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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 09-14763 (ALG)

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6 In the Matter of:

7
8 GILLES Y. MICHAUD & JENNIFER R. MICHAUD,

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10 Debtors.

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13
14 United States Bankruptcy Court
15 One Bowling Green
16 New York, New York

17
18 June 3, 2010

19 10:31 AM

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21 B E F O R E:
22 HON. ALLAN L. GROPPER
23 U.S. BANKRUPTCY JUDGE
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HEARING re Motion filed by Citibank, N.A. for an order granting relief from the automatic stay.

HEARING re Objection filed by the United States Trustee to motion filed by Citibnk, N.A. for an order granting relief from the automatic stay.

Transcribed by: Penina Wolicki

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A P P E A R A N C E S :

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BY: NATALIE A. GRIGG, ESQ.

AMY E. POLOWY, ESQ.

U.S. DEPARTMENT OF JUSTICE

Office of the U.S. Trustee
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New York, NY 10004

BY: GREG M. ZIPES, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Gilles Michaud and Jennifer Michaud. May
3 I have appearances, please?

4 MS. GRIGG: Natalie Grigg, Steven J. Baum, P.C. on
5 behalf of Citibank, N.A.

6 MS. POLOWY: Amy Polowy, also from Steven J. Baum,
7 P.C. on behalf of Citibank.

8 MR. ZIPES: And Greg Zipes from the U.S. Trustee's
9 Office.

10 THE COURT: All right. This is a dispute over
11 evidence of assignment of a mortgage, if I recall?

12 MS. GRIGG: Yes, Your Honor. Citibank, N.A. has made
13 a motion for relief in the underlying Chapter 7 case, filed by
14 Gilles and Jennifer Michaud, on the grounds that there has been
15 a default in payment and that there was no equity in the
16 property. The debtor has not submitted any opposition to the
17 underlying motion nor has the Chapter 7 trustee. The only
18 opposition that we have received is from the U.S. Trustee's
19 Office, on the grounds that Citibank doesn't have standing and
20 that the assignment isn't valid; that there was no disclosure
21 that Ms. Elpiniki Bechakas was an attorney from Steven J. Baum,
22 P.C. who executed the assignment, and that Citibank has to
23 describe the procedures for determining the accuracy of its
24 figures.

25 In response to the U.S. Trustee's objection, we have

1 submitted a supplemental affirmation from my office, as well as
2 an affirmation directly -- or an affidavit directly from an
3 employee, bankruptcy specialist, from Citibank. The affidavit
4 sets forth that the note was originally executed to
5 CitiMortgage, the mortgage was initially executed, the lender
6 was CitiMortgage, and merged with the nominee for CitiMortgage.

7 THE COURT: CitiMortgage being a subsidiary of
8 Citicorp?

9 MS. GRIGG: And indirect subsidiary, yes.

10 THE COURT: All right.

11 MS. GRIGG: And --

12 THE COURT: Part of the Citibank group of companies?

13 MS. GRIGG: Correct, Your Honor.

14 THE COURT: All right.

15 MS. GRIGG: And the note was transferred from
16 CitiMortgage to Citibank in December of 2008. As set forth in
17 the affidavit of David Thornhill, Citibank, since that time,
18 has had possession of the original note. In having possession
19 of the original note, and being the owner and holder, it has
20 standing to bring the instant motion for relief. And we
21 believe that we've set forth proof with the affidavit of David
22 Thornhill to establish --

23 THE COURT: Now, I don't have that. Has that been --
24 was that filed on the ECF system?

25 MS. GRIGG: Yes, Your Honor. It's attached as Exhibit

1 A to my supplemental affirmation.

2 THE COURT: And when was that filed?

3 MS. GRIGG: That was filed on May 28th.

4 THE COURT: I don't have it. But let me hear from Mr.
5 Zipes. I assume you have it?

6 MR. ZIPES: I have it, Judge, yes.

7 Judge, I have an extra copy, by the way, of the
8 response if --

9 THE COURT: All right. If it's necessary.

10 MR. ZIPES: Okay. Judge --

11 THE COURT: What is insufficient with regard to the
12 further evidence?

13 MR. ZIPES: Sure.

14 THE COURT: This apparently was a mortgage originally
15 given to an affiliate of the movant, Citibank. And MERS was a
16 nominee as it apparently is a nominee for -- am I correct,
17 virtually every mortgage -- residential mortgage in the
18 country?

