

**L. DARREN GOLDBERG
DAVID A. KASUBA
– Substitute Trustees**

Plaintiffs

v.

**THERESA A. SWITALSKI
AND JOSEPH SWITALSKI**

Defendants

**IN THE CIRCUIT COURT
FOR**

CECIL COUNTY

MARYLAND

Case No. D-04-876

**THERESA A. SWITALSKI
AND JOSEPH SWITALSKI**

Counter/Cross Plaintiffs

v.

L. DARREN GOLDBERG, individually and in his
capacity as Substitute Trustee

and

DAVID A. KASUBA, individually and in his
capacity as Substitute Trustee

Counter/Defendants.

and

EMC MORTGAGE CORPORATION

and

DRAPER & GOLDBERG, PLLC.

Cross - Defendants

**THE SWITALSKI'S SUPPLEMENTAL RESPONSE TO COUNTER DEFENDANTS'
AND CROSS –DEFENDANTS' MOTION TO VACATE ORDER ENJOINING
FORECLOSURE PROCEEDING**

The Switalskis supplement their Response to the Counter Defendants' and Cross Defendants' (collectively the "Cross Defendants") Motion to Vacate Order Enjoining Foreclosure Proceeding based on recent court decisions.

CROSS DEFENDANTS ARE USING PRE-SIGNED FALSIFIED AFFIDAVITS

Based on the following facts, the Cross Defendants, for an extended period of time, engaged in the practice of preparing falsified pre-signed second page affidavits in support of their foreclosure proceedings. The practice has been utilized by those in the foreclosure mill industry who define the practice as the “***SLICE and DICE***” method¹. See *In re Rivera*, 342 B.R. 435, 451 (Bankr. D.N.J. 2006). The practice involves the pre-signing of several blank original second pages by an individual whose signature is notarized or certified under oath. These pages are then sent to the foreclosure mill for use in foreclosure and bankruptcy proceedings. When an attorney needs an affidavit necessary to conduct a foreclosure or bankruptcy proceeding, they simply prepare the first page of the affidavit or certification and attach the pre-signed signature to the first page. *Id.* at p. 443.

In *Rivera*, the Bankruptcy court held that the law firm had acted in bad faith by engaging in the ***SLICE and DICE*** method and fined them \$125,000.00. The Court also held that the use of pre-signed forms also constitutes a submission to the court of a false material fact. *Id.* at p. 468.

In the case at bar, Draper and Goldberg, PLLC (“D&G”) handled over 2300 foreclosure cases in the state of Maryland in 2003. *Wilson v. Draper & Goldberg, PLLC*. 443 F.3d 373, 379

¹ Mr. Kreisman then testified, reviewing the Shapiro and Kreisman history, including involvement in New Jersey back into the 1980s. He graphically described the volume and time pressures impacting on mortgagees' local counsel.

Then in 1990 HUD came out with their time frame requirements and said you had to complete a case in so many days, weeks, months, in various states. And then, subsequently VA did the same, followed by the GSE's, Freddie Mac, and Fannie Mae. And, they all came up with time frames. And so, ***we had to learn to slice and dice*** the--not slice and dice, that's not the way it worked, to manage the work flow better than we did before. And, that continues to today as not only has the time frames shrunk, but there's more competition and everybody's trying to outdo each other in terms of impressing clients as to their capability of moving work.

Your Honor, I believe that--and, we'll get back to the answer--there is probably--I'm going to--this is a guess--maybe eight billion dollars worth of files sitting in our offices. Our clients don't expect us to have them sit there and not move them. Nor, would we expect not to move them. ***So, it becomes a process driven business.*** [emphasis added] *Id.* at p. 451.

(4th Cir. 2006). D&G has engaged in the same practice as the law firm in *Rivera* as evidenced by the affidavits filed in this proceeding. Based on the following evidence, D&G delivered a stack of second page affidavits to the servicer or sub-servicer, who would then sign the stack and return them to D&G. D&G then attaches the second page to the first page which contains the facts necessary to file the foreclosure proceeding. D&G then fills in the date blanks on the second page misrepresenting the date the second page affidavit was actually signed.

