

No. 17-6686

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF REHEARING OF CERTIORARI

Karen Emmel, Petitioner

v.

Amtrustbank, Respondent

Petitioner

Karen Emmel

200 Marion Street

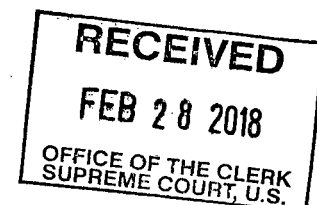
Sayville NY 11782

Prose

Respondent:

McCabe Weisberg & Conway

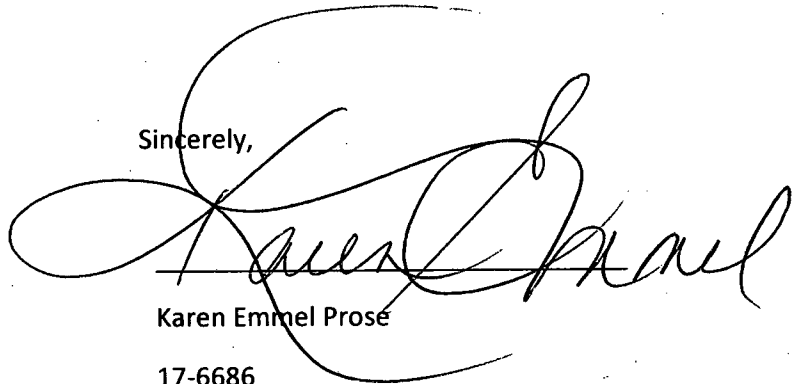
45 Huguenot St,
New Rochelle, NY 10801
(914) 636-8900



PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, petitioner respectfully petitions this Court for rehearing of the writ of certiorari in this case. On February 18 2018, this court denied petitioner's as pro se for a petition for certiorari. As prose I am pleading with the court to review additional information and proof of said information.

Sincerely,

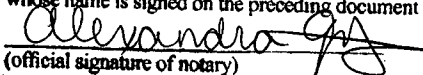


Karen Emmel Prose

17-6686

STATE OF NEW YORK
COUNTY OF SUFFOLK

On the 20 day of February in the year 2018
before me, the undersigned, personally appeared
Karen Emmel, proved to me
through satisfactory evidence of identification, to be the person
whose name is signed on the preceding document in my presence.


(official signature of notary)

Alexandra Garito
Notary Public, State of New York
No. 01GA6364138
Qualified in Suffolk County
Commission Expires September 5, 2021

QUESTIONS PRESENTED

1. CPLR 3211 (a) (3) on the ground that the plaintiff lacked standing to bring this action.

In order to commence a foreclosure action, Where the plaintiff is the assignee of the mortgage and the note (Wells Fargo Bank, N.A. v Marchione, AD3d , 2009 NY Slip Op 07624 [2d Dept 2009] Respondent did not assign the mortgage until March 6, 2012, recorded for over 4 years later? Supreme Court, petitioner and petitioner attorney back in December 2013 Foreclosure of a mortgage may not be brought by one who has no title to it"?

2. CPLR 3408 The parties shall engage in settlement discussions in good faith to reach a mutually agreeable resolution, including a loan modification if possible, consistent with CPLR Rule 3408(f). The court shall ensure that each party fulfills its obligation to negotiate in good faith and shall see that conferences not be unduly delayed

22 CRR-NY 202.12aNY-CRR

STATEMENT OF THE CASE

In an action to foreclose a mortgage, Petitioner Karen Emmel, which were for leave to serve and file an answer to assert a defense based on lack of standing and violations of CPLR 34 thereupon, to dismiss the complaint insofar as asserted against her based-on lack of standing by her attorney Fred Schwartz on or about January 21, 2014, to dismiss the complaint insofar as asserted against the Petitioner Karen Emmel based on lack of standing, and violating CPLR 3408 should have been granted

Petitioner Karen Emmel (Supreme Court of Suffolk County, NY Index No. 09-15831), was working in Good Faith (CPLR3408) with Respondent to attain a modification. Petitioner "Emmel" corresponded with the Respondents "Amtrust" Mc Cabe, Weisberg & Conway, at conferences, phone calls and via mail. Respondent told Supreme Court of Suffolk County, NY Index No. 09-15831, in writing "Emmel" did nothing from the start of the order of reference up and through to the Judgement of Foreclosure dated in E courts as 9/15/2013. It is clear "Emmel" not only appeared at confrences, can prove she did try to hire an attorney, paid taxes and Home Owners Insurance, Corresponded with Respondents over & over again. Petitioner, "Emmel believed she had a chance to modify her loan. Respondent did send her one application, petitioner sent back, followed up and was told over and over again in processing.

