735 ILCS 5/15-1101, states as follows:

1. Plaintiff files this Complaint to Foreclose the mortgage, trust deed or other conveyance in the nature of a mortgage (hereinafter called "Mortgage") hereinafter described, and names the persons identified in the above caption as "Defendants", as parties hereto.
2. Attached as "EXHIBIT A" is a copy of the Mortgage. Attached as "EXHIBIT B" is a copy of the Note.
3. Information concerning said Mortgage:
 - (A) Nature of the instrument: Mortgage.
 - (B) Date of the Mortgage: 6/2/2008
 - (C) Name of the mortgagor(s):
Mario A. Lopez a/k/a Mario Augusto Lopez-Franco
Martha D. Lopez
 - (D) Name of the original mortgagee:
Mortgage Electronic Registration Systems, Inc. as Nominee for SecurityNational
Mortgage Company
 - (E) Date and Place of Recording or Registering:
7/17/2008
Office of the Recorder of Deeds of DuPage County Illinois
 - (F) Identification of Recording: Document No. R2008-112721
 - (G) Interest subject to the mortgage: Fee Simple.

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(H) Amount of original indebtedness:

(1) Original Indebtedness: \$236,193.00

(I) Both the legal description of the mortgaged real estate and the common address or other information sufficient to identify it with reasonable certainty:

LOT 713 CAROL STREAM UNIT 8, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 10, 1962 AS DOCUMENT R62-31592, IN DUPAGE COUNTY, ILLINOIS.

COMMONLY KNOWN AS:

643 Adobe Court
Carol Stream, IL 60188

TAX PARCEL NUMBER: 02-30-411-017

(J) Statement as to defaults: Mortgagors have not paid the monthly installments of Principal, taxes, Interest and insurance for 06/01/2011, through the present; the Principal balance due on the Note and the Mortgage is \$227,613.19, plus Interest, costs, advances and fees. Interest accrues pursuant to the Note, and the current per diem is \$38.97.

(K) Name of present owner(s) of said premises:
Mario A. Lopez a/k/a Mario Augusto Lopez-Franco
Martha D. Lopez

(L) Names of other persons who are joined as defendants and whose interest in or lien on the mortgaged real estate is sought to be terminated and alleged to be subordinate and inferior to the mortgage of the Plaintiff:

(M) Names of defendants claimed to be personally liable for deficiency, if any:

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco.

(N) Capacity in which Plaintiff brings this foreclosure: Legal holder of the indebtedness.

(O) Facts in support of a redemption period shorter than the longer of 7 months from the date the mortgagor or, if more than one, all the mortgagors have been served with summons or by publication or have otherwise submitted to the jurisdiction of the court, or 3 months from the entry of the judgment of foreclosure, whichever is later, if sought:

The redemption period shall be determined pursuant to 735 ILCS 5/15-1603.

(P) Statement that the right of redemption has been waived by all owners of redemption:
There has been no executed waiver of redemption by all owners of redemption, however

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Plaintiff alleges that it is not precluded from accepting such a waiver of redemption by the filing of this complaint.

(Q) Facts in support of request for attorney's fees and of costs and expenses, if applicable: The subject mortgage provides for payment of attorney fees, court costs and expenses in the event of a default under the mortgage.

(R) Facts in support of a request for appointment of mortgagee in possession or for appointment of a receiver, and identity of such receiver, if sought: Unless otherwise alleged, Plaintiff will pray for said relief after the filing of the instant foreclosure action by separate petition if such relief is sought.

(S) Offer to the mortgagor in accordance with Section 15-1402 to accept title to the real estate in satisfaction of all indebtedness and obligations secured by the mortgage without judicial sale, if sought: No allegation of an offer is made however, Plaintiff alleges that it is not precluded from making or accepting such offer by the filing of the instant foreclosure action.

(T) Name or names of defendants whose rights to possess the mortgaged real estate, after the confirmation of a foreclosure sale, are sought to be terminated, and if not elsewhere stated, the facts in support thereof:

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; Martha D. Lopez;

4. Plaintiff avers that in addition to persons designated by name herein and the Unknown Defendants herein before referred to, there are other persons, and/or non-record claimants who are interested in this action and who have or claim some right, title, interest or lien in, to or upon the real estate, or some part thereof, in this Complaint described, including but not limited to the following:

Unknown Owners and NonRecord Claimants, if any.

That the name of each of such persons is unknown to Plaintiff and on diligent inquiry cannot be ascertained, and all such persons are therefore made party defendants to this action by the name and description of UNKNOWN OWNERS and NONRECORD CLAIMANTS.

REQUEST FOR RELIEF

WHEREFORE, PLAINTIFF REQUESTS:

- (i) A judgment of foreclosure and sale.
- (ii) An order granting a shortened redemption period, if sought.
- (iii) A personal judgment for deficiency, if applicable and sought, and only against parties who have signed the Note or monetary obligation which is the subject matter of this complaint, or persons who have assumed liability of the Note or monetary obligation which is the subject matter of this

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complaint, and who have not received a Chapter 7 bankruptcy discharge and who are not personally protected by the automatic stay at sale confirmation.

(iv) An order granting possession, if sought.

(v) An order placing the mortgagee in possession or appointing a receiver, if sought.

(vi) A judgment for attorneys' fees, costs and expenses, if sought.

(vii) For the appointment of a Selling Officer, if deemed appropriate by this court.

(viii) Such other and further relief as this court deems just.

