THE REAL EMPLOYERS OF THE SIGNERS OF MORTGAGE ASSIGNMENTS TO TRUSTS

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On May 11, 2010, Judge Arthur J. Schack, Supreme Court, Kings County, New York, entered an order denying a foreclosure action with prejudice. The case involved a mortgage-backed securitized trust, SG Mortgage Securities Asset Backed Certificates, Series 2006-FRE2. U.S. Bank, N.A. served as Trustee for the SG Trust. See *U.S. Bank, N.A. v. Emmanuel*, 2010 NY Slip Op 50819 (u), Supreme Court, Kings County, decided May 11, 2010. In this case, as in hundreds of thousands of other cases involving securitized trusts, the trust inexplicably did not produce mortgage assignments from the original lender to the depositor to the securities company to the trust.

This particular residential mortgage-backed securities trust in the *Emmanuel* case had a cut-off date of July 1, 2006. The entities involved in the creation and early agreements of this trust included Wells Fargo Bank, N.A., as servicer, U.S. Bank, N.A. as trustee, Bear Stearns Financial Products as the "swap provider" and SG Mortgage Securities, LLC. The Class A Certificates in the trust were given a rating of "AAA" by Dominion Bond Rating Services on July 13, 2006.

The designation "FRE" in the title of this particular trust indicates that the loans in the trust were made by Fremont Investment & Loan, a bank and subprime lender and subsidiary of Fremont General

Corporation. The "SG" in the title of the trust indicates that the loans were "securitized" by Signature Securities Group Corporation, or an affiliate.

Fremont, a California-based corporation, filed for Chapter 11 bankruptcy protection on June 19, 2008, but continued in business as a debtor-in-possession. On March 31, 2008, Fremont General sold its mortgage servicing rights to Carrington Capital Management, a hedge fund focused on the subprime residential mortgage securities market. Carrington Capital operated Carrington Mortgage Services, a company that had already acquired the mortgage servicing business of New Century after that large sub-prime lender also filed for bankruptcy. Carrington Mortgage Services provides services a portfolio of nearly 90,000 loans with an outstanding principal balance of over $16 billion. Nearly 63% of the portfolio is comprised of adjustable rate mortgages. Mortgage servicing companies charge substantially higher fees for servicing adjustable rate mortgages than fixed-rate mortgages. Those fees, often considered the most lucrative part of the subprime mortgage business, are paid by the securitized trusts that bought the loans from the original lenders (Fremont & New Century), after the loans had been combined into trusts by securities companies, like Financial Assets Securities Corporation, SG and Carrington Capital.

Carrington Capital in Greenwich, Connecticut, is headed by Bruce Rose, who left Salomon Brothers in 2003 to start Carrington. At Carrington, Rose packaged $23 billion in subprime mortgages. Many of those securities included loans originated by now-bankrupt New Century Financial. Carrington forged unique contracts that let it direct any foreclosure and liquidations of the underlying loans. Foreclosure

management is also a very lucrative part of the subprime mortgage business. As with servicing adjustable rate mortgages, the fees for the foreclosure management are paid ultimately by the trust. There is little or no oversight of the fees charged for the foreclosure actions. The vast majority of foreclosure cases are uncontested, but the foreclosure management firms may nevertheless charge the trust several thousand dollars for each foreclosure of a property in the trust.

The securities companies and their affiliates also benefit from the bankruptcies of the original lenders. On May 12, 2010, Signature Group Holdings LLP, ("SG") announced that it had been chosen to revive fallen subprime mortgage lender Freemont General, once the fifth-largest U.S. subprime mortgage lender. A decision to approve Signature's reorganization plan for Fremont was made through a bench ruling issued by the U.S. Bankruptcy Court in Santa Ana, CA. The bid for Fremont lasted nearly two years, with several firms competing for the acquisition.

The purchase became much more lucrative for prospective purchasers in late March, 2010, when Fremont General announced that it would settle more than $89 million in tax obligations to the Internal Revenue Service without actually paying a majority of the back taxes. The U.S. Bankruptcy Court for the Central District of California, Santa Ana Division, approved a motion that allowed Fremont General to claim a net operating loss deduction for 2004 that is attributable for its 2006 tax obligations, according to a regulatory filing with the Securities and Exchange Commission.

In addition, Fremont General will deduct additional 2004 taxes, because of a temporary extension to the period when companies can

claim the credit. The extension from two years to five went into effect when President Obama signed the Worker, Homeownership, and Business Assistance Act of 2009. While approved by the bankruptcy court judge, the agreement must also meet the approval of the Congressional Joint Committee on Taxation, but according to the SEC filing, both Fremont General and the IRS anticipate that it will be approved. In all, Fremont's nearly $89.4 million tax assessment was reduced to about $2.8 million, including interest. In addition, as a result of the IRS agreement, a California Franchise Tax Board tax claim of $13.3 million was reduced to $550,000.

