

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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DLS-2756

Case No.: **08-18700**

In Re:  
**John T. Kemp**

CHAPTER 13

Judge: **Judith H. Wizmur**

**John T. Kemp,**  
Plaintiff,  
vs.

**Hearing Date: June 15, 2009**

**Countrywide Home Loans, Inc.**  
Defendant.

**Adversary Proceeding: 08-02448**

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**BRIEF IN SUPPORT OF MOTION TO DISMISS ADVERSARY PROCEEDING**

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Dori L. Scovish, Esq.  
Attorney on Brief

**STATEMENT OF FACTS**

Plaintiff, John T. Kemp (“Plaintiff”) owns real property situate 1316 Kings Highway, Haddon Heights, New Jersey. On May 31, 2006, Mortgage Electronic Registration Systems, Inc. as nominee for America’s Wholesale Lender granted the Plaintiff a \$167,200.00 mortgage against the property. Said mortgage was thereafter assigned to Bank of New York as Trustee for the Certificateholders CWABS, Inc., Asset-backed Certificates, Series 2006-8. Countrywide Home Loans, Inc., was the servicing the Loan for Bank of New York. Countrywide Home Loans, Inc. is now known as BAC Home Loan Servicing, L.P. (“the Defendant”).

Plaintiff filed a Chapter 13 bankruptcy petition on May 9, 2008. On June 11, 2008, Plaintiff filed a Proof of Claim. On October 16, 2008, Plaintiff filed the instant adversary proceeding. In short, the Plaintiff alleged that the Defendant 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 was “to determine the extent and validity of the lien based on loan documentation.” The Plaintiff requested and received copies of the Pooling and Servicing, the Assignment of Mortgage and recorded mortgage. As such, the Defendant established ownership of the loan.

ARGUMENT

POINT I

THE STANDARD FOR DISMISSAL

Rule 12(b) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure, provides that a party may file a motion to dismiss a claim for “failure to state a claim upon which relief can be granted.” Fed.R.Civ.P. 12(b)(6). A court hearing a Rule 12(b)(6) motion will “generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record.” *Pension Ben. Guar. Corp. V. White Consol. Industries*, 998 F.2d 1192, 1196 (3d Cir. 1993). Additionally, “a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss into one for summary judgment.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d. 1410, 1426 (3d. Cir. 1997).

As the Supreme Court set forth in *Bell Atlantic Corp. v. Twombly*:

Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the claim is and the grounds upon which it rests.’ While a complaint attacked by Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, **a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.** Factual allegations must be enough to raise a right to relief above the speculative level...  
550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d. 929 (2007)  
(Internal citations omitted; **emphasis added**).

Ultimately, a plaintiff must allege “enough facts to state a claim to relief that is plausible on its’ face.” *Id.* at 1974.

**POINT II**

**PLAINTIFF HAS FAILED TO STATE A  
CLAIM UPON RELIEF CAN BE GRANTED**

In the adversary complaint, the Plaintiff alleged that the Defendant does not own the loan; that the mortgage is invalid; and that the Proof of Claim should be expunged. As set forth in the Statement of Facts, on May 31, 2006, Mortgage Electronic Registration Systems, Inc. as nominee for America’s Wholesale Lender granted the Plaintiff a \$167,200.00 mortgage against the property. Said mortgage was thereafter assigned to Bank of New York as Trustee for the Certificateholders CWABS, Inc., Asset-backed Certificates, Series 2006-8. Countrywide Home Loans, Inc., was the servicing the Loan for Bank of New York. Countrywide Home Loans, Inc. is now known as BAC Home Loan Servicing, L.P. The Defendant has produced copies of the Note, Mortgage, Assignment of Mortgage and Pooling and Servicing Agreement. These documents establish Defendant’s ownership of the loan and that the mortgage is valid. The Plaintiff has not established that he is entitled to relief. As such, the Proof of Claim should not be expunged.

CONCLUSION

Based upon the foregoing, the defendant respectfully requests that the motion to dismiss the adversary proceeding with prejudice be granted.

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

*/s/ Dori L. Scovish*

Dori L. Scovish, Esq.