19 MR. ZIPES: Judge, let me -- let me take a step back
20 and try to describe my office's position with respect to this
21 objection. And we have reviewed the response --

22 THE COURT: I read your objection.

23 MR. ZIPES: Yes.

24 THE COURT: An apparently you have a directive from
25 Washington to take appropriate action in cases where there is

1 no initial evidence of assignment, which I don't question at
2 all.

3 MR. ZIPES: Okay.

4 THE COURT: Where are we on this particular --

5 MR. ZIPES: Judge, where we're at is, at the very
6 least there remain some questions regarding Citibank's --

7 THE COURT: Have you asked counsel those questions?

8 MR. ZIPES: Judge, we haven't. We've had --

9 THE COURT: Well, why don't I take a brief recess. If
10 you have questions, why don't you ask them of counsel first,
11 and then if there's an issue -- a legal issue that has to come
12 before me, it can.

13 MR. ZIPES: That's fine, Your Honor.

14 THE COURT: All right. Why don't you -- if you have
15 any remaining questions, you should take it up with counsel, in
16 this case as in any case. Is there somebody -- is there a
17 businessperson here from the bank?

18 MS. GRIGG: No, Your Honor. Because we submitted the
19 affidavit, we did not bring a representative in today.

20 THE COURT: All right. We ordinarily don't have
21 evidentiary hearings, at least at the first return date. All
22 right. I'll take the other case --

23 MR. ZIPES: Which I have too.

24 THE COURT: You're appearing on that? Well, I'll take
25 an adjournment if you have questions. Are we ready on --

1 MR. DAL LAGO: Your Honor, debtor's counsel is still
2 making phone calls.

3 THE COURT: Making phone calls. Should I take a five-
4 minute break, and you can ask any questions if you have?

5 MR. ZIPES: Sure.

6 THE COURT: Or do you want -- under the circumstances,
7 do you want to ask them on the record? I'll listen to them.

8 MR. ZIPES: Judge, let me -- if I --

9 THE COURT: I don't know that this is a very efficient
10 way of proceeding.

11 MR. ZIPES: No --

12 THE COURT: I tell you like I tell all counsel. If
13 you have questions, raise them. But not necessarily before me.
14 But go ahead. Go ahead.

15 MS. POLOWY: -- no, Judge, let me just preface it by
16 saying that discovery has been ongoing in various cases of
17 these types by my office. And the Steven J. Baum firm has been
18 involved. I know Ms. Polowy and Ms. Grigg. And we have been
19 in communication in other cases.

20 I do believe that in this case the Baum firm is
21 drawing the line, in the sense that they believe that the
22 motion as filed was sufficient. And in that regard, we may
23 have --

24 THE COURT: All right.

25 MR. ZIPES: -- a basic disagreement as to --

1 THE COURT: All right. Let us assume that the motion
2 as filed was insufficient. What should be done at this point?
3 Should they start over again and pay another filing fee, as a
4 matter of penalty, in effect? If there's any impropriety in
5 submitting without adequate disclosure and attorneys'
6 affidavit, under the circumstances, do we need to deal with
7 that today in this case? I'm merely trying to deal with a
8 motion for relief from the stay that's pending before me today,
9 without an objection from either of the debtors.

10 When I get these on presentment, I always check to see
11 what the debtor has said. Do you know? I did not, because
12 this has come up in a very different way. Did the debtor
13 intend to surrender this property or to retain it in the
14 debtor's initial filing? Do you recall?

