ORIGINAL

21-1269

No. 21-____

In the Supreme Court of the United States

HEIDI M. LOBSTEIN AND
MARGUERITE DESELMS,

Petitioners,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, US BANK NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO LASALLE BANK NA; ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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MARCH 14, 2022

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QUESTIONS PRESENTED

The securitization of a mortgage into a closed trust require that the servicer carry PMI on every loan, and that any default is paid in full by the collection of that insurance, satisfying the mortgage. In the instant case, the insurance recovery was not credited to the borrowers account, unjustly enriching the lender. This was accomplished in the name of a trust which no longer existed, by obtaining foreclosures in the name of an unlicensed, non-registered trust. This entity sought a triple-bonanza of payouts from the parties connected to these mortgages by obtaining three separate payouts—first, by filing fraudulent class actions and false billing statements; second, by collecting PMI proceeds without crediting Petitioners' mortgage; and third, by profit on sale of Petitioners' property.

To aid its defense in New Jersey state proceedings, the Respondent swore under penalty of perjury that they are "not an individual, estate or a trust". Later in the federal district and circuit courts, Respondent conveniently switched positions, claiming to be a trust.

The Questions Presented Are:

1. Whether the court must take as true the sworn testimony of the Respondents that they are not a Trust and also take as true that they are a trust when it suits Respondents.

2. Whether a non-existent entity, who could not lawfully securitize a note and mortgage into an already closed trust, have standing or capacity to do business, acquire a mortgage and foreclose?

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants

- Heidi M. Lobstein
- Marguerite Deselms

Respondents and Defendants-Appellees

- Respondents are Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1, US Bank National Association as Trustee, Successor in Interest to Bank of America, National Association as Successor by Merger to Lasalle Bank Na; Et Al, a non-existent, closed trust who never had standing to foreclose. The caption to the complaint changed by the Defendant without any order of the court. The caption of the writ of mandamus reads, Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1, Erroneously Sued as US Bank National Association as Trustee, successor in interest to Bank of America, National Association as successor by merger to Lasalle Bank NA; et al.
- Policemens Annuity and Benefit Fund of the City of Chicago
- Laborers Pension Fund and Health and Welfare Department of the Construction and General Laborers District Council of Chicago and Vicinity
- Iowa Public Employees Retirement System
- Arkansas Public Employees Retirement System
- Vermont Pension Investment Committee
- Arkansas Teacher Retirement System

- Washington State Investment Board
- Public Employees Retirement System of Mississippi
- City of Tallahassee Retirement System
- Central States Southeast and Southwest Areas Pension Fund
- Alan David Tikal, as Trustee of the Katn Revocable Living Trust

There is no finding, no motion to leave to change defendants, nothing making this change of defendants permitted nor is there a finding of erroneous naming of a defendant. They just changed it on the caption of their pleadings and the court just adopted the change. That was not even the foreclosing entity.

PROCEEDINGS BELOW

United States Court of Appeals for the Ninth Circuit

No. 20-55998

Heidi M. Lobstein; Marguerite Deselms, *Plaintiffs-Appellants* v. Washington Mutual Mortgage Pass-through Certificates WMALT Series 2007-OC1, Erroneously Sued as US Bank National Association as Trustee, Successor in Interest to Bank of America, National Association as Successor by Merger to Lasalle Bank NA; Policemens Annuity and Benefit Fund of the City of Chicago; Laborers Pension Fund and Health and Welfare Department of the Construction and General Laborers District Council of Chicago and Vicinity; Iowa Public Employees Retirement System; Arkansas Public Employees Retirement System; Vermont Pension Investment Committee; Washington State Investment Board; Arkansas, Teacher Retirement System; Public Employees Retirement System of Mississippi; City of Tallahassee Retirement System; Central States Southeast and Southwest Areas Pension Fund; Alan David Tikal, as Trustee of the KATN Revocable Living Trust, *Defendants-Appellees*

Date of Final Opinion: November 18, 2021

Date of Rehearing Denial: December 27, 2021

U.S. District Court Central District of California

No. 2:19-cv-07615-SVW-JPR

Heidi M. Lobstein v.
Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1, et al.

Date of Final Order: September 23, 2020

RELATED CASE

United States Court of Appeals for the Ninth Circuit

No. 20-55993

The Bank of New York Mellon, FKA The Bank of New York, as Trustee for the Certificate Holders CWALT, Inc. Alternative Loan Trust 2006-OC8 Mortgage Pass-Through Certificates, Series 2006-OC8, *Plaintiff-counterdefendant-Appellee, v.* Alan David Tikal, as Trustee of the KATN Revocable Living Trust; CAA, INC., a Nevada corporation, Defendants, and Marguerite Deselms, individually, and as Trustee of The Circle Road Revocable Living Trust Dated November 11, 2010, *Defendant-counter-claimant-Appellant.*

Date of Final Order: October 26, 2020

Rehearing Denial Date: December 27, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Heidi M. Lobstein and Marguerite Deselms, respectfully submit this petition for a writ of certiorari. If the court considers this petition, the Petitioner will retain qualified counsel for oral argument.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit, dated November 18, 2021, is included at App.1a. The Order of the United States District Court for the Central District of California granting the Defendants' motion to dismiss, dated August 27, 2020, is included at App.9a. These opinions were not designated for publication.

