

SUPREME COURT THE STATE OF NEW YORK:
COUNTY OF QUEENS

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WILMINGTON SAVINGS FUND SOCIETY, FSB,
D/B/A CHRISTIANA TRUST AS OWNER TRUSTEE
OF THE RESIDENTIAL CREDIT OPPORTUNITIES
TRUST V,

Plaintiff,

-against-

AMERICA, N.A.; BANK OF
; NEW YORK CITY
DEPARTMENT OF FINANCE PARKING VIOLATIONS
BUREAU; NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD; NEW YORK CITY TRANSIT
ADJUDICATION BUREAU; CAPITAL ONE BANK (USA).
N.A.; UNITED STATES OF AMERICA ON BEHALF
OF THE INTERNAL REVENUE SERVICE; "JOHN DOE"
and "JANE DOE" said names being fictitious, it being the
intention of Plaintiff to designate any and all occupants of
premises being foreclosed herein,

Defendants.

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State of Florida }

County of Broward }

BEFORE ME, the undersigned Notary, Carlos E. Chinchilla, on this the 19th day of December,
2019, personally appeared Dwight Maxwell, known to me, who being by me first duly sworn, on his oath,
deposes and says:

1. My name is Dwight Maxwell. I am a Mortgage Loan Analyst, Certified QuickBooks Pro Advisor, Auditor, and a Consultant. For foreclosure related matters, I specialize in reconciling mortgage accounting payments, validating debt balances, assessing compliance to applicable state and federal mortgage origination and servicing guidelines, chain of title document examination, and facilitating the tracing of mortgage backed securities to determine present ownership of residential mortgage loans.

Index No.

**AFFIDAVIT OF
DWIGHT MAXWELL**

Mortgaged Premises:

Flushing, New York 11365

Block:

Lot:

2. I have a B.S. in Accounting and an MBA with an emphasis in Finance. Additionally, I have 11 years of experience with Ford Motor Company in corporate finance, accounting, auditing, and mergers and acquisitions. I have practiced as a Series 6 Securities licensee and am a licensed loan originator.
3. My NMLS number is 328742, and I am compliant with the latest Federal Continuing Education requirements for RESPA, TILA, ATR, ECOA, MAP, TRID, Fair Lending, Ethics, HPML, Non-Traditional Loans, Reverse Mortgages, UDAAP, Mortgage Backed Securities, etc.
4. I am qualified to understand key laws, statutes, and requirements in various stages of a mortgage loan, including origination, securitization, servicing, and foreclosure. I have extensive experience in examining public land records and the Securities and Exchange Commission databases.
5. I have experience in conducting hundreds of Forensic, Chain of Title, and Securitization Mortgage Reports for attorneys and residential customers. In the course of my work I have reviewed mortgage loan-related documents including TIL disclosures, settlement statements, appraisals, underwriting and processing documents, security instruments, notes, foreclosure filings, allonges, assignments, trust documents such as pooling and servicing agreements, and prospectus supplements.
6. I am over twenty-one years of age and I am prepared to testify under oath in any court of law about the facts and conclusions reported herein.
7. I have no interest in the outcome of any litigation or the mortgaged premises.
8. I personally examined the documents provided to me by _____, son of the borrower, as related to the subject property. The facts set forth in this Affidavit are based on the results of a Chain of Title Examination and Forensic Mortgage Analysis pursuant to an examination of the documents and publicly available records. Also, responses provided by _____ based on questions asked of him relating to the documentation provided to conduct the report and analysis are also included herein.

9. The content of this Affidavit is factual but is provided for informational purposes only and is not to be construed as legal advice or conclusions of law. I reserve the right to alter or amend the report as new information becomes available and to correct any errors or mistakes.
10. The original note was executed on January 26, 2006. The borrower is _____ and the originating lender is America's Wholesale Lender. **See Attached Exhibit A**
11. The Mortgage was executed on the same date. The key parties are the borrower, the originating lender and MERS which is named as nominee for the lender and beneficiary. **See Attached Exhibit B**
12. The Mortgage was assigned by MERS as Nominee for the originating lender to Bank of America, N.A. (BoA), however, it could not be ascertained if the Note was endorsed to BoA by America's Wholesale Lender (or Countrywide Home Loans d/b/a America's Wholesale Lender) because the copy provided was from the original closing and no court filing was provided that included a copy of the original note. **See Attached Exhibit C**
13. After the assignment to BoA, on October 15, 2010, the borrower and her spouse executed a Consolidated Note and Consolidated Mortgage with Bank of America, N.A. **See Attached Exhibit D & E**
14. BoA created a consolidated assignment of the original 1st and 2nd mortgages and transferred them to Federal National Mortgage Association. **See Attached Exhibit F**
15. BoA also endorsed in blank the Consolidated Note that was created as a part of a Consolidation, Extension, and Modification Agreement, making it a bearer instrument. **See Attached Exhibit D**
16. Federal National Mortgage Association then assigned the consolidated mortgage to PROF-2013-S3 Legal Title Trust II, by U.S. Bank National Association, as Legal Title Trustee. **See Attached Exhibit G**
17. Finally, the Consolidated Mortgage was assigned from PROF-2013-S3 Legal Title Trust II, by U.S. Bank National Association, as Legal Title Trustee to Wilmington Savings Fund Society,

FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V.