"defendant advances specific and substantiated allegations that the plaintiff or its agents engaged in acts constituting extrinsic fraud, [*5]that is, wrongful acts of trickery or deceit which allegedly induced the moving defendant into defaulting or otherwise wrongfully deterred him or her from litigating the plaintiff's claims, will a vacatur of a default in answering be excused as reasonable." (*Id.*)

CPLR § 3211 one exception to this rule is when plaintiff's factual allegations are flatly contradicted by documentary evidence. Here Petitioner "Emmel;" can clearly prove she was in negation with the

Respondent in good faith CPLR 3408. Respondent in its motion to Supreme Court stated, "Emmel, Petitioner did nothing until Final Judgement of Foreclosure to try and save her home". Emmel never received a final Judgement of foreclosure and sale. Petitioner as Prose, in the Appellate Division, Brooklyn NY appeared with the Respondent, Kaiyam Poulson. Mr. Polson was asked during the verbal questioning by the justices of the court, the justice to the far right of the bench, "why did you not serve her the judgment of foreclosure & sale"? Mr. Polson replied, we served her attorney! Such a blatant lie, Petitioner "Emmel. Petitioner Emmel did not have an attorney, she was prose. Court rules Petitioner could not reply back to this lie. Petitioner Emmel only hired an attorney when the real estate woman asking for keys for cash knocked on her door. that is how Respondent was informed the house was sold.

It is clear by the attached papers Petitioner Emmel was corresponding with Respondent for years. Petitioner stress become so horrific she had to see a doctor and was sent to speak to a therapist and nurse PR actioner and was then prescribed an anti-depressant. Petitioner clearly was put under enormous stress by being led to believe she could possible get a modification. Waiting for an updates was caused increased stress for petitioner. The Respondent never got back to Petiole upon numerous calls, nor ever offered a short sale, or simply say "NO' we are foreclosing. Respondent would clearly be there right to do so. The question here is, why would Respondent even send the application for a modification if they did not have standing they were not on the note or mortgage? Why not tell simply tell Emmel Petitioner to call Residential Credit Solutions, or simply we are foreclosing?

Wells Fargo Bank, N.A. v Marchione, 69 AD3d 204 [2009 in the verification, Wells Fargo's attorney affirmed the complaint to be true to the best of his knowledge, and his belief {**69 AD3d at 211} as to matters stated to be alleged on information and belief was based upon "correspondence, memoranda and statements of account in affirmant's possession." The complaint included a paragraph that stated Wells Fargo was "now the sole, true and lawful owner of record of the bond(s), note(s) and mortgage(s) securing the Mortgaged Premises." This averment was not based on information and belief and could not have been true on the date of the verification, November 29, 2007, since the actual execution of the

assignment did not take place until December 4, 2007. Thus, the complaint contained a misstatement of a material fact which is not excused simply because the attorney was the one who verified the complaint.

Upon filing for the order of Reference & judgement of foreclosure Respondent was NOT the holder of the note, therefore had no legal standing to foreclose.

In Fact, if Respondent did not have standing (CPLR 3408) working in good faith would have been impossible.as stated above Amtrust the bank closed on 12/4/2009, Residential Credit Solutions held the note as of 07/9//2010 and the mortgage as of. And yet no recordings in Suffolk County Records. The assignment of Mortgage dated 3/06/2012 (attached). From Mortgage Electronic Systems Inc / Amtrust Bank to Residential Credit Solutions, Meres was inactive as of 5/10/2007. , (attached)

Since the verification makes the pleading, or those parts of the pleading that are verified, sworn data, a verified pleading is the equivalent of an affidavit, CPLR 105, and may be used for the same purposes" (Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3020:2). When an attorney verifies, he or she affirms under the penalties of perjury (*see* Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, and CPLR C3020:9).

The plaintiff's causes of action for foreclosure and a deficiency judgment, respectively, must fail since foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity

Countrywide Home Loans, Inc. v Gress

CPLR 3211 (a) (3) on the ground that the plaintiff lacked standing to bring this action. In order to commence a foreclosure action, Where the plaintiff is the assignee of the mortgage and the underlying note at the time the foreclosure action was commenced, the plaintiff has standing to maintain the action" (Federal Natl. Mtge. Assn. v Youkelsone, 303 AD2d 546, 546-547 [2003];

Here, it is undisputed that the subject mortgage was not assigned to the plaintiff until, March 6, 2012. The assignment was from Mers / Amtrust. MERS document states in fact that it was inactive as of 5/10/2007.

REASON FOR GRANTING THE PETITION

THE COURT SHOULD GRANT THE WRIT TO DECIDE WHEATHER SUFFOLK SUPREME COURT COULD NOT HAVE KNOWN ANY OF THE FOLLOWING. RESPONDENT DID NOT FILE IN THE COUNTY CLERK OFFICE THAT THEY SOLD THE NOTE, OR THAT THEY GAVE PETITIONER AN APPLICATION FOR A MODIFICATION. RESPONDENT LED SUPREME COURT TO BELIEVE PETITIONER DID NOTHING TO SAVE HER HOME, WHEN IN FACT SHE BELIEVED THEY WERE WORKING UNDER CPLR3408 DURING THAT TIME PETITIONER PAID REAL ESTATE TAXES, HO INSURANCE ALL NOT DOCUMENTED IN RESPONDENTS MOTION TO SUFFOLK SUPREME

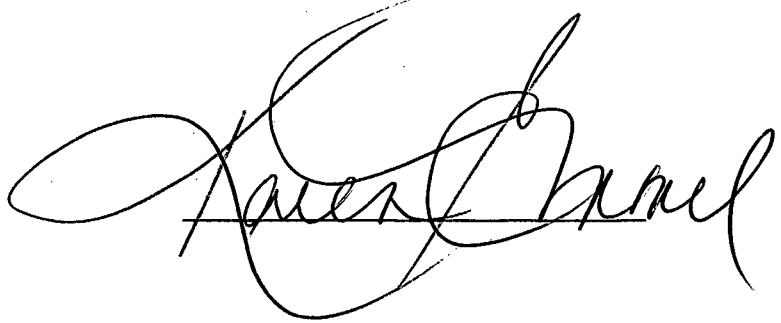
Respondent Mc Cabe, Weisberg & Conway clearly knows the law, myself as prose is quite difficult. I only asked for a modification, I never denied I fell behind. I attended the conferences and tried to attain a modification. Respondent ethically should never have falsely given me an application under a bank that no longer existed.

