

ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO, ex rel. MICHAEL
DEWINE, ATTORNEY GENERAL, et al.

Petitioners,

v.

GMAC MORTGAGE, LLC, et al.

Respondents.

: Case No. 2011-0890
:
:
: On Review of Certified Questions from
:
: the United States District Court for the
:
: Northern District of Ohio
:
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: U.S. District Court Case Nos.
:
: No. 3:10-cv-02537, 1:10-cv-02709
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**MERIT BRIEF OF PETITIONER
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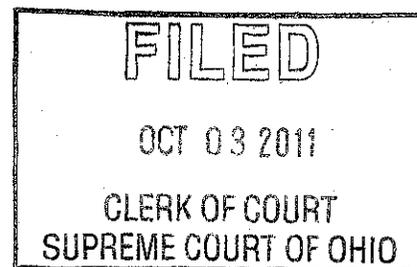
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INTRODUCTION

As one of the nation's largest mortgage servicers, GMAC Mortgage, LLC ("GMAC") plays a central role in the lives of thousands of Ohioans. In today's market, lenders often sell "servicing rights" over residential mortgage loans to companies like GMAC. For a comfortable fee, GMAC does all the face-to-face work—communicating with the homeowners, collecting their mortgage payments, managing their accounts, and negotiating over fees and interest rates. And when the homeowner falls behind in his payments, GMAC initiates foreclosure proceedings. As part of this enterprise, GMAC employed "robosigners" over the past several years to prepare foreclosure affidavits, exhibits, and mortgage assignments. These employees drafted thousands of documents each month, attesting that GMAC had custody of a particular mortgage note, that the homeowner was in default, that GMAC had issued all required notices, and that the homeowner still owed a certain principal on the note. And they executed these documents "under oath" on the basis of "personal knowledge."

This was all a charade. GMAC's employees did not bother to verify any of the attested-to facts or review the accuracy of the documents. One employee, Jeffrey Stephan, signed thousands of affidavits without personal knowledge of their contents. He failed to verify any facts about the identity of the mortgage holder, the conduct of the homeowner, or the validity of the required notices. In some cases, Stephen failed to even read the affidavit or review the attached exhibits.

Stated simply, employees like Stephan performed one robotic task—they affixed their signature to documents. GMAC then submitted these documents to homeowners and trial courts in numerous foreclosure cases, and ultimately, secured judgments that uprooted countless Ohio families from their homes.

Two federal courts have now asked this Court to confirm whether the Ohio Consumer Sales Practices Act (“CSPA”)—which imposes liability on any “supplier” who commits an unfair, deceptive, or unconscionable act “in connection with a consumer transaction”—covers mortgage servicers like GMAC.

The answer is “yes.” First, mortgage servicing is a “consumer transaction.” It is “a service . . . to an individual for purposes that are primarily personal, family, or household.” R.C. 1345.01(A). Second, GMAC is a “supplier.” The company is “engaged in the business of effecting . . . consumer transactions.” R.C. 1345.01(C). Third, the Attorney General has alleged unfair, deceptive, and unconscionable conduct: In connection with its mortgage servicing business, GMAC used false and fraudulent affidavits in litigation to evict its customers from their homes. R.C. 1345.02, 1345.03, 1345.031.

As they have done before, GMAC and its amici will deluge this Court with a stream of irrelevant citations and legislative history—all in an attempt to twist the CSPA’s simple and straightforward language. And they will stretch the statute’s narrow exemptions into expansive canyons—transforming the CSPA from a vital consumer protection tool into an endless maze that excuses their fraudulent conduct.

The Court should pay no heed to those distractions. The CSPA means what it says: Any supplier engaging in consumer transactions has a duty to avoid unfair, deceptive, and unconscionable conduct. The alleged practice in this case—GMAC’s preparation and use of false and fraudulent affidavits against its own customers—falls well below that standard.

Whether the Attorney General can substantiate this claim at trial is an issue for another day. The narrow question for this Court is whether aggrieved Ohio homeowners are even entitled to a day in court. They are. The CSPA applies to mortgage servicers like GMAC.

STATEMENT OF THE CASE AND FACTS

A. GMAC services thousands of residential mortgages in Ohio.

GMAC services residential mortgage loans in Ohio and many other states. As part of its business, GMAC also initiates foreclosure actions in state courts when homeowners default on their monthly payments. See Amended Complaint ¶ 4, *State v. GMAC*, No. 3:10-cv-2537 (N.D. Ohio Dec. 3, 2010) (“Compl.”) (attached as Apx. A).

In some cases, GMAC holds the homeowner’s mortgage—the promissory note (the loan) and the security interest in the homeowner’s property. GMAC then acts as “the servicer” of these loans, “collecting payments . . . from consumer borrowers and applying them as required by the applicable documents; communicating with the consumer borrowers about insurance and tax payments the consumer borrowers allegedly owe; negotiating with the consumer borrowers over late fees, other fees and loan modifications; initiating and pursuing foreclosure proceedings against consumer borrowers; obtaining affidavits and assignments of mortgage to pursue; and selling properties of the consumer borrowers that have been foreclosed upon.” *Id.* ¶ 10.

In other cases, GMAC acts as “the servicer or sub-servicer for a trustee,” who holds the mortgage in a trust for investors. *Id.* ¶ 11. GMAC services these mortgages in the same fashion—collecting payments, communicating with borrowers, negotiating with borrowers, pursuing foreclosure proceedings, obtaining affidavits and assignments, and selling foreclosed properties. *Id.* ¶ 12.

When a homeowner defaults on his mortgage payments, GMAC initiates a foreclosure action in state court, seeking transfer of the title to the mortgaged property. As part of that proceeding, GMAC submits affidavits showing that (1) GMAC has custody of, or is the loan-servicing agent for, the disputed note and the mortgage; (2) the note and mortgage are in default because the homeowner failed to make required monthly payments; (3) the property owner failed

to cure the default; and (4) GMAC provided adequate notice to the homeowner. See *id.*, Ex. A & B. Occasionally, GMAC must prepare additional documents (“Assignments of Mortgage”) to establish the identity of the owner for the mortgage and note. *Id.* ¶ 19.

GMAC’s affidavits and documents constitute “essential material proof” of its allegations, *id.* ¶ 15, and courts rely on those affidavits during the foreclosure proceeding, *id.* ¶ 29.

B. GMAC prosecuted foreclosure actions in Ohio with false and improper affidavits.

In the past two years, GMAC submitted hundreds of foreclosure affidavits to courts in Ohio and elsewhere. *Id.* ¶ 26. Jeffrey Stephan, a “limited signing officer” in GMAC’s foreclosure department, signed each of these affidavits “on the basis of personal knowledge” after “being duly sworn according to law.” See *id.*, Ex. A & B.

In 2009, parties in foreclosure litigation in Florida deposed Stephan about his affidavits. Stephan indicated that he signed “approximately 10,000 affidavits and assignments” each month. *Id.* ¶ 23. He further stated “that he did not sign the affidavits based on his personal knowledge,” and “that his team did not verify the accuracy of the information.” *Id.* ¶ 24. Of particular note, Stephan signed affidavits without “ascertain[ing] who the current promissory note-holder was,” and executed Assignments of Mortgage “even though he did not have the authority . . . to assign a note to any party.” *Id.* ¶¶ 25, 27. Finally, Stephan admitted that he “signed hundreds of affidavits outside the presence of a notary public.” *Id.* ¶ 29.

In 2010, Stephan repeated these admissions in foreclosure litigation in Maine. He disclosed that “he signed the affidavits outside the presence of a notary,” that he did “not inspect any exhibits attached to” his affidavits, that “he did not read every paragraph of the summary judgment affidavits he signed,” and that his conduct was “in accordance with the policies and procedures required . . . by GMAC Mortgage.” *Id.* ¶ 39.

During this period, Stephen executed, and GMAC filed, similar affidavits in a number of Ohio courts, giving the Attorney General reasonable cause to believe that GMAC was using the same fraudulent practices to foreclose on residential property in Ohio.¹ *Id.* ¶¶ 26, 27, 41, 48. The Attorney General also alleges that Stephen falsely executed Assignments of Mortgage on GMAC's behalf, and that his affidavits falsely represented that GMAC complied with Federal Housing Administration and Veterans Administration rules before initiating foreclosure actions. *Id.* ¶¶ 20, 28.

C. The Attorney General sued GMAC for violations of the Ohio Consumer Sales Practices Act and common law fraud.

The Attorney General filed suit in the Lucas County Court of Common Pleas, alleging that GMAC and Stephan violated the Ohio Consumer Sales Practices Act, R.C. 1345.02, 1345.03, and 1345.031, by committing unfair, deceptive, and unconscionable acts against Ohio consumers. Compl. ¶¶ 56-57. The Attorney General also alleged common law fraud, asserting that GMAC and Stephan intentionally misled trial courts and opposing parties in foreclosure proceedings. *Id.* ¶¶ 60-63.

The Attorney General requested injunctive relief, monetary damages, and civil penalties. GMAC removed the case to the United States District Court for the Northern District of Ohio. The district court then consolidated this action with *Blank v. GMAC Mortgage* (N.D. Ohio), No. 1:10-cv-2709, where a group of homeowners and former homeowners sued GMAC under similar statutory and common law theories.

¹ Indeed, several common pleas courts ordered mortgage servicer attorneys (over their strong objections) to certify the content of similar affidavits under threat of Civ. R. 11 sanctions. See Complaint in Prohibition, *Sassano v. Honorable John F. Bender*, No. 2010-2239 (dismissed Apr. 6, 2011). Such steps were necessary, the trial courts said, because “many documents submitted in residential foreclosures have not been properly authenticated” and “additional safeguards are necessary to protect the validity of any judgment that might ensue.” Aff. of David Cliffe, Ex. A, *Sassano v. Bender*, No. 2010-2239 (filed Dec. 23, 2010).

Once in federal court, GMAC filed a motion to dismiss, asserting that the Attorney General failed to state a claim under the CSPA. In particular, GMAC argued that the Attorney General failed to allege the existence of a “consumer transaction” or a “supplier.”