JURISDICTION

The United States Court of Appeals, for the Ninth Circuit, and the Order of that Court was mailed on January 4th, 2022 rendered its decision denying relief on January 4th, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The U.S. Constitutions Clauses under 5th and 14th Amendments, protecting the Due Process and Equal Protection Rights of its citizens under the law. Petitioner is being deprived of her Substantive due process, which is the doctrine holding that the 5th and 14th Amendments require all governmental intrusions into fundamental rights and liberties be fair and reasonable and in furtherance of a legitimate governmental interest, requiring the courts to apply fairly the law and the application of the statute. Permitting the wrongful foreclosure of her property to a non-existent, unregistered entity, who was paid in full twice before the sale of their home clearly deprived the Appellants of their fundamental due process rights. The refusal to permit the Plaintiffs/Appellants a trial on their merits and perform discovery to prove to the evidentiary satisfaction of the court that the mortgage was already satisfied deprives the appellants of their equal protection, due process rights and prevented from proving that the Lender was paid in full three times.

U.S. Const., amend. V

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process

for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const., amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case arises as a result of a complaint by the Plaintiff for damages and declaratory relief over their homestead home. Plaintiff, *Heidi M. Lobstein*, resides at 269 Westgate, Prescott, AZ 86305, and at all relevant times, the address of the subject property, 3852 Mclaughlin Avenue, Los Angeles, CA 90066. The subject property is located within Los Angeles county in California.

US Bank claimed to be making an appearance on behalf of the Defendant *Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1*, claiming to be the trustee and claiming that it is a trust. That was not even the case, as the appearance was by a servicer who made hearsay statements of affirmative fact that they were appearing for the Defendant as *US Bank* as Trustee for the

Trust, not telling the court that there is no trust and certainly without disclosing that the PMI already satisfied the mortgage. Even the Pooling and Servicing Agreement required the loan be insured; it was insured; and the mortgage satisfied by the non-subrogable PMI.

The Plaintiff opposed the motion to dismiss on the grounds that the mortgage was satisfied; that the mortgage was voided when separated from the note; and that there is no trust. That US Bank cannot act as a trustee if there is no trust. And the servicer cannot act as servicer of a non-existent trustee for a non-existent trust, and anything it says is stacked hearsay and inadmissible. Furthermore, the search of the California Records shows that it is not registered with the California Secretary of State to do business in California and is not a registered trust in California, is not licensed to do business in this state and is doing business here unlawfully, and whose principal place of business is 1301 Second Avenue, WMC 3501A Seattle WA 98101 (206) 500-4418 and is subject to the laws of Washington; and whose closing date is January 25th, 2007, making any acquisition after that illegal, unenforceable and outside the terms of the offering, and therefore voids the subject mortgage on the grounds it separates the mortgage from the note and it is illegal to securitize a note into an already closed trust. There is no trust, there is no trustee, and they swore to the State of New Jersey that they are not an individual, estate or a trust, and therefore, the court erred in granting the motion to dismiss. Defendant *Washington Mutual Mortgage Pass-Through Certificates WMALT Series* 2007-OC1, and which entity is currently operating outside of the statutory guidelines and thus NOT a valid California

Corporation and cannot do business in this State and knowingly doing so in violation of California Corporations Code Section 2100, et seq. Defendant Washington *Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1* is a "closed trust" whose principal place of business is 1301 Second Avenue, WMC 3501A Seattle WA 98101 (206) 500-4418, and is subject to the laws of the State of Washington and the investors in said closed trust recovered money from two class actions of almost one hundred million dollars, and none of the funds recovered were ever credited to the Plaintiff's account, resulting in a double recovery for the Defendant, and the Defendant received double payment on a void mortgage.

Plaintiffs alleged in their complaint that the trust had no legal capacity to foreclose; the mortgage was satisfied; and the Defendant unjustly enriched.

REASONS FOR GRANTING THE PETITION

I. DE NOVO STANDARD ON APPEAL MOTION TO DISMISS.

De Novo review is standard. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In determining whether a claim for relief is plausible on its face, a court may "draw on its judicial experience and common sense" to determine whether "the plaintiff [has pled] factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Id.* at 678-79 (internal citations omitted). However, "recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient. *Id.* at 678 (citing *Twombly*, at 555.) Leave to amend a complaint is to be freely given when justice requires. CR 15(a). *Doyle v. Planned Parenthood*, 639 P.2d 240-Wash: Court of Appeals, 1st Div. 1982 Civil Rule 15(a).