Respondent would be the only legal entity to sell that note so they knew clearly, they had no standing to give an application to Petitioner for a modification or to receive a final judgement of fore closure and sale (motion filed to supreme court on or about Sept 2013, by Mc Cabe, Weisberg & Conway) representing Amtrust Bank. Respondent knowingly a fraudgelant modification application, CPLR 3408 work in good faith, they did not.

CPLR 3211 (a) (3) on the ground that the plaintiff lacked standing to bring this action. In order to commence a foreclosure action, the plaintiff must have a legal or equitable interest in the subject mortgage (see Wells Fargo Bank, N.A. v Marchione, 69 AD3d 204 [2009]

Certificate

I hereby certify that this petition for rehearing is
presented in good faith and not for delay



STATE OF NEW YORK
COUNTY OF SUFFOLK

On the 26 day of February in the year 20
before me, the undersigned, personally appeared
Karen Emmel, proved to me
through satisfactory evidence of identification, to be the person
whose name is signed on the preceding document in my presence.

Alexandra Garfo
(official signature of notary)

Alexandra Garfo
Notary Public, State of New York
No. 01GA6364138
Qualified in Suffolk County
Commission Expires September 5, 2021

6/22/09

Honorable Spinner:

Please note I did contact an attorney, + sent all my Paper work on 5/11. I also followed up via I mail with concern I have not heard from their office.

On June 18th, after the fact I was told they were answering this complaint they said they did not want the case.

I am very upset because they notified me 6 weeks later + I truly believed they were working on this. I do have all my I mails as proof they were taking this case. Your Honor even if they chose not to please help me. I'm currently @ a temp 1th 21 Address.

Temp Services & have applied
for a Perm position.
I can then save my
Home; as try to
I thank you for
your time.

Sincerely,
Karen Cinner

Index # 09-15831

U.S. Postal ServiceTM
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(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

7009 2820 0000 8869 3798
RIVERHEAD NY 11901 **OFFICIAL USE**

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Supreme Court - STATE of New York
Street, Apt. No.,
or PO Box No. 1 COURT STREET
City, State, ZIP+4[®] RIVERHEAD, N.Y. 11901
PS Form 3800, August 2006 See Reverse for Instructions

DTS

DTS

516 - 938 - 3333

DOCUMENT TRANSPORT SERVICES, INC.

Date: _____

85650

OVERNIGHT

NEXT BUSINESS DAY

- ☐ PRIORITY: BY 10:30am
☐ ECONOMY: BY 3:00pm
☐ ANYTIME: BY 5:00pm
☐ SPECIAL: *Specify Time*
TIME _____

- ☐ LETTER
☐ PACKAGE
☐ BOX
☐ OTHER
☐ WAITING
TIME _____

SAME DAY

- ☐ SPECIAL: 4-6 HRS.
☐ RUSH: 2-4 HRS
☐ EXCLUSIVE: DIRECT

DELIVERY TIME _____

DELIVERY DRIVER # _____

INTERNAL BILLING INFO: _____

DELIVER TO: 5 BOROUGH, NASSAU, WESTERN SUFFOLK
AND LOWER WESTCHESTER

Recipient's Signature _____

Print Last Name _____
(Very Important)

DESTINATION COPY

From: Burke & Burke, Attorneys at Law

Company Name

(Your Name) Please Print

Address

Farmingdale

Zip 11735

City

(631) 249-3978

Suite 116

Phone

(Very Important)

To:

Company Name

(Recipient's Name) Please Print

Address

City

We Cannot Deliver To P.O. Boxes or P.O. Zip Codes

Zip

Phone

(Very Important)

Papers sent on about 5/11
Papers returned 6/19/09

LAW OFFICES
McCABE, WEISBERG & CONWAY, P.C.

SUITE 499
145 HUGUENOT STREET
NEW ROCHELLE, NY 10801
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FAX (301) 490-1568

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February 10, 2011

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See www.mwc-law.com for licensing key.

Karen Emmel
200 Marion Street
Sayville, New York 11782

Re: AMTRUST BANK v. Karen Emmel
Index No.: 09-15831
Matter No.: 292-0023ny

Dear Karen Emmel:

Attached please find modification packet. In order to be reviewed for workout assistance, please submit the following required information and completed mod packet:

- a) Financial Worksheet
- b) Proof of Income ✓
- c) Bank Statements
- d) Tax Returns
- e) List of Household Monthly Expense ✓
- f) Hardship Letter
- g) Form IRS 4506-T
- h) Proof of Rental Income
- i) Proof of Residency/Occupancy ✓ *to follow*

Once complete, please fax the requested information to our office at (914) 819-5505.

Thank you,

McCabe, Weisberg & Conway, P.C.