Finding “no controlling precedent on this issue,” the district court certified three questions to this Court under S. Ct. Prac. R. 18: (1) “Does the servicing of a borrower’s residential mortgage loan constitute a ‘consumer transaction’ as defined in the Ohio Consumer Sales Practices Act, R.C. § 1345.01(A)?”; (2) “Does the prosecution of a foreclosure action by a mortgage servicer constitute a ‘consumer transaction’ as defined in the Ohio Consumer Sales Practices Act, R.C. § 1345.01(A)?”; and (3) “Is an entity that services a residential mortgage loan, and prosecutes a foreclosure action, a ‘supplier... engaged in the business of effecting or soliciting consumer transactions’ as defined in the Ohio Consumer Sales Practices Act, R.C. § 1345.01(C)?” Certification Order, at 2, *State of Ohio v. GMAC Mortgage, LLC*, No. 2011-0890 (filed May 24, 2011) (attached as Apx. B).²

This Court accepted review of the certified questions. It also accepted certified questions in a related case, *Anderson v. Barclays Capital Real Estate, Inc.*, No. 2011-0908, and stayed briefing pending resolution of this matter.

ARGUMENT

Under the CSPA, no “supplier” shall commit an unfair, deceptive, or unconscionable act “in connection” with a consumer transaction. R.C. 1345.02(A), 1345.03(A), 1345.031(A). This litigation fits squarely within that statute: (1) the servicing of residential mortgages is a “consumer transaction”; (2) GMAC is a “supplier” of such transactions; and (3) the filing of

² The Attorney General’s common law claim, addressing GMAC’s fraudulent scheme to mislead Ohio trial courts and opposing litigants, is still pending before the federal district court.

false and fraudulent documents against homeowners in foreclosure proceedings was a deceptive and unconscionable act “in connection” with those transactions.

In short, the scope of the CSPA undoubtedly extends to GMAC’s activities as a mortgage servicer.

Ohio Attorney General’s Proposition of Law No. 1:

The servicing of a residential mortgage loan is a “consumer transaction” under the Ohio Consumer Sales Practices Act.

A. Mortgage servicing involves the “transfer of a service” to the homeowner.

A “transfer of . . . a service . . . to an individual for purposes that are primarily personal, family, or household” is a “consumer transaction” under the CSPA. R.C. 1345.01(A). Mortgage servicing easily meets this definition.

First, mortgage servicing is a “service.” GMAC and its competitors perform all sorts of tasks for homeowners: These companies (1) collect payments from homeowners for distribution to the holder of the mortgage note; (2) communicate regularly with homeowners about their loan balance, insurance costs, and tax payments; (3) negotiate with homeowners over late fees and payment plans; (4) work with homeowners to obtain loan modifications; (5) prepare affidavits detailing the homeowners’ accounts and overdue payments; and (6) calculate and report payments and liquidations to all relevant parties (including the homeowner) in the event of foreclosure. See Compl. ¶¶ 10-14. Because GMAC is “perform[ing] . . . labor for the benefit of another,” it is providing a “service.” O.A.C. 109:4-3-01(C)(2); accord American Heritage College Dictionary (3d ed. 1997) 1246 (defining “service” as “[w]ork done for others as an occupation or a business”).

Second, the purpose of mortgage servicing is “personal, family, or household.” GMAC is “servicing *residential* mortgage loans.” Compl. ¶ 9 (emphasis added). When a homeowner

remits a payment to GMAC, confers with one of its agents, or negotiates a payment plan, he plainly does so for “personal and family purposes.” *Id.* ¶ 1.

These allegations are more than sufficient to demonstrate the existence of “consumer transactions” between GMAC and homeowners: Mortgage servicing is a “service” to the homeowner that is “primarily personal, family, or household” in nature. R.C. 1345.01(A).

But the Court need not take the Attorney General’s word for it. The Federal Trade Commission informs homeowners that “[a] mortgage servicer is responsible for the day-to-day management of your mortgage loan account, including collecting and crediting your monthly loan payments, and handling your escrow account The servicer is who you contact if you have questions about your mortgage loan account.” Federal Trade Commission, Mortgage Servicing: Making Sure Your Payments Count (June 2010), available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/real0.shtm>. This “day-to-day management of [the homeowner’s] mortgage loan account” qualifies, in every respect, as a “service” to the homeowner.

GMAC’s own statements also demonstrate that it engages in “consumer transactions” with homeowners—who GMAC considers as “customers.”³ In New Jersey foreclosure litigation, GMAC discussed its “loss mitigation” services—“loan modifications, forbearance, and repayment plans”—and touted its “596,000 workout solutions for its customers nationwide.” See Aff. of Dana Dillard, Senior Vice President of GMAC Mortgage, at ¶¶ 5, 7 (attached to GMAC-Ally Responsive Pleading, *In re Residential Mortgage Foreclosure Pleading and*

³ To be sure, the homeowner does not willingly seek out GMAC as his servicer. Rather, he enters into a mortgage agreement with a lender, and the lender then sells the servicing rights over the mortgage to GMAC. But that fact is irrelevant because “the CSPA does not require privity of contract” between the supplier and the consumer “as a prerequisite to damages.” *Hinckley Roofing, Inc. v. Motz* (9th Dist.), No. 04CA55-M, 2005-Ohio-2404, ¶ 8; accord *Garner v. Borcharding Buick, Inc.* (1st Dist. 1992), 84 Ohio App. 3d 61, 64; *Carter v. Taylor* (4th Dist.), No. 99-CA-10, 1999 Ohio App. Lexis 6097, at *8; *Miner v. Jayco, Inc.* (6th Dist.), No. F-99-1, 1999 Ohio App. Lexis 3944, at *14.

Document Irregularities (filed Jan. 5, 2011)), available at http://www.judiciary.state.nj.us/superior/f_59553_10.htm. As part of these efforts, GMAC “mail[s] out . . . financial packages to its . . . customers,” “meet[s] with our customers face to face in their communities,” and “look[s] for sustainable payment solutions for our struggling homeowners.” *Id.* ¶¶ 11-12. When GMAC performs these activities for its customers, it provides a “service . . . to an individual for purposes that are primarily personal, family, or household.” R.C. 1345.01(A).

The nature of GMAC’s activities, together with the Federal Trade Commission’s advisements and GMAC’s public statements, confirm that the servicing of a residential mortgage loan is a “consumer transaction.”

B. Mortgage servicing does not fall under the “real estate exemption.”

In an effort to defeat this litigation, GMAC has attempted to cloak itself in the “real estate exemption.” See GMAC Prelim. Mem. (June 13, 2011), at 5. That effort is misplaced.

It is true that the CSPA “has no application in a ‘pure’ real estate transaction.” *Brown v. Liberty Clubs, Inc.* (1989), 45 Ohio St. 3d 191, 193. “Real estate is not a ‘consumer transaction’ because it does not fall within the definition of a good, service, franchise or intangible as provided by the statute.” *Elder v. Fischer* (1st Dist. 1998), 129 Ohio App. 3d 209, 216-17.

But it is equally true that this exemption covers only “‘pure’ real estate transaction[s].” *Brown*, 45 Ohio St. 3d at 193. If a “transaction involv[es] both the transfer of personal property or services, and the transfer of real property,” the CSPA “is applicable to the personal property or services portion” of the transaction. *Id.* at 195. In other words, the CSPA applies to any “portion of the[] agreement that involve[s] . . . provision of services,” *DeLutis v. Ashworth Home Builders, Inc.* (9th Dist.), No. 24302, 2009-Ohio-1052, ¶ 14, even if those services are “inextricably intertwined” with “the sale of real estate.” *Brown*, 45 Ohio St. 3d at 194.

Such is the case here: A buyer purchases land from a seller. The buyer then secures a mortgage loan from a lender. Finally, a mortgage servicer like GMAC acquires servicing rights over that loan. Only the first step—the buyer’s purchase of land from the seller—constitutes a “pure real estate transaction” exempted from the CSPA. *Id.* at 194. GMAC is several steps removed from that “pure” transaction: Although “intertwined” with the “sale of real estate,” its servicing of residential mortgage loans “constitute[s] a consumer transaction for the purpose of R.C. 1345.01.” *Id.* at 194-95.

A federal court in Ohio just reached this same conclusion: Mortgage servicing “[i]s not a pure real estate transaction.” *Jent v. BAC Home Loans Servicing, LP* (N.D. Ohio 2011), No. 1:10-cv-783, 2011 U.S. Dist. Lexis 79652, at *10. It “instead . . . involve[s] a provision of servicing and payment collection services, to which the OCSPA applies.” *Id.*

C. None of the statutory exemptions in R.C. 1345.01(A) apply to mortgage servicing.

As a final matter, the CSPA excludes certain conduct from its definition of “consumer transactions.” Of particular note, transactions involving “persons defined in section 5725.01 of the Revised Code”—specifically, financial institutions, dealers in intangibles, and insurance companies—fall outside the statute’s purview.⁴ R.C. 1345.01(A).

None of these exceptions applies here. The federal district court already determined that “GMAC is not an entity defined in R.C. 5725.01.” See Certification Order, at 1 (attached as Apx. B). And for good reason: GMAC is not a “financial institution,” as that term is defined in R.C. 5725.01(A). Nor is GMAC a “dealer in intangibles,” as that term is defined in R.C. 5725.01(B): Its mortgage servicing business does not involve “lending money, or discounting,

⁴ Transactions between individuals and their accountants, attorneys, physicians, dentists, veterinarians, and public utilities are also excluded from the definition of “consumer transactions.” R.C. 1345.01(A).

buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness.”

The CSPA’s language conclusively resolves the central issue in this litigation: Mortgage servicing is “a service . . . to an individual for purposes that are primarily personal, family, or household.” R.C. 1345.01(A). Accordingly, GMAC’s business dealings with its customers constitute “consumer transactions” under the CSPA.

Ohio Attorney General’s Proposition of Law No. II:

A company that offers mortgage servicing to homeowners is a “supplier” under the Ohio Consumer Sales Practices Act.

