

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
SANTA FE COUNTY

WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF THE
HOLDERS OF THE HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2007-1,

Plaintiff,

v.

D-101-CV-2013-00904

Marcelina Martinez, et al.,

Defendants.

SECOND MOTION FOR RECUSAL OF JUDGE BRYAN BIEDSCHEID

Marcelina Martinez, *pro se*, “Marcelina”, without waiving any rights, remedies, or defenses, statutory or procedural, hereby moves to recuse Judge Bryan Biedscheid under Rule 21-211(A)(1), (5) NMRA and NMSA 1978, § 38-3-9, for bias, conflicts, and failure to oversee the foreclosure sale as required for due process. Biedscheid’s actions in this case, Case D-117-CV-2015-00345 (“Case 345”), Case D-101-CV-2023-01229 (“Case 1229”), and Case D-101-CV-2021-01403 (“Case 1403”) demonstrate prejudice and jurisdictional abuse. A prior recusal motion (July 11, 2022) was improperly denied, and a forthcoming Rule 1-060(B) Motion to Vacate Sale and/or Judgment (due June 1, 2025) will address fraud, voidness, and lack of standing.

A. Prior Recusal Motion (2022)

Marcelina filed an Expedited Motion for Disqualification and Recusal (see filing on 7/11/2022), citing Biedscheid’s bias at the August 4, 2021, sale confirmation hearing stating that he:

1. Argued for Plaintiff, falsely claiming NMSA 1978, §§ 39-5-1 to -23 authorized possession to a non-party “purchaser” (no jurisdiction, see un rebutted Affidavit recorded with the Santa Fe County Clerk and filed into this action on 8/18/2021, Aff. Bias).

2. Confirmed a sale \$244,347.16 over the judgment (\$492,890.23, **see In Rem Judgment filed August 22, 2016** and **EXHIBIT A** with relevant excerpts, ¶ MM) with unapproved interest (3.3750%, from May 30, 2015, not judgment date, **EXHIBIT B**, Notice of Sale).

3. Confirmed a sale where the individual alleged special master, David Washburn, was never substituted according to law (Rule 1-053(F) NMRA) (see In Rem Judgment, Ex. A at ¶ PP).

4. Ignored arguments relating to David Washburn’s lack of legal qualification, calling the sale “perfunctory” (Aff. Bias at ¶¶ 37-38).

5. Ignored Defendant’s Affidavit of Bias (Aff. Bias, Santa Fe County Instrument #1962997).

Biedscheid denied the motion (October 11, 2022) without a hearing, citing non-existent Rule LR1-306(H) and misapplying *National Excess Insurance Co. v. Bingham*, 1987-NMCA-109, ¶ 9 (relating to summary judgment, not recusal), violating due process.

B. Obstruction of Sale Evidence

Biedscheid blocked access to evidence of the March 3, 2021, sale, eventually admitting its non-existence:

1. An untimely opposed Expedited Motion to Compel (filed July 30, 2021) for sale evidence (bids, communications) was ignored. This Motion was filed after the First Judicial District Court failed to provide any such evidence in response to a request under the Inspection of Public Records Act (**EXHIBIT C**).

2. This failure forced Marcelina to file a lawsuit for the improper denial, Case 1403, wherein Marcelina obtained discovery from David Washburn showing the following, in part:

- a. Washburn does not believe he is subject to any regulating authority;
- b. Washburn claims that he operates under the “supervision” of the court;
- c. Washburn does nothing ordered in the judgment other than reading aloud the notice of sale;
- d. Washburn does not draft any of the documents he signs related to an alleged sale;
- e. Washburn does not consult with a Certified Public Accountant or other professional to ascertain amounts noticed in the sale, report, or order confirming the sale, or otherwise;
- f. All documents, including the special master’s deed, are drafted by the attorney(s) for the plaintiff;
- g. Washburn does not draft, nor file, the “notice of sale”, despite his signature stating he files it;
- h. Washburn does not “advertise” the sale according to the Judgment; this is facilitated by the attorney for the plaintiff;
- i. The proceeds of the sale are not paid as required by the Judgment; payment is made on the date of the alleged sale from the plaintiff’s attorney to Washburn’s employer, National Service & Investigations, Inc., “NSI”.
- j. The only “evidence” used to claim that a property has been sold via foreclosure, relied upon by Washburn, is an e-mail from the paralegal from the plaintiff’s attorney, which states, “the client bids...”¹

¹ The e-mail does not indicate “who” the client is or the authority of the paralegal to make a bid on its behalf. There is no evidence provided that shows an account or judgment credited by the alleged proceeds from the sale.

- k. Washburn has limited training to conduct foreclosure sales and the initial “training” he received was from the law firm Rose Ramirez & Associates, P.C., “RRA”, (formerly Rose Little Brand & Associates, P.C., “RLB”), which is involved in numerous foreclosure cases across the state, and initiated the present foreclosure case, as well as case 345.²
1. A Case 1229 subpoena (September 1, 2023, **EXHIBIT D**) was unanswered. Biedscheid’s order (May 7, 2024, **EXHIBIT E**) admitted, “the presiding judge’s knowledge... is evidenced from the documents in the court file,” which lacks sale proof, confirming a non-existent sale. Rule 1-053E(1) *requires* evidence and exhibits be attached to the report. A “sign-in sheet” does not amount to evidence of a sale. Additionally, the fact that Judge Biedscheid did not recuse, at a minimum, for the hearing created further bias, along with the *ex parte* communications indicated in ¶ 2 of the order.

NOTE: These statements will be validated with exhibits in the upcoming motion to vacate the sale.

C. Failure to Oversee Sale

Biedscheid failed to supervise the sale, required for due process (*Armstrong v. Csurilla* 1991-NMSC-081, ¶ 36). He called the special master’s role “perfunctory” (August 4, 2021 hearing), allowed Washburn’s improper substitution (January 20, 2021, Rule 1-053(F) violation), and confirmed a sale in egregious excess of the Judgment, including unapproved interest.

D. Ignoring Lack of Standing

² Additional information discovered from publicly available sources show that Rose Ramirez, f/k/a Rose Brand, has a financial interest in NSI even while regularly naming David Washburn’s in cases where RRA represents the named plaintiff. Thus, the sale is not conducted “under the supervision of the court” but entirely conducted by the plaintiff and its attorneys. Neither NSI nor David Washburn has denied this interest but, instead, objected to the discovery request as “irrelevant” to the IPRA case.

1. Biedscheid ignored WFBNA's lack of standing. The note inspected (November 2014) had a Richmond Monroe Group label and SPS account number, unlike the complaint's copy (March 29, 2013, **EXHIBIT F**, Affidavit), suggesting no possession (*Bank of New York v. Romero*, 2014-NMSC-007, ¶ 21). The Court of Appeals (Mandate October 2, 2019) erred, claiming a label on the complaint's mortgage was visible on the copy, ignoring the note (**EXHIBIT G**, COA opinion, Issue B).³

2. The PSA (created March 19, 2007) required note assignment by June 17, 2007. No evidence exists, voiding standing (*Deutsche Bank Nat'l Trust Co. v. Johnston*, 2016-NMSC-013, ¶ 34). Mortgage assigned January 15, 2013 (Complaint, ex. C), but note assignment is unproven.

3. WFBNA sold its Corporate Trust Services to Computershare (November 1, 2021, **EXHIBIT H**), likely ending its trustee role. No substitution was filed (Rule 1-025(C)).⁴

E. SPS's Unauthorized Actions:

SPS directed attorneys without a POA.⁵ A Series 2006-12 POA (**Exhibit I**) terminates if WFBNA ceases as trustee, voiding any 2007-1 POA post-2021. Biedscheid's failure to verify SPS's authority shows bias.

F. Case 904 Bias

Biedscheid advised the sheriff to execute a void Writ (April 28, 2023, lapel footage, <https://bit.ly/3OoVx8j> beginning at 00:00:12 – 00:01:40) indicating *ex parte* communications,

³ The New Mexico judiciary, at all levels, not only fails to assist pro se litigants but also appears to use their disadvantage against them through highly technical rule requirements. Marcelina was unaware of the record proper, and never received the record proper at the time of appeal. None of the "self-help" documents assist pro se litigants on how to properly reference the record resulting in this miscarriage of justice. Judge Biedscheid, as a successor judge had an obligation to become familiar with the record. See e.g. Rule 1-063 NMRA.

⁴ Marcelina fully argued this in her filings challenging the writ of assistance.

⁵ No evidence of authority has been produced in this case despite the only "evidence" (affidavit of Diane Weinberger" stating that SPS acts as attorney-in-fact. Marcelina spent approximately twenty minutes on the phone with the Salt Lake County Recorder conducting a search for such POA and it was determined it does not exist.

during an appeal (See filings on 11/10/2022 through 2/3/2023). He issued an amended Writ (April 3, 2023) after jurisdiction transferred (*Murken v. Solv-Ex Corp.*, 2006-NMCA-064, ¶ 9)⁶. He granted the October 11, 2022, Writ without a hearing, despite no title litigation (*Romero v. State*, 1982-NMSC-028, ¶ 19) or jury trial (*Pankey v. Ortiz*, 1921-NMSC-007, 26 N.M. 575, 195 P. 906).

G. Case 1229 Conflict and Statements

Biedscheid self-assigned Case 1229 (June 14, 2023), failing to properly serve Marcelina a notice of assignment after the initial judge recused. This failure made her peremptory excusal “untimely.” Case 1229 is directly related to the present foreclosure case therefore Judge Biedscheid has personal knowledge of the facts in dispute and had a duty to recuse *sua sponte* yet he denied recusal at the same hearing where he dismissed a party from the case (dispositive).

He refused recusal until a judicial complaint was submitted but ultimately claimed his recusal was due to “other good cause” and not due to his personal knowledge, affecting appeal on his dispositive orders. In the hearing on the motion for disqualification/dismissal of a party Biedscheid made such statements as, “*in these sorts of cases is, I make a ruling, or I confirm a sale and things like that and then there’s an appeal if there’s a concern about it and then the appeals court says, Biedscheid got it right, or Biedscheid got it wrong, and depending on what their view of that is, I would take up follow up proceedings or not*”. This indicates that Biedscheid expects the court of appeals to do his job and ignored the lack of (and even blocked) evidence; Marcelina did not appeal the sale, as she was not fully informed of the evidence or facts. *See Muse v. Muse*, 2009-NMCA-003 ¶ 50, 145 N.M. 451, 200 P.3d 104.

We do, however, think it troubling that Husband appears to have continuously been refused access to the documentation and information the special master obtained and

⁶ Legal precedent shows that a judge can carry out enforcement of a proper order; however, in this case, Judge Biedscheid issued and enforced an *amended* writ, while the original was on appeal, which went beyond enforcement, and the request to amend the writ was filed long after the deadline prescribed in Rule 1-059 NMRA while jurisdiction was with the court of appeals. This matter has not been litigated and his failure to recuse has prevented this.

used as support for the information, conclusions, and recommendations contained in his reports. We are not alerted by Wife how Wife and the court could expect Husband to be in a reasonable position to attack the special master reports if Husband was denied access to such documents and information. Wife nowhere indicates the court's thinking as to why Husband had no right to review the underlying documentation and information. Based on Husband's appellate arguments and what he points to in the record, left completely unexamined and unexplained is whether Husband had a fair opportunity to show the court that aspects of the reports were clearly erroneous.

Biedscheid also stated, "*if I understand it, in this case the defendants are going to be saying, hey judge you entered a writ, you confirmed a sale that transferred title, and then we act on that and we get sued for doing that and then that's a follow up concern*". It is clear that Biedscheid acted as gatekeeper to shield others from liability due to his due process violations (October 5, 2023, recusal hearing, **EXHIBIT J**), showing prejudice. His May 7, 2024, admission (Ex. E) confirms a non-existent sale, tainting Case 904.