Another development that made the purchase especially favorable for SG was the announcement on May 10, 2010, that Federal Insurance Co. has agreed to pay Fremont General Corp. the full $10 million loss limits of an errors and omissions policy to cover subprime lending claims, dropping an 18-month battle over whether the claims were outside the scope of its bankers professional liability policies.

All of these favorable developments are part of a long history of success for Craig Noell, the head of Signature Group Holdings, the winning bidder for Fremont. Previously, as a member of the distressed investing area at Goldman Sachs, Noell founded and ran Goldman Sachs Specialty Lending, investing Goldman's proprietary capital in "special situations opportunities."

Bruce Rose's Carrington Mortgage Services and Craig Noell's Signature Group Holdings are part of the story of the attempted foreclosure on Arianna Emmanuel in Brooklyn, New York. U.S. Bank,

N.A., as Trustee for SG Mortgage Securities Asset-Backed Certificates, Series 2006 FRE-2 attempted to foreclose on Arianna Emmanuel. The original mortgage had been made by Fremont Investment & Loan (the beneficiary of the $100 milion tax break and the $10 million insurance payout discussed above).

To successfully foreclose, the Trustee needed to produce proof that the Trust had acquired the loan from Fremont. At this point, the document custodian for the trust needed only to produce the mortgage assignment. The securities company that made the SG Trust, the mortgage servicing company that serviced the trust and U.S. Bank as Trustee had all made frequent sworn statements to the SEC and shareholders that these documents were safely stored in a fire-proof vault.

Despite these frequent representations to the SEC, the assignment relied upon by U.S. Bank, the trustee, was one executed by Elpiniki Bechakas as assistant secretary and vice president of MERS, as nominee for Freemont. In foreclosure cases all over the U.S., assignments signed by Elpiniki Bechakas are never questioned. But on May 11, 2010, the judge examining the mortgage assignment was the Honorable Arthur J. Schack in Brooklyn, New York.

Bechakas signed as an officer of MERS, as nominee for Fremont, representing that the property had been acquired by the SG Trust in June, 2009. None of this was true. Judge Schack determined sua sponte that Bechakas was an associate in the law offices of Steven J. Baum, the firm representing the trustee and trust in the foreclosure. Judge Schack recognized that the Baum firm was thus working for

both the GRANTOR and GRANTEE. Judge Schack wrote, "The Court is concerned that the concurrent representation by Steven J. Baum, P.C. of both assignor MERS, as nominee for FREMONT, and assignee plaintiff U.S. BANK is a conflict of interest, in violation of 22 NYCRR § 1200.0 (Rules of Professional Conduct, effective April 1, 2009) Rule 1.7, "Conflict of Interest: Current Clients."

Judge Schack focused squarely on an issue that pro se homeowner litigants and foreclosure defense lawyers often attempt to raise - the authority of the individuals signing mortgage assignments that are used by trusts to foreclose. In tens of thousands of cases, law firm employees sign as MERS officers, without disclosing to the Court or to homeowners that they are actually employed by the law firm, not MERS, and that the firm is being paid and working on behalf of the Trust/Grantee while the firm employee is signing on behalf of the original lender/Grantor.

Did the SG Trust acquire the Emmanuel loan in 2006, the closing date of the trust, or in 2009, the date chosen by Belchakas and her employers? There are tremendous tax advantages being claimed by banks and mortgage companies based on their portfolio of non-performing loans. There are also millions of dollars in insurance payouts being made ultimately because of non-performing loans. There are substantial fees being charged by mortgage servicing companies and mortgage default management companies – being paid by trusts and assessed on homeowners in default. The question of the date of the transfer is much more than an academic exercise.

As important as the question of WHEN, there is also the question of

WHAT – what exactly did the trust acquire? What is the reason for the millions of assignments to trusts that flooded recorders' offices nationwide starting in 2007 that were prepared by law firm employees like Bechakas or by employees of mortgage default companies or document preparation companies specializing is providing "replacement" mortgage documents. Why, in judicial foreclosure states, are there thousands of Complaints for Foreclosure filed with the allegations: "We Own the Note; we had the note; we lost the note." Why do bankruptcy courts repeatedly see these same three allegations in Motions For Relief of Stay filed by securitized trusts attempting to foreclose? If the assignments and notes are missing, has the trust acquired anything (other than investors' money, tax advantages and insurance payouts)? In many cases, the mortgage servicing company does eventually acquire the property – often by purchasing the property after foreclosure for ten dollars and selling it to the trust that had claimed ownership from the start.

Where are the missing mortgage assignments?