15 MR. ZIPES: I believe his intention is to surrender
16 the property. But this is a Chapter 7, and there's a Chapter 7
17 trustee who --

18 THE COURT: Right, who hasn't been heard from.

19 MR. ZIPES: My office has been in communication with
20 the Chapter --

21 THE COURT: What is the -- all right --

22 MR. ZIPES: -- Chapter 7 trustee.

23 THE COURT: Now, this isn't evidence, but this is just
24 an informal hearing. What does the Chapter 7 trustee want to
25 do?

1 MR. ZIPES: The Chapter --

2 THE COURT: Do they think there's equity in this
3 property for the creditors?

4 MR. ZIPES: -- Judge, I think the trustee is trying to
5 determine that even at this time. He's --

6 THE COURT: Well, one would --

7 MR. ZIPES: -- trying --

8 THE COURT: -- who is the trustee?

9 MR. ZIPES: Alan Nisselson.

10 THE COURT: Mr. Nisselson ought to speak for himself.
11 He certainly has time to appear before me in a lot of other
12 cases.

13 MR. ZIPES: That's true, Your Honor. And I won't try
14 to speak for him. Judge, I think --

15 THE COURT: Well, you can certainly -- you can try to
16 speak for him if you want to. What do you want me to do today?

17 MR. ZIPES: Judge, I appreciate your questions,
18 because there is a bigger issue here that doesn't necessarily
19 focus on this motion by itself. And it --

20 THE COURT: What is the bigger issue?

21 MR. ZIPES: The bigger issue is one of disclosure and
22 making sure that under the Local Rule 4001, which requires
23 significant disclosure by a secured creditor when they're
24 filing these motions, that that local rule is complied with in
25 a way that when we pick up a motion, it's internally consistent

1 and makes sense, and that all relevant facts are disclosed.

2 THE COURT: Okay.

3 MR. ZIPES: And I really think that that is the crux
4 of what the U.S. Trustee's concern is here. There -- this is
5 not a big Chapter 11 case, and these motions are filed in a
6 very routine manner, Judge. And frankly --

7 THE COURT: We don't get that many in this court, in
8 fact.

9 MR. ZIPES: Judge, I can --

10 THE COURT: No, let me continue.

11 MR. ZIPES: I'm sorry.

12 THE COURT: And you say they're routine. I review
13 each one personally. I don't give it to my law clerks. I
14 review the motion and I review the petition. And I'm
15 particularly interested in determining, one, whether there's
16 been service on the individuals as well as the attorney. I
17 look at it more closely when it's a pro se matter. You are --
18 I think the Office is to be commended or at least I appreciate
19 that you ferreted out some relevant information here that
20 wouldn't be obvious in my review.

21 But I don't treat these routinely. And I look to see
22 whether or not the debtor has stated -- because they now have
23 to state -- do they intend to retain the property or do they
24 intend to surrender it. And in many cases -- in most cases, I
25 would say, certainly half of the cases, they indicate

1 surrender. In a number of the matters -- you know, may two on
2 the average, come before me, a week, at most. And half of
3 them, at least, are second properties. I had one in Las Vegas
4 a few days ago, or maybe yesterday, where the -- this was
5 either the debtor's pied-a-terre in Las Vegas or investment
6 property. I suspect from looking at the petition it was
7 investment property.

8 Very few cases where the property is the residence
9 where the debtor is living at the time, at least at the time
10 they filed the petition. Very few. But so be it. So I
11 don't -- I will not comment one way or another on the policy of
12 the U.S. Trustee, I'm just trying to deal with this case. And
13 if you have questions, go ahead. Or are we ready now on -- oh,
14 you have to appear on that case, Mr. Zipes.