THE CHRISTY ASHBY AFFIDAVITS

Exhibits 1- 4

1. Ex 1. CHRISTY ASHBY – Affidavit of Debt (“Ashby Affidavit 1”)

Christy Ashby signed the Ashby Affidavit 1, claiming to be an agent of EMC Mortgage Corporation. The Affidavit was allegedly executed in Loudoun County Virginia. Page two of the Affidavit contains the following inconsistencies:

- The type face is different. Page 1 is an “arial” type font Page 2 is a “times new roman” type font.
- On Page 2 of the Affidavit, EMC Mortgage Corporation is slanted in an “arial” type font.
- D&G’s account # is type written on Page 1 and hand written on Page 2.
- The handwriting containing the date of the notarization is identical to all of the affidavits attached as Exhibits to this Supplemental Response. The following is extracted from the notary portion of the affidavit.

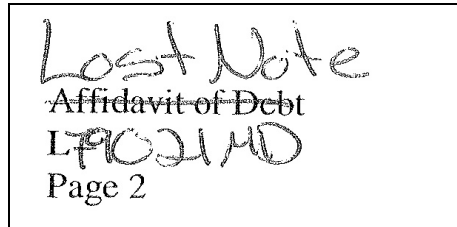
STATE OF	Virginia
COUNTY OF	Loudoun

I hereby certify that on this 15th day of September, 2004
before me, the subscriber, a Notary Public for the State and County aforesaid, personally
appeared Christy M Ashby who acknowledged himself/herself to be the Agent of
*
and having been granted authority to do so, executed the above document by signing
his/her name in my presence. He/She is personally known to me and did take an oath.

W. H. H. H.
Notary Public

2. Ex 2. CHRISTY ASHBY – Affidavit of Lost Note (“Ashby Affidavit 2”)

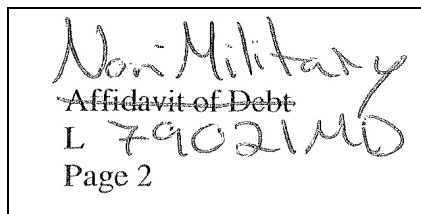
- Same inconsistencies as Ashby Affidavit 1.
- Page 2 of the Ashby Affidavit 2 “Statement of Debt” is crossed out and Affidavit of Lost Note is hand written in as illustrated below.



Lost Note
~~Affidavit of Debt~~
L 79021MD
Page 2

3. Ex 3. CHRISTY ASHBY –Non Military Affidavit (“Ashby Affidavit 3”)

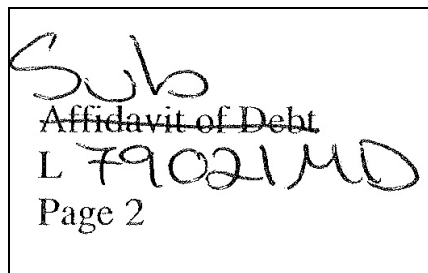
- Same inconsistencies as Ashby Affidavit 1.
- Page 2 of the Ashby Affidavit 3 “Statement of Debt” is crossed out and the word “Non-Military” is penciled in as illustrated below.



Non-Military
~~Affidavit of Debt~~
L 79021MD
Page 2

4. Ex 4. CHRISTY ASHBY – Substitute Trustee (“Ashby Affidavit 4”)

- Same inconsistencies as Ashby Affidavit 1
- Page 2 of the Ashby Affidavit 3 “Statement of Debt” is crossed out and the word “Sub” is penciled in as illustrated below:



Sub
~~Affidavit of Debt~~
L 79021MD
Page 2

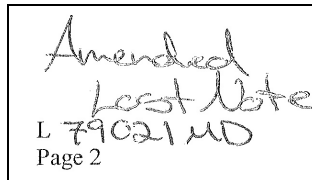
THE MARY JACQUE THOMPSON AFFIDAVITS
(“Thompson Affidavits”)
Exhibits 5-7

D&G filed amended affidavits for (1) a Lost Note; (2) Non-Military Status; and (3) Substitute Trustee. All three Affidavits are identical in substance to the Ashby Affidavits except for the notary and the signatures. Mary Jacque Thompson is purportedly the Assistant Vice President of EMC Mortgage Corporation. What is identical to all of the affidavits is the handwriting on the date the notary signature was signed.