H. Case 345 Bias

Biedscheid ignored *BOKF v. Pacheco* (NMSC, S-1-SC-40119 Slip Opinion, April 24, 2025), requiring vacature of Case 345's judgment (no personal representative, no heir service). He denied a motion to set aside the sale, holding a hearing (January 27, 2025) on a motion that had been filed in October of 2022 clearly implying that he held a hearing on this motion to show that he "heard" Marcelina yet ignored the challenges to the serious issues in that case, including the very same issues that *Pacheco* clarified. Instead of vacating the judgment as void, he scheduled a presentment hearing for June 16, 2025 presumably to determine which version of the order(s) and to issue a writ of assistance - no intention of vacating the judgment despite lacking jurisdiction.

I. Dual Hearings

Of grave concern regarding the issue of bias and duty to recuse, Judge Biedscheid's scheduling of a hearing in Case 345 (10:00 AM) and Case 904 (11:00 AM) on June 16, 2025 shows a fundamental due process violation and an appearance of, if not actual, bias, which risks prejudice

(Rule 21-209 NMRA). Having back-to-back hearings on two cases in which Judge Biedscheid has personal knowledge of the defendant and facts at issue, as Case 345's Writ ruling could bias Case 904's Consolidated Motion is, on its face, improper.

J. Chief Judge Conflict:

Biedscheid's FJDC Chief Judge role conflicts with all cases involving Marcelina wherein issues are all related to her property and to illegal foreclosure. This role and his insistence on presiding over the three overlapping cases, has not only created a conflict within those cases, but also among other judges in the district, over whom he has a chief judge role. This conflict has deprived Marcelina of hearings, and of fair hearings. In the IPRA case, 1403, Judge Biedscheid failed to recuse the court (as it was a named defendant) for several months and the judges were only recused by Judge Wilson, as "acting Chief Judge" upon being questioned by the public.

K. Abuse of Discretion and Jurisdictional Deprivation

Biedscheid's obstruction of evidence (Expedited Motion to Compel filed 7/30/2021 in this case and Ex. D & E), confirmation of a non-existent sale, and refusal to recuse despite conflicts (Case 1403, 1229) and overlapping cases constitute abuse of discretion and deprive him of jurisdiction (*City of Albuquerque v. Chavez*, 1997-NMCA-054, ¶ 14: impartiality must be unquestionable). His actions violate due process (N.M. Const. Art. II, § 18) and a right to trial by jury (Art II § 12). Judge Biedscheid is aware of a notice of claim under NMSA 1978 Article 41, Chapter 4A. "[W]hen a judge becomes embroiled to the point where it is unlikely that he can maintain the calm detachment necessary for fair adjudication, then he should be prohibited from rendering [judgment]." *State v. Stout*, 1983-NMSC-094 ¶ 10, 100 N.M. 472, 672 P.2d 645. Judge Biedscheid's actions have injured Marcelina and are subject to claims. Through his insistence on presiding over three cases with overlapping themes and facts, and as Chief Judge, Judge

Biedscheid has become so embroiled that his statements and actions have become personal and retaliatory. Statements in hearings, such as “Sometimes your assertions don’t cut it” and depriving Marcelina of objecting to his conflicts in hearings are egregious due process violations.

Relief Requested

- A. Recusal Biedscheid from all cases involving Marcelina Martinez, including the present case.
- B. Reassignment of a non-FJDC judge to address further proceedings in this case.
- C. Stay proceedings, including the June 16, 2025, hearing, pending recusal.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Respectfully Submitted,

/s/Marcelina Martinez

Marcelina Martinez

In Propria Persona

PO Box 2077

Santa Cruz, NM 87567

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2025 I served a copy of the foregoing Second Motion for Recusal of Judge Bryan Biedscheid and to the following via e-mail:

Holland & Hart LLP
(current attorney of record)
Larry Montano
110 N. Guadalupe Suite 1
Santa Fe, NM 87501
lmontano@hollandandhart.com

David Wertz
Aldridge Pite LLP
3333 Camino Del Rio S #225
San Diego, CA 92108
dwertz@aldridgepite.com

GORDON REES SCULLY
MANSUKHANI
Solomon S. Krotzer
500 Marquette Avenue NW, Suite 1200
Albuquerque, NM 87102
skrotzer@grsm.com

Karl H. Sommer
Sommer Karnes & Associates, LLP
200 West Marcy Street, Suite 133
Santa Fe, NM 87501
khs@sommerkarnes.com

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

Case No. D-101-CV-2013-00904

WELLS FARGO BANK, N.A., AS TRUSTEE ON
BEHALF OF THE HOLDERS OF THE
HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2007-1,

Plaintiff,

v.

MARCELINA Y. MARTINEZ, CARL J. MARTINEZ,
THE BANK OF NEW YORK MELLON FKA THE
BANK OF NEW YORK, AS SUCCESSOR TRUSTEE
TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE
ON BEHALF OF THE CERTIFICATEHOLDERS OF
THE CWHEQ INC., CWHEQ REVOLVING HOME
EQUITY LOAN TRUST, SERIES 2006-1, GILBERT
ROMERO AND UNKNOWN TENANT (REAL
NAME UNKNOWN),

Defendants.

IN REM JUDGMENT, DECREE OF FORECLOSURE, AND ORDER OF SALE

THIS MATTER came before the Court on March 21, 2016, for hearing on the following
four motions:

- (1) Plaintiff's Motion For Summary Judgment against Marcelina Martinez and Carl Martinez (the "Martinezes");
- (2) Plaintiff's Motion To Dismiss The Counterclaims of Marcelina Y. Martinez and Gilbert Romero;
- (3) Ms. Martinez's Motion To Strike Bank of America's Affirmative Defenses; and,
- (4) Ms. Martinez's Motion To Vacate Orders of March 30, 2015.

Having reviewed the four above-referenced motions, the parties' briefs and legal
authorities concerning those motions, and having considered the arguments made by the parties

4. The real property securing the Note and encumbered by the Mortgage (the "Property") is commonly described as 14 Camino De Paz, Santa Fe, New Mexico 87506, and is more particularly described as:

PARCEL "A" AS SHOWN AND DELINEATED ON PLAT OF SURVEY FOR CARL J. MARTINEZ AND MARCELINA MARTINEZ AND EDWARD MARQUEZ AND BENITA MARQUEZ, BY JOHN PAISANO JR. NMLS NO. 5708 DATED JUNE 28, 2006 FILED AS DOCUMENT NO 1440868 IN PLAT BOOK 628, PAGE 017, IN THE RECORDS OF SANTA FE COUNTY, NEW MEXICO.

5. The Martinezes' loan was subsequently transferred to Plaintiff, Wells Fargo Bank, N.A., as Trustee on Behalf of the Holders of the Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1 (the "Trust" or "Plaintiff"). The Trust has deposited with the possession of the original Note and the original Mortgage executed by the Martinezes on November 16, 2006, and has had such possession since before this action was filed.

6. Under the Note and the Mortgage, the Martinezes agreed to pay the principal and interest due on the loan each month and that, if they failed to do so, they would be in default.

7. The Mortgage designated Mortgage Electronic Registration Systems, Inc. ("MERS") as the mortgagee "acting solely as a nominee for Lender and Lender's successors and assigns." Under the Mortgage, the mortgagee may foreclose on the property as follows:

Borrower understands and agrees that . . . MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender, including, but not limited, releasing and canceling this Security Instrument.

8. The Note and the Mortgage provide that the Note holder, now may accelerate the debt upon default.

General Conclusions of Law

KK. Defendants fail to identify any evidence sufficient to establish a genuine issue of material fact regarding the allegations of any of their counterclaims and defenses.

LL. The mortgages, liens, and interests referred to in the foregoing findings are hereby ordered foreclosed, together with all rights in the Property of the Martinezes and any person claiming by, under or through the Martinezes, in the form and manner provided by law, and subject to the right of the Martinezes to redeem as provided by law and the Mortgage and liens, which redemption period shall be one (1) month from the judicial sale.

MM. That the Trust is entitled to an *in rem* judgment against the Martinezes, in the total sum of \$492,890.23 as of and through September 6, 2015.

NN. The foregoing *in rem* Judgment shall bear interest at the prescribed rate from and including today's date until and including the date of foreclosure sale hereinafter set out.

OO. The Trust shall be declared to be the holder of a first priority lien on the Property described in the Mortgage to which the interests of the Martinezes herein and all persons claiming under, by, with, or through the Martinezes are subordinate and inferior and said interests should be foreclosed.

Additional Conclusions of Law

PP. Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Property at issue in this action,

IS HEREBY ORDERED foreclosed and that the Property be sold as provided by law and that The Honorable Jay G. Harris (Ret.) or his designee be and is hereby appointed Special Master to advertise and sell the Property and make a report thereof to this Court as provided by law, and that at the sale the Trust is authorized to bid, and, in the event the Trust is the successful bidder, to apply all or any part of its Judgment in payment of the purchase price.

QQ. The Property shall be sold to the highest bidder for cash, free and clear of all liens of the parties hereto and each of them, and all persons claiming under, by, with, and through the parties or any persons claiming an interest.

RR. The Property shall be sold subject to any unpaid taxes, any outstanding governmental assessments and/or liens, to the right of redemption as provided herein and to the approval of the Court.

SS. The Trust shall have the right to bid at the foreclosure sale provided for in this Judgment, and it may bid the amount of its Judgment, in lieu of cash, at the sale; provided, however, that if any party, other than the Trust, is the successful bidder, the bid must include cash to the extent necessary to pay the Special Master's fee and sale expenses and the amount of any liens and judgment of the Trust having priority over such successful bidder's lien as the priority of liens is established by this Judgment and in the findings contained herein.

TT. The proceeds of the foreclosure sale shall first apply to the costs of sale, including the Special Master's fee, to be hereafter fixed by the Court, for any costs incurred for the maintenance and protection of the property, including those not included in this Judgment, then to the Trust for *in rem* Judgment as provided above including the unpaid balance, escrow, late charges, costs, interest to and including date of sale, attorney's fees and any other costs with interest to and including date of sale. The balance of proceeds, if any, shall be deposited into the Court Registry and applied as may be determined by the Court.

UU. Unless the Property to be sold is redeemed in the manner provided by law within one (1) month from and after the judicial sale, the Martinezes and all persons claiming under, by, with, through or against them by instruments recorded subsequent to the Mortgage, shall be forever foreclosed from any and all right, title and interest in or lien or claim upon, or equity or redemption to the Property.

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

No. D-101-CV-2013-00904

WELLS FARGO BANK, N.A., AS TRUSTEE, on Behalf of the
Holders of the Haborview Mortgage Loan Trust Mortgage Loan
Pass-Through Certificates, Series 2007-1,

Plaintiff,

vs.

MARCELINA Y. MARTINEZ; CARL J. MARTINEZ; THE BANK OF
NEW YORK MELLON fka The Bank of New York as Successor
Trustee to JP Morgan Chase Bank, N.A., as Trustee on Behalf of
the Certificateholders of the CWHEQ Inc., CWHEQ Revolving
Home Equity Loan Trust, Series 21006-1; GILBERT ROMERO;
and UNKNOWN TENANT (REAL NAME UNKNOWN),

Defendants.

NOTICE OF SALE

NOTICE IS HEREBY GIVEN that on March 3, 2021, at the hour of 10:00 a.m.,
the undersigned Special Master will, at the main entrance of the Judge Steve Herrera
Judicial Complex, 225 Montezuma Avenue, Santa Fe, New Mexico, sell all the right, title
and interest of the above-named Defendants in and to the hereinafter described real
estate to the highest bidder for cash. The property to be sold is located at 14 Camino
de Paz, Santa Cruz, and is situate in Santa Fe County, New Mexico, and is particularly
described as follows:

PARCEL "A" AS SHOWN AND DELINEATED ON PLAT OF SURVEY FOR
CARL J. MARTINEZ AND MARCELINA MARTINEZ AND EDWARD MARQUEZ
AND BENITA MARQUEZ, BY JOHN PAISANO JR. NMLS NO. 5708 DATED
JUNE 28, 2006 FILED AS DOCUMENT NO 1440868 IN PLAT BOOK 628,
PAGE 017, IN THE RECORDS OF SANTA FE COUNTY, NEW MEXICO.