15 All right. What are your questions? What do you want
16 to do with this case today?

17 MR. ZIPES: Judge, I really do want to focus on this
18 case. But routine may be a semantic argument.

19 THE COURT: All right.

20 MR. ZIPES: If you --

21 THE COURT: What do you want to do with this case
22 today?

23 MR. ZIPES: Judge, we would either ask that the motion
24 be denied with -- and it be refiled with the information that
25 we would request, or that we be entitled to conduct discovery

1 and adjourn the motion. Or we could use that time to discuss
2 it informally as well. But there is an issue here, statements
3 made in response, which you haven't had an opportunity to
4 review, about MERS's role in this assignment and the Baum law
5 firm's relationship to MERS, which frankly contradict
6 statements that are in the motion.

7 For example, in the response, which again, you haven't
8 had the opportunity to review, MERS is described as a
9 placeholder. And this Court, I think, is familiar with MERS.

10 THE COURT: Somewhat, but no expert.

11 MR. ZIPES: MERS --

12 THE COURT: And I don't purport to be.

13 MR. ZIPES: -- yes, and Judge, it's a learning process
14 for everybody. But MERS was -- is designed by the banking
15 industry to allow for an easier route towards securitizations
16 by -- mortgages are recorded under MERS's name, and then
17 there's a registry where mortgages are traded on the secondary
18 market. And that much, I think, everybody can agree to. But
19 MERS has taken an inconsistent position in this case and in
20 prior cases.

21 In this case, in the original motion, the papers that
22 are attached under the mortgage, if you read the mortgage
23 documents, MERS is allowed to foreclose, for example. And if
24 you read the assignment of mortgage, MERS is assigning its
25 beneficial interest to the assignee here, which is Citibank.

1 In the responsive papers -- MERS hasn't submitted an
2 affidavit, by the way, in the responsive papers. But Citibank
3 is arguing that MERS is just a placeholder. The two positions
4 aren't necessarily consistent. MERS has, in the past, it's
5 uncontested, filed complaints, foreclosure actions, in its own
6 name. So the position they're taking here is not necessarily
7 consistent with what MERS has taken in the past.

8 And my office -- if MERS is the assignor here, Judge,
9 we want to know -- it's now clear that there is an attorney
10 from the Baum firm that signed the assignment -- what is her
11 authority? Who told her to do this? Was it someone at MERS or
12 was it someone at Citibank? These are questions that we don't
13 know the answers to at this time. The response, I can tell
14 you, did not -- they can speak for themselves, but the response
15 didn't make that any clearer, who directed her to sign these
16 papers.

17 Baum is also arguing that it has no attorney-client
18 relationship with MERS. But it's also attaching papers where
19 it frankly does have a relationship with MERS. So is the Baum
20 law firm on both sides of this transaction? And Judge, in
21 Chapter 11 context, if there's a motion --

22 THE COURT: This has got nothing to do with Chapter
23 11.

24 MR. ZIPES: -- it's got absolutely nothing to do with
25 Chapter 11. But if there's a party in interest behind the

1 scenes for a sale, for example, it's relevant to the motion to
2 at least know what that is. It may not affect the ultimate
3 outcome of the motion, Judge, but it's relevant to all the
4 parties that full disclosure be made. Certainly the spirit of
5 Local Rule 4001, is to have full disclosure in these motions.

6 And it's -- when I use the word "routine", Judge, it
7 is perhaps a semantical argument, but there are -- there was a
8 motion filed that night, on Friday, but -- the response was
9 filed in Friday before Judge Morris, with the same basic
10 scenarios, an assignment of mortgage signed by Ms. Bechakas of
11 the -- and I might be pronouncing that wrong, and I
12 apologize -- but signed by her, same motion to vacate the
13 automatic stay; same lack of disclosure in that motion. And
14 it's an issue that transcends this case.