U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust

BY: _____

CODILIS & ASSOCIATES, P.C.
One of its Attorneys

Joupin Izadi
ARDC # 6313115

Codilis & Associates, P.C.
Attorney for Plaintiff
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
14-14-04231
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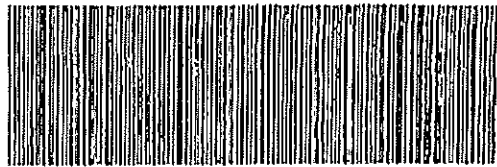
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Exhibit A

Return To:
SECURITYNATIONAL
MORTGAGE COMPANY
5300 SOUTH 360 WEST
SUITE 150
MURRAY, UTAH 84123
Prepared By:

KAREN ROGERS
SECURITYNATIONAL
MORTGAGE COMPANY
45 SOUTH PARK BOULEVARD
GREENWOOD, INDIANA 46143



FRED BUCHOLZ
DUPAGE COUNTY RECORDER
JUL 17, 2008 RHSP 1:22 PM
OTHER 02-30-411-017
009 PAGES R2008-112721

TITLE NO.: [REDACTED]
ESCROW NO.: [REDACTED]
LOAN NO.: [REDACTED]
PARCEL NO.: 02-30-411-017

PERSONAL INFORMATION REDACTED

State of Illinois

MORTGAGE

FHA Case No.
[REDACTED]

MIN [REDACTED]

THIS MORTGAGE ("Security Instrument") is given on
The Mortgagor is
MARIO A LOPEZ AND MARTHA LOPEZ, HUSBAND AND WIFE

JUNE 01, 2008

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
SECURITYNATIONAL MORTGAGE COMPANY, A UTAH CORPORATION

("Lender") is organized and existing under the laws of UTAH, and has an address of 5300 SOUTH 360 WEST SUITE 150; MURRAY, UTAH 84123

Borrower owes Lender the principal sum of
TWO HUNDRED THIRTY SIX THOUSAND ONE HUNDRED NINETY THREE AND 00/100 Dollars (U.S. \$ 236,193.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on JUNE 01, 2038 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's

Initials *ML ML* Amended 2/01

FHA Illinois Mortgage with MERS - 4/96
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DUPAGE COUNTY RECORDER

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covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in

DUPAGE

County, Illinois:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 02-30-411-017

which has the address of 643 ADOBE COURT

[Street]

CAROL STREAM

[City], Illinois

60188

[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

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If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or

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abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

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- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

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13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

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18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

21. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

- Condominium Rider
- Adjustable Rate Rider
- Growing Equity Rider
- Planned Unit Development Rider
- Graduated Payment Rider
- Other [Specify]

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4N(IL) (0305)
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BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

A  _____ (Seal)
-Borrower
MARIO A LOPEZ

A  _____ (Seal)
-Borrower
MARTHA LOPEZ

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

STATE OF ILLINOIS,
I, *G Livingston*
that
MARIO A LOPEZ AND MARTHA LOPEZ

Dupage County ss:
, a Notary Public in and for said county and state do hereby certify

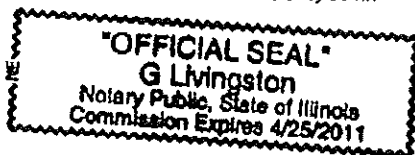
, personally known to me to be the same person(s) whose name(s) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this *2nd* day of *June*, *2008*.

My Commission Expires:



Notary Public



LOAN NO.: 
4N(IL) (0306)
DOCUPREP SERVICES, INC. FORM - MHTBLO-3214

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ATTORNEYS' TITLE GUARANTY FUND, INC.

LEGAL DESCRIPTION

Legal Description:

LOT 713 IN CAROL STREAM UNIT 8, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 10, 1962 AS DOCUMENT R62-31592, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 02-30-411-017

Permanent Index Number:

Property ID: 0230411017

Property Address:

643 ADOBE COURT
CAROL STREAM, IL 60188

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FRED BUCHOLZ

R2008-112721

DUPAGE COUNTY RECORDER

RECORDER OF DEEDS

Z-16-0967

Exhibit B

PERSONAL INFORMATION REDACTED

Multistate

NOTE

FHA Case No. [REDACTED]

JUNE 01, 2008 WINFIELD, ILLINOIS
[Date]

643 ADOBE COURT
CAROL STREAM, ILLINOIS 60188
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means SECURITYNATIONAL MORTGAGE COMPANY, A UTAH CORPORATION

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of TWO HUNDRED THIRTY SIX THOUSAND ONE HUNDRED NINETY THREE AND 00/100

Dollars (U.S. \$ 236,193.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of SIX AND 250/1000 percent (6.250 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on JULY 01, 2008. Any principal and interest remaining on the first day of JUNE 2038, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 5300 SOUTH 360 WEST, SUITE 150 MURRAY, UTAH 84123 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 1,454.28. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

Graduated Payment Allonge Growing Equity Allonge Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

LOAN NO.: [REDACTED]
FHA Multistate Fixed Rate Note - 10/95
-1R 10210/01
DOCSERV SERVICES, INC. FORM - 7147004-0111

MTN NO.: [REDACTED]

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HECQUO BRHONHTE

2-16-0967

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of FOUR percent (4.000 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

MARIO A LOPEZ (Seal) -Borrower (Seal) -Borrower (Seal) -Borrower (Seal) -Borrower (Seal) -Borrower (Seal) -Borrower

LOAN NO.: [redacted] MIN NO.: [redacted]

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pay to the order of Countrywide Bank, FSB without recourse Security National Mortgage Company Utah Corporation Barrett B. Sill, Vice President

PAY TO THE ORDER OF Secretary of Housing and Urban Development of Washington D.C., and his/her successors and assigns COUNTRYWIDE BANK, FSB

BY [Signature] LASK, NEDER SENIOR VICE PRESIDENT

A 40

2-16-0967

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FILED

14 NOV -7 AM 9:55

Oliver
CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY ILLINOIS

**IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY - WHEATON, ILLINOIS**

U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust
PLAINTIFF

No. 2014 CH 000473
RESIDENTIAL

Vs.