EXHIBIT B

THE FOREGOING SALE will be made to satisfy a judgment rendered by the above Court in the above entitled and numbered cause on August 22, 2016, being an action to foreclose a mortgage on the above described property. The Plaintiff's Judgment, which includes interest and costs, is \$617,126.09 and the same bears interest at 3.3750% *per annum* from May 30, 2015, to the date of sale. The Plaintiff and/or its assignees has the right to bid at such sale and submit its bid verbally or in writing. The Plaintiff may apply all or any part of its judgment to the purchase price in lieu of cash. The sale may be postponed and rescheduled at the discretion of the Special Master.

NOTICE IS FURTHER GIVEN that the real property and improvements concerned with herein will be sold subject to any and all patent reservations, easements, all recorded and unrecorded liens not foreclosed herein, and all recorded and unrecorded special assessments and taxes that may be due. Plaintiff and its attorneys disclaim all responsibility for, and the purchaser at the sale takes the property subject to, the valuation of the property by the County Assessor as real or personal property, affixture of any mobile or manufactured home to the land, deactivation of title to a mobile or manufactured home on the property, if any, environmental contamination on the property, if any, and zoning violations concerning the property, if any.

NOTICE IS FURTHER GIVEN that the purchaser at such sale shall take title to the above described real property subject to a one month right of redemption.

Electronically filed /s/ David Washburn
David Washburn, Special Master
Post Office Box 91988
Albuquerque, NM 87199
505-433-4576
sales@nsi.legal



M Martinez <aequitasveritas777@gmail.com>

IPRA Request

Jorge Montes <sfedrequests@nmcourts.gov>
To: aequitasveritas777@gmail.com

Thu, Jun 3, 2021 at 2:46 PM

Ms. Martinez,

It is the policy of the First Judicial District Court to be fully responsive to all requests for public records available under the Inspection of Public Records Act, NMSA 1978, § 14-2-1 et seq. ("IPRA"). This office received your IPRA request on May 20, 2021 and on May 25, 2021 regarding several records. Attached is the court's response to your IPRA request. This response will close out your IPRA request.

Sincerely,
Jorge Montes
Judicial Court Supervisor

[Public Requests] IPRA Request

Inbox 2021 IPRA REQUESTS



M Martinez <aequitasveritas777@gmail.com>
to sfedrequests

Thu, May 20, 1:06 PM

Good afternoon,

This is a request under the Inspection of Public Records Act. Within three business days, the records custodian will explain when the records will be available for inspection or when the custodian will respond to the request.

First Name: Marcelina
Last Name: Martinez
Email Address: aequitasveritas777@gmail.com
Phone Number: 505.672.8497
Court Locations: 1st Judicial District
Physical Address: PO Box 2077
City: Santa Cruz
State: New Mexico
Zip: 87567
Records Requested:

- All communications between David Washburn and Tiffany & Boscoe P.A. agents, officers, or employees relating to case D-101-CV-2013-00904, Wells Fargo Bank, N.A. as Trustee v Martinez et al.
- All communications between David Washburn and Houser LLP agents, officers, or employees relating to case D-101-CV-2013-00904, Wells Fargo Bank, N.A. as Trustee v Martinez et al.
- Include all communications prior to, during and after the alleged "sale", which purportedly was held on March 3, 2021
- Evidence of funds transferred from the alleged purchaser
- Receipts for advertisement in the newspaper having a general circulation in Santa Fe County, New Mexico
- Evidence of Bond/Insurance of David Washburn (name of insurance company, address and policy number)

NOTE: I attempted to request the records directly from David Washburn but received the response below. It is my belief that the court should be the custodian for the records requested given that special masters are appointed by judges to act on their behalf.

For your reference:

Rule 16-305 NMRA, Rules of Professional Conduct, Impartiality and decorum of the tribunal. "During a proceeding a lawyer may not communicate ex parte with persons serving an official capacity in the proceeding, such as judges, masters, or jurors, unless authorized to do so by law or court order." See Committee commentary. Masters are considered officers serving an official capacity.

NMSA 1978 Sect. 34-10-2.1. Judicial standards commission; duties; subpoena power.

EXHIBIT C

A. Pursuant to the judicial standards commission's authority granted by Article 6, Section 32 of the constitution of New Mexico, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, persistent failure or inability to perform the judge's duties or habitual intemperance, or may be retired for a disability that seriously interferes with the performance of the justice's, judge's or magistrate's duties and that is, or is likely to become, of a permanent character. The judicial standards commission is granted the same authority to regulate the conduct and character of court-appointed commissioners, hearing officers, administrative law judges or special masters while acting in a judicial capacity.

E.g. "requirement of impartiality applies not only to judicial officers but also to private persons who serve as adjudicators." *Rissler v. Jefferson Cnty. Bd. of Zoning Appeals*, 693 S.E.2d 321, 328 (W. Va. 2010)." See *Los Chavez Cmty. Assn. v. Valencia Cnty.*, 2012-NMCA-044, 277 P.3d 475.

Also see the attached Attorney General Opinion Letter, which acknowledges that special masters are judicial employees acting in a quasi-judicial capacity.

Thank you!

----- Forwarded message -----

From: **Elizabeth Mason** <Elizabeth.Mason@roselbrand.com>
Date: Thu, May 20, 2021 at 12:33 PM
Subject: RE: IPRA Request | Deadline to respond 5.20.2021
To: aequitasveritas777@gmail.com <aequitasveritas777@gmail.com>
Cc: David Washburn <dwashburn@nsi.legal>

Good afternoon. This office has been retained by David Washburn regarding the records request submitted by electronic message to David Washburn at sales@nsi.legal on May 17, 20201, as set forth below.

Please be advised that the records request is not subject to the provisions of the Inspection of Public Records Act, Sections 14-2-1, *et seq.*, NMSA 1978 ("the Act"). Neither David Washburn nor National Service & Investigations, Inc., are a "public body" as defined by the Act, the records requested are not "public records" as defined by the Act, and neither David Washburn nor National Service & Investigations, Inc., is a "custodian" as defined by the Act. Accordingly, a response to the records request set forth below will not be provided.

A copy of Section 14-2-6 NMSA 1978 is provided herewith for your reference. Thank you.

14-2-6. Definitions.

As used in the Inspection of Public Records Act:

- A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;
- B. "file format" means the internal structure of an electronic file that defines the way it is stored and used;
- C. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;
- D. "person" means any individual, corporation, partnership, firm, association or entity;
- E. "protected personal identifier information" means:
 - (1) all but the last four digits of a:
 - (a) taxpayer identification number;
 - (b) financial account number; or
 - (c) driver's license number;
 - (2) all but the year of a person's date of birth; and
 - (3) a social security number;

EXHIBIT C

F. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education;

G. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained; and

H. "trade secret" means trade secret as defined in Subsection D of Section 57-3A-2 NMSA 1978.

Elizabeth Mason

National Compliance Attorney



Rose L. Brand & Associates P.C.

7430 Washington St. NE

Albuquerque, NM 87109

Phone: (505) 833-3036 | Fax: (505) 833-3040

E-mail: elizabeth.mason@roselbrand.com

From: M Martinez [<mailto:aequitasveritas777@gmail.com>]

Sent: Monday, May 17, 2021 5:40 PM

To: Sales <sales@nsi.legal>

Subject: IPRA Request

RE: David Washburn, Special Master -
Foreclosure Sales, sales@nsi.legal, NM Private Investigation Company Lic #3212."

This is a request under the Inspection of Public Records Act. Within three business days, the records custodian will explain when the records will be available for inspection or when the custodian will respond to the request.

First Name: Marcelina

Last Name: Martinez

Email Address: aequitasveritas777@gmail.com

Phone Number: 505.672.8497

Court Locations: 1st Judicial District

Physical Address: PO Box 2077

City: Santa Cruz

State: New Mexico

Zip: 87567

Records Requested:

- All communications between David Washburn and Tiffany & Boscoe P.A. agents, officers, or employees relating to case D-101-CV-2013-00904, Wells Fargo Bank, N.A. as Trustee v Martinez et al.
- All communications between David Washburn and Houser LLP agents, officers, or employees relating to case D-101-CV-2013-00904, Wells Fargo Bank, N.A. as Trustee v Martinez et al.
- Include all communications prior to, during and after the alleged "sale", which purportedly was held on March 3, 2021
- Evidence of funds transferred from the alleged purchaser
- Receipts for advertisement in the newspaper having a general circulation in Santa Fe County, New Mexico
- Evidence of Bond/Insurance of David Washburn (name of insurance company, address and policy number)

EXHIBIT C

Thank you

 **2021 IPRA Response M MARTINEZ 6032021.pdf**
493K

EXHIBIT C

KATHLEEN VIGIL
COURT EXECUTIVE OFFICER
DISTRICT COURT CLERK



POST OFFICE BOX 2268
SANTA FE, NM 87504
PHONE: (505) 455-8200
FAX: (505) 455-8207

State of New Mexico
First Judicial District Court
LOS ALAMOS COUNTY
RIO ARRIBA COUNTY, Santa Fe COUNTY

Thursday, June 3, 2021

Marcelina Martinez
P.O. Box 2077
Santa Cruz, NM 87567
Via Email: aequitasveritas777@gmail.com

Re: Inspection of Public Records Act Request, Received on May 20, 2021 (Duplicate Request Received on May 25, 2021)

Dear Ms. Martinez:

The First Judicial District Court ("FJDC") is in receipt of your public records request received by FJDC Court Administration on May 20, 2021 and May 25, 2021. Citing the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Section 14-2-1 *et seq.*, you have requested the following records:

Records Requested:

- All communications between David Washburn and Tiffany & Boscoe P.A. agents, officers, or employees relating to case D-101-CV-2013-00904, Wells Fargo Bank, N.A. as Trustee v Martinez et al.
- All communications between David Washburn and Houser LLP agents, officers, or employees relating to case D-101-CV-2013-00904, Wells Fargo Bank, N.A. as Trustee v Martinez et al.
- Include all communications prior to, during and after the alleged "sale", which purportedly was held on March 3, 2021
- Evidence of funds transferred from the alleged purchaser
- Receipts for advertisement in the newspaper having a general circulation in Santa Fe County, New Mexico
- Evidence of Bond/Insurance of David Washburn (name of insurance company, address and policy number)

First Judicial District Court's Response:

It is the policy of FJDC to be fully responsive to all requests for public records available under IPRA. FJDC notes that Mr. David Washburn was designated as a special master to conduct a foreclosure sale in the following legal action: *Wells Fargo Bank, N.A. v. Marcelina Y. Martinez et al.*, Cause No. D-101-CV-2013-00904. To fulfill the above-captioned request, FJDC is producing the enclosed: (a) Report of Special Master, filed March 4, 2021, and (b) Notice of

Filing Affidavit of Publication, filed March 4, 2021, in *Wells Fargo Bank, N.A. v. Marcelina Y. Martinez et al.*, Cause No. D-101-CV-2013-00904.

With respect to the remaining records sought by your request, FJDC is unable to produce those records. Therefore, FJDC is denying that portion of your request on four grounds.

First, FJDC is not in possession, custody, or control of the additional records sought by your request. *See* NMSA 1978, § 14-2-8(B) (“Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.”).

Second, FJDC is not the custodian of the requested records. NMSA 1978, Section 14-2-6(A) provides that a custodian is “any person responsible for the maintenance, care or keeping of a public body’s public records . . .” FJDC is not “responsible for the maintenance, care or keeping of” the special master’s records.

Third, the special master is not a public body within the scope of IPRA. NMSA 1978, Section 14-2-6(F) states that a public body includes “the executive, legislative and judicial branches of state and local governments . . .” The special master is not part of the judicial branch of state government, and is not an employee, contractor, or agent of FJDC.

Fourth, the remaining records sought in the above-captioned request do not constitute public records. NMSA 1978, Section 14-2-6(G) defines public records as “all documents . . . and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body . . .” The remaining requested records—if they exist—are not “used, created, received, maintained or held by or on behalf of the public body” (*i.e.*, the First Judicial District Court). NMSA 1978, § 14-2-6(G).

Pursuant to NMSA 1978, Section 14-2-9(B), FJDC is producing the (a) Report of Special Master, and (b) Notice of Filing Affidavit of Publication, in electronic pdf format as attachments to this letter sent via email.

FJDC now considers your request closed.

