

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

FRENKEL, LAMBERT, WEISS, WEISMAN &
GORDON LLP
80 Main Street West Orange, N.J. 07052
973-325-8800
Attorney for BAC Home Loan Servicing, L.P. (Formerly
known as Countrywide Home Loans, Inc. servicer for Bank
of New York), Secured Creditor
DLS-2756

Case No.: **08-18700**

In Re:
John T. Kemp

CHAPTER 13

Judge: **Judith H. Wizmur**

John T. Kemp,
Plaintiff,

Trial Date: August 11, 2009

vs.

Adversary Proceeding: 08-02448

Countrywide Home Loans, Inc.
Defendant.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW BY DEFENDANT,

BAC Home Loan Servicing, L.P. (Formerly known as Countrywide Home Loans, Inc.)

servicer for Bank of New York

STATEMENT OF FACTS

The Defendant relies on the Joint Stipulation of Undisputed Facts submitted by the Plaintiff/Debtor but also sets forth additional facts. On October 16, 2008, Plaintiff filed the instant adversary proceeding. In short, the Plaintiff alleged that the Defendant/Secured Creditor does not own the loan; that the mortgage is invalid; and that the Proof of Claim should be expunged. The intended purpose of the proceeding commenced by the Plaintiff/Debtor was “to determine the extent and validity of the lien based on loan documentation.” The Plaintiff requested and received copies of the Note; Mortgage; Assignment of Mortgage, and Allonge to the Note (Allonge to Note is attached hereto as Exhibit “A”). Said documents establish that Bank of New York is the holder and owner of the loan and has standing.

On June 15, 2009, the Defendant/Secured Creditor filed a motion to dismiss the adversary proceeding. The Plaintiff/Debtor filed opposition to the motion. The hearing date of the motion was set for August 3, 2009. The attorney that was scheduled to appear in court was late for court and was unable to give oral argument. As a result, the motion to dismiss was denied.

PROPOSED CONCLUSIONS OF LAW

Perfection of a security interest is governed by state law. A promissory note is an “instrument” as defined by the New Jersey Uniform Commercial Code. N.J.S.A. 12A:9-105(1)(g) and 12A:3-104(2)(d); In re Kennedy Mortgage Co., 17 B.R. 97, B.R. 957, 963 (Bankr.D.N.J. 1982). Case law in New Jersey is settled that where the mortgage is assigned with the underlying promissory note, the assignee is a secured creditor. Mardirossian v. Wilder, Super. 37 (Ch. Div. 1962). An assignment of mortgage together with a transfer of possession

of the underlying note perfects a security interest in the note. In Re Investors & Lenders, Ltd., 156 B.R. 145 (1993).

In the case at bar, the Defendant/Secured Creditor has provided the Note, allonge, mortgage and recorded assignment. All of the documents establish Bank of New York as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-8 as holder and owner of the loan. As such, the Defendant/Secured Creditor had standing to file its Proof of Claim and enforce the obligations of the Note and Mortgage. Based upon the foregoing, the Proof of Claim should not be expunged.

RESPECTFULLY SUBMITTED,
Attorney for Defendant/Secured Creditor,
BAC Home Loan Servicing, L.P.

/s/ Dori L. Scovish

Dori L. Scovish, Esq.

ALLONGE TO PROMISSORY NOTE

Loan # 138805335

This Allonge is to be attached to and made a part of that certain Promissory Note

Dated 5/31/2006 original principal amount of: One Hundred Sixty

Seven Thousand, Two Hundred Dollars (\$167,200.00) executed by JOHN T.

KEMP, AN UNMARRIED MAN,

ADDRESS: 1316 Kings Hwy., Haddon Heights, NJ 08035

In favor of COUNTRYWIDE HOME LOANS, INC.

**Pay to the order of BANK OF NEW YORK, as Trustee for the Certificateholders
CWABS, Inc. Asset-backed Certificates, Series 6006-8**

WITHOUT RECOURSE,

COUNTRYWIDE HOME LOANS, INC.

By 

Title: VICE PRESIDENT