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco;
Martha D. Lopez; Unknown Owners and Nonrecord Claimants

DEFENDANTS

AMENDED COMPLAINT TO FORECLOSE MORTGAGE

NOW COMES the Plaintiff, U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN IT'S INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR QUEEN'S PARK OVAL ASSET HOLDING TRUST, by and through its attorneys, CODILIS & ASSOCIATES, P.C., complaining of the defendants herein and, pursuant to 735 ILCS 5/15-1101, states as follows:

1. Plaintiff files this Complaint to Foreclose the mortgage, trust deed or other conveyance in the nature of a mortgage (hereinafter called "Mortgage") hereinafter described, and names the persons identified in the above caption as "Defendants", as parties hereto.
2. Attached as "EXHIBIT A" is a copy of the mortgage. Attached as "EXHIBIT B" is a copy of the Note secured thereby.
3. Information concerning said Mortgage:
 - (A) Nature of the instrument: Mortgage.
 - (B) Date of the Mortgage: 6/2/2008
 - (C) Name of the mortgagor(s):
Mario A. Lopez a/k/a Mario Augusto Lopez-Franco
Martha D. Lopez
 - (D) Name of the original mortgagee:
Mortgage Electronic Registration Systems, Inc. as Nominee for Security National Mortgage Company
 - (E) Date and Place of Recording or Registering:
7/17/2008
Office of the Recorder of Deeds of DuPage County Illinois
 - (F) Identification of Recording: Document No. R2008-112721

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(G) Interest subject to the mortgage: Fee Simple.

(H) Amount of original indebtedness:

(1) Original Indebtedness: \$236,193.00

(I) Both the legal description of the mortgaged real estate and the common address or other information sufficient to identify it with reasonable certainty:

LOT 713 CAROL STREAM UNIT 8, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 10, 1962 AS DOCUMENT R62-31592, IN DUPAGE COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 643 Adobe Court
Carol Stream, IL 60188

TAX PARCEL NUMBER: 02-30-411-017

(J) Statement as to defaults: Mortgagors have not paid the monthly installments of Principal, taxes, Interest and insurance for 06/01/2011, through the present; the Principal balance due on the Note and the Mortgage is \$227,613.19, plus Interest, costs, advances and fees. Interest accrues pursuant to the Note, and the current per diem is \$38.97.

(K) Name of present owner(s) of said premises:
Mario A. Lopez a/k/a Mario Augusto Lopez-Franco
Martha D. Lopez

(L) Names of other persons who are joined as defendants and whose interest in or lien on the mortgaged real estate is sought to be terminated and alleged to be subordinate and inferior to the mortgage of the Plaintiff:

None.

(M) Names of defendants claimed to be personally liable for deficiency, if any:

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco.

(N) Capacity in which Plaintiff brings this foreclosure: On March 11, 2014, Plaintiff was a non-holder in possession of the Note with the rights of a holder. Plaintiff is currently the legal holder of the Note.

(O) Facts in support of a redemption period shorter than the longer of 7 months from the date the mortgagor or, if more than one, all the mortgagors have been served with summons or by publication or have otherwise submitted to the jurisdiction of the court, or 3 months from the entry of the judgment of foreclosure, whichever is later, if sought:

The redemption period shall be determined pursuant to 735 ILCS 5/15-1603.

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(P) Statement that the right of redemption has been waived by all owners of redemption: There has been no executed waiver of redemption by all owners of redemption, however Plaintiff alleges that it is not precluded from accepting such a waiver of redemption by the filing of this complaint.

(Q) Facts in support of request for attorney's fees and of costs and expenses, if applicable: The subject mortgage provides for payment of attorney fees, court costs and expenses in the event of a default by the mortgagors.

(R) Facts in support of a request for appointment of mortgagee in possession or for appointment of a receiver, and identity of such receiver, if sought: Unless otherwise alleged, Plaintiff will pray for said relief after the filing of the instant foreclosure action by separate petition if such relief is sought.

(S) Offer to the mortgagor in accordance with Section 15-1402 to accept title to the real estate in satisfaction of all indebtedness and obligations secured by the mortgage with judicial sale, if sought: No allegation of an offer is made however Plaintiff alleges that it is not precluded from making or accepting such offer by the filing of the instant foreclosure action.

(T) Name or names of defendants whose rights to possess the mortgaged real estate, after confirmation of a foreclosure sale, is sought to be terminated and, if not elsewhere stated, the facts in support thereof:

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; Martha D. Lopez;

4. Plaintiff avers that in addition to persons designated by name herein and the Unknown Defendants hereinbefore referred to, there are other persons, and/or non-record claimants who are interested in this action and who have or claim some right, title, interest or lien in, to or upon the real estate, or some part thereof, in this Complaint described, including but not limited to the following:

Unknown Owners and NonRecord Claimants, if any.

That the name of each of such persons is unknown to Plaintiff and on diligent inquiry cannot be ascertained, and all such persons are therefore made party defendants to this action by the name and description of UNKNOWN OWNERS and NONRECORD CLAIMANTS.

5. On July 27, 2011, Plaintiff, through its former servicer Bank of America, mailed a letter to Defendants by a Certificate of Mail to the subject property asking that Defendants call it to discuss the default on the loan, and indicating that it was available to schedule a meeting with them at the subject property.

6. On August 9, 2011, an agent of Plaintiff's former servicer, Bank of America, made a visit to the subject property in an attempt to arrange a face to face interview with Defendants. On August 16, 2011 an agent of Plaintiff's former servicer, Bank of America, made a follow-up visit to the subject property in an attempt to arrange a face to face interview with Defendants.


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REQUEST FOR RELIEF**PLAINTIFF REQUESTS:**

- (i) A judgment of foreclosure and sale.
- (ii) An order granting a shortened redemption period, if sought.
- (iii) A personal judgment for deficiency, if applicable and sought, and only against parties who have signed the Note or monetary obligation which is the subject matter of this complaint, or persons who have assumed liability of the Note or monetary obligation which is the subject matter of this complaint, and who have not received a Chapter 7 bankruptcy discharge and who are not personally protected by the automatic stay at sale confirmation.
- (iv) An order granting possession, if sought.
- (v) An order placing the mortgagee in possession or appointing a receiver, if sought.
- (vi) A judgment for attorneys' fees, costs and expenses, if sought.
- (vii) For the Appointment of a Selling Officer, if deemed appropriate by this court.
- (viii) Such other and further relief as this court deems just.