Sincerely,

Jorge Montes
Judicial Court Supervisor

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

No. D-101-CV-2013-00904

WELLS FARGO BANK, N.A., AS TRUSTEE, on Behalf of the
Holders of the Harborview Mortgage Loan Trust Mortgage Loan
Pass-Through Certificates, Series 2007-1,

Plaintiff,

vs.

MARCELINA Y. MARTINEZ; CARL J. MARTINEZ; THE BANK OF
NEW YORK MELLON fka The Bank of New York as Successor
Trustee to JP Morgan Chase Bank, N.A., as Trustee on Behalf of
the Certificateholders of the CWHEQ Inc., CWHEQ Revolving
Home Equity Loan Trust, Series 21006-1; GILBERT ROMERO;
and UNKNOWN TENANT (REAL NAME UNKNOWN),

Defendants.

REPORT OF SPECIAL MASTER

David Washburn, Special Master, reports to the Court as follows:

1. Your Special Master, pursuant to the judgment rendered herein on August 22, 2016, proceeded to publish and sell the real estate described in the decree of foreclosure entered herein, the sale being made for the purpose of satisfying the judgment entered in this cause, costs expended for sale, the Special Master's fee, costs of this action and costs expended for taxes, insurance and other expenses of foreclosure.
2. Your Special Master advertised said sale pursuant to New Mexico statutory requirements, for four (4) consecutive weeks in a newspaper having a general

circulation in Santa Fe County, New Mexico, as evidenced by the affidavit of publication being filed herein.

3. At the time and place specified in the Notice of Sale filed herein, your Special Master offered said property for sale and the best and highest bidder at said sale was Wells Fargo Bank, N.A., as trustee, on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1, who bid \$702,000.00, whereupon your Special Master sold said property to said highest bidder for said sum.

4. Your Special Master reports that the following costs of sale were incurred:

Special Master's Fee	\$269.69
Publication of Notice(s) of Sale	\$494.21
Recording Special Master's Deed	\$ 30.00
E-filing fees	\$ 18.00
Total	\$811.90

5. Your Special Master prays that:

- a. The sale be confirmed.
- b. This report be accepted and approved.
- c. The Special Master be authorized to distribute or credit the funds.
- d. The Special Master's Deed attached hereto be approved.

e. That the Special Master be authorized to deliver the Deed to Wells Fargo Bank, N.A., as trustee, on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1.



David Washburn, Special Master
Post Office Box 91988
Albuquerque, NM 87199
505-433-4576
sales@nsi.legal



SPECIAL MASTER'S DEED

THIS INDENTURE made March 3, 2021, by and between David Washburn, as Special Master, duly and regularly appointed by the District Court for the County of Santa Fe, State of New Mexico, in Cause No. D-101-CV-2013-00904, party of the first part, and Wells Fargo Bank, N.A., as trustee, on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1, whose address is 3217 South Decker Lake Drive, Salt Lake City, UT 84119, party of the second part.

WITNESSETH:

WHEREAS, in and by the Judgment rendered and entered by the District Court in and for the County of Santa Fe, State of New Mexico, Cause No. D-101-CV-2013-00904, on August 22, 2016, it was, among other things, ordered, adjudged and decreed that the mortgaged premises described in the Complaint and Judgment in said cause be sold at public auction; and,

WHEREAS, pursuant to said Judgment, the undersigned at the hour of 10:00 a.m. on March 3, 2021, after due publication of notice had been given as required by law did sell at the main entrance of the Judge Steve Herrera Judicial Complex, 225 Montezuma Avenue, Santa Fe, New Mexico, the premises subject to the Judgment and hereinafter described; and,

WHEREAS, the premises were sold at said sale to the party of the second part for the sum of \$702,000.00, the said party of the second part being the highest bidder and that being the sum bid for said premises;

NOW, THEREFORE, BY THIS INDENTURE WITNESSETH:

That the party of the first part, as Special Master, in order to carry into effect the sale so made by him as aforesaid and in pursuance of law and of said Judgment, does hereby convey by these presents and by these presents does grant, sell and convey unto the party of the second part, its successors and assigns, all of that certain lot, piece and parcel of land situated and lying in the County of Santa Fe, State of New Mexico, and being more particularly described as:

PARCEL "A" AS SHOWN AND DELINEATED ON PLAT OF SURVEY FOR
CARL J. MARTINEZ AND MARCELINA MARTINEZ AND EDWARD MARQUEZ
AND BENITA MARQUEZ, BY JOHN PAISANO JR. NMLS NO. 5708 DATED
JUNE 28, 2006 FILED AS DOCUMENT NO 1440868 IN PLAT BOOK 628,
PAGE 017, IN THE RECORDS OF SANTA FE COUNTY, NEW MEXICO

together with all and singular the tenements, hereditaments, and appurtenances thereto
belonging or any wise appertaining thereto, and subject to conveyances, contracts,
liens, reservations, restrictions and easements of record.

To have and to hold all the singular of these said premises unto the party of the
second part, its successors and assigns, forever as fully as the said Special Master
can, may or ought to grant, sell and convey the same.

IN WITNESS WHEREOF the party of the first part as such Special Master has
hereunto set his hand and seal the day and year first written above.

David Washburn, Special Master

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on _____, 2021, by
David Washburn, Special Master.

My Commission Expires:

Notary Public

Marcelina Y. Martinez and Carl J. Martinez

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

No. D-101-CV-2013-00904

WELLS FARGO BANK, N.A., AS TRUSTEE, on Behalf of the
Holders of the Harborview Mortgage Loan Trust Mortgage Loan
Pass-Through Certificates, Series 2007-1,

Plaintiff,

vs.

MARCELINA Y. MARTINEZ; CARL J. MARTINEZ; THE BANK OF
NEW YORK MELLON fka The Bank of New York as Successor
Trustee to JP Morgan Chase Bank, N.A., as Trustee on Behalf of
the Certificateholders of the CWHEQ Inc., CWHEQ Revolving
Home Equity Loan Trust, Series 21006-1; GILBERT ROMERO;
and UNKNOWN TENANT (REAL NAME UNKNOWN),

Defendants.

NOTICE OF FILING AFFIDAVIT OF PUBLICATION

Tiffany & Bosco, P.A., hereby gives notice of filing of the Affidavit of Publication
of the Notice of Sale, a copy of which is attached hereto.

TIFFANY & BOSCO, P.A.

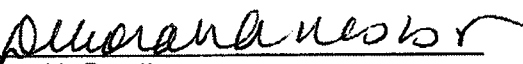
By 
Karen H. Bradley
Deborah A. Nesbitt
Attorneys for Plaintiff
PO Box 3509
Albuquerque, NM 87190-3509
(505) 248-2400 FAX (505) 254-4722

EXHIBIT C

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

No. D-101-CV-2013-00904

WELLS FARGO BANK, N.A.,
AS TRUSTEE, on Behalf of
the Holders of the Harborview
Mortgage Loan Trust Mort-
gage Loan Pass-Through Cer-
tificates, Series 2007-1,

Plaintiff,

vs.

MARCELINA Y. MARTINEZ;
CARL J. MARTINEZ, THE
BANK OF NEW YORK MEL-
LON fka The Bank of New
York as Successor Trustee to
JP Morgan Chase Bank, N.A.,
as Trustee on Behalf of the
Certificateholders of the
CWHEQ Inc., CWHEQ Re-
volving Home Equity Loan
Trust, Series 21006-1; GIL-
BERT ROMERO; and UN-
KNOWN TENANT (REAL
NAME UNKNOWN),

Defendants.

NOTICE OF SALE

NOTICE IS HEREBY GIVEN
that on March 3, 2021, at the
hour of 10:00 a.m., the under-
signed Special Master will, at
the main entrance of the
Judge Steve Herrera Judicial
Complex, 225 Montezuma
Avenue, Santa Fe, New Mexi-
co, sell all the right, title and
interest of the above-named
Defendants in and to the here-
inafter described real estate to
the highest bidder for cash.
The property to be sold is lo-
cated at 14 Camino de Paz,
Santa Cruz, and is situate in
Santa Fe County, New Mexi-
co, and is particularly descri-
bed as follows:

PARCEL "A" AS SHOWN
AND DELINEATED ON
PLAT OF SURVEY FOR
CARL J. MARTINEZ AND
MARCELINA MARTINEZ
AND EDWARD MARQUEZ
AND BENITA MARQUEZ,
BY JOHN PAISANO JR.
NMLS NO. 5708 DATED
JUNE 28, 2006 FILED AS
DOCUMENT NO. 1440868
IN PLAT BOOK 628, PAGE
017, IN THE RECORDS OF
SANTA FE COUNTY, NEW
MEXICO.

THE FOREGOING SALE will
be made to satisfy a judgment
rendered by the above Court
in the above entitled and num-
bered cause on August 22,
2016, being an action to fore-
close a mortgage on the
above described property.
The Plaintiff's Judgment,
which includes interest and
costs, is \$617,126.09 and the
same bears interest at 3.
3750% per annum from May
30, 2015, to the date of sale.
The Plaintiff and/or its assign-
ees has the right to bid at such
sale and submit its bid verbally
or in writing. The Plaintiff may
apply all or any part of its judg-
ment to the purchase price in
lieu of cash. The sale may be
postponed and rescheduled at
the discretion of the Special
Master.

AFFIDAVIT OF PUBLICATION

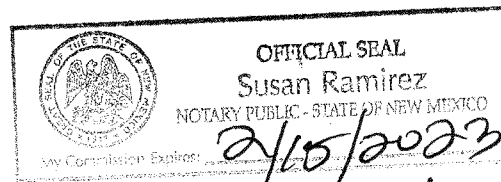
STATE OF NEW MEXICO

County of Santa Fe

SS

Elise Rodriguez, the undersigned, on oath states that she is an authorized Representative of
Journal North, and that this newspaper is duly qualified to publish legal notices
or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that
payment therefore has been made of assessed as court cost; that the notice, copy of which hereto
attached, was published in said paper in the regular daily edition, for 4 time(s) on the following
date(s):

01/24/2021, 01/31/2021, 02/07/2021, 02/14/2021



Sworn and subscribed before me, a Notary Public, in and
for the County of Santa Fe and State of New Mexico this
15 day of February of 2021

PRICE \$494.21

Statement to come at the end of month.

ACCOUNT NUMBER 1090862

NOTICE IS FURTHER GIVEN
that the real property and im-
provements concerned with
herein will be sold subject to
any and all patent reserva-
tions, easements, all recorded
and unrecorded liens not fore-
closed herein, and all record-
ed and unrecorded special as-
sessments and taxes that may
be due. Plaintiff and its attor-
neys disclaim all responsibility
for, and the purchaser at the
sale takes the property subject
to, the valuation of the prop-
erty by the County Assessor as
real or personal property, affix-
ture of any mobile or manufac-
tured home to the land, deacti-
vation of title to a mobile or
manufactured home on the
property, if any, environmental
contamination on the property,
if any, and zoning violations
concerning the property, if
any.

NOTICE IS FURTHER GIVEN
that the purchaser at such
sale shall take title to the
above described real property
subject to a one month right of
redemption.

Electronically filed

/s/ David Washburn
David Washburn,
Special Master
Post Office Box 91988
Albuquerque, NM 87199
505-433-4576
sales@nsi.legal

Journal North: January 24, 31,
February 7, 14, 2021

EXHIBIT C

FIRST JUDICIAL DISTRICT COURT
SANTA FE COUNTY
STATE OF NEW MEXICO

Marcelina Martinez; and
Gilbert Romero

Plaintiffs,

v.

No. D-101-CV-2023-01229

SAFEGUARD PROPERTIES MANAGEMENT,
LLC; "Terry Doe", in his individual capacity and
as "vendor" to SAFEGUARD PROPERTIES
MANAGEMENT, LLC; SANTA FE COUNTY
BOARD OF COMMISSIONERS; Santa Fe County
Sheriff Adan Mendoza; Santa Fe County Deputy
Sheriff Stephen Orr; Santa Fe County Deputy
Sheriff Jose Puentes; REAL ESTATE DE SANTA
FE, LLC; Isabel "Chavela" Valdez, in her individual
capacity and as Realtor for REAL ESTATE DE
SANTA FE, LLC; Carlos Griego, in his individual
capacity; John Does 1-5; and Jane Does 1-5,

Defendants.