II. THE LOAN WAS PAID IN FULL BY PMI, WHEN THE DEFAULT WAS FIRST CLAIMED, SO ANY ACTION TAKEN AFTER THAT TIME WAS FRAUDULENT AND THE FAILURE TO CREDIT THE PAYMENT WAS WRONGFUL, AND THE REFUSAL OF THE COURT TO PERMIT PLAINTIFF TO PROVE THE MORTGAGE WAS SATISFIED VIOLATES DUE PROCESS, EQUAL PROTECTION, AND IS AN UTTER ABUSE OF EQUITY.

CA Civ. Code § 2941, et seq. which requires the recording of the satisfaction of mortgage within 30 days of the date that it was paid in full. The Defendants have failed to comply with the statute. This court has already heard the case where the insurance company sued the trust to interfere with the settlement between the trust and Bank of America for the failure of Countrywide. *See* your case no. 18-1067, In the Matter of Harborview Mortgage Loan Trust 2005-10, *Ambac Insurance Corporation v. US Bank National Association*, 18-10671.

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1 In US Bank's responsive petition, it admits that "HarborView Mortgage Loan Trust 2005-10 is one such trust. The Trust, like other RMBS trusts, holds a pool of residential mortgage loans for the benefit of investors, who make money from the principal and interest payments borrowers make on those loans. *See generally Fixed Income Shares: & Series M v. Citibank N.A.*, 130

III. THE DEFENDANT WAS PAID IN FULL OR PARTIALLY PAID AS A RESULT OF THE CLASS ACTION SETTLEMENT AND OTHER SETTLEMENTS BETWEEN THE INVESTORS AND SERVICERS AND ORIGINATORS SUCH THAT THE DEFENDANT DOUBLE RECOVERED AND PROFITED FROM THE MISCONDUCT PERPETRATED BY THE DEFENDANT.

The second point made in the complaint which was improperly and prematurely dismissed, was that a lawsuit occurred between the trust, the trustees, the servicers, the brokers who set up the trust, and the investors. That lawsuit resulted in a settlement where the lender again was paid in full. And, again, that recovery was not credited to the mortgage as required

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F.Supp.3d 842, 846 (S.D.N.Y. 2015). The more than 4,000 loans held by the Trust were originated by Countrywide Home Loans, Inc., and then sold to Greenwich Capital Acceptance, Inc. ("GCA") and Greenwich Capital Financial Products, Inc. ("GCFP"). Pet.App.2a. In 2005, GCA, GCFP, and U.S. Bank entered into a Pooling Agreement, pursuant to which the loans were aggregated into a trust for which U.S. Bank would serve as trustee. *Id.* at 2a–3a. In connection with that Agreement, Countrywide made various representations and warranties regarding the quality and characteristics of the underlying mortgage loans and agreed to repurchase defective loans should that prove necessary. *See id.* at 3a. The Pooling Agreement assigned to U.S. Bank the right to seek a remedy against Countrywide for breach of those representations and warranties. *See id.* at 31a. Certificates based on the trust's assets were ultimately sold to investors, who hold a beneficial interest in the underlying loans and a right to the income flowing from borrower payments. *See id.* at 3a. Petitioner Ambac Assurance Corporation ("Ambac") is an insurer of some of those trust certificates. *Id.* In that role, Ambac guaranteed payment to certain certificate-holders in the event cash flow from the mortgage loans were ever to become inadequate and obtained a subrogated third-party beneficiary interest in the insured certificates. *Id.*

by CA Civ. Code § 2941, et seq. Before the United States District Court, Western District of Washington At Seattle, the consolidated cases of class actions were settled by stipulation (https://www.tousley.com/uploads/pdf/wamu-stipulationofsettlement.pdf), In Re Washington Mutual Mortgage Backed Securities Litigation, Master Case No.: C09-0037(MJP). On January 12, 2009, the above-captioned class action (the "Action") was filed against defendants Washington Mutual Bank ("WMB"), WMAAC, WCC, Beck, Novak, Thomas Green, Jurgens, Careaga, Deutsche Bank Trust Company Americas, Christiana Bank & Trust On January 12, 2009, the above-captioned class action (the "Action") was filed against defendants Washington Mutual Bank ("WMB"), WMAAC, WCC, Beck, Novak, Thomas Green, Jurgens, Careaga, Deutsche Bank Trust Company Americas, Christiana Bank & Trust; consolidated that case with *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass Through Certificates*, No. 09-0037MJP (the "Boilermakers Action"), *New Orleans Employees' Retirement System and MARTA/ATU Local 732 Employees Retirement Plan v. Washington Mutual Bank*, No. 09-0134MJP (the "New Orleans I Action"), and *New Orleans Employees' Retirement System v. The First American Corporation*, No. 09-0137MJP (the "New Orleans II Action") into a single action under case number C09-0037MJP (the "Boilermakers Consolidated Action"); and consolidated that with *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass Through Certificates*, No. 09-0037MJP (the "Boilermakers Action"), *New Orleans Employees' Retirement System and MARTA/ATU Local 732 Employees Retirement Plan v. Washington Mutual Bank*, No. 09-0134MJP (the "New Orleans I Action"), and *New Orleans*

