

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

	)	
In re:	)	
Ann C. Jones	)	Chapter 13
	)	Case No. 07-15662
Debtor	)	Honorable Joan N. Feeney

AFFIDAVIT OF CHUCK HOUSTON

I, Chuck Houston, hereby depose on oath as follows:

1. I am a Vice President and Assistant General Counsel for Carrington Mortgage Holdings, LLC. ("Carrington") which purchased the servicing rights from New Century Mortgage Corporation ("NCMC"). I have occupied this position since July 1, 2007. Prior to that time I was Vice-President Litigation and Regulatory Counsel for NCMC from January 2003 to June 30, 2007.
2. I am familiar with the facts and history surrounding the pooling and securitization of mortgage loans conducted by NCMC. This particular transaction is evidenced by a Servicing Agreement (See Exhibit "F" attached to Motion for Reconsideration), and a Mortgage Loan Purchase Agreement ("MLPA") (See Exhibit 1 appended hereto)<sup>1</sup>. I am also familiar with the transfer of servicing rights from NCMC to Carrington by way of a Second Amended and Restated Asset Purchase Agreement. (See Exhibit "H" attached to Motion for Reconsideration).
3. NCMC's custom and practice during the relevant time period was to securitize loans originated by it or by its correspondent lenders by utilizing various entities with which it was a joint subsidiary. In this case NCMC had its joint subsidiary New

<sup>1</sup> Exhibit A which identifies the Debtor's Loan at Row 4680 is identical to Exhibit A attached to the Servicing Agreement and reference is made to Exhibit G to the Motion for Reconsideration for this Exhibit.

Century Credit Corporation ("NCCC") securitize the pool of loans in the present case through another joint subsidiary New Century Mortgage Securities, LLC ("NCMS").

4. It was not uncommon for loans so purchased to move from one joint subsidiary to another. In some cases a private agreement was drawn up, but in other cases no such agreement was ever drafted. It is my understanding after searching for a private agreement for this transaction that no agreement was ever entered into between NCMC and NCCC.

5. Pursuant to the Servicing Agreement NCMS deposited the mortgage loans listed in Exhibit A into the pool; NCMC agreed to be responsible for the servicing of the loans; and Deutsche Bank agreed to serve as Trustee to hold legal title to the loans in the pool for benefit of the investors of the pool. (See Motion for Reconsideration Exhibit "F"). The Exhibit A to the Servicing Agreement includes the Debtor's Loan at Row 4680.

6. Pursuant to the Mortgage Loan Purchase Agreement the Seller, NCCC was to "deliver" (MLPA, p. 2), on behalf of the Purchaser, NCMS, to the Indenture Trustee, Deutsche Bank; the note, original mortgage, assignment of mortgage and the original lender's title insurance policy. Pursuant to the terms of the MLPA this delivery was accomplished by providing the note and mortgage with endorsements to the Indenture Trustee (MLPA, p. 2). The common practice was for Ameripath to endorse a note and assignment in blank or to endorse the note and assign the mortgage to NCMC which would then in turn endorse and assign in blank or to the Indenture Trustee always resulting with the documents being delivered to the Indenture Trustee. In this case Ameripath assigned the note to NCMC and NCMC endorsed the note in blank. (See Amended Motion for Reconsideration Exhibit "B") It was then delivered to Deutsche

Bank. An assignment from Ameripath in blank was also delivered. (See Amended Motion for Reconsideration Exhibit "C") On or about July 29, 2005 the Debtor, Ann Jones was in default and a foreclosure action was commenced. At this time an assignment from Ameripath to Deutsche Bank was recorded. (See Amended Motion for Reconsideration Exhibit "D") It is not uncommon to have such an assignment from the original lender directly to the trustee when a securitization agreement has already been executed as it was in this case. Because the foreclosure attorney listed his address as the return address on the assignment the recorded assignment was not returned to NCMC and therefore was not placed in the collateral file. It was then assigned from Ameripath to NCMC in error. This would happen at times. It is unclear from the record why this assignment was recorded. It was subsequently assigned in error from NCMC to Carrington and then from Deutsche Bank to Carrington. The assignment from Ameripath to Deutsche Bank complied with the terms of the MLPA and Servicing Agreement that an assignment could be recorded into Deutsche Bank. Neither the MLPA nor the Servicing Agreement require that the assignment run from Ameripath to NCMC to Deutsche Bank.

7. On May 21, 2007 NCMC sold all of its right title an interest to its servicing rights to Carrington which agreement was approved by The United States Bankruptcy Court for the District of Delaware on May 23, 2007. (See Motion for Reconsideration Exhibits "H" and "J"). The Debtor's loan is listed at Row 47381 of Schedule 5.12(a) attached to the New Century Bankruptcy Purchase Agreement (See Motion for Reconsideration Exhibit "I").

8. To the best of my knowledge neither NCMS nor NCCC claims any interest at this time, nor at any time since April 22, 2005 in the Debtor's Mortgage or the Note it secures. Likewise, NCMC has not had any involvement in servicing the Debtor's mortgage loan after July 1, 2007.

Signed under the pains and penalties of perjury this the 22 day of April, 2009

  
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Chuck Houston

What a mess. Lots to chew on here....in paragraph 6, page 3 Houston indicates that NCMC was in possession of the collateral file when the foreclosure attorney filed the assignment from Ameripath to Deutsche. Had Deutsche released the collateral file to NCMC for the foreclosure? I would think the custody records from Deutsche Bank would be especially helpful here (see especially Sec. 2.03 of the Indenture regarding their review of the loans.) Also, how was the Note "assigned" from Ameripath to NCMC (para. 6 - "In this case Ameripath assigned the note to NCMC and NCMC endorsed the note in blank.")? According to Houston's narrative in paragraph 6, Deutsche had possession of the original Note endorsed in blank and the subsequent series of incorrect assignment are what confused the record. Does the mortgage follow the Note in Massachusetts and did Deutsche take possession prior to the alleged July 2005 default?

One additional observation: the assignment that was filed in the bankruptcy as exhibit 123 indicates the original lender was New Century Mortgage Corporation, but the affidavit by Houston indicates that the originator on the loan was Ameripath. Clearly this 7/2/08 assignment was done by Carrington for the bankruptcy case, but this inconsistency is highly notable.