Only “suppliers” are liable under the CSPA. And a “supplier” refers to a “person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer.” R.C. 1345.01(C). This language is far reaching; the General Assembly “inten[ded] to define ‘supplier’ a[s] . . . people engaged in consumer business transactions.” *Bungard v. Dep’t of Job & Family Servs.* (10th Dist.), No. 07AP-447, 2007-Ohio-6280, ¶ 13.

And this language encompasses mortgage servicers. GMAC “service[s] residential mortgage loans held by individuals residing in Lucas, Cuyahoga, Summit, Montgomery, Franklin and Hamilton Counties, as well as other counties in the State of Ohio.” Compl. ¶ 9. Because GMAC effectuates thousands of consumer transactions with homeowners across the State, it is a “supplier” under the CSPA.

The structure of the CSPA further confirms this interpretation. The General Assembly exempted certain participants in the residential mortgage industry—but not mortgage servicers—from the CSPA. For instance, the law does not classify “assignee[s] or purchaser[s] of the [mortgage] loan for value” as “suppliers.” R.C. 1345.01(C). GMAC has never invoked this

exemption, nor could it. The exemption does not apply to situations where “[t]he violation was committed by the assignee or purchaser.” R.C. 1345.091(A). Because GMAC *itself* committed the deceptive and unconscionable acts against the homeowners, it could not use this exemption to disclaim liability under the CSPA.

That the General Assembly exempted certain mortgage purchasers and assignees, but not mortgage servicers, from the statutory definition of “supplier” is telling: “[I]f a statute specifies one exemption to a general rule,” courts assume that “other exceptions or effects are excluded.” *Thomas v. Freeman* (1997), 79 Ohio St. 3d 221, 224-25 (citation omitted). Because the CSPA expressly exempts some individuals from the definition of “supplier,” the Court must conclude that the legislature intended to reach all other persons engaged in consumer transactions—including mortgage servicers like GMAC.

Both the CSPA’s language and structure could not be more plain: As a “person engaged in the business of effecting . . . consumer transactions,” GMAC is a “supplier.” R.C. 1345.01(C).

Ohio Attorney General’s Proposition of Law No. III:

The prosecution of a foreclosure action is an “act or practice in connection with a consumer transaction” under the Ohio Consumer Sales Practices Act.

Because GMAC is a “supplier” of “consumer transactions,” it is subject to the CSPA. It is therefore liable for any unfair, deceptive, or unconscionable act or practice taken “in connection with” one of its consumer transactions. R.C. 1345.02(A), 1345.03(A), 1345.031(A).

The Attorney General’s complaint alleges such conduct. First, GMAC undertook the alleged acts in connection with consumer transactions. It prepared affidavits, assignments, and other legal documents as part of its mortgage servicing business.

Second, those acts were unfair, deceptive, and unconscionable. GMAC’s agents prepared thousands of affidavits despite having no personal knowledge of, and making no effort to verify,

the attested-to facts. GMAC then deployed those fraudulent documents in an untold number of court proceedings to evict its customers from their homes. This conduct is “deceptive” because it “induc[es] in the mind of the consumer a belief which is not in accord with the facts.” *D&K Roofing, Inc. v. Pleso* (11th Dist. 1991), 77 Ohio App. 3d 181, 184 (citation omitted). And this conduct is “unconscionable” because it “knowingly take[s] advantage of the inability of the consumer reasonably to protect the consumer’s interests.” R.C. 1345.03(B)(1).

The nature of foreclosure litigation underscores this point. “Many homeowners threatened with foreclosure cannot afford an attorney” and, therefore, have little hope of contesting the accuracy of a foreclosure affidavit, assignment, or document. Supreme Court of Ohio, *Statewide Effort Provides Legal Assistance for Homeowners Facing Foreclosure* (Apr. 1, 2008), available at http://www.sconet.state.oh.us/PIO/news/2008/savethedream_040108.asp. For that reason, “the use of the false affidavit [in litigation] [i]s unfair and deceptive in nature.” *Midland Funding LLC v. Brent* (N.D. Ohio 2009), 644 F. Supp. 2d 961, 977. A party who does so “violate[s] the OCSA.” *Id.*

In response, GMAC repeatedly intones that “th[is] litigation-related conduct . . . is not a consumer transaction under the CSPA.” GMAC Prelim. Mem. (June 13, 2011), at 6. That argument misstates the thrust of the Attorney General’s claim. GMAC’s servicing of residential mortgages is the “consumer transaction,” and GMAC’s preparation of false and fraudulent documents is the unfair, deceptive, and unconscionable act “in connection with” that transaction. R.C. 1345.02(A), 1345.03(A), 1345.031(A).

It is beyond dispute that the CSPA imposes liability on a supplier who “continually stalls and evades his legal obligations to consumers.” *Miner v. Jayco, Inc.* (6th Dist.), No. F-99-1, 1999 Ohio App. Lexis 3944, at *20 (citation omitted). GMAC did that here. By preparing false

and fraudulent affidavits, GMAC deceived an untold number of Ohio consumers (not to mention Ohio judges) about the facts underpinning its foreclosure suits. And it did so in connection with its servicing transactions.

* * *

Every element of a CSPA claim is present in this case. The Attorney General has (1) identified a consumer transaction—the servicing of residential mortgages; (2) named a supplier—GMAC; and (3) alleged unfair, deceptive, and unconscionable acts—the preparation of false and fraudulent affidavits—in connection with those transactions. Accordingly, the citizens of Ohio are entitled to their day in court. The Attorney General can proceed with this litigation and attempt to mitigate the damage inflicted on countless Ohioans who, due to sham affidavits, packed up their belongings, moved out of their homes, and upended their families.

CONCLUSION

The Court should answer “yes” to the three certified questions and confirm that, under the CSPA, mortgage servicing is a “consumer transaction,” GMAC is a “supplier,” and the prosecution of a foreclosure case with fraudulent affidavits is an unfair, deceptive, and unconscionable act connected to that transaction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Petitioner Ohio Attorney General

Michael DeWine was served by U.S. mail this 3rd day of October, 2011 upon the following:

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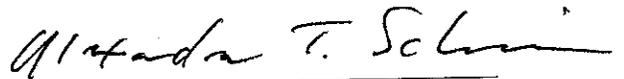
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APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

STATE OF OHIO, ex rel.)
RICHARD CORDRAY)
ATORNEY GENERAL OF OHIO)
30 East Broad Street, 17th Floor)
Columbus, Ohio 423215)

PLAINTIFF)

vs.)

GMAC MORTGAGE, LLC)
c/o Csc-Lawyers Incorporating Service)
50 West Broad St., Suite 1800)
Columbus, Ohio 43215)

and)

JEFFREY STEPHAN)
42 Lenape Drive #L35)
Sellersville, PA 18960)

DEFENDANTS)

CASE NO. 3: 10-cv-02537

**JUDGE ZOUHARY
MAGISTRATE JUDGE KNEPP**

**FIRST AMENDED
COMPLAINT FOR DECLARATORY
RELIEF, PRELIMINARY AND
PERMANENT INJUNCTION,
DAMAGES, CIVIL PENALTIES
AND PUNITIVE DAMAGES**

**JURY DEMAND ENDORSED
HEREON**

INTRODUCTION

1. Plaintiff, State of Ohio, by and through counsel, Ohio Attorney General Richard Cordray (the "Ohio Attorney General"), has reasonable cause to believe Defendants GMAC Mortgage

LLC (“GMAC”) and Jeffrey Stephan (“Stephan”) (GMAC and Stephan collectively the “Defendants”) have committed frauds and unfair, deceptive and unconscionable acts and practices on Ohio consumers and the courts of Ohio through, among other ways, the signing of and causing the filing in Ohio courts of hundreds of false affidavits and assignments of notes. GMAC has been the plaintiff and/or servicer in hundreds of Ohio mortgage foreclosure cases in at least the last two years and in those cases used false affidavits, assignments and other documents to increase its profits at the expense of Ohio consumers and Ohio’s system of justice. GMAC has pursued and pursues these foreclosure cases against individual consumers who have purchased homes, made loan payments on their home loans to the loan servicers and negotiated with their loan servicers, all for their personal and family purposes.

PARTIES

2. The State of Ohio has a sovereign interest in the economic well-being of Ohio residents and in the maintenance of the integrity of Ohio’s judicial system. The Ohio Attorney General is the chief law enforcement officer of the State of Ohio. Through the doctrine of *parens patriae* and through statutory and common law, the Ohio Attorney General has the authority to file suits in the courts of Ohio to enforce the right of the public to: (a) prevent and remedy violations of the Ohio Consumer Sales Practices Act, (b) prevent and remedy fraud against the public interest; and (c) prevent violations of the requirement of the Ohio Constitution that Ohio's courts be open and its citizens have remedy in them by due course of law.

3. Plaintiff brings this action on behalf of the State of Ohio in the public interest under the authority vested in him by the Ohio Consumer Sales Practices Act, Ohio Revised Code §1345.01 *et seq.* and under his authority to enforce common law to stop the fraud caused by Defendants.

4. Defendant GMAC is a Delaware limited liability company licensed to do business in Ohio that acts as (a) the note holder in many foreclosure cases in Ohio and (b) in all cases at issue as the servicer or sub-servicer of the mortgage loans. Pursuing foreclosures are part of GMAC's responsibilities as a servicer or sub-servicer.

5. Defendant Stephan is an individual employee of GMAC and a team leader of mortgage foreclosures for GMAC. GMAC had authority over and the right to control the actions of Stephan and benefited financially from the actions of Stephan. The actions of Stephan were part of the business plans of GMAC.

JURISDICTION AND VENUE

6. The actions of Defendants, hereinafter described, have occurred in Lucas County and other counties in the State of Ohio and, as set forth below, are in violation of the Ohio Consumer Sales Practices Act, R.C. §1345.01 *et seq.* ("CSPA") and the common law.

7. The Defendants removed this case to this Court, and this Court denied Plaintiff's Emergency Motion to Remand.

8. The Defendants conducted activity which gave rise to the claims for relief in several counties in the State of Ohio, including Lucas County - and some of the transactions complained of herein, and out of which the claims for relief arose, occurred in Lucas County.