15 My office would obviously prefer to work something
16 out. But there does seem to be a basic disagreement of what
17 disclosure is necessary, and that --

18 THE COURT: All right. So what would you like me to
19 do today?

20 MR. ZIPES: So today, as I said, I think -- and I
21 appreciate -- it's not my office's intention to pay the fifty-
22 dollar -- whatever the filing fee is. That's really not what
23 we're --

24 THE COURT: I don't think that's the issue.

25 MR. ZIPES: -- it's not the issue. Although, the

1 shortcuts here are, in our opinion -- on the other side, are to
2 save money. But that's not our issue. We'd either like the
3 motion to be denied -- and we're not saying that because we
4 want them to pay that filing fee. We want the further
5 disclosure. We want disclosure if there's an assignment by
6 someone of the Baum firm, we want that disclosed in the motion.
7 If MERS is more than just a nominee without a nominee without a
8 beneficial interest, that needs to be explained in the motion.

9 I don't think it's a complicated -- necessarily a
10 complicated motion. It just requires a little bit more time
11 and energy on the part of the parties that are filing these
12 motions.

13 But, Judge, there is an issue here, if the assignment
14 of mortgage is -- if the note was separate from the mortgage,
15 for example; if the holder of the mortgage is different from
16 the holder of the note, there are issues for a Chapter 7
17 trustee to look at in that situation. And that is one of the
18 reasons why Alan Nisselson is taking a wait-and-see approach
19 with this. But there are legal issues --

20 THE COURT: Well, I think you can tell Mr. Nisselson
21 that if he's taking a wait-and-see, it would behoove him to
22 sign -- to file a piece of paper saying that he wants to review
23 the situation more fully.

24 MR. ZIPES: And --

25 THE COURT: And if that's his position, obviously, if

1 the mortgage wasn't filed properly, there would be a real issue
2 here for the Chapter 7 trustee. But I don't hear that.

3 MR. ZIPES: Judge, I'd just note that there's a
4 basic -- if you just look at the papers as someone from --
5 there's a basic contradiction in the position of MERS. On one
6 hand it's an assignment by MERS. On the other hand, MERS has
7 no interest in it. And that may be ultimately explainable, but
8 it requires a little bit more of an explanation, with all the
9 papers that say MERS has this role and that role and MERS's
10 current position, which is -- and again, I note, not backed by
11 an affidavit by anybody at MERS in the papers.

12 THE COURT: All right.

13 MR. ZIPES: So, Judge, I don't want to -- on the one
14 hand, I want to answer your questions --

15 THE COURT: You answered my question. Thank you.

16 MR. ZIPES: Okay.

17 THE COURT: Let me hear from --

18 MS. GRIGG: Thank you, Your Honor.

19 THE COURT: -- the movant.

20 MS. GRIGG: Your Honor, the issue of the MERS
21 assignment really isn't relevant to this motion. Yes, there
22 was an assignment from MERS to Citibank attached to the motion.
23 But it's not that assignment that gives Citibank its standing
24 to bring this motion. MERS, as listed in the original
25 mortgage, was just the mortgagee of record, that's it. It

1 didn't have a beneficial interest --

2 THE COURT: But didn't you include --

3 MS. GRIGG: -- an equitable interest --

4 THE COURT: -- in your original papers an assignment
5 by MERS?

6 MS. GRIGG: For purposes -- an assignment was
7 included, and the assignment was executed strictly to put the
8 world on notice that this transfer had occurred. Citibank's
9 standing comes from the fact that it has had possession of the
10 note since December of 2008. And it is the current owner and
11 holder of that note.

12 THE COURT: And that's in your reply papers?

13 MS. GRIGG: Yes, Your Honor.

14 THE COURT: All right.

15 MS. GRIGG: It's set forth in the reply. It's set
16 forth in David Thornhill's affidavit, when they took possession
17 in December of 2008, that they've had possession since then.
18 It's strictly -- once relief is granted and the foreclosure
19 needs to proceeds, Citibank needs to foreclose in its own name.
20 So for purposes of being able to foreclose, that assignment has
21 to be out there, because it has to just finish connecting the
22 chain of title in the eyes of the public, basically.