U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust

BY:


CODILIS & ASSOCIATES, P.C.
One of its Attorneys

Michael R. Kemock
ARDC# 6286572

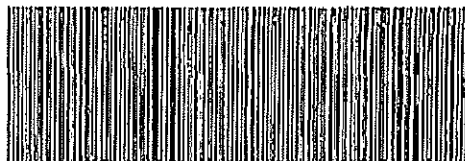
Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
14-14-04231
DuPage #15170

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2-16-0967...

Exhibit A

Return To:
**SECURITYNATIONAL
MORTGAGE COMPANY**
5300 SOUTH 360 WEST
SUITE 150
MURRAY, UTAH 84123
Prepared By:
KAREN ROGERS
SECURITYNATIONAL
MORTGAGE COMPANY
45 SOUTH PARK BOULEYARD
GREENWOOD, INDIANA 46143



FRED BUCHOLZ
DUPAGE COUNTY RECORDER
JUL 17, 2008 RHSP 1:22 PM
OTHER 02-30-411-017
009 PAGES R2008-112721

TITLE NO.: [REDACTED]
ESCROW NO.: [REDACTED]
LOAN NO.: [REDACTED]
PARCEL NO.: 02-30-411-017

PERSONAL INFORMATION REDACTED

State of Illinois

MORTGAGE

FHA Case No.
[REDACTED]

MIN [REDACTED]

THIS MORTGAGE ("Security Instrument") is given on **JUNE 02, 2008**
The Mortgagor is
MARIO A LOPEZ AND MARTHA LOPEZ, HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
SECURITYNATIONAL MORTGAGE COMPANY, A UTAH CORPORATION

("Lender") is organized and existing under the laws of **UTAH**, and has an address of **5300 SOUTH 360 WEST SUITE 150; MURRAY, UTAH 84123**

Borrower owes Lender the principal sum of **TWO HUNDRED THIRTY SIX THOUSAND ONE HUNDRED NINETY THREE AND 00/100** Dollars (U.S. \$ **236,193.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **JUNE 01, 2038**. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's

Initials *ML ML* Amended 2/01

FHA Illinois Mortgage with MERS - 4/96
4N(IL) (9006)
DOCPREP SERVICES, INC. FORM - MMTGLB-3214

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VMP Mortgage Solutions (800)521-7281
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FRED BUCHOLZ R2008-112721 DUPAGE COUNTY RECORDER

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covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in
DUPAGE County, Illinois:
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 02-30-411-017
which has the address of 643 ADOBE COURT (Street)
CAROL STREAM (City), Illinois 60188 (Zip Code) ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

LOAN NO.: [REDACTED]
4N(1L) (0305)

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DOCPREP SERVICES, INC. FORM - MHTGLD-3214

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If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows: First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or

LOAN NO.: [REDACTED]
4N(IL) (0306)
DOCREP SERVICES, INC. FORM NMTGLB-3214

Initials ML ML

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abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Gam-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

LOAN NO.: [REDACTED]
4N(IL) (0306)
DOCPREP SERVICES, INC. FORM - MHTGLO-3214

Initials [Signature] [Signature]

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(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

LOAN NO.: [REDACTED]
4N(IL) (0305)
DOCREP SERVICES, INC. FORM - MHT010-3214

Initials ML ML

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13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

LOAN NO.: [REDACTED]
4N(LL) (0305)

Initials *[Handwritten Signature]*

DocuPREP SERVICES, INC. FORM MMTGILD-3214

Page 6 of 8
ORIGINAL

A50

2-16-0967

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 375i et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

21. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

- Condominium Rider
- Adjustable Rate Rider
- Growing Equity Rider
- Planned Unit Development Rider
- Graduated Payment Rider
- Other [Specify]

LOAN NO.: [REDACTED]
4N(IL) (0305)
DOCREP SERVICES, INC. FORM - MNTDLO-3214

Initials *ML*

Page 7 of 8
ORIGINAL

FRED BUCHOLZ


R2008-112721

DUPAGE COUNTY RECORDER

ASI

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

P  _____ (Seal)
-Borrower
MARIO A LOPEZ

P  _____ (Seal)
-Borrower
MARTHA LOPEZ

(Seal) _____ (Seal)
-Borrower -Borrower

(Seal) _____ (Seal)
-Borrower -Borrower

(Seal) _____ (Seal)
-Borrower -Borrower

STATE OF ILLINOIS,
I, G Livingston
that
MARIO A LOPEZ AND MARTHA LOPEZ

Dupage County ss:

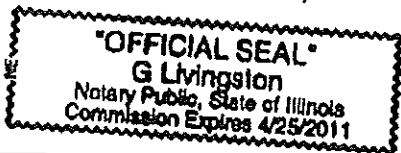
, a Notary Public in and for said county and state do hereby certify

, personally known to me to be the same person(s) whose name(s) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 2nd day of June, 2008.

My Commission Expires: _____

Notary Public



LOAN NO.: 
4N(IL) (0305)
DOCPREP SERVICES, INC. FORM - MMTGL0-3214

Page 6 of 6
ORIGINAL

FRED BUCHOLZ R2008-112721 DUPAGE COUNTY RECORDER

A52

2-16-0967

ATTORNEYS' TITLE GUARANTY FUND, INC.