STATEMENT OF FACTS

9. At all relevant times hereto GMAC and Stephan were "suppliers" as that term is defined in Ohio Revised Code §1345.01(C), as Defendants engaged in the business of effecting

consumer transactions by servicing residential mortgage loans held by individuals residing in Lucas, Cuyahoga, Summit, Montgomery, Franklin and Hamilton Counties, as well as other counties in the State of Ohio, for purposes that were primarily personal, family or household within the meaning specified in Ohio Revised Code §1345.01.

10. In many mortgage foreclosure cases filed in Ohio, GMAC claimed and claims to be the holder of the promissory note and mortgage that form the basis for the foreclosure action, and in these cases GMAC is the plaintiff. Attached as **Exhibit A** are examples of affidavits signed by Defendant Stephan in foreclosure cases in which GMAC is or was the plaintiff. In those cases in which GMAC is the plaintiff, it has also acted as the servicer on the loan, responsible for: collecting payments on the residential mortgage loans from consumer borrowers and applying them as required by the applicable documents; communicating with the consumer borrowers about insurance and tax payments the consumer borrowers allegedly owe; negotiating with the consumer borrowers over late fees, other fees and loan modifications; initiating and pursuing foreclosure proceedings against consumer borrowers; obtaining affidavits and assignments of mortgage to pursue; and selling properties of the consumer borrowers that have been foreclosed upon.

11. In many other Ohio cases, GMAC is not the named plaintiff but is the servicer or sub-servicer for a trustee holding in a "pool" hundreds or even thousands of mortgages for investors in certificates evidencing ownership interests in the securitized mortgage loans (the "trust").

12. As a servicer for the trust, GMAC is responsible for: collecting payments on the mortgage loans from consumer borrowers and applying them as required by the applicable documents; communicating with the consumer borrowers about insurance and tax payments the

borrowers allegedly owe; negotiating with the consumer borrowers over late fees, other fees and loan modifications; initiating and pursuing foreclosure proceedings against consumer borrowers; obtaining affidavits and assignments of mortgage to pursue; and selling properties of the consumer borrowers that have been foreclosed upon. Attached as **Exhibit B** are examples of affidavits signed by Defendant Stephan in Ohio foreclosure cases in which GMAC is or was the servicer or sub-servicer. GMAC's servicing obligations are often set forth in various contracts, commonly referred to as Pooling and Servicing Agreements ("PSA"), between GMAC and the true owner of the underlying residential mortgage loan notes, typically a trust or pool containing thousands of securitized residential mortgage loans.

13. GMAC acted, and is still acting, as a servicer or sub-servicer for trustees in securitized transactions in many Ohio foreclosure cases. In a securitized transaction with a master servicer and sub-servicer, the sub-servicer has primary responsibility for communications with the borrowers and actions taken against the borrower, as the following excerpt from a Prospectus Supplement for a securitized transaction in which GMAC acted as a sub-servicer shows:

Sub-servicers are generally responsible for the following duties:

- communicating with borrowers;
- sending monthly remittance statements to borrowers;
- collecting payments from borrowers;
- recommending a loss mitigation strategy for borrowers who have defaulted on their loans (i.e. repayment plan, modification, foreclosure, etc.);
- accurate and timely accounting, reporting and remittance of the principal and interest portions of monthly installment payments to the master servicer, together with any other sums paid by borrowers that are required to be remitted;

- accurate and timely accounting and administration of escrow and impound accounts, if applicable;
- accurate and timely reporting of negative amortization amounts, if any;
- paying escrows for borrowers, if applicable;
- calculating and reporting payoffs and liquidations;
- maintaining an individual file for each loan; and
- maintaining primary mortgage insurance commitments or certificates if required, and filing any primary mortgage insurance claims.

See Prospectus Supplement dated December 6, 2007 (to prospectus dated April 9, 2007) \$2,538,093 RALI Series 2006-QS6 Trust Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QS6, at <http://www.secinfo.com/d1zj61.u1Da.htm#5npc>.

14. In connection with the servicing of these residential mortgage loans, GMAC accepts, applies, and distributes residential mortgage loan payments made by Ohio residents and, in connection with its servicing activities, prosecutes foreclosure actions against Ohio consumers allegedly in default on their residential mortgage loan payments [hereinafter referred to as "Ohio foreclosures"], said prosecution including the preparation and submission of various affidavits and documents by and at the direction of GMAC to the court hearing the foreclosure matter and to the Ohio consumer.

15. In connection with the prosecution of Ohio foreclosures GMAC submits various affidavits and documents to the Court and Ohio consumers as an essential material proof component of its Ohio foreclosures prosecution, intending that the Court hearing the matter, and the specific Ohio consumer subject to the foreclosure, rely on the veracity and authenticity of the affidavits and documents so submitted.

16. In order to facilitate the mortgage securitization process, when a borrower executes a mortgage, typically that mortgage is either (a) granted to Mortgage Electronic Registration Systems, Inc. ("MERS") or (b) the original mortgage is assigned to MERS. MERS is a corporation created by the mortgage banking industry whose shareholders consist of banks and other financial institutions, including GMAC Residential Funding Corp., an affiliate of GMAC.

17. MERS was created by the mortgage banking industry to streamline the mortgage process and save money by using electronic commerce to eliminate paper and the need to file assignments of mortgage every time a mortgage was transferred in the securitization process or subsequent changes in servicing. MERS claims, "Our mission is to register every mortgage loan in the United States on the MERS® System. Beneficiaries of MERS include mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorders and consumers. MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the nominal mortgagee no matter how many times servicing is traded."

18. Unless MERS is the plaintiff in an Ohio foreclosure case, MERS does not hold the note of a borrower and is not named in the note or any transfer of the note, but simply is named the secured party in the mortgage filed in the local real estate records as the nominee of the note holder.

19. When a trustee of a securitized transaction initiates an Ohio foreclosure action as a plaintiff, the servicer, sub-servicer or its agent is responsible for the preparation of the papers

filed in the Ohio foreclosure action. In the many securitized transactions in which GMAC was or is the servicer or sub-servicer of Ohio mortgage loans, GMAC has been responsible for the preparation of the necessary documents, including an Assignment of Mortgage assigning the mortgage from MERS to the trustee. In some cases MERS gives servicers and sub-servicers the authority to execute Assignments of Mortgages from MERS to the trustee. However, MERS never authorizes services or sub-servicers to execute an Assignment of Mortgage that includes an assignment of a note.

20. In spite of this lack of authority, GMAC, in connection with Ohio foreclosures, has caused Assignments of Mortgage to be prepared and executed by agents of GMAC that improperly purport to assign the note from MERS to the trustee and falsely claim that the GMAC employee executing the Assignment has authority to assign the note on behalf of MERS. Stephan has executed many such improper and false Assignments (see an example attached as **Exhibit C**) that have been filed in Ohio foreclosure cases and that have the purpose of trying to deceive the consumer borrower and courts as to who is the note holder.

GMAC Mortgage Signed and Filed False Affidavits in 2006

21. In May of 2006, the Circuit Court of the Fourth Judicial Circuit in and for Duvall County Florida sanctioned the plaintiff in a mortgage foreclosure case (the "Florida Foreclosure Decision") because an employee of GMAC Mortgage Corporation (a predecessor of GMAC Mortgage), Margie Kwiatanowski, had signed a false affidavit on behalf of the plaintiff. The court said, "Plaintiff, through its servicing entity, GMAC Mortgage Corporation, submitted false testimony to the Court in the form of Affidavits of Indebtedness signed and subscribed by a....'Limited Signing Officer' with GMAC Mortgage Corporation....[who] would attest to review of the relevant loan documents...when in fact...she neither reviewed the referenced

records nor was familiar with the manner in which the records were created by GMAC on behalf of Plaintiff....none of the Affidavits were signed before a Notary.” (see attached **Exhibit D**). The court sanctioned plaintiff in the Florida Foreclosure Decision and ordered GMAC Mortgage Corporation to provide a written confirmation that “affidavits filed in future foreclosure actions in Florida accurately memorialize the actions and conduct of the affiants.”

GMAC Mortgage Continued to File False Affidavits in 2009 and 2010

22. Stephan has been a team leader in the foreclosure department of GMAC for years, including through at least August 2, 2010. Stephan has been an employee of GMAC, or affiliates, for approximately 5 years.

23. In a December 10, 2009 deposition (the “2009 Deposition”) in a Florida state court foreclosure case (the “2009 Florida Case”), Stephan testified that his team brought to him approximately 10,000 affidavits and assignments in a month for him to sign (2009 Deposition, p.7, ls 18-20). Stephan testified that he reported to Margie Kwiatanowski (2009 Deposition, p. 6, ls18-21). This was the individual who signed the false affidavits for the Florida courts in 2006.

24. In spite of the Florida Foreclosure Decision, Stephan testified that he did not sign the affidavits based on his personal knowledge and that he relied on others (2009 Deposition, p. 10, ls 6-15). However, he also testified that his team did not verify the accuracy of the information: “They do not go into the system and verify the information as accurate. We are relying on our attorney network to ensure that they are asking for the correct information.” (2009 Deposition, pp. 12-13, ls 16-25 and 1-4). Stephan knew or should have known that these hundreds of affidavits would be filed in connection with Ohio foreclosures in Ohio courts and relied upon by

Ohio Common Pleas Judges in deciding whether the plaintiff in the particular case had a right to foreclose on Ohio residents.

25. When Stephan executed an affidavit, he testified he did not ascertain who the current promissory note-holder was (2009 Deposition, p. 31, ls. 12-14), even though his affidavits always stated or implied that plaintiff was the holder of the note. The agents of GMAC prepared these affidavits in connection with Ohio foreclosures in order to mislead the courts and consumers in Ohio on such matters as, who kept the applicable records, who the holder of the note was, and the amount due to whoever the holder of the note was.

26. In spite of the Florida Foreclosure Decision and Stephan's lack of personal knowledge, GMAC continued to have Stephan swear in the hundreds of affidavits he signed, apparently in Montgomery County, Pennsylvania, for Ohio foreclosures filed in Ohio courts from at least February 17, 2009 until at least June 30, 2010, falsely stating that "I have personal knowledge of the facts contained in this affidavit," or "personal knowledge of the accounts of said company" or equivalent words (see as examples **Exhibits A and B**). Stephan signed hundreds of these false affidavits, and GMAC caused hundreds of these false affidavits to be filed in hundreds of Ohio foreclosures.