Employees' Retirement System v. The First American Corporation, No. 09-0137MJP (the "New Orleans II Action") into a single action under case number C09-0037MJP (the "Boilermakers Consolidated Action"); Jurgens, Careaga, Thomas Lehmann, Stephen Fortunato, David Wilhelm, Moody's Investors Services, Inc. ("Moody's), and McGraw-Hill Companies, Inc., inclusive of its Standard & Poor's Rating Services division ("S&P") (Moody's and S&P are the "Rating Agencies"); H. On April 27, 2010, Defendants filed motions to dismiss the Complaint. On September 28, 2010, the Court granted in part and denied in part Defendants' motions to dismiss, dismissing Plaintiffs' claims against the Rating Agencies and certain individual defendants and certain claims against the other defendants; I. On March 11, 2011, Plaintiffs filed their motion for class certification. On June 30, 2011, Defendants filed a motion for judgment on the pleadings to dismiss all claims relating to the 110 tranches that Plaintiffs had not purchased and thus lacked standing to sue upon. Oral argument on both motions was held on October 13, 2011. On October 21, 2011, the Court granted Defendants' motion for judgment on the pleadings and granted Plaintiffs' motion for class certification in part. Beginning on May 17, 2012, notices of pendency of the class action began to be served in the form approved by the Court. On January 26, 2012, the Court issued an order correcting a clerical error in its October 21, 2011 order; J. On April 13, 2012, Defendants filed a motion for summary judgment. Oral argument was heard on July 12, 2012 and the Court subsequently denied Defendants' motion for summary judgment in its entirety on July 23, 2012; K. Concurrently with the litigation of this Action, the Parties participated in

an extensive series of formal mediations conducted by experienced mediators from November 2010 through August 2012. Numerous in-person and telephonic mediation sessions were held. As a result of the mediation, the Parties reached an agreement on the resolution of this Action.

The settlement entered on September 4th, 2012 resulted after Plaintiff's Lead Counsel has conducted a thorough investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Lead Counsel's investigation and discovery has included, to date: (i) review of publicly-available documents, conference calls, and announcements made by Defendants, including Defendants' filings with the Securities and Exchange Commission ("SEC"); (ii) review of over 26 million pages of documents produced during discovery; (iii) depositions of 39 fact witnesses; (iv) extensive expert discovery, including depositions of seven of Defendants' experts and five of Plaintiffs' experts; and (v) research of the applicable law with respect to the claims asserted in the Action and the potential defenses thereto in payment of the sum of $26 million dollars. It included a release of all claims, which means that the Lender cannot any longer assert any claims against the borrower, the Plaintiff in the above-entitled cause, having been paid in full.

Even if this court does not find they were paid in full, but some portion, then why was the Defendant permitted to violate the statute (The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Released Claims as against all Released Persons and any and all Settled Defendants' Claims. Plaintiffs and members of the Class on behalf of themselves

and each of their past and present subsidiaries, affiliates, parents, successors and predecessors, estates, heirs, executors, administrators, and the respective officers, directors, shareholders, agents, legal representatives, spouses and any persons they represent, shall, with respect to each and every Released Claim, release and forever discharge, and shall forever be enjoined from instituting, commencing or prosecuting, any Released Claims against any of the Released Persons; and b. Each of the Defendants, on behalf of themselves and each of their past or present subsidiaries, affiliates, parents, successors and predecessors, estates, heirs, executors, administrators, and the respective officers, directors, shareholders, agents, legal representatives, spouses and any persons they represent, shall, with respect to each and every one of Settled Defendants' Claims, release and forever discharge each and every one of the Settled Defendants' Claims, and shall forever be enjoined from instituting, commencing or prosecuting the Defendants' Claims. If any Related Party institutes, commences or prosecutes any Settled Defendants' Claim, that person shall no longer be a Released Person. Plaintiff was deprived of the opportunity to prove that they fell within this settlement as a released person and prevented from proving the settlement made the Lender whole.)

IV. THE DEFENDANT APPELLEE WAS UNJUSTLY ENRICHED.

"[Civil Code] section 2943 incorporates the common law concepts of unjust enrichment, mistake and estoppel and provides a debtor may not receive a windfall and escape the obligation of satisfying a loan in full when a mortgage or deed of trust is retired

in error. The Legislature provided [that] in these circumstances the debtor remains personally liable for the deficiency." (*Freedom Financial Thrift & Loan v. Golden Pacific Bank, supra,* 20 Cal.App.4th at p. 1315.) (5) Under the law of restitution, an individual may be required to make restitution if he is unjustly enriched at the expense of another. (Rest., Restitution, § 1, p. 12.) A person is enriched if he receives a benefit at another's expense. (*Id.,* com. a, p. 12.) The term "benefit" "denotes any form of advantage." (*Id.,* com. b, p. 12.) Thus, a benefit is conferred not only when one adds to the property of another, but also when one saves the other from expense or loss. Even when a person has received a benefit from another, he is required to make restitution "only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it." (*Id.,* com c, p. 13.)