LEGAL DESCRIPTION

Legal Description:

LOT 713 IN CAROL STREAM UNIT 8, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 10, 1962 AS DOCUMENT R62-31592, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 02-30-411-017

Permanent Index Number:

Property ID: 0230411017

Property Address:

643 ADOBE COURT
CAROL STREAM, IL 60188

FRED BUCHOLZ

R2008-112721

DUPAGE COUNTY RECORDER

A53

2-16-0967

EXHIBIT B

PERSONAL INFORMATION REDACTED

NOTE

Multistate



JUNE 01, 2008 WINFIELD, ILLINOIS
[Date]

643 ADOBE COURT
CAROL STREAM, ILLINOIS 60188

[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means SECURITYNATIONAL MORTGAGE COMPANY, A UTAH CORPORATION

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of TWO HUNDRED THIRTY SIX THOUSAND ONE HUNDRED NINETY THREE AND 00/100

Dollars (U.S. \$ 236,193.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of SIX AND 250/1000 percent (6.250 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on JULY 01, 2008 . Any principal and interest remaining on the first day of JUNE 2038 , will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 5300 SOUTH 360 WEST, SUITE 150 MURRAY, UTAH 84123 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 1,454.28 . This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

Graduated Payment Allonge Growing Equity Allonge Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

VIA Multistate Fixed Rate Note - 10/95
-IR (2/10)02
DOCTRIP SERVICES INC. POAM - PRAT0048-3153

VMP Mortgage Solutions (800)821-7251

Page 1 of 2
ORIGINAL

A 54

2-16-0967

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of FOUR percent (4.000 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

MARIO A LOPEZ (Seal) -Borrower
____ (Seal) -Borrower
____ (Seal) -Borrower

DocuSign SERVICES INC. FORM 17847048-3153

Page 2 of 2 ORIGINAL

pay to the order of Countrywide Bank, FSB without recourse Security National Mortgage Company

PAY TO THE ORDER OF Secretary of Housing and Urban Development of Washington D.C., and his/her successors and assigns WITHOUT RECOURSE COUNTRYWIDE BANK, FSB

BY Jennie Medel SENIOR VICE PRESIDENT

A 55

2-16-0967



ALLONGE TO NOTE

Instrument Type: **NOTE**

Original Maker: **MARIO A LOPEZ**

Original Lender: **SECURITYNATIONAL MORTGAGE COMPANY, A UTAH CORPORATION**

Date of Instrument: **6/2/2008**

Original Principal Amount: **\$ 236,193.00**

Property Address: **643 ADOBE COURT CAROL STREAM, IL 60188**

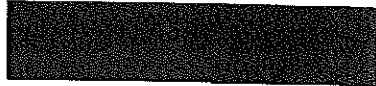
Mortgage Note duly endorsed to **QUEEN'S PARK OVAL ASSET HOLDING TRUST**, without representation, warranty or recourse.



THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
 by Queen's Park Oval Asset Holding Trust its Attorney
 In Fact

By: *K. Airis*
 Kelli J. Airis, Vice President

A 56



2-16-0967

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY - WHEATON, ILLINOIS

U.S. Bank Trust National Association, not in its
individual capacity but solely as Owner Trustee for
Queen's Park Oval Asset Holding Trust
PLAINTIFF

Vs.

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; et.
al.

DEFENDANTS

No. 2014 CH 000473
RESIDENTIAL

VERIFIED AFFIDAVIT OF ROBERT H. RAPPE, JR.

I, the undersigned, am over the age of eighteen years old, and state that the following are true and correct statements based on my personal knowledge:

1. My name is Robert H. Rappe, Jr. and I am a Managing Attorney of Codilis & Associates, P.C. ("Codilis"), counsel for Plaintiff herein. If called as a witness, I could personally testify to the facts contained herein.
2. I am familiar with the business practices of and the business records kept by Codilis as I am involved with the same as a routine function of my position with Codilis. I have personal knowledge of the matters herein attested to, as established below.
3. Attached hereto as **Exhibit 1** is an image of a screen reflecting the imaging of the Original endorsed Note in this matter that was imaged into Codilis' case management system.
4. The image establishes that the Original endorsed Note was scanned into and imaged in Codilis' case management system on March 10, 2014 by employee Maggee Omielan.
5. Accordingly, the Original Note was in the possession of Codilis, as counsel for Plaintiff, prior to the initiation of the instant action on March 11, 2014.
6. **Exhibit 1** is a record that was kept in the ordinary course of Codilis' business, and it is the ordinary business practice of Codilis to keep such records on the files which it handles.
7. I further have personal knowledge that when Codilis receives original Mortgages and Notes from its clients, they are imaged into case management system at or near the time that they are received, and an electronic copy of the same is stored thereafter. The original documents are then stored in a secure, fire-proof room that is only accessible by authorized Codilis employees.

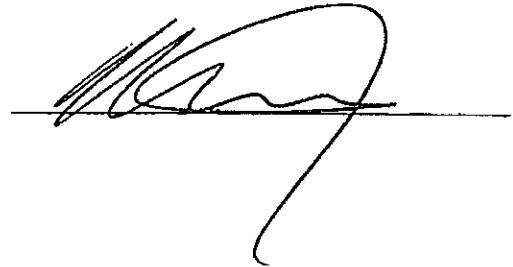
A 57

2-16-0967

8. Attached hereto as **Exhibit 2** is a copy of the original Note, with the loan number redacted as it existed on March 11, 2014. **Exhibit 2** is an imaged copy of the Note that is electronically stored, as described above.
9. The original Note was subsequently returned to the servicer, after the initiation of the instant action, in order to obtain an endorsement to Plaintiff. Attached hereto as **Exhibit 3** is a copy of the original Note with the additional endorsement to Plaintiff.
10. I have viewed the original Note and **Exhibit 3** constitutes a true, accurate, and complete copy of the original document that is currently in Codilis' possession, and that was received by Codilis as described above.