[RETURN]
SUBPOENA

[X] SUBPOENA FOR DOCUMENTS

TO: Bryan Biedscheid, c/o 225 Montezuma, Ave. Santa Fe, NM 87501 and PO Box 2268,
Santa Fe, NM 87504-2268, c/o .

YOU ARE HEREBY COMMANDED ON:

DATE: September 19, 2023

TO:

[X] permit inspection of the following described books, papers, documents or tangible things
by providing electronic copies in an electronic format, either through compact disc, DVD, or
thumb drive, that can be mailed via USPS Certified Mail, return receipt requested, to Marcelina
Martinez, P.O. Box 2077, Santa Cruz, New Mexico 87567, post-marked fourteen days from the
date of service of this subpoena or the date above, the later of the two:

ELECTRONIC COPIES OF DOCUMENTS OR RECORDS RELATED TO WELLS FARGO BANK N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2007-1 v. MARTINEZ, ET AL., FIRST JUDICIAL DISTRICT COURT CASE D-101-CV-2013-00904, ASSOCIATED WITH THE "SALE" ON MARCH 3, 2021 AND AMENDED "WRIT OF ASSISTANCE" ISSUED 4/3/2023, INCLUDING ALL COMMUNICATIONS OR TRANSCRIPTS OF COMMUNICATIONS PERTAINING TO:

- (1) All evidence, exhibits, and transcripts associated with "sale" on 3/3/2021 and the Report of Special Master filed 3/4/2021;
- (2) Evidence upon which you relied to issue the order confirming sale, which shows that consideration was paid to convey property to Wells Fargo Bank, N.A. as Trustee on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1, including the accounting of the alleged credit bid to the judgment;
- (3) Evidence of a bid from Wells Fargo Bank, N.A. as Trustee on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1, include documents showing authorization from Wells Fargo Bank, N.A. as Trustee on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1 to the individual that made the bid on its behalf.
- (4) All communications between you and any party related to the "sale" of Plaintiffs' property, generally known as 14 Camino de Paz, Santa Cruz, New Mexico, including communications from the special master to you, with the evidence mentioned above in paragraphs 1 - 3;
- (5) All communications between you and the various attorneys for Wells Fargo Bank, N.A. as Trustee on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1 in the aforementioned case;
- (6) The law or reference to the law you relied upon to allow Wells Fargo Bank, N.A. as Trustee on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1 or anyone acting on its behalf to take possession of plaintiffs' *personal property*;
- (7) The substantive law that gives you authority to grant possession of property held under a deed, to another party where title is not litigated and corresponding procedural law (rule) that details how such authority is executed;
- (8) The judgment for possession, pursuant to NMSA 1978 sec. 42-4-12, under which the "Application for Writ of Assistance" was requested;

- (9) The motion to amend the complaint or caption, along with the order granting the same, to materially alter the caption from:

FILED IN MY OFFICE
DISTRICT COURT CLERK
3/29/2013 11:49:20 AM
STEPHEN T. PACHECO

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

JAM

No. D-101-CV-2013-00904

WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF THE
HOLDERS OF THE HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES
2007-1,

Plaintiff,

vs.

MARCELINA Y. MARTINEZ, CARL J. MARTINEZ, THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW YORK, AS
SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS
TRUSTEE ON BEHALF OF THE CERTIFICATEHOLDERS OF THE
CWHEQ INC., CWHEQ REVOLVING HOME EQUITY LOAN TRUST,
SERIES 2006-1, GILBERT ROMERO AND UNKNOWN TENANT
(REAL NAME UNKNOWN),

Defendants.

To:

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
4/3/2023 12:15 PM
KATHLEEN VIGIL, CLERK OF THE COURT
Glenn Landin

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

WELLS FARGO BANK, N.A., AS: No. D-101-CV-2013-00904
TRUSTEE, on Behalf of the Holders of the
Harborview Mortgage Loan Trust Mortgage
Loan Pass-Through Certificates, Series 2007-
1, its successors and/or assigns,

Plaintiff,

v.

MARCELINA Y. MARTINEZ, CARL J.
MARTINEZ, THE BANK OF NEW YORK
MELLON fka The Bank of New York as
Successor Trustee to JP Morgan Chase Bank,
N.A., as Trustee on Behalf of
Certificateholders of the CWHEQ Inc.,
CWHEQ Revolving Equity Loan Trust, Series
21006-1; GILBERT ROMERO; and
UNKNOWN TENANT (REAL NAME
UNKNOWN),

Defendant(s),

(10) The communication between any attorney and you, containing or referencing the proposed (amended) writ of assistance, issued by you on 4/3/2023 along with the draft proposed writ of assistance;

(11) All documents, including communications, with directives or instructions on how to handle foreclosure cases, including foreclosure sales.

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA."

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

AUGUST 29,



2023
KATHLEEN VIGIL
Judge, clerk or attorney
by Deputy
STATE OF NEW MEXICO
NOTARIAL OFFICER
Leticia Cunningham
First Judicial District

TO BE PRINTED ON EACH SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

2. A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof.

Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. See NMSA 1978, Section 38-6-4 (1983) for per diem and mileage for witnesses. See NMSA 1978, Section 10-8-4(A) (2009) for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See NMSA 1978, Section 34-9-11 (2017) for payments from the jury and witness fee fund.

4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of _____, _____ in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena and a fee of \$ _____ (insert the amount of fee tendered or, if no fee is tendered, "none").³

Deputy sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the 29th day of August, 2023, in Santa Fe County, I served this subpoena on Bryan Birdscheid by delivering to the person named a copy of the subpoena and a fee of \$ None (insert the amount of fee tendered or, if no fee is tendered, "none").³

[Signature]
Person making service

SUBSCRIBED AND SWORN to before me this 31st day of August, 2023 (date).

[Signature]
Judge, notary or other officer
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

Marcelina Martinez
Plaintiff
c/o PO Box 2077

STATE OF NEW MEXICO
NOTARY PUBLIC
DAVID HERNANDEZ
COMMISSION # 1129267
EXPIRES AUGUST 13, 2024

Santa Cruz, New Mexico [87567]
505.672.8497

INFORMATION FOR PERSONS RECEIVING SUBPOENA

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. The order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(1) fails to allow reasonable time for compliance,

(2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held,

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(4) subjects a person to undue burden.

If a subpoena

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information,

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

[As amended, effective November 1, 2002; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; by Supreme Court Order No. 09-8300-030, effective October 12, 2009; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]

**FIRST JUDICIAL DISTRICT COURT
SANTA FE COUNTY
STATE OF NEW MEXICO**

MARCELINA MARTINEZ and GILBERT ROMERO, Plaintiffs, v. SAFEGUARD PROPERTIES MANAGEMENT, LLC, "Terry Doe," in his individual capacity and "vendor" to SAFEGUARD PROPERTIES MANAGEMENT, LLC; SANTA FE COUNTY SHERIFF'S OFFICE; STEPHEN ORR, in his capacity as Santa Fe County Deputy Sheriff; ADAN MENDOZA, in his capacity as Santa Fe County Deputy Sheriff; JOSE PUENTES, in his capacity as Santa Fe County Deputy Sheriff; REAL ESTATE DE SANTA FE, LLC, ISABEL "CHAVELA" VALDEZ, in her individual capacity and as a realtor for REAL ESTATE DE SANTA FE, LLC; CARLOS GRIEGO, in his individual capacity; JOHN DOES 1-5; and JANE DOES 1-5, Defendants.	Case No. D-101-CV-2023-01229 <i>[Assigned to Hon. Bryan Biedscheid]</i>
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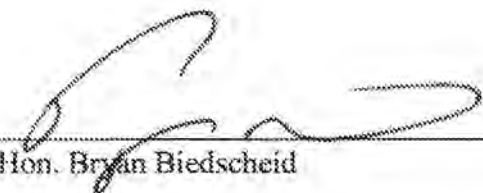
**ORDER DENYING MOTION TO COMPEL BRYAN BIEDSCHEID TO COMPLY
WITH SUBPOENA DUCES TECUM SERVED ON SEPTEMBER 29, 2023**

THIS MATTER having come before the Court December 13, 2023 on Plaintiffs' Motion to Compel Bryan Biedscheid to Comply with Subpoena Duces Tecum served on September 29, 2023, the Court having reviewed the pleadings, listened to argument of *pro se* parties and counsel, and being otherwise fully informed in the premises hereby FINDS and CONCLUDES that:

EXHIBIT E

1. Plaintiffs have not shown the existence of relevant facts of which the presiding judge has personal knowledge. Rather, the presiding judge's knowledge of the matters at issue is evidenced from documents in the court file.
2. As stated in *Cheeves v. Southern Clay, Inc.*, 797 F.Supp. 1570, 1582-83 (M.D. Ga. 1992), "sound policy considerations speak out loudly against compulsory discovery from the presiding judge. Embroiling the presiding judge in the adversarial process of any case is not only unseemly, it is calculated to give rise at the least to a resulting appearance of bias against the aggressor litigant although . . . that species of boot strap bias cannot be recognized, as a matter of law, as a disqualifying circumstance. To do so would simply invite manipulated harassment by any lawyer [or party] unscrupulous enough to willingly embark on a course of conduct designed to disqualify an otherwise impartial judge . . ."

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion is not well-taken and is hereby DENIED.



Hon. Bryan Biedscheid

PARTIES ENTITLED TO NOTICE:

Marcelina Yolanda Martinez
Gilbert Romero
PO BOX 2077
Santa Cruz, NM 87567
aequitasveritas777@gmail.com
Plaintiffs Pro Se

Michael Dickman
LAW OFFICE OF MICHAEL DICKMAN
PO BOX 549
Santa Fe, NM 87504
mikedickman@yahoo.com
*Attorney for Defendants Santa Fe County Board of
Commissioners, Santa Fe County Sheriff's Office,
Sheriff Adan Mendoza, Deputy Sheriff Stephen Orr,
and Deputy Sheriff Jose Puentes*

Isabel Valdez
34A CR 101B
Santa Fe, NM 87506
Defendant Pro Se

Carlos Griego
State Road 76 House 105
Truchas, NM 87578
Defendant Pro Se

Real Estate De Santa Fe, LLC
1301 S. St. Francis Dr, Suite D
Santa Fe, NM 87505

Wells Fargo Bank NA
2200 N. Main Street
Las Cruces, NM 88001

Courtney D. Casiano
11811 N. Tatum Blvd., Suite 3031
Phoenix, Arizona 85028
ccasiano@zelmserslich.com
Attorney for Defendant Safeguard Properties Management, LLC and Terry Yunie

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
SANTA FE COUNTY

FILED
FIRST JUDICIAL
DISTRICT COURT

2014 DEC 11 PM 2:26

WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF THE
HOLDERS OF THE HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2007-1,
Plaintiff,

vs.

D-101-CV-2013-00904

MARCELINA Y MARTINEZ, et al.,
Defendants.

AFFIDAVIT OF MARCELINA MARTINEZ
COPY OF ALLEGED ORIGINAL NOTE

Santa Fe County)
)
New Mexico State)

I, Marcelina Martinez, hereinafter "Affiant", being duly sworn do depose and say the following:

1. On Friday, November 14, 2014, I visited the office of Sandra Brown, counsel for the plaintiff in this case, to inspect the original documents per my Request for Production and Second Request for Production.
2. The main document of interest that I, along with Gilbert Romero, inspected was the document alleged to be the "original" note in this action.
3. I asked to have a copy of this "original" made for my records, which Ms. Brown provided.
4. I also asked to inspect the original mortgage assignment, which was not with the documents Ms. Brown presented. Ms. Brown has failed to contact me regarding



inspection of this document as of the date of this Affidavit.