23 But for purposes of this motion, this MERS assignment
24 does not undermine Citi's standing. It's not what gives
25 Citibank standing to come before this Court. What gives

1 Citibank standing is the fact that it is the owner and holder
2 of the note in this case, and has been since 2008.

3 With respect to disclosure that Mr. Zipes bring up,
4 and I understand Your Honor doesn't have a copy of our
5 supplemental papers, but there's grounds set forth in there
6 setting forth that there is an assigning agreement between
7 MERS, CitiMortgage and Steven J. Baum, that gives Ms. Bechakas
8 authority to sign assignments on behalf of MERS. It is very
9 specific language as to what she is entitled to do, and that is
10 to execute assignments to future holders, basically.

11 Ms. Becha -- any disclosure, however is not -- to the
12 Court, we believe is not necessary. Disclosure was made to the
13 proper parties. MERS knows that Ms. Bechakas is going to
14 assign an assignment. CitiMortgage knew they were going to by
15 executing this assigning agreement between the parties. Who
16 instructed Ms. Bechakas is completely irrelevant to this
17 underlying motion, again, because the assignment is nothing
18 more than to put the world on notice that Citibank is the
19 actual holder at this point.

20 And there have been many other cases, Your Honor,
21 where an affidavit from a client has been sufficient to
22 establish its standing and to overcome any burden or any
23 issues. You know --

24 THE COURT: I don't think the issue is lack of a
25 witness with knowledge to come in and testify today. I hear

1 the issue being the initial papers having been insufficient.
2 I'm not sure that it is the U.S. Trustee's position that the
3 papers as supplemented are insufficient to show standing in
4 this case, but that the initial filing was insufficient; and
5 that in cases such as this, not necessarily to call them
6 routine, but in cases like this, it's extremely important that
7 the initial papers be accurate and sufficient. And that's why
8 we have specific rules that movants have to follow.

9 The reason is is that we do get multiple motions of
10 this nature. They are reviewed, but they only get a certain
11 amount of review; and that as a matter of policy, it is
12 extremely important that the initial papers be sufficient,
13 fully vetted, and that full disclosure be made. And I think
14 the U.S. Trustee still is uncertain as to MERS's position in
15 these types of mortgages and these types of proceedings, and in
16 the position of the lawyer in your firm, who purports to be a
17 signatory for MERS, and is that appropriate under all the
18 circumstances. I think that's what the issue is.

19 I don't -- and if anybody feels differently -- I don't
20 think the issue is lack of a witness to come in today in this
21 case -- that certainly could be an issue in another case. But
22 in this case it's the insufficiency of the original papers.

23 MS. GRIGG: I would submit, Your Honor, that the
24 original papers were sufficient and in compliance with the
25 local rules. It identified Citibank as the holder of the note

1 and mortgage and the client aff -- I say client affidavit, but
2 for all intents and purposes, the worksheets that were
3 submitted in support of the affidavit or in support of the
4 motion, was signed by David Thornhill as a representative of
5 Citibank, and set forth all of the amounts due and everything
6 that's required by the local rules.

7 There's nothing further required by the local rules
8 that's missing from the motion. That affidavit, in and of
9 itself, saying that he's a representative of Citibank, that
10 this is what the records reflect, this is what it reflects
11 they're due for, is sufficient to establish standing. Citibank
12 is the holder of this note and mortgage. That's set forth.

13 Mr. Zipes may not be happy with the fact that there's
14 a MERS assignment, but ultimately, like I said, the MERS
15 assignment is just strictly to put everyone on notice that the
16 transfer took place. The transfer took place back in December
17 2008. Mr. Zipes had questions regarding how --

18 THE COURT: You're telling me there never was a
19 transfer to MERS and therefore there wasn't --

20 MS. GRIGG: MERS only is just a nominee of record.
21 That's all. They never had physical possession of the note.
22 It was -- CitiMortgage originally had physical position, and
23 that's what was transferred to Citibank. And between our
24 original motion papers and the supplemental, we believe we have
25 established that this motion is sufficient, Citibank has

1 standing, and it is entitled to relief in this case.