Thus, a party who does not know about another's mistake, and has no reason to suspect it, may not be required to give up the benefit if he also relied on it to his detriment. For example, in *California Federal Bank v. Matreyek* (1992) 8 Cal.App.4th 125 [10 Cal. Rptr.2d 58], a bank advised borrowers that they could pay off a loan without incurring any prepayment penalty. The borrowers did so, and the bank, under the mistaken belief that no prepayment penalty was due, caused the note to be canceled and the deed of trust reconveyed without requesting a prepayment penalty. The bank subsequently learned that it was required to pay a prepayment penalty to the Federal National Mortgage Association that funded the loan. The Court of Appeal concluded that the bank's mistake was not a basis for a cause of action for unjust

enrichment against its borrowers because they did not know of the mistake and also detrimentally relied on the bank's promise. (*Id.* at pp. 132-134.)

In other circumstances, however, the party benefiting from a mistake of fact may be not be entitled to retain what amounts to a mere windfall. Thus, in *First Nationwide Savings v. Perry* (1992) 11 Cal.App. 4th 1657 [15 Cal.Rptr.2d 173], the Court of Appeal considered whether a beneficiary could recover for unjust enrichment from a non-assuming grantee of a purchase money deed of trust after the trustee mistakenly reconveyed the deed of trust and the grantee sold the property, thereby obtaining all the proceeds from the sale. (*Id.* at p. 1160.) The Court of Appeal concluded that a cause of action for unjust enrichment could be stated if the beneficiary amended its complaint to allege that the grantee knew, or should have known, that the deed of trust was mistakenly reconveyed and that it was not entitled to all the proceeds of the sale. It reasoned that restitution may be required when the person benefiting from another's mistake knew about the mistake and the circumstances surrounding the unjust enrichment. (*Id.* at p. 1664.) "In other words, innocent recipients may be treated differently than those persons who acquire a benefit with knowledge." (*Ibid.*)

V. APPELLANT CANNOT DEFAULT ON A VOID LOAN.

Appellee never proved that the subject mortgage was <u>not</u> securitized into a closed trust. To the contrary, Appellant established the closing date, and the assignment date. The closing date occurred prior to the assignment date. The evidence is not only irrefutable, but not refuted by the sham hearsay pleading filed by counsel for the closed, non-existent appellee.

Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1 Trust has a closing date of January 29th, 2007. The subject mortgage was assigned on October 26, 2009 (Case 2:19-cv-07615-SVW-JPR Document 28-1).

The court erred in refusing to consider this irrefutable and unrefuted information. The trust was closed when it claimed to have securitized the mortgage into it. There is no trust and securitizing the mortgage into the closed trust voided it. Consider who signed the assignment of mortgage, Deborah Brignac, Vice President of Mers, whom William Hultman testified that MERS had no employees and where Deborah Brignac, Vice President was actually employed by California Reconveyance Company, and whose signature appears in no less than ten different forms. In the normal world, it is Forgery and perjury. Apparently, in the lower court it is permitted. In this court, it should be considered illegal, outrageous, and intolerable conduct.

VI. THE COURT ERRED IN FAILING TO ACCEPT, AND TAKE AS TRUE THE ALLEGATION THAT THE APPOINTMENT OF THE TRUSTEE AND ASSIGNMENT OF MORTGAGE WERE INVALID.

The court prematurely and improperly dismissed the complaint even though the Appellant properly alleged that the assignments occurred without authority to do so, and on the face of the documents, and public records, the allegations were not only properly made, but true and even unrefuted by the Appellee in their hearsay, inadmissible, illegal, brief.

The Appellee's arguments are misstated and misleading the court into misinterpreting the argu-

ments made by the Appellants. The argument is much simpler than described by the Appellee, who has taken them out of context, and then claimed them to be improper.

The scheme of the servicer was simple. The Plaintiff/Appellant was abused by the servicer of the loan.

She was overcharged for services that were rendered; charged improperly for services which were not rendered; and the servicer imposed fees and costs which the servicer was not entitled to impose, even if the loan were legitimate. That the servicer put the borrower into default as a result of these fraudulent charges. Multiple borrowers were put into default by the same process. Forced placed insurance, including private mortgage insurance was placed on the Plaintiff/Appellants' property, along with other borrowers.