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth above are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
DuPage #15170
14-14-04231

A 58

EXHIBIT 1

A59

14-14-04231 - (COP) - Mario A. Lopez (Conventional) - Loan # [REDACTED]

Attention: Hourly Billing | BKFS-LoanSphere

Document - Endorsed Note

General | View | History | Location

General

Folder: Original Docs | Document Types: Endorsed Note

Received From: [REDACTED] | Default | Returned To: [REDACTED] | Default

Tracking Info: [REDACTED] | Track

or: [REDACTED] | Clear | [REDACTED]

document is a(n): Original

Incomplete
Comments:
into Sacy of HUD

Info:
Entered By: Barbara Donahue (3/7/14 8:35p)
Scanned By: MOMIELAN (Retired) (3/10/14 8:34a)

Batch: [REDACTED] | E-Mail user when scanned [REDACTED]

Cancel | OK

A 60

2-16-0967



FRED BUCHOLZ
DUPAGE COUNTY RECORDER
JAN 22, 2014 8:58 AM
OTHER
002 PAGES R2014-005929

PREPARED BY & RETURN TO:
M. E. Wilshen
Orion Financial Group, Inc.
2860 Exchange Blvd. # 100
Southlake, TX 76092

RECORD SECOND
Assignment of Mortgage Send Any Notices To Assignee.

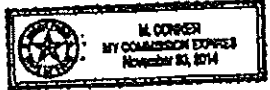
For Valuable Consideration, the undersigned, **THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT** 451 7th Street S.W., Washington, DC 20410 (Assignor) by these presents does assign and set over, without recourse, to U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR QUEEN'S PARK OVAL ASSET HOLDING TRUST 300 Delaware Avenue, 5th Floor, Wilmington, DE 19801 (Assignee) the described mortgage with all interest, all liens, any rights due or to become due thereon, executed by MARIO A LOPEZ AND MARTHA LOPEZ. Said mortgage Dated: 6/2/2008 is recorded in the State of IL, County of DuPage on 7/17/2008, Document # R2008-112721 AMOUNT: \$ 236,193.00 SEE ATTACHED EXHIBIT A Parcel # 02-30-411-017 Property Address: 643 ADOBE COURT, CAROL STREAM, IL 60188

IN WITNESS WHEREOF the undersigned corporation/trust has caused this instrument to be executed as a sealed instrument by its proper officer.
Executed on: 1-16-14
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT by Queen's Park Oval Asset Holding Trust Its Attorney In Fact

By: K. Alris
Kelli J. Alris, Vice President



State of Texas, County of Tarrant
On 1-16-14 before me, the undersigned, Kelli J. Alris, who acknowledged that he/she is Vice President of Queen's Park Oval Asset Holding Trust Its Attorney In Fact for THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT and that he/she executed the foregoing instrument and that such execution was done as the free act and deed of THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.



M. Conner
Notary public, M. Conner
My Commission Expires: November 30, 2014

IL DuPage 25CAP/HUD/AOM/I

FRED BUCHOLZ R2014-005929 DUPAGE COUNTY RECORDER

A 61

2180
1640
2840

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY - WHEATON, ILLINOIS

U.S. Bank Trust National Association, not in it is
individual capacity but solely as Owner Trustee for
Queen's Park Oval Asset Holding Trust
PLAINTIFF

Vs.

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; et.
al.

DEFENDANTS

No. 2014 CH 000473
RESIDENTIAL

ORDER

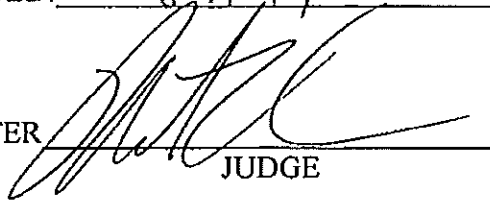
THIS CAUSE COMING ON TO BE HEARD on motion of the Plaintiff, U.S. Bank Trust National Association, not in it is individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust, the Court having jurisdiction over the parties and subject matter and being fully advised in the premises;

FILED
14 AUG 11 04:35
Clerk of the Circuit Court
Dupage County Illinois

IT IS HEREBY ORDERED:

1. Defendants are granted 28 days to respond to Plaintiff's Motion to Dismiss Defendants' Affirmative Defenses;
2. Plaintiff is granted 21 days thereafter to reply;
3. Hearing on Plaintiff's Motion to Dismiss Defendants' Affirmative Defenses is set for October 27, 2014 at 1:30pm in room 1003.
4. Strike 8/27/14 court date. TR66

DATED: 8-11-14

ENTER  JUDGE

Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
DuPage #15170
14-14-04231

A 62

2180

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ORDER - BLANK

2116 (Rev. 6/13)

47

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
 IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

us Bank Trust National Association

vs

Mario A. Lopez et al.

2014 CH 473
CASE NUMBER

FILED
 14 OCT 27 PM 4:04
 Clerk: *Michelle*
 CLERK OF THE 18th JUDICIAL CIRCUIT
 DU PAGE COUNTY, ILLINOIS
 File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, IT IS HEREBY ORDERED:

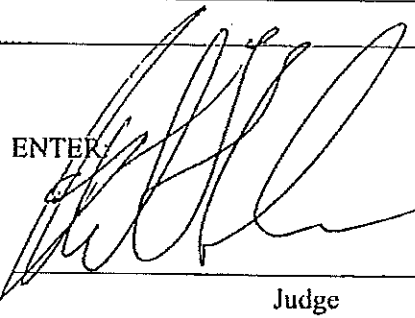
Over Defendants' objection, Plaintiff is granted 28 days to file an Amended Complaint;

Defendants are granted 30 days thereafter to file a responsive pleading to Plaintiff's Amended Complaint;

Status is set for 1-14-15 at 9:00 Am in room 1003;

The Court deems the matter to strike Affirmative Defenses as moot based upon leave to file the Amended Complaint.