27. Stephan – claiming to be an officer of MERS – signed for many Ohio foreclosure cases Assignments of Mortgage falsely claiming that he assigned a borrower's mortgage and note from MERS to the plaintiff (see attached **Exhibit C**), even though he did not have the authority of MERS to assign a note to any party. Stephan signed on July 20, 2010 the Assignment (purportedly assigning the Mortgage and Note) attached as **Exhibit C** apparently in Montgomery

County, Pennsylvania without authority from the purported assignor, Mortgage Electronic Registration Systems, Inc.

28. Many loans serviced by GMAC are guaranteed by the Federal Housing Administration (FHA) or the Veterans Administration (VA). GMAC disregards the additional obligations, including notice and negotiation, imposed in the loan documents for such loans. The affidavits of GMAC employees, including Stephan, executed in Ohio foreclosures falsely represented that appropriate notice and other steps had been taken to accelerate these loans.

29. Stephan signed hundreds of affidavits outside of the presence of a notary public (2009 Deposition, p. 13, ls. 10-17) and without being sworn. He and his "team" followed the same procedures in Ohio foreclosures that they followed in the Florida foreclosure cases and filed hundreds of false affidavits in Ohio foreclosure cases. Stephan executed the affidavits reasonably expecting that Ohio consumers subject to Ohio foreclosures would be injured, and therefore he had a purpose to cause injury in Ohio. As a result of these affidavits, and in reliance on these affidavits and no admissible evidence, Ohio courts throughout Ohio foreclosed on the houses of Ohio consumers.

30. Stephan was acting within the scope of his employment with GMAC in connection with Ohio foreclosures when he executed the false affidavits, when he executed affidavits outside the presence of notaries public, and when he executed false assignments of note from MERS to plaintiffs in Ohio foreclosure cases.

31. GMAC has outsourced various pieces of the Ohio foreclosure process. For instance, GMAC contracts with Fiserv, Inc. ("Fiserv") to provide such computer services as recording payments received from, and amounts allegedly due, lenders. Fiserv advertises that it is a

“leading global provider of information management and electronic commerce services” which provides “solutions for optimizing all aspects of the payments mix to help create efficiency and growth.”

32. In connection with Ohio foreclosures, and at the direction of GMAC, GMAC employees executed hundreds of false affidavits and purported to enter payments, failures to pay, and other information into computers for the Fiserv system.

33. It is Fiserv that creates and maintains the records and calculates the amounts allegedly due from borrowers.

34. In a June 7, 2010 deposition (the “2010 Deposition”) in a Maine mortgage foreclosure case (the “Maine Mortgage Foreclosure Case”), Stephan testified that he did not have “any knowledge about how GMAC ensures the accuracy of the data entered into the system” (2010 Deposition, p. 30, ls. 10-13).

35. Lender Processing Services, Inc. (“LPS”) provides a separate system that creates documents for GMAC in the foreclosure process and acts as an intermediary between attorneys for GMAC and GMAC in the foreclosure process (2010 Deposition, pp. 35-42 and 56-57).

36. As part of GMAC policy, Stephan did not read every paragraph of the summary judgment affidavits he signed (2010 Deposition, pp. 61-64) that were prepared by LPS. The summary judgment affidavits signed by Stephan contained inaccuracies.

37. GMAC knew or should have known that failure to supervise the accuracy of the input of information into, maintenance of information in, and calculations provided by, the outsourced computer systems and document preparation would lead to errors and inaccuracies that would

violate GMAC's duty to consumers in connection with both its servicing of residential loans in Ohio and related Ohio foreclosures to accurately account for payments received by consumers and payments owed by consumers.

38. GMAC learned of the 2009 Deposition soon after that deposition, but took no corrective action.

39. During the 2010 Deposition, Stephan testified: (a) he signed the affidavits outside of the presence of a notary (p. 56, ls. 10-18); (b) when he signed a summary judgment affidavit he did "not inspect any exhibits attached to it" (p. 54, ls. 12-25); (c) he did not read every paragraph of the summary judgment affidavits he signed (p. 60, ls. 24-25 and p. 62, ls. 1-3); and (d) the process he followed "in signing summary judgment affidavits is in accordance with the policies and procedures required of you by GMAC Mortgage." (p. 64, ls. 8-14).

40. GMAC learned of the 2010 Deposition in June of 2010.

41. On June 25, 2010, GMAC unsuccessfully moved for a protective order in the Maine Mortgage Foreclosure Case to try to prevent disclosure of GMAC's and Stephan's fraudulent scheme outside of Maine because of the "embarrassment" such disclosure would cause. Yet GMAC and Stephan, knowing the execution and filing of such false affidavits and documents were improper, intentionally continued to have Stephan sign such false documents in Ohio foreclosures (see, e.g., pp. 72- 73 of **Exhibit A** and see **Exhibit C**), and Stephan knowingly continued to sign such false documents, to injure the Ohio judicial system and Ohio consumers and cause improper Ohio foreclosure judgments to be granted based on no admissible evidence.

42. By August 3, 2010, counsel for GMAC in Maine was submitting to Maine courts “supplemental affidavits” and was stating that on June 7 “Mr. Stephan testified that although he reviewed and confirmed certain information contained in such affidavits, he did not independently review and verify all of the information contained in the affidavits...and that he did not routinely sign the affidavits in the presence of a notary.” (Exhibit G) Yet on August 2, 2010, GMAC had Stephan sign a false affidavit, and Stephan signed the false affidavit, in Montgomery County, Pennsylvania with intent to deceive the Hamilton County Court of Common Pleas and the defendants in Case No. A 1006915. In that affidavit, Stephan falsely claimed that he was signing the affidavit “on the basis of personal knowledge” and that “the full amount of principal and interest due under the note are now required to be paid,” even though the Note said, at section 6(B), “In many circumstances regulations issued by the Secretary [of Housing and Urban Development] will limit Lender’s rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations.” (Exhibit F).

Sanctions in Maine in 2010

43. The Defendant in the Maine Mortgage Foreclosure moved for sanctions for a false affidavit signed by Stephan and relied upon by the court in granting summary judgment for plaintiff. The Maine court held oral argument on the motion on September 1, 2010.

44. Since the oral argument in the Maine mortgage foreclosure case was held on September 1, 2010, GMAC knew after September 1 that sanctions were imminent.

45. On September 24, the Maine court vacated the grant of summary judgment and also addressed the motion for a protective order that had been filed that would have prohibited the

dissemination of the deposition of Stephan taken in the case. The Maine court said that “Plaintiff points to the embarrassment GMAC and its employees have suffered, and will continue to suffer, from the posting of excerpts from Stephan’s deposition transcript on an Internet blog.” (p. 3 of **Exhibit E**) The Maine court denied the motion for protective order, noting “Stephan’s deposition was taken to advance a legitimate purpose...”

46. The Maine court then granted the motion for sanctions filed by the borrower, awarding to the borrower the borrower’s attorneys fees: “Rather than being an isolated or inadvertent instance of misconduct, the Court finds that GMAC has persisted in its unlawful document signing practices long after and even in the face of the Florida Court’s order, and that such conduct constitutes ‘bad faith’ under Rule 56(g). These documents are submitted to a court with the intent that the court find a homeowner liable to the plaintiff for thousands of dollars and subject to foreclosure on the debtor’s residence. Filing such a document without significant regard for its accuracy, which the court in ordinary circumstances may never be able to investigate or otherwise verify, is a serious and troubling matter.” (p. 5 of **Exhibit E**).

47. In spite of his admissions in his depositions, Jeffrey Stephan is still employed by GMAC, reflecting the fact that his actions were in accordance with GMAC policy.

48. In light of the actions of GMAC and Stephan, the Attorney General of Ohio has reasonable cause to believe that GMAC employees in addition to Stephan have signed false affidavits, assignments of notes and other documents in connection with Ohio foreclosure cases.

49. On September 27, 2010 the Ohio Attorney General sent a letter to the counsel for GMAC expressing concerns over GMAC’s actions and requested that GMAC describe the steps being taken to remedy the problems identified, the steps to alert Ohio courts of the problems, including

Ohio foreclosure cases that had already proceeded to a foreclosure judgment, and the actions to ensure that the problems related to its foreclosure affidavits not re-occur in the future. On September 30, Plaintiff requested that GMAC agree not to proceed towards a judgment, sale, eviction, or transfer of any property in Ohio until there was agreement that proper remedial action had been taken.

50. GMAC claims that they will review the affidavits signed by Stephan and other GMAC employees since July of 2009 in connection with Ohio foreclosures, but not affidavits signed before July of 2009. GMAC did not indicate it would review any Assignments executed by Stephan in connection with Ohio foreclosures, even though they were improperly prepared and executed.

51. GMAC said they would substitute new affidavits for improper affidavits in connection with Ohio foreclosures, without any assurance of which affidavits they would consider improper and while still asserting they would rely on their outsourced system for the calculation of amounts allegedly due. GMAC has not explained how it planned to determine from its review of outsourced computer records who the holder of the note and mortgage was in any particular case, which of necessity must involve a review of the actual note, mortgage and any assignments or endorsements.

52. GMAC has refused to halt pursuing Ohio mortgage foreclosures or vacate Ohio foreclosure judgments based on false affidavits while its "review" is proceeding, even though that will mean more cases will proceed to a foreclosure judgment based on improper affidavits and assignments of notes and more Ohio consumers will suffer.

53. Because of GMAC's improper foreclosures, Ohio consumers have been required to upend their families and move to other locations, not only causing them to spend money they could not afford to spend but disrupting their family life, at least prematurely and sometimes unnecessarily altogether. If GMAC and its employees had followed the procedures, including requirements of additional notice and negotiating with consumers, incorporated into many loan documents (for instance, FHA and VA loans), more Ohio consumers would have been able to remain in their homes.