The large number of defaults in these mortgages led to the Defendant Policemen's Annuity and Benefit Fund of the City of Chicago, Laborers Pension Fund and Health and Welfare Department of the Construction and General Laborers District Council of Chicago and Vicinity, Defendant Iowa Public Employees Retirement System, Defendant Arkansas Public Employees Retirement System, Defendant Vermont Pension Investment Committee, Defendant Washington State Investment Board, Defendant Arkansas Teacher Retirement System, Defendant Public Employees Retirement System of Mississippi, Defendant City of Tallahassee Retirement System, Defendant Central States Southeast and Southwest Areas Pension Fund, and Defendant Alan David Tikal as Trustee of the KATN Revocable Living Trust, all of whom were the "Lender" under the mortgage to file a class action be-

cause all they wanted was a return on their investment, repayment of the loan and the interest. They did not want all the extra charges imposed, and certainly did not want all their loans they claim to have held put into default.

So, the lender sued the Trust. They sued because the Trust permitted the servicer to commit these wrongful acts against the borrowers. The investors/lenders won. They sued the servicer for putting the borrowers into default, and the Investors and lenders won. They sued the Trustee for breach of fiduciary duty, and for damages because the Trustee collected the private mortgage insurance, did not credit the receipt of those funds to the mortgages, and stole the money rather than pay the Lender/investors, and the lenders/Investors won. They sued the brokers who continued to do business with the money from the trust after it was closed. The investors/lenders won. There is no trust, there is no lender. The lender was paid in full when they settled with the trust, the brokers, the trustee and the servicers. What were they paid for? Their investment. What was their investment? Plaintiff/Appellants mortgage. They were paid in full. The lender was paid in full, yet the mortgage remained unsatisfied and a slander on the title of the Plaintiff. The mortgage was paid multiple times, once with the class action settlement, a second time by the non-subrogable mortgage insurance recovery; and a third from the sale of the Plaintiff/Appellants home. That, in a just and equitable court, is inequitable, unjust enrichment, and the Appellant was deprived of being able to prove that everyone else profited off the Appellant multiple times, all at the expense of the Appellant. The law is, believe it or not,

that equity dictates that an entity who is unjustly enriched is not entitled to retain it, and must equitably return the profits to the appellant. That is not what has transpired here. The investors/lenders were paid because the servicer defrauded the borrower. The servicers profited from those fraudulent charges. The Trustee got paid for being a trustee and for permitting the servicer to defraud the borrower. Everyone else got paid because the borrower was cheated and stolen from, and when the borrower attempted to recover for their damages, the lower court deprived her of her claims or even a right to prove her claims.

Appellee argues that the Trust cannot be sued, but the trustee is the real party in interest. The true facts are, the collection of assets and liabilities may be a trust, but here, There is no trust. it was closed. the investors were paid in full, and the borrower is entitled to be compensated and has been deprived of that opportunity.

The Trustee may be the correct party to sue, but the Trust does not exist, the trustee was sued and paid because it breached its fiduciary duties to the trust. Now, the Appellee fails to explain why the Appellant is not entitled to sue the individuals of this closed trust who profited from their investment in that trust and were unjustly enriched at the expense of the Appellant. If a person went to the appellants' home, and pointed a gun at her, and stole $100 and then gave half of that money to the guy waiting in the car, the both of them would have to pay that back. The Trustee went to the appellants home and stole from her, and gave half of the profits from that theft to the investors. You cannot find that the investors are free from having to pay the money back because

they were not the ones who robbed the Appellant. They profited from that theft. The investors were the lender and they knew the borrower and they knew the borrower was being robbed, and they sued the trustee because the trustee kept the money and did not turn it all over to the investors. You literally have the situation where the crooks sued each other over the bounty they got from the Appellant, and now are saying that we cannot recover for that theft. It is disgusting, an abuse of the law, a violation of Due Process, a violation of Equal Protection, and it is not an equitable result. Foreclosure is an equitable remedy which prohibits the borrower from a jury trial.

VII. US BANK IS NOT EXEMPT FROM REGISTERING TO DO BUSINESS BECAUSE US BANK CANNOT ACT AS A TRUSTEE OF A CLOSED TRUST, AND US BANK WAS CLOSED ON 8/9/2001.

According to the bank find page of the FDIC, "U.S. Bank National Association

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Institution Closed as of 08/09/2001
Insured until closed FDIC Cert # 5134
Primary Regulator-OCC"

We have a closed trust, being operated by a trustee who was sued for breach of fiduciary duty and lost, who securitized a mortgage into a closed trust, and who separated the note from the mortgage, voiding the mortgage, all after letting a servicer obliterate the Appellant with fraudulent charges, and put the Appellant into default. Appellee cannot say that there was a trust, they already swore to the

State of New Jersey that "*Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OCI Trust" Is Not an Individual, Estate or A Trust.*

This takes us back to the question this court must address. One that is of Great public importance and not the first time the issue of liability of an investor was addressed. The question is simple.

What duties does an Investor have to a Borrower where the Lender not only does Not exist, but had no legal capacity or standing to foreclose. There is no longer an original lender. The Investors Were Unjustly enriched at the expense of the borrower as the Lender.