1. **Ex. 5 - Mary Thompson – Affidavit of Lost Note (“Thompson Affidavit 1”)**


Thompson Affidavit 1 was allegedly executed in Dallas Texas. Page two of the Affidavit contains the following inconsistencies:

- The type face is different. Page 1 is an “arial” type font Page 2 is a times new roman type font.
- D&G’s account # is type written on Page 1 and hand written on Page 2.
- Page 2 – The type of affidavit is hand written on a blank line illustrated as follows:



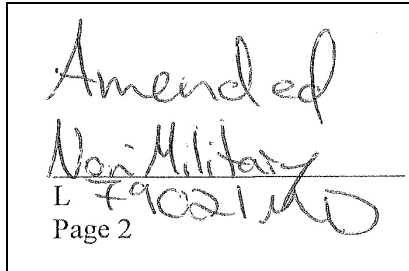
Amended
Lost Note
L 79021 MD
Page 2

- The handwriting containing the date of the notarization is identical to all of the affidavits attached as Exhibits to this Supplemental brief. Although the Notaries differ from the Ashby Affidavit the hand writing on the Notary Date is the same. The following is extracted from the notary portion of the affidavit.

STATE OF	TEXAS
COUNTY OF	DALLAS
I hereby certify that on this <u>28th</u> day of <u>September</u> , 2004 before me, the subscriber, a Notary Public for the State and County aforesaid, personally appeared Mary Jacque Thompson who acknowledged himself/herself to be the Assistant Vice President of EMC Mortgage Corporation and having been granted authority to do so, executed the above document by signing his/her name in my presence. He/She is personally known to me and did take an oath.	
 Notary Public	

2. **Ex. 6. - Mary Thompson – Non-Military Affidavit (“Thompson Affidavit 2”)**

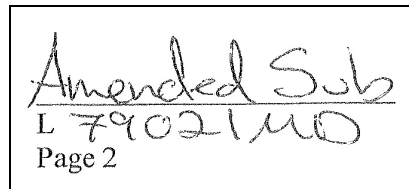
- Same inconsistencies as Thompson Affidavit 1.



Amended
Non-Military
L 79021MO
Page 2

3. **Ex. 7. - Mary Thompson – Amended Substitute Trustee (“Thompson Affidavit 3”)**

- Same inconsistencies as Thompson Affidavit 1.



Amended Sub
L 79021MO
Page 2

Other Affidavits Supporting Cross Defendants use Pre-signed Blank Affidavit.

SAME HAND WRITING – DIFFERENT NOTARIES

Exhibits 8-11

A review of several D&G Substitute Trustee Deeds filed in Cecil County reveal the same hand writing in the notary signing date in the affidavit portion of the Substitute Trustee Deed.

Note, however, all of the Notaries are different individuals.

Book 1745 Page 230, 231 – Exhibit 8

STATE OF Minnesota
COUNTY OF Dakota

I hereby certify that on this 16th day of September, 2004
before me, the subscriber, a Notary Public for the State and County aforesaid, personally
appeared CHRIS ANDERSON who acknowledged himself/herself to be the MANAGER
of Fidelity national Foreclosure Solutions and having been granted authority to do so,
executed the above document by signing his/her name in my presence. He/She is
personally known to me and did take an oath.

Bette Peterson
Notary Public

Book 1792 Page 537, 538 – Exhibit 9

STATE OF Minnesota
COUNTY OF Dakota

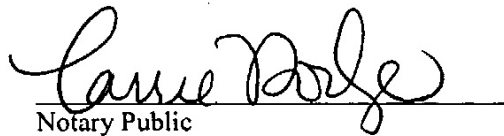
I hereby certify that on this 4th day of October, 2004
before me, the subscriber, a Notary Public for the State and County aforesaid, personally
appeared Rick Wilken who acknowledged himself/herself to be the
AVP of Homecomings Financial Network Inc and having been
granted authority to do so, executed the above document by signing his/her name in my
presence. He/She is personally known to me and did take an oath.