Name: Codillo PRO SE
 DuPage Attorney Number: 15170
 Attorney for: Plaintiff
 Address: 152030 N. Floritage Rd
 City/State/Zip: Burr Ridge IL 60527
 Telephone: 630 794 5300

ENTER: 
 Judge

Date: 10-27-14

A 63

2-16-0967

2116 (Rev. 6/13)

97

2270

ORDER - BLANK

2180
1640

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

US Bank as Trustee

vs

Mario A. Lopez; et. al.

2014 CH 473
CASE NUMBER

FILED
95 MAR 18 PM 4:22
Clerk of the
18th JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, IT IS HEREBY ORDERED:

Defendant's 619.1 Motion to Dismiss is Denied without prejudice

to raise the issues as an Affirmative Defense;

Defendants are granted 28 days to file an Answer to Plaintiff's

Amended Complaint;

Status is set for 5-13-15 at 9:00 AM in room 1003

Name: Codilis PRO SE

DuPage Attorney Number: 15170

Attorney for: Plaintiff

Address: 15430 N. Frontage Rd

City/State/Zip: Burr Ridge IL 60527

Telephone: 630 797 5300

ENTER:

Judge

Date: 3-18-15

164

2-16-0967

2116 (Rev. 6/13)

23

2570
1440

ORDER - BLANK

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

US Bank Trust Nat'l Assoc, not
in its individual capacity but solely
as owner trustee for Queen's Park Oval
Asset Holding Trust
vs

Mario Lopez, et al.

2014 CH 473
CASE NUMBER

FILED
15 NOV - 6 PM 3: 41
CLERK OF THE
18th JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, IT IS HEREBY ORDERED:

Plaintiff's Motion to Strike Defendants' Affirmative Defenses

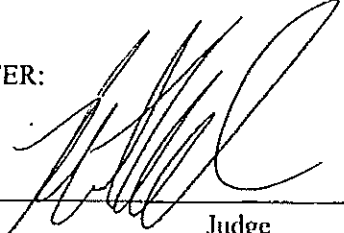
is granted;

Defendants' Affirmative Defenses are Stricken with prejudice;

Status is set for 12-7-15 at 9:00 AM in room 1003;

Plaintiff produce the original Note in open court.

Name: Codilis PRO SE
DuPage Attorney Number: 15170
Attorney for: Plaintiff
Address: 15W130 N. Fremont Rd
City/State/Zip: Burr Ridge IL 60527
Telephone: 630 799 5300

ENTER: 
Judge
Date: 11-4-15

A 65

1170

2270

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY - WHEATON, ILLINOIS

U.S. Bank Trust National Association, not in it is
individual capacity but solely as Owner Trustee for
Queen's Park Oval Asset Holding Trust
PLAINTIFF

Vs.

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; et.
al.

DEFENDANTS

No. 2014 CH 000473
RESIDENTIAL

FILED
15 JUL 18 PM 2:30
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY ILLINOIS

ORDER FOR SUMMARY JUDGMENT

This matter coming to be heard on Plaintiff's Motion for Summary Judgment, Defendant(s) having Answered Plaintiff's Complaint to Foreclose Mortgage, the Court having reviewed said Answer and determining that said Answer, as pleaded without sufficient supporting documentation, does not raise a genuine issue of material fact sufficient to preclude the entry of Summary Judgment in favor of Plaintiff, the Court being otherwise duly advised in the premises;

NOW, THEREFORE, IT IS ORDERED:

Plaintiff's Motion for Summary Judgment is granted. Summary Judgment and Judgment of Foreclosure and Sale is hereby entered in favor of Plaintiff and against the following Defendants:

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco
Martha D. Lopez.

Defendants' oral motion for 309A language is denied without prejudice and my bits back as a written motion.

ENTERED: _____

Judge

DATED: 7/18/16

Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
pleadings@il.cslegal.com
DuPage #15170
14-14-04231

NOTE: This law firm is a debt collector.

A66

2-16-0967
5

3230
1000
1280

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY - WHEATON, ILLINOIS

U.S. Bank Trust National Association, not in it is individual
capacity but solely as Owner Trustee for Queen's Park Oval
Asset Holding Trust

PLAINTIFF

Vs.

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; et. al.
DEFENDANTS

No. 2014 CH 000473
RESIDENTIAL

ORDER CONFIRMING SALE (ORDER APPROVING)
AND ORDER OF POSSESSION

FILED
16 NOV - 7 PM
Clerk
18TH JUDICIAL
CIRCUIT
DUPAGE COUNTY
ILLINOIS

NOW COMES U.S. Bank Trust National Association, not in it is individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust by and through its attorneys, Codilis & Associates, P.C., and the Sheriff of DuPage County or Sale Officer, and files herein his report of sale and distribution of the proceeds of sale of the premises involved herein;

THE COURT FINDS that:

1. The Sheriff or Sale Officer has proceeded in accordance with all the terms of the Judgment heretofore entered in conducting the sale of the premises involved herein and in distributing the proceeds derived from said sale;
2. The Notice of Sale, as required pursuant to 735 ILCS 5/15-1507(c), has been properly given.
3. The terms of the sale were fair and conscionable and the sale was conducted fairly without fraud.
4. U.S. Bank Trust National Association, not in it is individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust including its insurers, investors, and agents, or its assigns is entitled to possession of the subject property as of the date thirty (30) days after the entry of this order and that U.S. Bank Trust National Association, not in it is individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust including its insurers, investors, and agents, or its assigns is entitled to a Deed to the subject property to be issued after entry of this Order.

IT IS HEREBY ORDERED that:

1. The sale of the premises involved herein on 10/20/16 conducted by said Sheriff or Sale Officer and the distribution by him of the proceeds of sale and his report of sale and distribution be, and are hereby in all respects, approved, ratified and confirmed;
2. The Sheriff or Sale Officer issue a deed to U.S. Bank Trust National Association, not in it is individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust including its insurers, investors, and agents, or its assigns pursuant to the findings of this Court as set forth above;

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3. The Deed to be issued hereunder is a transaction that is exempt from all transfer taxes, either state or local.