This Supreme Court has addressed this issue as early as 1935. In *Worthen Co. v. Kavanaugh*, 295 US 56-Supreme Court 1935, the Court said,

"To know the obligation of a contract we look to the laws in force at its making. *Sturges v. Crowninshield*, 4 Wheat. 122, 197; *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 429. In the books there is much talk about distinctions between changes of the substance of the contract and changes of the remedy. *Von Hoffman v. Quincy*, 4 Wall. 535; *Louisiana v. New Orleans*, 102 U.S. 203; *Barnitz v. Beverly*, 163 U.S. 118; *cf. Home Building & Loan Assn. v. Blaisdell, supra*, at pp. 429, 434, where the cases are assembled." In 2013, in *Pens. Trust Fund v. Mortgage Asset Securitization*, 730 F.3d 263 (3rd Cir. 2013), the court lays out the typical scheme and artifice to defraud the borrower, created by Wallstreet to create these investment funds which hold the Plaintiffs/Appellants mortgages.

This appeal involves mortgage-backed securities, investment vehicles that were among the casualties of the financial crisis of the late 2000s. In a traditional mortgage, a lending institution, known as the originator, extends credit to a borrower. In exchange, the borrower promises to repay principal and interest on the loan, and the borrower's real property serves as collateral in case of her default. The originator follows guidelines, known as underwriting standards, to ensure that it receives a return on its investment. For example, to evaluate the borrower's creditworthiness, the originator assesses the ratio of her monthly mortgage-related obligations to her monthly gross income (the "debt-to-income ratio"). And to assess the collateral's worth, the originator evaluates the ratio of the outstanding mortgage obligation to the property's appraised value (the "loan-to-value ratio").

For mortgage-backed securities, the originator sells the loan to a financial institution to realize immediate profit and to reduce future risk of default. The financial institution pools the loan with others, deposits the loans into a trust, and sells certificates issued by the trust to investors. Investors are entitled to receive cash flows from the principal and interest payments made by the borrowers on the loan pool in the trust. The rate of return on the securities partially depends on the riskiness of the underlying loans, which, in turn, is partially measured by the debt-to-income and loan-to-value ratios.

The mortgage-backed securities in this case, known as the MASTR Pass-Through Certificates, Series 2007-3 (the "Certificates"), were offered to the public on May 14, 2007. UBS Real Estate Securities, Inc. ("UBS Real Estate"), the sponsor of the Certif-

icates, purchased the underlying loans from originators, including Countrywide Home Loans, Inc. ("Countrywide") and IndyMac Bank, F.S.B. ("IndyMac"). UBS Real Estate then sold the loans to Mortgage Asset Securitization Transactions, Inc. ("MASTR"), the depositor of the Certificates. MASTR next placed the loans into the MASTR Adjustable Rate Mortgages Trust 2007-3 (the "MASTR Trust"), the issuer of the Certificates. UBS Securities, LLC ("UBS Securities"), the underwriter of the Certificates, finally sold the Certificates to investors like the Operating Engineers, who purchased Series 12A1 Certificates with a face value of $5,123,977 on September 18, 2007.

The Certificates were issued pursuant to a Securities and Exchange Commission ("SEC") Form S-3 Registration Statement filed on December 16, 2005, as amended by an SEC Form S-3/A supplemental pre-effective Registration Statement on April 4, 2006 (together, the "Registration Statement"), and an SEC Form 424B5 Prospectus Supplement filed on May 14, 2007 (the "Prospectus Supplement" and, together with the Registration Statement, the "Offering Documents"). The Registration Statement was signed by MASTR's officers and directors, including David Martin, Per Dyrvik, Hugh Corcoran, and Peter Slagowitz.

The Offering Documents stated that Countrywide originated about 52% and IndyMac originated about 40% of the mortgages backing the Certificates. The Offering Documents assured investors that the underlying loans were originated pursuant to particular underwriting policies, practices, and procedures and in compliance with federal and state laws and regulations. For example, the Offering Documents indicated that the availability of the loans was limited to

those borrowers whose creditworthiness, as revealed by the debt-to-income ratio, was within accepted limits. Additionally, the Offering Documents provided that the real property that was collateral for the loans was appraised pursuant to the generally-accepted Uniform Standards of Professional Appraisal Practice and that certain quantities of the loans were within specific ranges of loan-to-value ratios. Finally, the Offering Documents represented that no material legal proceedings were pending against "the sponsor, the depositor or the issuing entity" of the Certificates. App. at 1728. Based on these guarantees, Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's ("S&P's" and, together with Moody's, the "Ratings Agencies") rated the Series 12A1 Certificates as AAA, the highest quality investment grade, in September 2007.