*This is a communication from a debt collector.
This letter may be an attempt to collect a debt and any information obtained will be used for that purpose.*

BORROWER FINANCIAL STATEMENT

LOAN NUMBER:

Borrower Name EMMEL (SMITH)		Date of Birth 12-1-61		Co-Borrower Name		Date of Birth 12-01-61	
Social Security # 096-54-6213		Home Phone # 631-563-1247		Work Phone #		Social Security # 096-54	
Phone #		Work Phone #		Phone #		Work Phone #	

MISCELLANEOUS

Mailing Address 200 MARION STREET		Property Address 200 MARION STREET	
Do you occupy the property? ☒ Yes ☐ No		Is it a Rental? ☐ Yes ☒ No	
Have you ever filed bankruptcy? ☐ Yes ☒ No		If yes, what chapter: _____	
Is the Property listed for sale? ☐ Yes ☒ No		If so, Agent's Name Phone # _____	
Total number of persons living in the property: SELF		Are there any other liens or judgements against the property? ☐ Yes ☒ No	

EMPLOYMENT INFORMATION

Employer - Borrower SLEEPY'S CORP.		How Long? 1 year		Employer - Co-borrower		How Long?	
--	--	----------------------------	--	------------------------	--	-----------	--

MONTHLY INCOME BORROWER

MONTHLY INCOME CO-BORROWER

Pay schedule (check one) ☐ weekly ☒ bi-weekly ☐ monthly		Pay Schedule (check one) ☐ weekly ☐ bi-weekly ☐ monthly	
Wages: \$		Wages: \$	
Unemployment / Disability Income: \$		Unemployment / Disability Income: \$	
Child Support / Alimony Received: \$		Child Support / Alimony Received: \$	
Rents Received: SEE ATTACHED \$ 1,000.-		Rents Received: \$	
Other: PAY CHECK \$		Other: \$	
TOTAL: \$		TOTAL: \$	

MONTHLY EXPENSES

ASSETS

Mortgage Payment: \$		Type: _____		Estimated Value: \$	
Auto Loan(s): \$ 372.76		Home: _____		\$	
Auto Expenses and Insurance: \$ 115.-		Other Real Estate: # _____		\$	
Credit Cards / Installment Loans: \$ 0		Checking: _____		\$	
Health Insurance not deducted from paycheck: \$ 0		Savings / Money Market: _____		\$	
Medical Bills: \$ 0		Cars and Value: # _____		\$	
Child Care / Support / Alimony Paid: \$ 0		IRA / Keogh Account(s): _____		\$	
Food and Spending Money: \$ 400.-		401 K / ESOP Account(s): _____		\$	
Water / Sewer / Utilities / Phone: \$ 50.-		Stocks / Bonds: _____		\$	
Homeowner Association Fees / Dues: \$ 110.-		Other: _____		\$	
List Others: \$		Other: _____		\$	
TOTAL: \$		TOTAL: \$		\$	

I agree as follows: My lender may discuss, obtain, and share information about my mortgage and personal financial situation with third parties such as purchasers, real estate brokers, insurers, financial institutions, creditors, and credit bureaus. Discussion and negotiations of a possible foreclosure alternative will not constitute a waiver of or defense to my lenders right to commence or continue any foreclosure or other collection action, and an alternative to foreclosure will be provided only if an agreement has been approved in writing by my lender. The information herein is an accurate statement of my financial status.

Submitted this _____ day of _____, 200

By: [Signature]
Signature of Borrower

Date: June 29, 2011

By: _____
Signature of Borrower

Date: _____

*BEFORE MAILING, MAKE SURE YOU HAVE SIGNED AND DATED THIS FORM, ATTACH A COPY OF YOUR (2) MOST RECENT PAYSTUBS, BANK STATEMENT(S) OF YOUR CHECKING AND/OR SAVINGS ACCOUNT AND A LETTER EXPLAINING THE REASON FOR DELIQUENCY.

Please NOTE: I had a dear friend move in to help me - we now share THE HOUSE THAT'S THE 1000 sq ft

BORROWER NAME:

Karen Emmel

LOAN NUMBER:

Explanation of Financial Hardship:
IT IS VERY IMPORTANT THAT YOU
EXPLAIN YOUR FINANCIAL HARDSHIP

I am having problems making my monthly payment because of financial difficulties created by:
(Check all options that apply)

- ☐ Military Service
☐ Incarceration
☐ Reduced Income
☐ Medical Bills

- ☐ Business Failure
☐ Death of Spouse
☐ Too Much Debt
☐ Job Relocations

- ☐ Divorce/Separation
☐ Disability
☒ Unemployment
☒ Illness

Other (Please specify)

* WAS *

I believe that my situation is

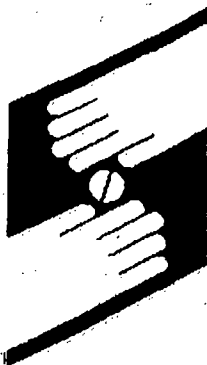
☒ Temporary

☐ Permanent

I WAS OUT OF WORK + USED ALL MY SAVINGS TO PAY MY BILLS. I TOOK TEMP JOBS @ 8-12 HOUR UNTIL I COULD FIND SOMETHING. THE STRESS BECAME SO BAD I THEN BECAME SICK & WAS SUFFERING FROM SEVERE DEPRESSION.