Carmela J. Lagarile
Notary Public

Book 1792 Page 606, 607 Exhibit 10

STATE OF UTAH
COUNTY OF SALT LAKE

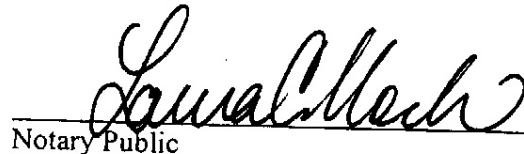
I hereby certify that on this 19th day of November, 2004
before me, the subscriber, a Notary Public for the State and County aforesaid, personally
appeared Joy Brodowsky-Lines who acknowledged herself to be the Document Control
Officer of Select Portfolio Servicing and having been granted authority to do so, executed
the above document by signing his/her name in my presence. He/She is personally
known to me and did take an oath.


Notary Public

Book 1751 Page 036-37 – Exhibit 11

STATE OF OHIO
COUNTY OF FRANKLIN

I hereby certify that on this 22nd day of September, 2004
before me, the subscriber, a Notary Public for the State and County aforesaid, personally
appeared Christina Trowbridge who acknowledged himself/herself to
be the ASSISTANT SECRETARY of * and
having been granted authority to do so, executed the above document by signing his/her
name in my presence. He/She is personally known to me and did take an oath.

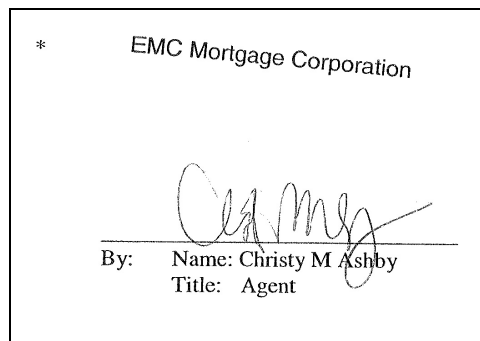

Notary Public

**CHRISTY ASHBY NOT AUTHORIZED TO SIGN AFFIDAVIT.
CHRISTY ASHBY'S AFFIDAVIT OF DEBT NOT AMENDED**

The only explanation for the Amended Affidavits filed by Mary J. Thompson is that Christy Ashby who signed her affidavit in Virginia – not in Dallas Texas - was not an authorized agent of EMC. With the exception of the names and titles, the first page of the Affidavits signed by Christy Ashby, were identical to the Affidavits signed by Mary J. Thompson.

The second page of the affidavits for both Christy Ashby and Mary J. Thompson had the same hand-writing referencing the date the affidavits were signed. However, the Notary for Christy Ashby was in Virginia, while the Notary for Mary J. Thompson was from Texas

The one affidavit not amended was Christy Ashby's Affidavit of Debt where the name of EMC Mortgage Corporation was literally pasted onto the second page as illustrated below:



The Amended Affidavits clearly show that Christy Ashby was not authorized to sign an affidavit of Debt on EMC's Behalf. Consequently, the submission of this Affidavit is fraudulent and the injunction should remain. D&G never withdrew the Christy Ashby Affidavits.

Ms. Thompson's affidavits are equally consistent with the second page affidavit *Slice and Dice* method Ms. Thomson, who purports to be an assistant vice president of EMC is certifying under penalty of perjury in her Amended Non-Military Affidavit that she had personal discussions, with the Debtor and engaged in a diligent crusade to find a lost note. Both tasks were allegedly completed by Christy Ashby.

The Cross Defendant's submission of false affidavits in a foreclosure proceeding bar the Cross Defendants from proceeding. Accordingly, the injunction must remain intact in favor of the Switalskis. .

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Cohen & Swanson, P.C.
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Suite 300
Bel Air, MD 21014
(410) 420-0700

Attorneys for the Switalskis.

CERTIFICATE OF SERVICE

I certify that on September 29, 2006, I served by e-mail and regular mail a copy of the foregoing Response to Counter Defendant's Motion to Dismiss to Rita Ting Hopper and Draper and Goldberg, PLLC, attorneys for the Counter Cross Defendants, 803 Sycolin Road Suite 301, Leesburg, VA 20175.

Troy C. Swanson,