5. Although I do have objections to the note presented being the original, the copy of the "original" that I inspected further after 11/14, is clearly not the same copy that was attached to the original complaint in this action.
6. The copy of the Adjustable Rate Note attached to this Affidavit as Exhibit "A" is a true and correct copy of the alleged "original" note that I inspected in the office of Sandra Brown.
7. This copy shows visible marks of hole punches at the top of the note, as though it is kept in a file folder.
8. The copy shows a label affixed to the first page, which states,

When recorded return to:
Richmond Monroe Group
15511 State Highway 13
Branson West, MO. 65737
SPS # 0012867974 (handwritten number)

9. The copy attached to the complaint, see attached Exhibit "B" for page 1, appears to have been transmitted by facsimile or electronically and is not as clear as the copy of the alleged original;
10. The font in the copy attached to the complaint appears narrower than the copy attached as Exhibit "A", the true and correct copy of the alleged original.
11. At the hearing on my motion to dismiss on December 2, 2014, Ms. Brown stated that the sticker would have been affixed when the servicer on the note changed, "which is what happened in this case. It went to a loan servicer known as select portfolio servicing."
12. This statement indicates then that the sticker would have been placed on the document on December 1, 2011, the date on which Select Portfolio Servicing (SPS) purportedly

became servicer. See attached copy of a letter from Bank of America sent on April 25, 2013 via Federal Express as Exhibit "C".

13. This statement by Sandra Brown confirms that the sticker would have been on the alleged original prior to commencement of the action and yet it is not visible on the copy of the alleged original attached to the complaint.

14. The statement, viewed in conjunction with the sticker/label, indicates that the plaintiff was not in possession of the original note at the commencement of the action, which is the basis of its claim of standing.

15. Further Affiant sayeth naught.


Marcelina Martinez

Subscribed and Sworn To before me by Marcelina Martinez this 11th day of December, 2014.


Notary Public

My Commission Expires: 2-10-16

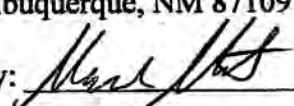


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Affidavit was mailed on December 11, 2014 to the following parties:

Sandra Brown
LITTLE, BRADLEY & NESBITT, P.A.
P.O. Box 3509
Albuquerque, NM 87109

Karl Sommer
SOMMER KARNES & ASSOCIATES,
200 West Marcy Street, Suite 133
Santa Fe, NM 87501

By: 

ADJUSTABLE RATE NOTE

(MTA - Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

NOVEMBER 10, 2006
[Date]

SANTA FE
[City]

NEW MEXICO
[State]

14 CAMINO DE PAZ, SANTA CRUZ, NM 87506
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 540,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed 115 percent of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is COUNTRYWIDE HOME LOANS, INC.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first monthly payment due date set forth in Section 3 of this Note, I will pay interest at a yearly rate of 7.375 %. Additional days interest collected prior to the first monthly payment due date is sometimes called "Per Diem" interest and is due at the time I close my loan. Thereafter until the first Interest Rate Change Date, defined below in Section 2(B), I will pay interest at a yearly rate of 1.000 %. This rate is sometimes referred to as the "Start Rate" and is used to calculate the initial monthly payment described in Section 3. The interest rate required by this Section 2 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of JANUARY, 2007, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates

• PayOption ARM Note - MTA Index
1E306-XX (12/05)(d)

Page 1 of 5



When recorded return to :
Richmond Monroe Group
15511 State Highway 13
Branson West, MO. 65737
SPS # 0012867974



EXHIBIT "A"

(H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding TWO & 575/1000 percentage point(s) 2.575 ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the first day of each month beginning on JANUARY 01, 2007. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

P.O. Box 660694, Dallas, TX 75266-0694

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$1,736.85, unless adjusted under Section 3(F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of JANUARY, 2008, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.500% of my prior monthly payment. This

7.500% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date

in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 3(A). For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my Minimum Payment would cause me to exceed that limit, I will instead pay a new Minimum Payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the tenth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, the Note Holder may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." The Payment Options are calculated using the new interest rate in accordance with Section 2(D). I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term. These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me

that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial repayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any Minimum Payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of the Minimum Payment. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each Minimum Payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the Minimum Payment by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond

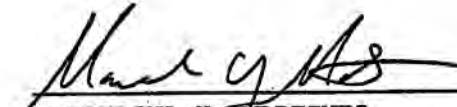
for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

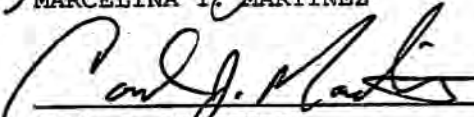
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


MARCELINA Y. MARTINEZ

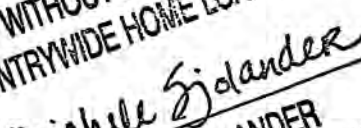
- Borrower


CARL J. MARTINEZ

- Borrower

- Borrower

- Borrower

PAY TO THE ORDER OF
WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC
BY: 
MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

ADJUSTABLE RATE NOTE

(MTA - Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

NOVEMBER 10, 2006
[Date]

SANTA FE
[City]

NEW MEXICO
[State]

14 CAMINO DE PAZ, SANTA CRUZ, NM 87506
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 540,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed 115 percent of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is COUNTRYWIDE HOME LOANS, INC.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first monthly payment due date set forth in Section 3 of this Note, I will pay interest at a yearly rate of 7.375 %. Additional days interest collected prior to the first monthly payment due date is sometimes called "Per Diem" interest and is due at the time I close my loan. Thereafter until the first Interest Rate Change Date, defined below in Section 2(B), I will pay interest at a yearly rate of 1.000 %. This rate is sometimes referred to as the "Start Rate" and is used to calculate the initial monthly payment described in Section 3. The interest rate required by this Section 2 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of JANUARY, 2007, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates."

• PayOption ARM Note - MTA Index
1E906-XX (12/05)(d)

Page 1 of 5

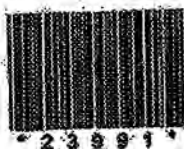


Exhibit A

EXHIBIT "B"

Bank of America 

Home Loans

1757 Tapo Canyon Road
Mailstop CA6-913-02-29
Simi Valley, CA 93063

VIA FEDERAL EXPRESS

April 25, 2013

**Marcelina Martinez
14 Camino De Paz
Santa Cruz, NM 87506**

**Re: BAC Loan Number Ending in: 90300
Property Address: 14 Camino De Paz, Santa Cruz, NM 87506**

Dear Ms. Martinez:

Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP, is in receipt of your correspondence, wherein you give notice to rescind the above-referenced mortgage loan transaction.

Our records show that on December 1, 2011 the mortgage loan was service released to: Select Portfolio Servicing, Inc., located at: 3815 South West Temple, Salt Lake City, UT 84115, phone no. (800) 258 8602.

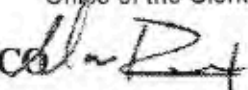
Please direct any future correspondence to the above-referenced address.

Sincerely,



**Terry Nall
Litigation Specialist**

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO


Mark Reynolds

**WELLS FARGO BANK, N.A., AS
TRUSTEE ON BEHALF OF THE
HOLDERS OF THE HARBORVIEW
MORTGAGE LOAN TRUST MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2007-1,**

Plaintiff-Appellee,

v.

**No. A-1-CA-36285
Santa Fe County
D-101-CV-2013-00904**

MARCELINA Y. MARTINEZ,

Defendant-Appellant,

and

**CARL J. MARTINEZ, THE BANK
OF NEW YORK MELLON FKA THE
BANK OF NEW YORK, AS SUCCESSOR
TRUSTEE TO JPMORGAN CHASE
BANK, N.A., AS TRUSTEE ON
BEHALF OF THE CERTIFICATE
HOLDERS OF THE CWHEQ INC.,
CWHEQ REVOLVING HOME EQUITY
LOAN TRUST, SERIES 2007-1,
GILBERT ROMERO AND UNKNOWN
TENANT (REAL NAME UNKNOWN),**

Defendants.

NOTICE
PROPOSED SUMMARY DISPOSITION

You are hereby notified that the:

Record Proper, and the

Amended Docketing Statement

were filed in the above-entitled cause on **July 18, 2017**, and **December 14, 2017**, respectively.

This case has been assigned to the **SUMMARY CALENDAR** pursuant to Rule 12-210(D) NMRA.

Summary affirmance is proposed.

Note: This is a *proposal* of how the Court views the case. It is not a final decision. You now have twenty (20) days to file a memorandum telling the Court any reasons why this proposed disposition should or should not be made.

See Rule 12-210(D) NMRA.

Defendant Marcelina Martinez appeals from the district court's in rem judgment, decree of foreclosure, and order of sale and denial of her motion to reconsider that order. This Court rejected Defendant's original docketing statement which raised thirty-four issues challenging the district court's rulings. Defendant has now filed an amended docketing statement consistent with this Court's order which

identifies four issues presented by her appeal. Having considered each of the issues raised, we propose to affirm.

Issues A & B: Defendant contends that the district court judge acted “outside his authority by issuing orders based on a hearing conducted by a previous judge during a time the presiding [d]istrict [c]ourt judge did not have concurrent jurisdiction with the previous judge[.]” [Amd. DS 24] Defendant asserts that Judge Attrep held a hearing on December 2, 2014; Judge Thomson later took over the case and relied on information obtained from the December 2, 2014 hearing; and Judge Thomson was not sworn in until December 19, 2014. [Amd. DS 3-5] Based on these assertions and other statements contained in Defendant’s amended docketing statement, we understand Defendant to argue that Judge Thomson was not permitted to rely on a hearing conducted before he had been sworn in as judge, even though that hearing was conducted by a different judge with the authority to do so. We suggest that this argument is unavailing, because if taken to its logical conclusion would mean that whole cases would essentially have to start over any time a recently appointed judge takes over a case. Furthermore, to the extent Defendant relies on Rule 1-063 NMRA to attempt to support this argument, we suggest that Defendant’s reliance on Rule 1-063 is inapposite. Specifically, we note that Rule 1-063 appears to apply to decisions where findings of fact are required; however, the decisions Defendant contends

should have been vacated due to Judge Thomson's lack of authority are discovery rulings and an order denying a motion for summary judgment. Thus, we suggest that these are not the type of rulings contemplated by Rule 1-063.

Moreover, to the extent Defendant contends that the district court abused its discretion by failing to fully adjudicate her motion to vacate the orders filed on March 30, 2015, prior to ruling on subsequent motions, we suggest that: (1) Defendant has not demonstrated that the district court was required to do so, and (2) any error in this regard is not reversible. First, we note that Defendant has not cited any authority to support the proposition that the district court was required to rule on the motion to vacate prior to hearing any subsequent matters. *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (stating that there is a presumption of correctness in the rulings or decisions of the trial court, and the party claiming error bears the burden of showing such error); *Farmers, Inc., v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (stating that the burden is on the appellant to clearly demonstrate that the trial court erred); *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists."). And, second, because we have proposed to hold that the district court's denial of Defendant's motion to vacate was not in error, we suggest that Defendant has not demonstrated

that such alleged error is reversible. *See Erica, Inc. v. N.M. Regulation & Licensing Dep't*, 2008-NMCA-065, ¶ 24, 144 N.M. 132, 184 P.3d 444 (“On appeal, error will not be corrected if it will not change the result.”(internal quotation marks and citation omitted)); *Deaton v. Gutierrez*, 2004-NMCA-043, ¶ 31, 135 N.M. 423, 89 P.3d 672 (“[I]n the absence of prejudice, there is no reversible error.”(alteration, internal quotation marks, and citations omitted)).

Issue B(i): Defendant contends that the district court erred in granting summary judgment despite numerous material fact disputes. We note, however, that Defendant’s statement of the issue does not identify the alleged factual disputes. To the extent that Defendant identifies numerous documents that she alleges the district court failed to consider in concluding that there were not genuine issues of material fact [Amd. DS 22-23], Defendant does not identify in her amended docketing statement how these documents create a factual dispute. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (stating that this Court will not “guess at what [a party’s] arguments might be”). Moreover, to the extent Defendant contends that the “existence of the label affixed to the first page of the alleged [n]ote containing the words, ‘When recorded return to: Richmond Monroe Group . . .’ is not seen” on the copy of the note attached to the complaint [Amd. DS 12-13, 22-23], and thus argues that there has been a material alteration to the note, we

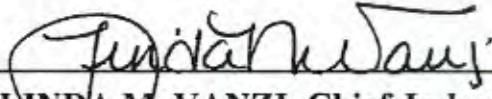
point out that there does not appear to be a label affixed to the copy of the note attached to either the complaint or the motion for summary judgment. Rather, the label is affixed to the mortgage. [RP 9, 14, 442, 447] Thus, we suggest Defendant's argument is not supported by the record. *See State v. Calanche*, 1978-NMCA-007, ¶ 10, 91 N.M. 390, 574 P.2d 1018 (providing that factual recitations in the docketing statement are accepted as true unless the record on appeal shows otherwise).