MY DOCTOR GAVE ME MEDICAL #'S TO REACH OUT FOR HELP. I AM NOW ON AN ANTI DEPRESSANT + THAT ALONG W/ WORKING HAS PUT BACK ON TRACK. I HAVE BEEN PAYING THE H/O INS & HAVE SENT MONEY IN FOR ARREAR TAXES.

Currently someone HAS PD THE H/O IN MAYBE YOU CAN HELP ME, I'M AFRAID + CONFUSED



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SUCCESS
2060-3 Ocean Avenue
Ronkonkoma, New York 11779
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Fax: (631) 580-5394

January 2, 2014

To Whom It May Concern:

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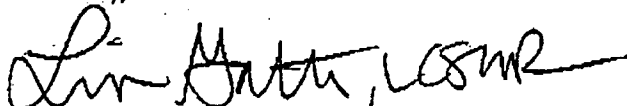
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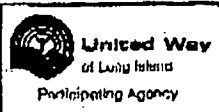
Executive Director
Richard Kassnove

Skills Unlimited Mental Health Clinic has been treating Karen Smith (Emmel) for Major Depression, Recurrent Moderate vs. Depressive Disorder NOS since June 24, 2010. Ms. Smith (Emmel) was referred to this Clinic by her primary care physician at Patchogue Clinic. Financial stressors have consistently been a source of symptom exacerbation during the course of treatment. She is treated by Janine Fiorello, NPP who prescribes Cymbalta 60mg and has psychotherapy with this writer.

If you have questions or concerns regarding Ms. Smith's treatment at this Clinic, please contact me.

Sincerely,


Lisa Gatti, LCSW-R



www.skillsunlimited.org

AN AFFIRMATIVE ACTION EMPLOYER

ACCREDITED BY COMMISSION ON ACCREDITATION OF REHABILITATION FACILITIES

43

U.S. Postal Service™ Delivery Confirmation™ Receipt

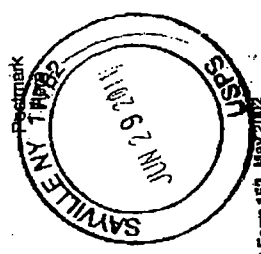
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modification pkg
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(See Reverse)



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over night to ATFR

SAYVILLE P.O.
SAYVILLE, New York

117822723

9330782-0098

06/29/2011

0

Product	Sale	Receipt
Description	Qty	Unit Price

NEW ROCK

1080: one-1

Priority Mail Small

Flat Rate Env

2.00 oz.

Expected Delivery: Fri 07/

Delivery Confirmation

Label #: 03102640000

Issue PVI:

Total:

Paid by:

Cash

Order stamps at USPS.com/shop
call 1-800-Stamp24. Go to
USPS.com/clicknship to print
shipping labels with postage.
other information call

Application Date 4/28/2009

Court s Case Type

Plaintiff(s) :

Name

AMTRUST-NP SFR VENTURE, LLC

Defendant(s) :

Name

EMMEL, KAREN; JP MORGAN CHASE BANK, N.A.; ET AL

Minutes :

Seq #	Date	Minute	Notation
1	4/28/2009	LIS PENDENS	ISLIP
2	4/28/2009	SUMMONS & COMPLAINT	VER
3	4/28/2009	EXHIBITS	
4	4/28/2009	EXHIBITS	
5	5/22/2009	AFFIDAVIT OF SERVICE	5-5-09
6	5/22/2009	AFFIDAVIT OF SERVICE	5-5-09
7	5/29/2009	AFFIDAVIT OF SERVICE	5-8-09
8	12/1/2009	R.J.I.	PD
9	3/10/2010	SHORT FORM ORDER	
10	5/12/2010	LETTER	4-30-10
11	5/12/2010	EXHIBIT	
12	6/24/2010	SHORT FORM ORDER	
13	7/7/2010	ORDER OF REFERENCE	
14	7/7/2010	NOTICE OF MOTION	
15	7/7/2010	SUPPORTING PAPERS	
16	7/29/2010	C-(ORDER) W/NOTICE OF ENTRY	
17	7/29/2010	AFFIDAVIT OF SERVICE	07-19-10

18	9/13/2010	C-(ORDER) W/NOTICE OF ENTRY	
19	9/13/2010	AFFIDAVIT OF SERVICE	9-7-10
20	11/18/2013	ORDER OF REF AND AMEND CAPTION - LIS PENDENS	CC
21	11/18/2013	ORDER OF REF AND AMEND CAPTION	CC
22	11/18/2013	JUDGMENT OF FORECLOSURE	
23	11/18/2013	C-DESCRIPTION	
24	11/18/2013	BILL OF COSTS	
25	11/18/2013	ATTORNEY'S AFFIRMATION	
26	11/18/2013	REF'S OATH & REPORT OF AMT DUE	
27	11/18/2013	EXHIBITS	
28	10/23/2013	FORECLOSURE AFFIRMATION	
29	10/30/2013	NOTICE OF SALE	
30	10/30/2013	AFFIDAVIT OF SERVICE	10-23- 13
31	10/30/2013	NOTICE	
32	10/30/2013	AFFIDAVIT OF SERVICE	10-23- 13
33	12/3/2013	C-(JUDGMENT) W/NOTICE OF ENTRY	
34	12/3/2013	AFFIDAVIT OF SERVICE	11-25- 13

Notations :

Liber	Page	Notation	LP #
M00021544	862		205173

Tax Map Info :

Tax Map
0500-305.00-04.00-046.000



Federal Deposit Insurance Corporation
1601 Bryan Street, Dallas, TX 75201

Division of Resolutions and Receiverships
Customer Service Department

09/24/2016

Karen Emmel
200 Marion Street
Sayville, NY 11782

SUBJECT: 10155-AMTRUST BANK
Request Number: 1003436500
Subject: Karen Emmel

Dear Karen Emmel:

Thank you for your correspondence dated 9/22/2016, wherein you inquired about where your loan was sent after Amtrust Bank closed.