2 THE COURT: Thank you.

3 MR. ZIPES: Judge, just -- Judge, you can see that
4 there is not a meeting of minds here with respect to the
5 original motion. And the original motion clearly, in paragraph
6 1 of the motion, is relying on the assignment of mortgage as a
7 basis. Standing is not mentioned in the original motion. But
8 clearly in the first paragraph, "Secured creditor is a holder
9 by assignment of a mortgage." And that assignment is MERS as
10 nominee to Citibank.

11 We're hearing today -- and this is really what's in
12 the response as well -- that MERS has no interest in this,
13 notwithstanding that there's an assignment of mortgage, Judge.
14 So I -- when I said this is a bigger issue than this case,
15 Judge, it is true that what you have before you is a motion to
16 vacate the automatic stay. It may be that my office will have
17 to take further action and bring this in a different way before
18 either this Court or some other court. But I agree with the
19 Court's sentiment that if we can come to an understanding of
20 what these motions should have in them, then that might be the
21 best way of doing it.

22 My office is prepared to move with discovery and take
23 what appropriate actions we deem as appropriate, before this or
24 any other court. There is a motion before Judge Morris, as I
25 said, that was just filed Friday night, which has the same

1 assignment of mortgage. Judge Morris wouldn't necessarily know
2 that that's an employee of the Baum law firm either. And it is
3 a matter of disclosure, Judge, that that is an important issue.
4 And disclosure is important because we need to know that
5 Citibank has standing.

6 If Citibank has standing because it holds the note,
7 Judge, and the mortgage -- I didn't hear Ms. Grigg say the
8 mortgage; she kept talking about the note. But assuming that
9 Citibank's standing is because of the mortgage, and that's the
10 reason, that's just not in the motion, Judge. In fact, the
11 motion clearly is relying on the assignment, which we just
12 heard is made for public relations purposes more than anything
13 else, and that MERS may have executed this assignment of
14 mortgage, but that MERS really doesn't have an interest in this
15 case.

16 Judge, again, if it's Joe Bank, and that bank had the
17 mortgage and note from the beginning, there's a motion to
18 vacate the automatic stay, there's no intermediary, those --
19 when you attach the note and mortgage, and you have an
20 affidavit from someone, that is sort of a clear case scenario.
21 This is not a clear-cut case, Judge. We would submit that it
22 requires a little bit more of an explanation. The facts are
23 garbled even today.

24 But at the very least, if we turn our attention to the
25 original motion, what you're hearing today from the Baum law

1 firm, is different from what's in the motion. The assignment
2 of mortgage, if it is a PR -- created for PR purposes, so that
3 when people are flipping through these motions they see an
4 assignment of mortgage and they're now satisfied of standing,
5 that probably is not an appropriate use of the assignment of
6 mortgage. But what MERS's role is in here is not entirely
7 clear. And if Ms. Bechakas didn't have authority from someone
8 to sign this assignment of mortgage and needed that authority
9 from someone to sign that assignment of mortgage, then maybe
10 this assignment was not effective, Judge.

11 Again, my office is not saying that the assignment
12 wasn't effective or that Citibank is --

13 THE COURT: Thank you. All right. It seems -- yes?

14 MS. GRIGG: I just wanted to add one point of
15 clarification, Your Honor. With respect to Mr. Zipes' note
16 about the holder by assignment language in our paragraph 1. We
17 include that language in our motions merely to disclose to the
18 Court that Citibank or whatever secured creditor we're moving
19 in the name of, was not the original holder, basically saying
20 that there is a chain of title, and we've now completed chain
21 of title.