54. In Ohio, foreclosures hurt the entire community, not just the consumer in foreclosure. In addition to the loss of the value in the house being foreclosed upon, houses in proximity to foreclosed properties, particularly vacant and abandoned properties, see their property values also decline. This overall decline in property values leads to diminished neighborhood and community health through destabilization of neighborhood economic and social conditions and through the destabilization of local and state government fiscal conditions by increasing cost burdens on decreasing revenues. See studies on the neighborhood impact of foreclosure, attached as composite **Exhibit H**.

FIRST CAUSE OF ACTION

Violations of the Ohio Consumer Sales Practices Act

55. Plaintiff State incorporates by reference as if completely rewritten herein, the allegations set forth in paragraphs 1-54 of this First Amended Complaint.

56. Defendant GMAC has engaged in a pattern and practice of unfair, deceptive, and unconscionable acts in violation of Ohio Revised Code §§1345.02, 1345.03 and/or 1345.031 in connection with Ohio foreclosures by authorizing and directing the filing of affidavits,

assignments and other documents that were false and by proceeding to foreclosure judgments in spite of the false affidavits, assignments and other documents, and causing Ohio consumers to have their most important personal investment – their homes – improperly taken from them in foreclosure proceedings in which no admissible evidence was presented to the Court.

57. Defendant Stephan has engaged in a pattern and practice of unfair, deceptive, and unconscionable acts in violation of Ohio Revised Code §§1345.02, 1345.03 and/or 1345.031 in connection with Ohio foreclosures by executing and causing the filing in Ohio courts of affidavits, assignments and other documents that were false, and causing Ohio consumers to have their most important personal investment – their homes – improperly taken from them in foreclosure proceedings in which no admissible evidence was presented to the Court

58. Such acts and practices have been previously determined by a court in Ohio to violate the Consumer Sales Practices Act, R.C. §1345.01 *et seq.* Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. §1345.05(A)(3).

SECOND CAUSE OF ACTION

Common Law Fraud

59. Plaintiff incorporates by reference as if completely rewritten herein, the allegations set forth in paragraphs 1-58 of this First Amended Complaint.

60. Stephan signed affidavits and other documents in Ohio foreclosure cases (a) which contained representations, (b) which were material to the foreclosure proceedings, (c) some of which were made with knowledge of their falsity and others which were made with utter disregard for whether they were true or false, (d) which were made with the intent of misleading

the courts and opposing parties (Ohio consumers and, in the cases in which the consumers were represented by counsel, their counsel) into relying upon them, and (e) on which the courts and the opposing parties justifiably relied.

61. Through its agent Stephan and perhaps others, GMAC (a) made representations in Ohio foreclosure cases (b) which were material to the foreclosure proceedings, (c) which were made with knowledge of their falsity or with utter disregard for whether they were true or false, (d) which were made with the intent of misleading the courts and opposing parties (Ohio consumers and, in the cases in which the consumers were represented by counsel, their counsel) into relying upon them, and (e) on which the courts and the opposing parties justifiably relied.

62. GMAC intentionally continued its fraudulent scheme in Ohio after the Florida Foreclosure Decision, after the 2009 deposition of Stephan and after the 2010 deposition of Stephan to save money at the expense of accuracy and with utter disregard for the harm to Ohio consumers and the Ohio judicial system.

63. The false representations of Defendants proximately resulted in injury to our judicial system and in the specific foreclosure proceedings in which false affidavits signed by Stephan and perhaps others were filed, resulted in injury to the consumer borrowers in those cases, Ohio consumers who purchased their homes, made payments on their home loans to loan servicers and negotiated with their loan servicers to try to save their homes. The system of justice in Ohio and Ohio consumer borrowers have suffered, and are suffering irreparable injury, by the actions of Defendants, and there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. ISSUE a preliminary and permanent injunction, pursuant to O.R.C. §1345.07(A)(2), enjoining GMAC (doing business under any name, their agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association):

1. From proceeding to foreclose in any pending Ohio foreclosure case or permit the sale of the related property unless and until Defendants file a certification with this Court and with Plaintiff that Defendants have complied with paragraphs A2, A3 and B;
2. To file motions to withdraw any motion for summary judgment or motion for default judgment in any pending Ohio foreclosure case that has an affidavit or assignment signed by Stephan and to provide at the time of filing copies of such motions to Plaintiff ;
3. To file motions to stay the sale of any property and to vacate any foreclosure judgment obtained in any Ohio case in which the property has not yet been sold and in which Stephan signed any affidavit or assignment and to provide at the time of filing copies of such motions to Plaintiff; and
4. From submitting any affidavit in the future in any mortgage foreclosure case that does not comply with Rule 56(E) of the Ohio Rules of Civil Procedure;

B. Issue a permanent injunction, pursuant to O.R.C. §1345.07(A)(2), enjoining GMAC (doing business under any name, their agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association) to institute and follow written procedures – first submitted to Plaintiff and then approved by this Court - so that in the future:

1. No Defendant or representative of Defendants will sign an affidavit saying s/he has personal knowledge of the facts or applicable business records if s/he does not have personal knowledge of the facts, and no Defendant or representative of the Defendants will sign an affidavit without reading each sentence in the affidavit and each attachment to the affidavit; and

2. To the extent a Defendant or representative of Defendant executes an affidavit relying in part on business records (including computer records) rather than personal knowledge of the facts in the business records, there will be a written record establishing the reliability of those records that complies with Rule 56(E) of the Ohio Rules of Civil Procedure and about which the affiant is qualified to testify.

C. (1) Appoint a referee, pursuant to O.R.C. §1345.07(B) to be paid by GMAC (2) Order GMAC to file reports with the referee and Plaintiff every three months for two years that show the actions GMAC has taken to comply with the Orders of the Court in this case, and (3) directing the referee to respond to this Court on whether GMAC has complied with the Orders of this Court;

- D. ENJOINING Defendants and their representatives (doing business under any name, their agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association) from executing any assignment that purports to assign a note on behalf of MERS;
- E. DECLARE, pursuant to O.R.C. §1345.07(A)(1), that the following acts, each time they occurred, violated the Ohio Consumer Sales Practices Act, R.C. §§1345.02 , 1345.03 and 1345.031: (1) each affidavit that claimed the affiant had personal knowledge when the affiant did not have personal knowledge and (2) each assignment that purported to assign a note on behalf of MERS;
- F. ORDER GMAC pursuant to O.R.C. §1345.07(B), to pay actual and non-economic damages to all consumers injured by the conduct of the Defendants, including any consumers who were foreclosed upon in an Ohio case in which there was a Stephan affidavit that was not withdrawn pursuant to paragraph A above;
- G. ASSESS, FINE and IMPOSE upon GMAC a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to O.R.C. §1345.07(D);
- H. AWARD Plaintiff punitive damages in an amount to be determined by the Court;
- I. ORDER GMAC liable for all monetary amounts awarded herein;

- I. ORDER GMAC, pursuant to Count II, to pay the Plaintiff its attorney fees, court costs incurred in the prosecution of this action, other litigation expenses including the expenses associated with retaining experts, and any other relief the Court deems appropriate;
- K. ORDER GMAC to pay all court costs associated with this matter; and
- L. GRANT such other relief as the court deems to be just, equitable and appropriate;

Respectfully submitted

RICHARD CORDRAY
Ohio Attorney General

/s/ Susan A. Choe

Susan A. Choe (0067032)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, OH 443215
614.466.1305
614.466.8898 (fax)
Susan.Choe@ohioattorneygeneral.gov

/s/ Douglas L. Rogers

Douglas L. Rogers (0008125)
Special Counsel to the Attorney General of Ohio
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
614.466.1305
614.466.8898 (fax)
Douglas.Rogers@ohioattorneygeneral.gov
Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff State of Ohio ex rel. Ohio Attorney General Richard Cordray demands a trial by jury in this action.

Respectfully submitted

RICHARD CORDRAY
Ohio Attorney General

/s/ Susan A. Choe
Susan A. Choe (0067032)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, OH 443215
614.466.1305
614.466.8898 (fax)
Susan.Choe@ohioattorneygeneral.gov

/s/ Douglas L. Rogers
Douglas L. Rogers (0008125)
Special Counsel to the Attorney General of Ohio
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
614.466.1305
614.466.8898 (fax)
Douglas.Rogers@ohioattorneygeneral.gov
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2010 a true and correct copy of the foregoing First Amended Complaint was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served via Regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Susan A. Choe
Susan A. Choe (0067032)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, OH 443215
614.466.1305
614.466.8898 (fax)
Susan.Choe@ohioattorneygeneral.gov

Mortgage that are the subject of this foreclosure action.

3. [redacted] signed the promissory note and thus promised, among other things, to make monthly payments on or before the date such payments were due.
4. Plaintiff is entitled to enforce the mortgage on the property commonly known as 1019 Eton Road, Toledo, OH 43615, parcel no. 2026354. The legal description of the Property is referenced in the Complaint.
5. The note and mortgage are in default because monthly payments have not been made.
6. A written notice of default was given in accordance with the terms of the note and mortgage. The default was not cured, and thus the sums due under the note were accelerated. As a result, the full amount of principal and interest due under the note are now required to be paid. Also required to be paid are all costs and expenses incurred in enforcing the note to the extent that the payment of such amounts is not prohibited by Ohio law.
7. Plaintiff is due on the Note principal in the amount of \$135,939.95 plus interest on the unpaid principal at the rate of 6.5% from December 1, 2008. Late charges, advances made for the payment of taxes, assessments, and insurance premiums, and expenses incurred for the enforcement of the note and mortgage may also be due, to the extent that the payment of such amounts is not prohibited by Ohio law. If necessary, the final amount of some or all of these items will be established at a later date.
8. To the best of Affiant's knowledge, [redacted] are not minors, incompetent or in the Military Service, as such term is defined in Section 101 (2) of the Servicemembers Civil Relief Act, as amended, which amended the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 501. Attached hereto as Exhibit C is a

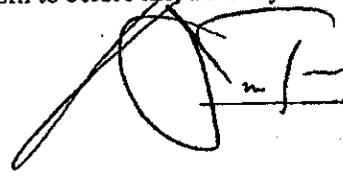
SECRET

document obtained from the web site of the Department of Defense Manpower Data
Center reflecting that _____ are not on Active Duty
Military status.