Research has been completed and we report the following:

- Your loan was sold on July 9, 2010 to Residential Credit Solutions, Inc.
7 Times Square Suite 2106 New York, NY 10036
866-317-0012 or www.residentialcredit.com

Upon a view of their website enclosed is more information with regards to what was located on their site.

Please note this is all the information we have with regards to your loan as upon the sale on July 9, 2010 Residential Credit took over your loan.

If you have any questions, please call the Customer-Service Center toll-free at 888-206-4662 and ask to speak with me. Otherwise, you may inquire via e-mail ttaber@fdic.gov; please reference your request number.

Sincerely,

Tad Taber
Research Unit
FDIC Customer Service

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
AMTRUST BANK,

Plaintiff,

-against-

**VERIFIED
ANSWER**

INDEX NO.
09/15831

KAREN EMMEL,
JP MORGAN CHASE BANK, N.A.
and "JOHN DOE #1" through "JOHN DOE #10,"
inclusive the last ten names being fictitious and
unknown to plaintiff, the persons or parties
intended being the persons, tenants, occupants,
or corporations, if any, having or claiming an
interest in or lien upon the premises, described
in the complaint,

Defendants.
-----X

Defendant, KAREN EMMEL, by her attorney, FRED M.
SCHWARTZ, answering the Complaint of the Plaintiff, sets forth and alleges as
follows:

1. Denies each and every allegation contained in Paragraph
"EIGHTH", "NINTH", and "TENTH" of Plaintiff's Complaint.
2. Lacks knowledge or information sufficient to form a belief as to
the truth or falsity of the allegations contained in Paragraphs "FIRST",
"SECOND", "THIRD", "FOURTH", "SIXTH", "SEVENTH", "ELEVENTH",
"THIRTEENTH", "FOURTEENTH", "FIFTEENTH", "SIXTEENTH" and
"SEVENTEENTH" of Plaintiff's Complaint.

3. With respect to Paragraphs "FIFTH" and "TWELFTH" of Plaintiff's Complaint, the answering Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, except admits that she is the owner of the subject premises and maintains an interest in the subject premises.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

4. That the Plaintiff is an improper party to this action and/or lacks the proper standing to commence this proceeding.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

5. That the action is barred by the Statute of Frauds.

AS AND FOR AN THIRD
AFFIRMATIVE DEFENSE

6. That the Complaint fails to state a proper cause of action upon which relief may be granted.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

7. That the alleged assignment of the loan documents is void.

AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE

8. Lack of jurisdiction.

AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE

9. That notice of the alleged default was not properly served upon the Defendant prior to the commencement of the proceeding.

AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE

10. That the Defendant has been denied an opportunity to cure any alleged default prior to the commencement of the proceeding and that any default/cure notice so served by Plaintiff and/or its agents is defective.

AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE

11. That the proceeding is jurisdictionally defective.

AS AND FOR A NINTH
AFFIRMATIVE DEFENSE

12. Plaintiff and/or its agents failed to mitigate damages.

AS AND FOR A TENTH
AFFIRMATIVE DEFENSE

13. That Plaintiff and/or its agents have failed to comply with the provisions and/or requirements of RPAPL 1302, 1303, 1304, 1306 and/or Banking Law Sections 6-l and 6-m.

AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE

14. That the Plaintiff and/or its agent or predecessor in interest has rejected and/or failed to properly allocate payments made by Defendant.

AS AND FOR A TWELFTH
AFFIRMATIVE DEFENSE

15. That the Plaintiff is not the owner and holder of the mortgage and note.

AS AND FOR A THIRTEENTH
AFFIRMATIVE DEFENSE

16. That the Plaintiff and/or its agents, have unclean hands and have acted in bad faith.

AS AND FOR A FOURTEENTH
AFFIRMATIVE DEFENSE

17. That the title charges, loan expenses, fees and funds withheld deducted from the loan proceeds exceed usual and customary charges and were not disclosed to and/or approved by Defendant and violated the rights of Defendant.

AS AND FOR A FIFTEENTH
AFFIRMATIVE DEFENSE

18. That the subject loan was provided to the Defendant without proper basis, review and valuation of the premises and/or income of Defendant.

AS AND FOR A SIXTEENTH
AFFIRMATIVE DEFENSE

19. That the conduct of the Plaintiff in extending the subject loan was predatory in nature and is unenforceable, null and void.

AS AND FOR A SEVENTEENTH
AFFIRMATIVE DEFENSE

20. That the Defendant failed to receive the mortgage proceeds and/or said proceeds were not properly distributed by the lender or its agent.

AS AND FOR A EIGHTEENTH
AFFIRMATIVE DEFENSE

21. Plaintiff's conduct and actions violate the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692, NYS GBL Section 349 and 22 NYCRR Section 202.12-a.