4. U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust including its insurers, investors, and agents, or its assigns be granted an order of possession of the subject property effective thirty (30) days after the entry of this order. Said order is enforceable against all party defendants named herein including:

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; Martha D. Lopez

at the subject property commonly known as:

643 Adobe Court
Carol Stream, IL 60188.

If said occupants fail to surrender possession of the subject property within thirty (30) days after the date of entry of this order, then after thirty (30) days from entry of this order, the Sheriff for DuPage County is directed to eject and remove said occupants from the subject property and to put U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust including its insurers, investors, and agents, or its assigns, in full and complete possession of the property set forth above;

5. There be an IN PERSONAM deficiency judgment against

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco

in the sum of \$144,857.75 with statutory interest thereon.

6. The Sheriff for DuPage County or Sale Officer is directed to issue Duplicate Original Certificates of Sale in recordable form which Certificate(s) shall be freely assignable;

7. That any Special Right to Redeem, if applicable, pursuant to 735 ILCS 5/15-1604, shall expire 30 days after entry of this order;

8. That the Municipality or County may contact the party below with concerns about the real property:

Name: Jahni Triano, as agen, agent of U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust
Address: 5016 Parkway Plaza Blvd, Suite 200
Charlotte, NC 28217
Phone: 704-426-8964

9. 735 ILCS 5/9-117 is not applicable to this order. This is a final and appealable order with no just cause for further delay..

ENTER: 
Judge

DATED: 11-7-16

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REC'D 11/13/16

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Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
pleadings@il.cslegal.com
DuPage #15170
14-14-04231
NOTE: This law firm is a debt collector.

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APPEAL TO THE APPELLATE COURT OF ILLINOIS FOR THE SECOND DISTRICT

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT DUPAGE COUNTY- WHEATON, ILLINOIS

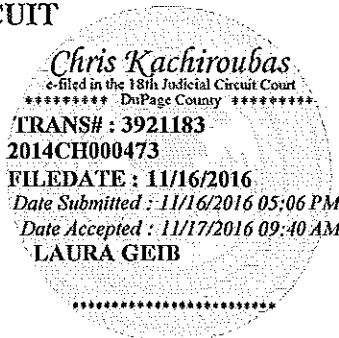
U.S. Bank Trust, National Association, not in its individual capacity but solely as Owner Trustee for Queen's Park Oval Asset Holding Trust

Appellee,

v.

Mario A. Lopez a/k/a Mario Augusto Lopez-Franco; Martha D. Lopez; Unknown Owners and Non-Record Claimants

Appellants.



Reviewing Court No.

Circuit Court No. 2014 CH 000473

Judge Robert Gibson

NOTICE OF APPEAL UNDER SUPREME COURT RULE 301 AND 303.

Mario A. Lopez and Martha D. Lopez, by and through their counsel, hereby appeal to the Appellate Court of Illinois, Second District, from the following orders:

- 1) The order entered in this cause on October 27, 2014, granting Plaintiff-Appellee, U.S. Bank Trust, National Association its Oral Motion to File an Amended Complaint (and any order incorporated therein);
2) The order entered in this cause on March 18, 2015, dismissing Defendant-Appellants' Combined Motion to Dismiss Plaintiff's Amended Complaint Pursuant to 735 ILCS 5/2-619.1 and Illinois Supreme Court Rule 113 (and any order incorporated therein);
3) The order entered in this cause on November 4, 2015, granting Plaintiff-Appellee, U.S. Bank Trust, National Association its Motion to Strike Defendants' Affirmative Defenses (and any order incorporated therein);
4) The order entered in this cause on July 18, 2016 by the Circuit Court of DuPage County, granting Plaintiff-Appellee's Motion for Summary Judgment, and Judgment of Foreclosure and Sale (and any order incorporated therein);

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- 5) The order entered in this cause on November 7, 2016 granting Plaintiff-Appellee, U.S. Bank Trust, National Association its Motion to Confirm Judicial Sale (and any order incorporated therein);


The above listed orders are collectively referred to as the "Orders."

Appellants Mario A. Lopez and Martha D. Lopez pray that this Court:

- 1) Reverse the Order granting the Oral Motion to File an Amended Complaint; and
- 2) Reverse the Order dismissing the Combined Motion to Dismiss Plaintiff's Amended Complaint Pursuant to 735 ILCS 5/2-619.1 and Illinois Supreme Court Rule 113; and
- 3) Reverse the Order granting the Motion to Strike Defendants' Affirmative Defenses; and
- 4) Reverse the Order granting Summary Judgment and Judgment of Foreclosure and Sale on behalf of Plaintiff-Appellee; and
- 5) Reverse the Order granting the Motion to Confirm Judicial Sale; and
- 6) Dismiss Plaintiff-Appellee's Complaint to Foreclose with prejudice; or
- 7) Remand this matter to the Circuit Court for implementation of the above, including the conduct of any evidentiary hearings and discovery necessary to implement further proceedings of the cause; and
- 8) Assess the costs related to this appeal to the Plaintiff-Appellee; and
- 9) Grant such other and full relief as may be just and appropriate.

SEE ATTACHED LIST OF APPELLANTS AND THEIR COUNSEL

BY:



Daniel Khwaja, Esq.
Attorney for Mario A. Lopez and Martha D. Lopez

Prepared by:
Daniel Khwaja, Esq.
North Legal Services
2342 West North Avenue
Chicago, Illinois 60647
PH: (773) 235-9300
Fax: (773) 235-9305
ARDC No. 6305287
DuPage No. 272384

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APPELLANTS REPRESENTED BY DANIEL KHWAJA

Lopez, Mario A.

Lopez, Martha D.

Prepared by:

Daniel Khwaja, Esq.
North Legal Services
2342 West North Avenue
Chicago, Illinois 60647
PH: (773) 235-9300
Fax: (773) 235-9305
ARDC No. 6305287
DuPage No. 272384

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