Issue C: Finally, Defendant contends that the district court erred in concluding that Wells Fargo had standing to foreclose. Whether a party has standing to bring a claim is a legal question we review de novo. *BAC Home Loans Servicing, LP v. Smith*, 2016-NMCA-025, ¶ 7, 366 P.3d 714. In order "to establish standing to foreclose, a lender must show that, at the time it filed its complaint for foreclosure, it had: (1) a right to enforce the note, which represents the debt, and (2) ownership of the mortgage lien upon the debtor's property." *Deutsche Bank Nat'l Tr. Co. v. Beneficial N.M. Inc.*, 2014-NMCA-090, ¶ 8, 335 P.3d 217. "Because the right to enforce the mortgage arises from the right to enforce the note, the question of standing turns on whether the plaintiff has established timely ownership of the note." *BAC Home Loans Servicing, LP*, 2016-NMCA-025, ¶ 8.

In the present case, it appears that Wells Fargo filed a complaint for foreclosure, contending that it is the owner of the mortgage and holder in due course of the note. [RP 1, 3] Attached to the complaint is an apparent copy of the note endorsed in blank. [RP 9] Also attached to the complaint appears to be a copy of the recorded mortgage [RP 14] and recorded assignment of mortgage, whereby the nominee of the original lender, Mortgage Electronic Registration Systems, Inc. (MERS), assigned the mortgage to Wells Fargo [RP 31]. Finally, Wells Fargo asserts in the complaint that it is in possession of both the note and the mortgage. [RP 3]

We propose to conclude that based on the above, Wells Fargo presented sufficient evidence to prove that it is the holder of the promissory note at issue in this case, having attached a copy of the note endorsed in blank to its complaint. *See Edwards v. Mesch*, 1988-NMSC-085, ¶3, 107 N.M. 704, 763 P.2d 1169 (recognizing that the holder of a negotiable instrument is one who has possession of an instrument indorsed in blank); *see also* NMSA 1978, Section 55-3-205(b) (1992) (“If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a ‘blank indorsement’. When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.”). Thus, we suggest that the district court did not err in concluding that Wells Fargo established standing to enforce the note.

For the reasons stated above, we propose to affirm.


LINDA M. VANZI, Chief Judge



1 November 2021

Computershare completes acquisition of Wells Fargo's US Corporate Trust business

News Release

Computershare Limited (ASX:CPU) is pleased to announce that it has completed the acquisition of the assets of Wells Fargo Corporate Trust Services ("CTS"), originally announced on March 23, 2021.

The business, which will now be known as Computershare Corporate Trust, includes around 2,000 employees based across the U.S. who have transferred to Computershare as part of the acquisition. The US corporate trust business line will operate as a standalone business within the overall Computershare organization, and provides a wide variety of trust and agency services in connection with debt securities issued by public and private corporations, government entities, and the banking and securities industries.

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I UNDERSTAND

EXHIBIT H

In the United States, the Computershare Corporate Trust business serves more than 14,000 clients and has significant market and product-level expertise that has been built over 85 years of U.S. corporate trust experience.

Computershare's Frank Madonna will lead the migration of and integration of the Computershare Corporate Trust business into the company.

"I want to thank everyone from both parties who has worked so hard to bring this acquisition to completion," said Computershare President and CEO Stuart Irving. "This Computershare Corporate Trust business represents our long-term commitment to investment in the corporate trust space, and we look forward to working with our customers to introduce new, technology driven solutions and products."

For media enquiries, please visit [here](#).

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News Details

WELLS FARGO ENTERS AGREEMENT WITH COMPUTERSHARE TO SELL WELLS FARGO CORPORATE TRUST SERVICES

03/23/2021

Share



SAN FRANCISCO--(BUSINESS WIRE)-- Wells Fargo & Company (NYSE: WFC) today announced it has entered into a definitive agreement to sell its Corporate Trust Services (CTS) business to Computershare. The transaction is expected to close in the second half of 2021, subject to customary closing conditions. Under the terms of the agreement, the purchase price is \$750 million.

Wells Fargo's CTS business provides a wide variety of trust and agency services in connection with debt securities issued by public and private corporations, government entities, and the banking and securities industries. It is annually ranked among the top service providers in most league tables by deal count and dollars serviced.

"This transaction is consistent with Wells Fargo's strategy of focusing on businesses that are core to our consumer and corporate clients," said David Marks, head of Wells Fargo Commercial Capital. "Additionally, we believe that Computershare's similar approach to service and their emphasis on innovative product development will be valuable to our clients and Corporate Trust Services colleagues in the future," he added.

With decades of experience and 2,300 clients across North America in a variety of industries, Computershare brings a long-term commitment to the business, along with a market-leading client services approach. It is also the largest Title Custodian service provider in the Canadian Mortgage-Backed Securities industry. Computershare's Frank Madonna will lead the integration, as approximately 2,000 CTS employees across the U.S. are expected to transfer to the company as part of the acquisition.

"We're excited to welcome these new employees to the Computershare family. We know they are interested in the same things we're passionate about: providing excellent customer service, supporting diversity and inclusion efforts, and giving back to local communities," said Madonna. "We're confident that as our businesses come together following the closing, our client proposition will be second to none in North America," he added.

Wells Fargo Securities LLC served as exclusive financial advisor, and Sullivan & Cromwell LLP served as legal counsel to Wells Fargo.

About Wells Fargo

Wells Fargo & Company is a leading financial services company that has approximately \$1.9 trillion in assets and proudly serves one in three U.S. households and more than 10% of all middle market companies in the U.S. We provide a diversified set of banking, investment, and mortgage products and services, as well as consumer and commercial finance, through our four reportable operating segments: Consumer Banking and Lending, Commercial Banking, Corporate and Investment Banking, and Wealth and Investment Management. Wells Fargo ranked No. 30 on Fortune's 2020 rankings of America's largest corporations. In the communities we serve, the company focuses its social impact on building a sustainable, inclusive future for all by supporting housing affordability, small business growth, financial health, and a low-carbon economy. News, insights, and perspectives from Wells Fargo are also available at [Wells Fargo Stories](#).

Additional information may be found at www.wellsfargo.com | Twitter: [@WellsFargo](#).

About Computershare Limited

Computershare (ASX: CPU) is a global market leader in transfer agency and share registration, employee equity plans, mortgage servicing, proxy solicitation, and stakeholder communications. We also specialize in corporate trust, bankruptcy, class action, and utility administration, and a range of other diversified financial and governance services.

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WELLS FARGO

statements are based on our current expectations and assumptions regarding the future, they are subject to inherent risks and uncertainties. Do not unduly rely on forward-looking statements as actual results could differ materially from expectations. Forward-looking statements speak only as of the date made, and we do not undertake to update them to reflect changes or events that occur after that date. For information about factors that could cause actual results to differ materially from our expectations, refer to our reports filed with the Securities and Exchange Commission, including the "Forward-Looking Statements" discussion in Wells Fargo's most recent Quarterly Report on Form 10-Q as well as to Wells Fargo's other reports filed with the Securities and Exchange Commission, including the discussion under "Risk Factors" in our Annual Report on Form 10-K for the year ended Dec. 31, 2020, available on its website at www.sec.gov.

WF-CF

Media

Trisha Schultz, 424-268-6202

Trisha.Schultz@wellsfargo.com

(or)

Investor Relations

John Campbell 415-396-0523

john.m.campbell@wellsfargo.com

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GARY W. DTT U.S.
RECORDER, SALT LAKE COUNTY, UTAH
830 SELECT PORTFOLIO SERVICING
PO BOX 65250
SLC UT 84165
11297045
Book 9974 Pages 5241-5242
12/14/2011 12:45 PM 12.00

LIMITED POWER OF ATTORNEY

1. Wells Fargo Bank, N.A., not in its individual or banking capacity, but solely in its capacity as trustee (the "Trustee") under: (i) that certain Pooling and Servicing Agreement dated as of November 1, 2006, by and among Greenwich Capital Acceptance, Inc., as Depositor (the "Depositor"), Greenwich Capital Financial Products, Inc., as Seller (the "Seller"), and Wells Fargo Bank, N.A., solely in its capacity as Trustee (the "Trustee"); and (ii) that certain Reconstituted Servicing Agreement dated as of November 1, 2006, by and among the Depositor, the Seller, the Trustee, Countrywide Home Loans, Inc., and Select Portfolio Servicing, Inc., successor in interest to Countrywide Home Loans Servicing LP, as Servicer (the "Servicer"), each relating to HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-12 (the "Trust") and any related governing transactional and servicing agreements(s) (collectively, the "Agreements") hereby constitutes and appoints:

SELECT PORTFOLIO SERVICING, INC.

solely in its capacity as Servicer under the Agreements, as its true and lawful attorney-in-fact, acting by and through its authorized officers, with full authority and power to execute and deliver on behalf of the Trustee any and all of the following instruments to the extent consistent with the terms and conditions of the Agreements:

(i) all documents with respect to residential mortgage loans serviced for the Trust by the Servicer which are customarily and reasonably necessary and appropriate to the satisfaction, cancellation, or partial or full release of mortgages, deeds of trust or deeds to secure debt upon payment and discharge of all sums secured thereby;

(ii) all documents and instruments necessary to conduct any (a) foreclosure, or (b) the taking of any deed in lieu of foreclosure, or (c) any judicial or non-judicial foreclosure or termination, cancellation, or rescission of any such foreclosure, or (d) any similar procedure (collectively, as applicable, a "Foreclosure");

(iii) instruments appointing one or more substitute trustees or special purpose entities ("SPS") to act in place of the corresponding entity named in any deed of trust;

(iv) affidavits of debt, notice of default, declaration of default, notices of foreclosure, and all such contracts, agreements, deeds, and instruments as are appropriate to (a) maintain any real property acquired through Foreclosure or (b) effect any sale, transfer, or disposition of real property acquired through Foreclosure;

(v) all documents and instruments necessary to effect any assignment of mortgage or assignments of deed of trust; and

(vi) all other comparable instruments.

2. This Limited Power of Attorney shall apply only to the foregoing enumerated transactions and shall be limited to the above-mentioned exercise of power. This instrument is to be construed and interpreted only as a limited power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it give rise to, and it should not be construed as, a general power of attorney.

3. Third parties without actual notice may rely upon the power granted to said attorney-in-fact under this Limited Power of Attorney and may assume that, upon the exercise of such power, all conditions precedent to such exercise of power have been satisfied and this Limited Power of Attorney has not been revoked. This Limited Power of Attorney shall supersede and replace any other limited power of attorney executed by the Trustee in connection with the Agreements in favor of the Servicer and any such other limited power of attorney shall be deemed revoked by this writing.

4. This Limited Power of attorney is effective as of the date below and shall remain in full force and effect until (a) revoked in writing by the Trustee, or (b) the termination, resignation or removal of the Trustee as trustee of the Trust, or (c) the termination, resignation or removal of the Servicer as a servicer of the Trust, or (d) the termination of the Pooling and Servicing Agreement, whichever occurs earlier.

5. Nothing contained in this Limited Power of Attorney shall (i) limit in any manner any indemnification obligation provided by the Servicer to the Trustee or Trust under the Agreements or any document related thereto, or (ii) be

construed to grant the Servicer the power to initiate or defend any suit, litigation, or proceeding in the name of the Trustee or Trust except as specifically provided for herein or under the Agreements.