22 Since the filing of this motion, our office has
23 actually amended its procedures and is no longer including the
24 "by assignment" language, because it does seem to be lending to
25 some confusion.

1 THE COURT: Well, is Ms. Bechakas a lawyer with your
2 firm?

3 MS. GRIGG: She is an attorney with our law firm, yes,
4 Your Honor.

5 THE COURT: And she's still signing for MERS as
6 nominee for the mortgagee?

7 MS. GRIGG: I don't know how recently she's been
8 signing up to. I can only speak to my involvement in this
9 motion.

10 THE COURT: In this case. All right.

11 MS. GRIGG: But, Your Honor, at this point, if Your
12 Honor feels inclined to deny the motion, we would be more than
13 willing to work with the Trustee to refile the motion --

14 THE COURT: Well, I think it's a good idea --

15 MS. GRIGG: -- to put whatever disclosure --

16 THE COURT: -- for you to work with the Trustee to see
17 how this can be resolved. It seems to me that the appropriate
18 action is -- in this case, to deny the motion without prejudice
19 to renewal. I certainly would have -- to the extent the
20 Clerk's office will allow me to, give you the right to refile
21 without paying the filing fee again, I would certainly
22 authorize that. But frankly, I don't know if I have the right
23 to authorize -- I have authorized parties to refile Chapter 7
24 petitions without paying the filing fee, and that's worked.
25 But I don't think the issue here is the filing fee.

1 If there are any other issues that need to be attended
2 to, the U.S. Trustee should pursue them, including such
3 discovery as may be called for. But I think the U.S. Trustee
4 does have a point, because I'm looking at the assignment of
5 mortgage which was part of the original papers, and the
6 assignment is from CitiMortgage Inc., in effect, to Citibank
7 N.A., which would seem to me to be potentially a possible
8 assignment, although within a corporate group. But the
9 original lender is said to be Mortgage Electronic Registration
10 Systems, Inc., or MERS, as nominee for CitiMortgage Inc., its
11 successors and assigns. And the MERS signature as nominee for
12 CitiMortgage is that of Ms. Bechakas.

13 And it does to seem to me, some possible issues are
14 raised by MERS appearing as -- merely as nominee, with a
15 signature of the lawyer for the movant, in this case, Citibank,
16 N.A. And it would seem to me, if MERS is appearing merely as a
17 nominee, that the assignor ought to be -- signatory ought to be
18 a signatory of CitiMortgage, although I'm not certain.

19 I think enough issues have been raised that I'll deny
20 the motion without prejudice to renewal, if possible, without
21 having the pay the filing fee. And perhaps the issues raised
22 by this -- or issues raised by the U.S. Trustee can be
23 separated from relief from the stay in this case, so that if
24 the next set of papers were adequate, perhaps they could be
25 reviewed by the U.S. Trustee and we don't have to delay.

1 Because it appears that the individuals have no
2 objection here, and if Mr. Nisselson wants to be heard, he
3 should be brought into the loop, Mr. Zipes, and he should be
4 heard. He can't just simply sit back. The movant is entitled
5 to relief from the stay, assuming there's no objection.

6 All right?

7 MR. ZIPES: Understood.

8 THE COURT: Thank you.

9 MR. ZIPES: Thank you, Judge.

10 MS. GRIGG: Thank you, Your Honor.

11 THE COURT: If the parties believe an order should be
12 entered -- an appropriate order should be entered, they can
13 discuss the same -- either party can settle an order or submit
14 an agreed order. Thank you.

15 MS. GRIGG: Thank you, Your Honor.

16 MR. ZIPES: Thank you.

17 (Proceedings concluded at 11:05 a.m.)

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I N D E X

RULINGS

	Page	Line
Motion filed by Citibank	25	18
for order granting		
relief from stay is		
denied without prejudice		
to renewal		

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: June 8, 2010