-- Affiant **Jeffrey Stephan**
Limited Signing Officer

Subscribed and sworn to before me, a Notary Public, this 29 day of May
2009.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Susan Turner, Notary Public
Upper Dublin Twp., Montgomery County
My Commission Expires Nov. 9, 2011
Member, Pennsylvania Association of Notaries

SCANNED

FILED
LUCAS COUNTY

2010 MAY -6 A 10:59

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

GMAC Mortgage, LLC

Plaintiff,

vs.

Defendants.

STATE OF

PA)

) SS

COUNTY OF

Montgomery

Case No. CI10-2992

Judge Ruth Ann Franks

AFFIDAVIT REGARDING
ACCOUNT AND MILITARY
STATUS

Jeffrey Stephan

~~Limited Signing Officer~~

("Affiant"), being first duly sworn according to law,

deposes and says on the basis of personal knowledge:

1. Affiant is an employee of GMAC Mortgage, LLC, (the "Plaintiff") and is competent to testify to the matters stated in this Affidavit. GMAC Mortgage, LLC has custody of, and maintains records related to, the promissory note and mortgage that are the subject of this foreclosure action.

2. Attached hereto as Exhibits A and B are true and accurate copies of the original Note and Mortgage that are the subject of this foreclosure action.
3. [REDACTED] signed the promissory note and thus promised, among other things, to make monthly payments on or before the date such payments were due.
4. Plaintiff is entitled to enforce the mortgage on the property commonly known as 5649 Winona Drive, Toledo, OH 43613, parcel no. 23-04034. The legal description of the Property is referenced in the Complaint.
5. The note and mortgage are in default because monthly payments have not been made.
6. A written notice of default was given in accordance with the terms of the note and mortgage. The default was not cured, and thus the sums due under the note were accelerated. As a result, the full amount of principal and interest due under the note are now required to be paid. Also required to be paid are all costs and expenses incurred in enforcing the note to the extent that the payment of such amounts is not prohibited by Ohio law.
7. Plaintiff is due on the Note principal in the amount of \$105,542.68 plus interest on the unpaid principal at the rate of 5.75% from October 1, 2009. Late charges, advances made for the payment of taxes, assessments, and insurance premiums, and expenses incurred for the enforcement of the note and mortgage may also be due, to the extent that the payment of such amounts is not prohibited by Ohio law. If necessary, the final amount of some or all of these items will be established at a later date.
8. To the best of Affiant's knowledge, Richard W Funk is not in the Military Service, as such term is defined in Section 101 (2) of the Servicemembers Civil Relief Act, as amended, which amended the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.

SECRET

App. § 501. Attached hereto as Exhibit C is a document obtained from the web site of
the Department of Defense Manpower Data Center reflecting ...ot
on Active Duty Military status.

~~Jeffrey Stephan~~
-- Affiant Limited Signing Officer

Subscribed and sworn before me, a Notary Public, this 5 day of Apr, 2010.

Heather Reinhart
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Heather Reinhart, Notary Public
Upper Dublin Twp., Montgomery County
My Commission Expires Sept. 9, 2013
Member, Pennsylvania Association of Notaries

COPY

DANIEL M. HOPRIGAN

2009 APR -7 PM 3: 17

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>GMAC Mortgage, LLC</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. <u>2009-02-1371</u></p> <p>Judge _____</p> <p style="text-align: center;"><u>AFFIDAVIT REGARDING ACCOUNT AND COMPETENCY AND MILITARY STATUS</u></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

STATE OF	<i>pa</i>)	
	Montgomery)	SS
COUNTY OF)	

Jeffrey Stephan
Limited Signing Officer (Affiant), being first duly sworn according to law,

deposes and says on the basis of personal knowledge:

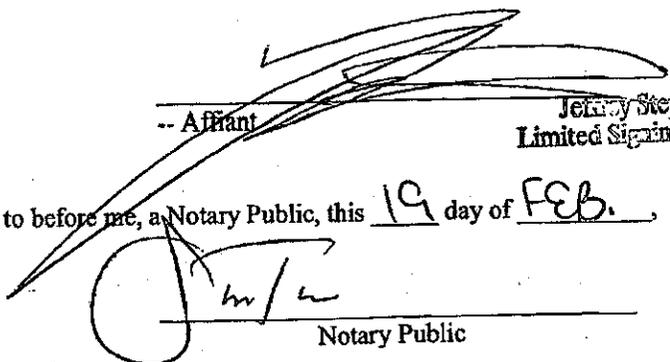
1. Affiant is an employee of GMAC Mortgage, LLC, (the "Plaintiff") and is competent to testify to the matters stated in this Affidavit. GMAC Mortgage, LLC has custody of, and maintains records related to, the promissory note and mortgage that are the subject of this foreclosure action.

2. Attached to the Complaint as Exhibits A and B are true and accurate copies of the original Note and Mortgage that are the subject of this foreclosure action.
3. [redacted] signed the promissory note and thus promised, among other things, to make monthly payments on or before the date such payments were due.
4. Plaintiff is entitled to enforce the mortgage on the property commonly known as 231 Wadsworth Avenue, Cuyahoga Falls, OH 44221, parcel no. 02-11803. The legal description of the Property is referenced in the Complaint.
5. The note and mortgage are in default because monthly payments have not been made.
6. A written notice of default was given in accordance with the terms of the note and mortgage. The default was not cured, and thus the sums due under the note were accelerated. As a result, the full amount of principal and interest due under the note are now required to be paid. Also required to be paid are all costs and expenses incurred in enforcing the note to the extent that the payment of such amounts is not prohibited by Ohio law.
7. Plaintiff is due on the Note principal in the amount of \$84,198.48 plus interest on the unpaid principal at the rate of 5.875% from July 1, 2008. Late charges, advances made for the payment of taxes, assessments, and insurance premiums, and expenses incurred for the enforcement of the note and mortgage may also be due, to the extent that the payment of such amounts is not prohibited by Ohio law. If necessary, the final amount of some or all of these items will be established at a later date.
8. To the best of Affiant's knowledge, [redacted] are not minors, incompetent or in the Military Service, as such term is defined in Section 101 (2) of the

COPY

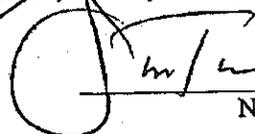
Servicemembers Civil Relief Act, as amended, which amended the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 501. Attached hereto as Exhibit A is a document obtained from the web site of the Department of Defense Manpower Data Center reflecting that _____ are not on Active Duty Military status.

-- Affiant


Jeffrey Stephan
Limited Signing Officer

2009.

Subscribed and sworn to before me, a Notary Public, this 19 day of FEB.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Susan Turner, Notary Public
Upper Dublin Twp., Montgomery County
My Commission Expires Nov. 9, 2011
Member, Pennsylvania Association of Notaries

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

GMAC Mortgage LLC

Plaintiff,

vs.

et al.

Defendants.

STATE OF PA)
COUNTY OF Montgomery) SS

Case No. 2009 cv 10548

Judge Frances E McGee

AFFIDAVIT REGARDING
ACCOUNT AND MILITARY
STATUS

Jeffrey Stephen ("Affiant"), being first duly sworn according to law,
deposes and says on the basis of personal knowledge:

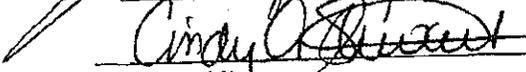
1. Affiant is an employee of GMAC Mortgage LLC (the "Plaintiff") and is competent to testify to the matters stated in this Affidavit. The Plaintiff has custody of, and maintains records related to, the promissory note and mortgage that are the subject of this foreclosure action.

2. Attached hereto as Exhibits A and B are true and accurate copies of the original Note and Mortgage that are the subject of this foreclosure action.
3. [redacted] signed the promissory note and thus promised, among other things, to make monthly payments on or before the date such payments were due.
4. Plaintiff is entitled to enforce the mortgage on the property commonly known as 817 Macmillan Drive, Trotwood, OH 45426, parcel no. H33 00112 0004. The legal description of the Property is referenced in the Complaint.
5. The note and mortgage are in default because monthly payments have not been made.
6. A written notice of default was given in accordance with the terms of the note and mortgage. The default was not cured, and thus the sums due under the note were accelerated. As a result, the full amount of principal and interest due under the note are now required to be paid. Also required to be paid are all costs and expenses incurred in enforcing the note to the extent that the payment of such amounts is not prohibited by Ohio law.
7. Plaintiff is due on the Note principal in the amount of \$79,125.86 plus interest on the unpaid principal at the rate of 5.875% from July 1, 2009. Late charges, advances made for the payment of taxes, assessments, and insurance premiums, and expenses incurred for the enforcement of the note and mortgage may also be due, to the extent that the payment of such amounts is not prohibited by Ohio law. If necessary, the final amount of some or all of these items will be established at a later date.
8. To the best of Affiant's knowledge, [redacted] is not in the Military Service, as such term is defined in Section 101 (2) of the Servicemembers Civil Relief Act, as amended, which amended the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.

App. § 501. Attached hereto as Exhibit C is a document obtained from the web site of
the Department of Defense Manpower Data Center reflecting
not on Active Duty Military status.


-- Affiant **Jeffrey Stephan**
Limited Signing Officer

Subscribed and sworn before me, a Notary Public, this 6 day of January, ²⁰¹⁰ 2009.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Cindy A. Stewart, Notary Public
Upper Dublin Twp, Montgomery County
My commission expires October 19, 2013

COPY

DANIEL M. HERRIGAN

2009 DEC 11 PM 3: 23

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Bank of America, National Association as
successor by merger to LaSalle Bank National
Association as Trustee for RAMP 2007RS2

Plaintiff,

vs.

Jenetta Davis, et al.

Defendants.