AS AND FOR A NINETEENTH
AFFIRMATIVE DEFENSE

22. Denies authenticity of the signatures affixed to the documents allegedly in support of the claimed indebtedness.

WHEREFORE, Defendant demands judgment as follows:

- a) dismissing Plaintiff's Complaint;
- b) suspending all accrued interest from the date of the alleged default;
- c) denying counsel fees and costs in favor of Plaintiff;

d) along with such other further and different relief as this Court
deems just and proper.

Dated: Smithtown, New York
January , 2014

YOURS, etc.

FRED M. SCHWARTZ
Attorney for Defendant,
KAREN EMMEL
317 Middle Country Road, Suite 5
Smithtown, New York 11787
631 724-2300

TO: McCABE, WEISBERG & CONWAY, P.C.
Attorneys for Plaintiff
LISA A. WALLACE, ESQ.
145 Huguenot Street, Suite 310
New Rochelle, NY 10801
(914) 636-8900



Office of the Treasurer of Suffolk County
Angie M. Carpenter, Treasurer

Make check payable and mail to:

Suffolk County Treasurer
330 Center Drive
Riverhead, NY 11901-3311

21
Official Receipt

Acceptance of a partial payment shall not waive enforcement of County Tax Sale Liens, Tax Deeds or any powers of the County of Suffolk.

KAREN SMITH
200 MARION ST
SAYVILLE, NY 11782

Office Hours: Monday - Friday 9:00 am - 5:00 pm
Phone: (631) 852-3000 Fax: (631) 852-3825

Town		Parcel ID Number		Land Value/Building Value/Full Value			Property Location			
ISLIP		0500.30500.0400.046000.0000		9900	29100	39000	200 MARION ST SAYVILLE			
Bill Date	Statement Number	Customer ID	Current Owner				Assessed Owner			
11/11/2011	1198097	004086418	EMMEL KAREN 200 MARION ST				EMMEL KAREN 200 MARION ST			
Base Tax	5% Penalty	Base Tax & 5% Penalty Total	Interest % Rate	Sale Adv. Cost	Sale Lien Amount	Redemption Int. % Rate	Redem. Adv. Cost	Fees*	Amount Due	Amount of Tax Paid
7,763.58	388.18	8,151.76	11% 896.70	20.00	9,068.46	3% 244.10			9,312.56	1,000.00

Payer	Payment Type	Check Number	Amount Tendered
KAREN SMITH	CHECK	450	1,000.00

Total Amount of Taxes Due 9,312.56

Total Amount Paid 1,000.00

Total Balance Due 8,312.56

Total Amount of Refund .00

Make check payable and mail to:

Suffolk County Treasurer
330 Center Drive
Riverhead, NY 11901-3311

Refund will be processed in 4 to 6 weeks

PLEASE NOTE THAT CURRENT YEAR TAXES WILL INCREASE AT 1% PER MONTH THROUGH LIEN DATE. THEREFORE, ANY BALANCE DUE SHOULD BE PAID IMMEDIATELY. IF REDEEMING TAX LIEN, PLEASE OBTAIN A CURRENT STATEMENT OF TAXES IN ARREARS FROM OUR OFFICE.

Receipt Number	Date	Amount Paid
37467993	04/12/2011	1,000.00



Office of the Treasurer of Suffolk County
Angie M. Carpenter, Treasurer

Official Receipt

Make check payable and mail to:

Suffolk County Treasurer
330 Center Drive
Riverhead, NY 11901-3311

Acceptance of a partial payment shall not waive enforcement of County Sale Liens, Tax Deeds or any power of the County of Suffolk.

SMITH, KAREN
200 MARION ST
SAYVILLE, NY 11782

Office Hours: Monday - Friday 9:00 am - 5:00 pm
Phone: (631) 852-3000 Fax: (631) 852-3000

Town ISLIP		Parcel ID Number 0500.30500.0400.046000.0000		Land Value/Building Value/Full Value 9900 29100 39000		Property Location 200 MARION ST SAYVILLE					
Bill Date 01/24/2011		Statement Number 1181250		Customer ID 004086417		Current Owner KAREN EMMEL 200 MARION ST		Assessed Owner KAREN EMMEL 200 MARION ST			
Tax Year 2010 1/05	Base Tax 7,763.58	5% Penalty 388.18	Base Tax & 5% Penalty Total 8,151.76	Interest % Rate 11% 896.70	Sale Adv. Cost 20.00	Sale Lien Amount 9,068.46	Redemption Int. % Rate 6% 544.10	Redem. Adv. Cost	Fees*	Amount Due 9,612.56	Amount Tax Paid

1/24 Pd \$ 1000.00

Payer KAREN SMITH	Payment Type CHECK	Check Number 431	Amounts Tendered 300.00
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Total Amount of Taxes Due	9,612.56
Total Amount Paid	300.00
Total Balance Due	9,312.56
Total Amount of Refund	

Refund to:

Make check payable and mail to:

Suffolk County Treasurer
330 Center Drive
Riverhead, NY 11901-3311

Refund will be processed in 4 to 6 weeks

PLEASE NOTE THAT CURRENT YEAR TAXES WILL INCREASE AT 1% PER MONTH FROM THE LIEN DATE. THEREFORE, ANY BALANCE DUE SHOULD BE PAID IMMEDIATELY. IF REPAYMENT OF TAX LIEN, PLEASE OBTAIN A CURRENT STATEMENT OF TAXES IN ARREARS FROM THE OFFICE.