See Attached Exhibit H

18. America's Wholesale Lender was not registered as New York Corporation at the time the original loan was executed. However, the mortgage clearly states that America's Wholesale Lender was a Corporation under the laws of New York. In the past, Countrywide Home Loans, Inc. would endorse loans originated by America's Wholesale Lender as Countrywide Home Loans, Inc. d/b/a America's Wholesale Lender. This type of endorsement may have been acceptable since Countrywide Home Loans, Inc. has been an active entity in New York since 1969. However, no evidence of this type or any type of Note endorsement to BoA was found.
19. The original Mortgage has been assigned one time to Bank of America, N.A., but as stated above, no evidence was provided that showed the original note was also endorsed to Bank of America, N.A.
- 20.
21. If the original Note was not endorsed to BoA, this could mean that neither Bank of America, N.A. nor its successors had the right to assign the Original Mortgage, execute the Consolidated Note/Mortgage, or initiate any foreclosure action.
22. Foreclosure-related collection activities initiated by debt collectors toward the borrower during the time the original note was separated from the security instrument may have violated FDCPA (15 U.S. Code § 1692e - False or misleading representations) because debt collection activity would have been conducted by parties enforcing the consolidated note that may not be enforceable.

23. With respect to the consolidated loan documents, I reviewed the 1003 application dated October 15, 2010, and it strongly suggests the borrower was not able to repay the consolidated loan at the payments disclosed. **See Attached Exhibit I**

24. The lender appears to have extended the loan to the borrower based on her collateral or credit rather than considering the borrower's current or expected income, current obligations, and employment status to determine whether the borrower is able to make the scheduled payments to repay the obligation. This is a prohibited act or practice under 12 CFR § 226.34 (see 12 CFR § 226.34(a)(4)).

25. The 1003 Application included total gross monthly income of \$3,657.82 and total monthly debt payments of \$8,701.00 while total monthly housing only debt was \$5,139.00. This would render a total debt-to-income ratio (DTI) of approximately 238% and a total housing DTI ratio of 140%. Such high DTIs in the past have clearly been seen as predatory in nature. A better solution for the borrower would have been for the lender to have extended the number of payments on the note from only 10 years and defer some of the principal to ensure the housing DTI was within well publicized industry standards of approximately 31% as required in the Home Affordable Modification Program (HAMP) since 2009.

26. During the time of the note consolidation, there was ample press about the abuses borrowers were experiencing at the hands of lenders utilizing predatory lending practices. BoA should have taken this into account when originating this consolidated loan.

27. Regarding the validation of the debt and the confirmation of payments, the servicer/lender was asked for a complete payment history which would include the very first payment to the last recorded payment applied to the subject account. This is extremely important to help determine if the balances in the default notices were correct. It is also important in determining if the servicer properly accounted for every payment and did not misapply any payment to the subject account. The borrower and/or her representatives were told on more than one occasion that a complete payment history could

not be provided. RESPA or Regulation X (12 CFR Part 1024.40 Continuity of Contact) requires that the servicer provide a “complete” payment history in a timely manner (See §1024.40(b)(2)(i)).

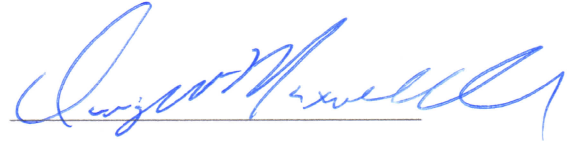
28. While reconciling mortgage statements and default notice balances, I regularly have made direct or indirect requests both verbally and/or in writing to servicers of the subject loans I am auditing.

This is because it is not possible for a statement or default balance to be fully validated without a complete payment history of the account. The following are some legitimate reasons as to why a complete history is needed:

29. If the default amount is not valid, it could be argued that the lender failed to fully comply with Paragraph 22 of the Mortgage or Consolidated Mortgage by sending a “default notice” that contained a material misstatement of amounts owed due to a misapplication of payments or other servicing error(s). RESPA entitles borrowers to a complete payment history so that the history and balances associated with the history can be validated. By the lender violating this requirement it deprives the borrower from fully validating the debt on the default notice. **See Attached Exhibit B & E.**

Further, Affiant sayeth not.

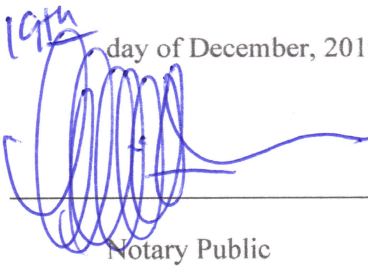
Dated: December 19, 2019



Dwight Maxwell

Sworn to me on this

19th day of December, 2019



Notary Public