Dated: December 2, 2011

Wells Fargo Bank, N.A., not in its individual or banking capacity, but solely as Trustee on behalf of the Trust

Attest:

By: Alex Humphries
Its: Assistant Secretary

Elisabeth A. Brewster
By: Elisabeth A. Brewster
Its: Vice President

Unofficial Witnesses:

Matthew Shaw
Matthew Shaw

Unofficial Witnesses:

Daniel Williamson
Daniel Williamson

STATE OF MARYLAND
COUNTY OF HOWARD

ss:

On the 2ND day of December 2011 before me, a notary public for said city and state, personally appeared Elisabeth A. Brewster, known to me to be Vice President of Wells Fargo Bank, National Association and also known to me to be the person who executed this Limited Power of Attorney on behalf of said bank, and acknowledged to me that such bank executed this Limited Power of Attorney.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my office seal the day and year written above,



Kathleen A. Dean
Notary Public : Kathleen A. Dean
My commission expires 2-6-2013

TRANSCRIPTION EXCERPTS FROM HEARING ON 10/5/2023, MOTION TO DISQUALIFY

Judge Biedscheid: [After calling the case and having parties state appearances, asking questions and making some statements]

07:05 I just can absolutely sincerely state, that uh, there, I know from my internal assessment, I have absolutely no bias towards anybody or against anybody in this matter ...

07:42: I have done the, I think, requisite soul-searching to see if that's true, that there is a bias, and there isn't. So then I get to the appearance and then I say what you're seeing too about being a potential witness, but let me ask, what ..testimony from me would be anticipated? ...I'm not clear on what sort of collateral attack on earlier judgments could be accomplished at this point. So let me hear what you think.

Martinez: ... [T]he issue is whether a sale actually occurred, whether consideration was paid, whether there was a true bid. The report of sale did not contain any evidence attached to it as required by the rule. I requested that evidence in numerous ways, through the same case. I asked for it from the court directly under the inspection of public records act. I asked for it in the case by a motion to compel the special master to provide that evidence and you did not issue an order on that motion, even though the opposing party...there was no response to it. So there is no evidence that a sale occurred. I also had to try to get it through IPRA so I filed a lawsuit under IPRA against the court and the special master to try to get this information. That's still pending. The judge appointed to that case is saying it's not subject to IPRA so I have not been freely given information that you relied upon to confirm a sale. The issue is what you relied upon to deem that the property was transferred. Because here's the issue, I was able to conduct discovery in that case, with the special master, and he has been unable to provide me any such evidence. Again, it's not finally adjudicated and by all appearances, again not finally adjudicated, there appears to be fraud in that case. And again, I requested and requested and requested and again, this is not under review here, but there's existing case law and it says, and it's *Muse v. Muse*, you can look it up, that basically says that one party should not have to rely on no evidence of a special master and should be able to review any evidence in order to be able to properly challenge it. Right now the testimony you have, or you should have, is the evidence that a sale actually occurred because you confirmed that sale even when there was no evidence attached to the report. And even when I requested it, and again, ad nauseum, requesting this evidence and, again, through discovery I'm finding that it does not exist. So that is where the bottom line is here, whether property was even conveyed. It is almost circumstantial to this present case, because this case does not involve the so-called plaintiff in that case. This case involves other people that

don't seem to have any involvement at all. So this is actually separate from that but it's circumstantial to what the defenses are. Does that make sense?

Judge: yes, my awesome legal response to that is kind of. I hear what you're talking about factually, and I must confess I've been giving the spinning wheels, I try to look at the underlying case. So typically, what happens, in these sorts of cases is, I make a ruling, or I confirm a sale and things like that and then there's an appeal if there's a concern about it and then the appeals court says, Biedscheid got it right, or Biedscheid got it wrong, and depending on what their view of that is, I would take up follow up proceedings or not. What I don't believe what I or any other judge can do, is take up testimony or elicit other facts related to whether or not a valid judgment was properly entered once the appellate proceedings are done. So that's what I'm trying to figure out what is happening in this other case, because.... I understand there are two issues in this case, you're focused on issues and actions taken in the other case and if I understand it, in this case the defendants are going to be saying, hey judge you entered a writ, you confirmed a sale that transferred title, and then we act on that and we get sued for doing that and then that's a follow up concern. What, I don't ... what testimony I could give other than my orders, uh which again, any judge would have to rely on. What other testimony are you expecting.

Martinez: The testimony of what you relied upon to issue those orders of the evidence. Because there has to be evidence. I mean, you don't issue orders without evidence, do you? Because that's essentially the question here. Was property actually conveyed, was there consideration paid, there's no evidence of that, and based on what I've obtained, it doesn't exist and it was done through fraud. A sale can be challenged for fraud, it can be reversed, even long after appeal. I mean, I couldn't have even challenged it through appeal because I didn't have the information. I'm only receiving it now. And the question here, again, I don't want to litigate this particular case right now because we're talking about whether or not you would be a material fact witness. And that's not even necessarily the issue. The issue is, are you going to be willing to look at everything when you're the one that confirmed the sale and it could potentially expose you to liability for confirming a sale that did not have any evidence to support it? Therein lies the issue. This is why it's a problem. I don't think you're trying to harm me, your honor, I don't think you're trying to do something wrong, necessarily, but self-preservation is a big big issue. So I believe that is why this rule is in place. You have, or you don't, have evidence, either way you are a material fact witness, whether or not you have the evidence and, again, I've already requested this evidence numerous times. And an order should not be issued without evidence period. Especially conveying someone's property and trying to remove them from it. That is due process, that's a constitutionally protected right. This is long standing case law that a person cannot be ejected from their property is actually litigated. I have a right to a trial by jury, that's under the 7th Amendment. I mean, there are a lot of implications here and it has not been finally litigated or adjudicated because title has not been litigated and that's, again, peripheral to this case. This case

has to do with whether the people that actually took possession of my property had any authority under the writ because ...and I brought this to your attention in the previous case. Wells Fargo Bank as Trustee is no longer doing those services and that ended in 2021 and this has not been litigated either. And there has been no evidence of any authority from Wells Fargo to allow anybody to do anything on its behalf. And there could not possibly be evidence since 2021 so there are lots of issues surrounding this case. But for the purposes of this present motion, even if you think you might not be biased and you are not inclined to be biased and you're a good man and you don't plan to be biased, there's a reason for this rule period. I understand, I mean, in some ways, your honor, I kind of want you in this case because you know what's going on in this case, but that's the whole point, you're not supposed to be. It's also considered ex parte. ...I can find that rule for you if you want, but I mean, you're the one that's bound to these rules so I think you should know this. A judge is not supposed to look at other cases to determine facts in the present case. That's considered ex parte. So there's just a lot of issues surrounding this that is a reason that this is a compulsory, "shall" disqualify.

Judge: Asks Ms. Casiano and Mr. Dickman.

Martinez: [Objecting] They took no position on this motion, they did not file a response, I'm not sure why they're being allowed to be given a response.

Judge: because I'm interested in their perspective on this.

Dickman: I didn't take a position on this motion but I would point out that from my client's perspective we have a dispositive motion pending, motion to dismiss based on absolute immunity and sovereign immunity. That motion is totally based on the pleadings and the record...

Acknowledges that if the court acts in complete absence of jurisdiction that absolute immunity may not apply.

Mr. Dickman states there is 40 years of case law that says the government is immune to a suit for trespass. Also states there is no other evidence that would be required to raise to support their defenses.

Casiano: Doesn't intend to call any witnesses and does not believe there is bias.

Martinez: There is decades of case law that states that a judge should disqualify even if there is no actual bias and even just a slight chance for bias. ... I know we are not here to argue the merits, but there actually is case law that allows a claim against a sheriff, sheriff's office for abuse of authority, which is even if the writ could be deemed facially valid. There was an abuse of authority. But the bottom line for this particular motion, your honor, is, all of the orders would be subject to appeal and reversal for a lack of due process for the potential for bias and for the fact that the rule actually would be violated because it's a "shall disqualify". That's a violation of due process.

That would make any orders void. It's a waste of our time. It's a waste of defendants' time, it's a waste of my time, it's a waste of the court's time. Because there would be no confidence that orders would be issued without bias. On either side.

Judge: one of the things I'm admittedly struggling with on this end is I agree with you that if I have personal knowledge of facts that are at issue in the matter, and I might be a witness, then I need to get out. What I'm struggling with I still can't figure out, I mean, A. I don't know any of the underlying facts. I was relying on what was presented to me, laws, statutes, rules, and the like, so I'm not clear what testimony I would have to offer that would make me a witness. And then 2, what I'm trying to figure out what is exactly still on appeal, what has been decided. To my knowledge, I don't have a stay or anything that would have made the writ improper. Again, what is still at issue in this matter related to the validity of the documents and what information is it I might be called to testify about.

Martinez: Here we are discussing the merits again. We're not trying to figure that out right now. The question is, when we do try to figure that out, is it proper for you to be the person to make that determination? And there's one other thing I want to mention about this that I mentioned before. I am not receiving any notices from your court. I didn't get a notice of hearing for this hearing, I had to go and dig it up and find it and I did not get a notice when you were assigned, when the initial judge was recused and for that reason I wasn't able to assert my peremptory excusal. I did it anyway when I discovered it, but it was untimely. There are so many issues. Again, I can't believe I'm having to explain this. There's, again, decades of case law that basically says, a judge shall disqualify, even if he has personal knowledge of a case, even if it's not about your writ. This is, I mean, I'm really kind of shocked that I'm having to explain this. I really am. Even just the slight appearance, and again, the bias isn't necessarily, when it's discussed in these cases, I've read lots and lots of cases about it, it's not necessarily talking about the judge was just being mean or something like that. It's about violating due process rights, it's about violating rules. It's about not sending notice when it should be sent, it's about not disqualifying when it should disqualify. And yes, there's issue with that writ. The writ itself was on appeal, and the plaintiff, and it wasn't even the plaintiff, because Wells Fargo doesn't exist anymore. The plaintiff sought an amended writ long after the deadline and while it was on appeal. It was an amended writ that it sought...and that writ was issued while it was on appeal. So there is a question as to whether there was jurisdiction and again, those are the merits of the case... The issue is if you make the determination that it was valid, how can we trust that that wasn't not a biased decision? Even if you make the determination that it was invalid because you don't want to be biased, that's the problem here. That is why judges are held to the code of judicial conduct, because they have to make a decision without any kind of external influence at all one way or the other or internal influence for that matter, that you want to do the right thing. That's also part of it and there's case law for that too but I didn't think I would have to bring that because, again, shall is compulsory.

Judge: Again, I do think it's important for you all to at least understand what I'm trying to balance here. I have a duty to hear cases, so that's a duty that I have, and I balance that against these other concerns, and the reasons I'm asking you about the bases for the other concerns is that it helps with the balancing, right? If it's just a concern about whether or not the writ was properly issued when there was appeal, then we can see if there was a stay. If there was no stay then it was, if there was a stay it wasn't. And any judge would do that same analysis. So in that case I think my duty to hear would override these other concerns. If there's some other component to this that I don't understand, that's why I keep asking. It isn't as straightforward as, someone claims that I should know something or that I do know something and I don't and that means I have to get out of the case. That would be a breach of my duty to hear it. So, just so you know, that's the internal analysis that's happening up here. While you consider that, let me just ask, so on your complaint in this matter, you put down your address as... care of PO Box 2077, Santa Cruz, New Mexico. I also note there is no zip code provided so what is the zip code.

Martinez: On the complaint there's not a zip code? It's 87567. I received the notice of recusal, but I never received the notice of reassignment.

Judge:

30:49 I guess my office did the research into the proper zip code... and has been using that zip code...

31:27 Anything else on this motion before I make a decision?

Martinez: No, I think that's all

Judge: Okay, at this point in the proceeding, I am not aware of what knowledge, facts, or any other basis for testimony I have that would actually make me a proper subject of the rule you have properly cited, about when I need to get out of a case. And, balancing that, unclear assertion against my duty to hear cases, I find that the duty to hear is paramount in this instance, and so I'm denying the motion to either disqualify or recuse, however you would put it. If, at some point in the future, that it is more apparent that there is something subjective or that I do have knowledge that might actually be elicited in this matter, then I can certainly revisit it... So on that basis the motion is denied.

33:23

-END OF HEARING ON MOTION FOR DISQUALIFICATION -