LGR	Receipt Number 37457786	Date 01/24/2011	Amount Paid 300.00
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Suffolk County Clerk's Office

Mortgages

Tax Map = 0500-305.00-04.00-046.000

Liber	Page	Date	Tax Map No	Mortgagor Name	Mortgagee Name	AMOUNT	TAX
M00012886	448	5/20/1987	1 0500-305.00-04.00-046.000	BANKERS FEDERAL SAVINGS AND LOAN ASSOCIATION	SIMMONS FIRST NATIONAL BANK OF PINE BLUFF		
M00013006	370	6/23/1987	1 0500-305.00-04.00-046.000	BRUNO, ROCCO / BRUNO, MARIE	BARCLAYS BANK OF NEW YORK N A		
M00014365	154	8/18/1988	1 0500-305.00-04.00-046.000	SIMMONS FIRST NATIONAL BANK OF PINE BLUFF	FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF AMARILLO TEXAS		
M00016045	113	6/5/1990	12 0500-305.00-04.00-046.000	AMWEST SAVINGS ASSOCIATION / OLNEY SAVINGS AND LOAN ASSOCIATION	FLETCHER, AVERNE S / FLETCHER, DAVID C		
M00019196	337	5/8/1997	12 0500-305.00-04.00-046.000	BRUNO, MARIE / BRUNO, ROCCO	KEYBANK NATIONAL ASSOCIATION		
M00019709	540	5/23/2000	1 0500-305.00-04.00-046.000	KEYBANK NATIONAL ASSOCIATION	DIME SAVINGS BANK OF NEW YORK FSB		
M00020376	427	4/29/2003	1 0500-305.00-04.00-046.000	EMMEL, KAREN	ABN AMRO MORTGAGE GROUP INC	250,000.00	2,475.00
M00020376	428	4/29/2003	1 0500-305.00-04.00-046.000	EMMEL, KAREN	NATIONAL CITY BANK	60,000.00	575.00
M00020646	220	2/6/2004	3: 0500-305.00-04.00-046.000	WASHINGTON MUTUAL BANK FA	BRUNO, ROCCO / BRUNO, MARIE		
M00020914	858	11/22/2004	0500-305.00-04.00-046.000	NATIONAL CITY BANK	EMMEL, KAREN		
M00020984	283	2/19/2005	1 0500-305.00-04.00-046.000	EMMEL, KAREN	NATIONAL CITY BANK	130,000.00	1,275.00
M00021262	787	3/24/2006	1 0500-305.00-04.00-046.000	EMMEL, KAREN	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC / GREENPOINT MORTGAGE FUNDING INC	173,000.00	1,786.50
M00021274	236	4/8/2006	8: 0500-305.00-04.00-046.000	NATIONAL CITY BANK	EMMEL, KAREN		
M00021544	862	6/1/2007	4: 0500-305.00-04.00-046.000	EMMEL, KAREN	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC / AMTRUST BANK	401,250.00	4,182.60
M00021544	863	6/1/2007	4: 0500-305.00-04.00-046.000	EMMEL, KAREN	JPMORGAN CHASE BANK N A	107,000.00	1,093.50
M00021558	480	6/26/2007	0500-305.00-04.00-046.000	ABN AMRO MORTGAGE GROUP INC	EMMEL, KAREN		
M00021563	727	7/6/2007	11 0500-305.00-04.00-046.000	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC / GREENPOINT MORTGAGE FUNDING INC	EMMEL, KAREN		
M00022179	208	3/6/2012	12 0500-305.00-04.00-046.000	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC / ~~AMTRUST BANK~~	<u>RESIDENTIAL CREDIT SOLUTIONS INC</u>		
M00022397	112	9/20/2013	1 0500-305.00-04.00-046.000	<u>RESIDENTIAL CREDIT SOLUTIONS INC</u>	AMTRUST NP SFR VENTURE LLC		



www.mers-servicerid.org

The Mortgage Industry's Utility

2 records matched your search:

MIN: 1001625-0003315178-9 Note Date: 05/10/2007

MIN Status: Inactive

Servicer: Residential Credit Solutions
Fort Worth, TX

Phone: (817) 321-6002

If you are a borrower on this loan, you can [click here](#) to enter additional information and display the Investor name.

MIN: 1000138-0088668249-7 Note Date: 01/19/2006

MIN Status: Inactive

Servicer: GMAC Mortgage, LLC
fort washington, PA

Phone: (800) 766-4622

If you are a borrower on this loan, you can [click here](#) to enter additional information and display the Investor name.

[Return to Search](#)

For more information about Mortgage Electronic Registration Systems, Inc. (MERS) please go to www.mersinc.org

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*New Note DATE
would be July 9, 2010
R.C.S*

*Never Recorded
anywhere?*

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

February 12, 2018

Karen Emmel
200 Marion Street
Sayville, NY 11782

RE: Emmel v. Amturst Bank
No: 17-6686

Dear Ms. Emmel:

The petition for rehearing in the above-entitled case was postmarked February 2, 2018 and received February 6, 2018 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

You must also certify that the petition for rehearing is presented in good faith and not for delay.

Also, the petition exceeds the 15 page limitation set out in Rule 33.2(b).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,
Scott S. Harris, Clerk
By:

M. Blalock
(202) 479-3023

Enclosures