However, because Countrywide and IndyMac "systematically ignored" and "completely" and "wholly disregarded" proper underwriting standards, UBS's statements in the Offering Documents about the loans underlying the Certificates were materially false and misleading. *Id.* at 382 ¶ 9, 384 ¶ 14, 411 ¶ In particular, the debt-to-income ratios were inaccurate because they were based on inflated income figures, and the loan-to-value ratios were skewed because they were based on inflated property appraisals. As a result of UBS's untrue statements and omissions about the underwriting standards, the Certificates were substantially more risky than disclosed in the Offering Documents.

From late 2007 through early 2009, many news articles linked the high delinquency rates of mortgages originated by Countrywide and IndyMac to the

abandonment of accepted underwriting standards. For example, on April 30, 2008, the Wall Street Journal reported on the "mounting evidence of serious problems with [Countrywide's] underwriting of many home loans," which included allegations that the company "deliberately overlooked inflated income figures for many borrowers," and relaxed its lending standards regarding the estimated values of the real estate. *Id.* at 1949. Also in 2008, the non-profit Center for Responsible Lending released a pair of reports criticizing Countrywide's and IndyMac's underwriting standards. *See, e.g., id.* at 1960 (describing how Countrywide's "appraiser was being 'strongly encouraged' to inflate property values on homes," and "employees were coaching borrowers to falsify their incomes on their applications"). Throughout this time, numerous class action securities suits were filed against Countrywide and IndyMac related to their lax underwriting standards.

On February 20, 2009, citing inappropriate underwriting standards, Moody's reduced the rating of the Series 12A1 Certificates to B2, a speculative grade. Similarly, on August 13, 2009, S&P's reduced the rating of the Series 12A1 Certificates to B. By February 2010, because of the deficient underwriting standards, about 61% of the underlying loans were in delinquency, default, or foreclosure, and the value of the Certificates on the secondary market had decreased by 40% to 50%. As a result, the monthly distributions that the Operating Engineers received from the MASTR Trust for their Certificates were significantly reduced. And if the Operating Engineers had sold their Certificates on the secondary market, then they would have suffered a substantial loss.

The argument is simple, elementary and unavoidable. If this court finds that the Appellees are not the Lender, then the Court must find that the Appellant's cause of action against the Trust must stand and deem not only the Appellant's mortgage void when it was securitized into this non-existent closed trust, but effectively deem Every mortgage which was ever securitized void because there is No lender. The Appellees claim that they are not the lender, even though the courts have consistently based their decisions on the fact that these investors together own the subject loan. If this court releases the investor as the holder and owner of the loan, which they based their claims for damages in the class action, and settles, then this Court will be violating basic precepts of contract law, where the mortgage only obligates the borrower to the lender. If there was no longer a lender, then there was no right whatsoever for the servicer to foreclose on behalf of the lender. That means that the Appellants are correct in their assertion that there is no trust. there is no lender, the foreclosure was wrongful, and the Appellee trust foreclosed with no legal capacity to do so.

The lender stepped out from behind their curtain when they sued in the class action and recovered damages from the co-defendants in this lawsuit. The lenders were Unjustly enriched when their criminal cohorts robbed the Appellant, and the lenders sued to share in the loot, shared in the loot, and became unjustly enriched at the same time as the trust, the trustee and the servicers. The class action, as the court knows, did not take all the profits made by the trust, trustee and the servicers. It took some of those profits. The booty was shared by all, at the expense

of the Appellant. Foreclosure is an Equitable remedy, and if this court no longer believes that, then the Appellant was deprived of her right to a trial by jury, and a jury never would have done what the lower court did to the Appellant. A jury of her peers would have given appellant all the relief she sought and more. "A foreclosure action is equitable in nature and triggers the equitable powers of the court (*see Notey v Darien Constr. Corp.*, 41 N.Y.2d 1055 [1977]; *Jamaica Sav. Bank v M.S. Inv. Co.*, 274 NY 215 [1937]; *Mortgage Elec. Registration Sys., Inc. v Horkan*, 68 AD3d 948 [2d Dept 2009]). 'Once equity is invoked, the court's power is as broad as equity and justice require' (*Mortgage Elec. Registration Sys., Inc. v Horkan* at 948, quoting *Norstar Bank v Morabito*, 201 A.D.2d 545 [2d Dept. 1994]) *Wells Fargo Bank, NA v. Meyers*, 108 A.D.3d 9-NY: Appellate Div., 2nd Dept. 2013. . . . Can this court truly find that equity demands that a Lender be repaid threefold, then be entitled to dismissal against an unjust enrichment claim, when their identity is finally revealed? Where is the equity in permitting a party to be Unjustly enriched threefold, all at the expense of the appellant? This was at the initial phase of the case, Appellant wasn't even provided the opportunity to prove the truth of the matters asserted, and what's worse, is the court did not deem the allegations true for the purposes of the motion.

CONCLUSION

The court should remand the case and permit the Plaintiff to proceed on her case and determine the issue on the merits.

Respectfully submitted,

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