STATE OF Pa)
) SS
COUNTY OF Montgomery)

Case No. CV-2009-09-6490

Judge Elinore M Stormer

AFFIDAVIT REGARDING
ACCOUNT AND COMPETENCY
AND MILITARY STATUS

Jeffrey Stephan ("Affiant"), being first duly sworn according to law,
deposes and says on the basis of personal knowledge:

1. Affiant is an employee of GMAC Mortgage, LLC, the loan servicing agent for Bank of America, National Association as successor by merger to LaSalle Bank National Association as Trustee for RAMP 2007RS2 (the "Plaintiff") and is competent to testify to the matters stated in this Affidavit. GMAC Mortgage, LLC, as loan servicing agent for

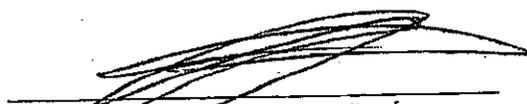
09-26475-CEM



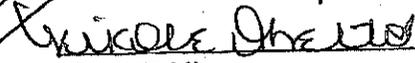
Plaintiff, has custody of, and maintains records related to, the promissory note and mortgage that are the subject of this foreclosure action.

2. Attached to the Complaint as Exhibits A and B are true and accurate copies of the original Note and Mortgage that are the subject of this foreclosure action.
3. Jenetta Davis signed the promissory note and thus promised, among other things, to make monthly payments on or before the date such payments were due.
4. Plaintiff is entitled to enforce the mortgage on the property commonly known as 2923 Chautauqua Drive, Stow, OH 44224, parcel no. . The legal description of the Property is referenced in the Complaint.
5. The note and mortgage are in default because monthly payments have not been made.
6. A written notice of default was given in accordance with the terms of the note and mortgage. The default was not cured, and thus the sums due under the note were accelerated. As a result, the full amount of principal and interest due under the note are now required to be paid. Also required to be paid are all costs and expenses incurred in enforcing the note to the extent that the payment of such amounts is not prohibited by Ohio law.
7. Plaintiff is due on the Note principal in the amount of \$507,042.20 plus interest on the unpaid principal at the rate of 6.924% from January 1, 2009. Late charges, advances made for the payment of taxes, assessments, and insurance premiums, and expenses incurred for the enforcement of the note and mortgage may also be due, to the extent that the payment of such amounts is not prohibited by Ohio law. If necessary, the final amount of some or all of these items will be established at a later date.

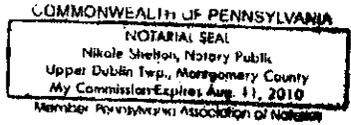
8. To the best of Affiant's knowledge, Jenetta Davis is not a minor, incompetent or in the Military Service, as such term is defined in Section 101 (2) of the Servicemembers Civil Relief Act, as amended, which amended the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 501. Attached hereto as Exhibit A is a document obtained from the web site of the Department of Defense Manpower Data Center reflecting that Jenetta Davis is not on Active Duty Military status.


-- Affiant Jeffrey Stephan
Chartered Signing Officer

Subscribed and sworn to before me, a Notary Public, this 23 day of Sept, 2009.



Notary Public



COPY

200928522
(kg)

JANEL M. HERRIGAN

2010 FEB -2 PM 1:54
COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
CLERK OF COURT

Case No. CV 2009 09 6828

Deutsche Bank Trust Company
Americas as Trustee for RALI
2006QS6
c/o GMAC Mortgage, LLC

Judge Patricia A. Cosgrove

Plaintiff

AFFIDAVIT OF STATUS OF ACCOUNT
AND MILITARY AFFIDAVIT

-vs-

Kristen M. Colvin, et al.

Defendants

Now comes Jeffrey Stephan, Affiant herein, and
being first duly sworn, states as follows:

1. Affiant is a LSO with GMAC
Mortgage, LLC as servicing agent for Deutsche Bank Trust Company
Americas as Trustee for RALI 2006QS6. In this job position,
Affiant has the custody of and has personal knowledge of the
accounts of said company, and specifically with the account of
Kristen M. Colvin, defendant herein.

2. Affiant states that said account is in default and that
plaintiff has elected to call the entire balance of said account
due and payable in accordance with the terms of the note and
mortgage attached to the Complaint.

3. Affiant states that there is due on said account a
principal balance of \$80,720.30, together with interest thereon
from the date of default at the rate specified in the note, late

EXHIBIT

ASSIGNMENT

Mortgage Electronic Registration Systems, Inc. ("Assignor"), whose address is P.O. Box 2026, Flint, MI 48501-2026, assigns to GMAC Mortgage, LLC ("Assignee"), whose address is c/o GMAC Mortgage Corporation, 1100 Virginia Drive, P.O. Box 8300, Fort Washington, Pennsylvania 19034, its interest in that mortgage dated May 29, 2008 executed and delivered by William J. Terry, Sr., unmarried, which mortgage was filed June 16, 2008, recorded in Official Records Volume 19876, Page 39, Recorder's Office, Hamilton County, Ohio, together with the promissory note secured by such mortgage and all sums of money due and to become due on such promissory note.

The property encumbered by such mortgage is described as follows:

See Exhibit "A" for legal description.

Parcel No. 192-0067-0031-00 and 192-0067-0044-00.

Property Address: 1916 Emma Place, Cincinnati, OH 45223

The Recorder is hereby requested to cross-reference this Assignment to the recording reference of the mortgage hereinbefore described.

**THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK
IN ORDER TO COMPLY WITH ORC 317.114**

Ref# 10-508491/SCC



EXHIBIT "A"

Legal Description:

Situated in the City of Cincinnati, County of Hamilton and State of Ohio

Tract A

Lying and being in the City of Cincinnati, in Section 27, Town 3, Fractional Range 2, of the Miami Purchase and being known as Lot No. 27 of Gottlieb Lillie's Second Subdivision, as recorded in Plat Book 32, Page 79, of the Records of Hamilton County, Ohio. Together with an easement for driveway recorded in Deed Book 1662, Page 200, Hamilton County, Ohio Records.

Tract B

Situate in the County of Hamilton, State of Ohio, and in the City of Cincinnati, and bounded and described as follows:

Beginning at a point in the North line of Emma Place at the Southeast corner of Lot No. 26 of Gottlieb Lillie's Second Subdivision as recorded in Plat Book 32, Page 79, of the records of Hamilton County, Ohio;

Thence Northwardly along the East line of said Lot No. 26, 100 feet to the Northeast corner of said Lot No. 26;

Thence Eastwardly parallel with the North line of Emma Place, 45 feet to the Northwest corner of Lot No. 27 of said Subdivision;

Thence Southwardly along the West line of said Lot No. 27, 100 feet to a point in the North line of Emma Place, said point being also the Southwest corner of said Lot No. 27;

Thence Westwardly along the North line of Emma Place, 45 feet to the place of beginning.

Ref# 10-508491/SCC

APPENDIX B

ORIGINAL

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

**Attest: Geri M. Smith Clerk
U.S. District Court
Northern District of Ohio**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

D. Ann Cox

Case Nos. 3:10-cv-02537-JZ
1:10-cv-02709-JZ

Deputy Clerk

STATE OF OHIO, ex rel.
MICHAEL DEWINE,
ATTORNEY GENERAL OF OHIO, et al.

CERTIFICATION ORDER

JUDGE JACK ZOUHARY

11-0890

Plaintiffs,

-vs-

GMAC MORTGAGE, LLC, et al.

Defendants.

FILED
MAY 24 2011
CLERK OF COURT
SUPREME COURT OF OHIO

STATEMENT OF FACTS

This case involves claims by Plaintiffs, the State of Ohio and Lois Blank, *et al.*, alleging violations of Ohio's Consumer Sales Practices Act by Defendants, GMAC Mortgage, LLC, Ally Financial, Inc., and Jeffrey Stephan. The alleged conduct at issue involves activity in connection with foreclosure actions prosecuted in Ohio, and the execution of affidavits by GMAC employees submitted to Ohio courts in support of default judgment or summary judgment.

GMAC Mortgage, LLC ("GMAC") is a "mortgage servicer" in the business of servicing residential mortgages of individuals for personal, family or household purposes. GMAC is not an entity defined in R.C. § 5725.01.

Plaintiffs allege that GMAC claims to be the holder of promissory notes and mortgages that form the basis for many foreclosure actions brought by GMAC (Doc. No. 1-4, at 4). Plaintiffs also allege that GMAC is a servicer or sub-servicer for a trustee holding a pool of mortgages for investors with certificates of ownership in the securitized mortgage loans (Doc. No. 1-4, at 4).

Among these mortgage activities, it is alleged that GMAC (Doc. No. 1-4, at 4):

- collects payments on residential mortgage loans from borrowers and applies them as required by the applicable documents;
- communicates with borrowers about insurance and tax payments owed;
- negotiates with borrowers over late fees, other fees, and loan modifications;
- initiates and pursues foreclosure proceedings against borrowers, including obtaining affidavits and assignments of mortgage; and
- sells foreclosed properties of borrowers.

QUESTIONS OF LAW TO BE ADDRESSED

This Court has determined that the interpretation of Ohio Rev. Code § 1345.01(A) & (C), effective December 28, 2009, may be determinative of this proceeding, and that there is no controlling precedent on this issue in the decisions of the Supreme Court of Ohio. Therefore, pursuant to Rule 18 of the Rules of Practice of the Supreme Court of Ohio, this Court certifies the following questions to the Supreme Court of Ohio:

1. Does the servicing of a borrower's residential mortgage loan constitute a "consumer transaction" as defined in the Ohio Consumer Sales Practices Act, R.C. § 1345.01(A)?
2. Does the prosecution of a foreclosure action by a mortgage servicer constitute a "consumer transaction" as defined in the Ohio Consumer Sales Practices Act, R.C. § 1345.01(A)?
3. Is an entity that services a residential mortgage loan, and prosecutes a foreclosure action, a "supplier . . . engaged in the business of effecting or soliciting consumer transactions" as defined in the Ohio Consumers Sales Practices Act, R.C. § 1345.01(C)?

NAMES OF PARTIES AND COUNSEL

The Plaintiffs are the State of Ohio, Ohio Attorney General Michael DeWine, Lois Blank, William H. Stroble, Brandon and Blair Ritze, and Rebecca Lawson. Plaintiffs' counsel are follows:

Susan Choe
Jeffrey Loeser
Office of the Attorney General
Consumer Protection Section
14th Floor, 30 East Broad Street
Columbus, OH 43215
614-466-1305
Email: susan.choe@ohioattorneygeneral.gov
Email: jeff.loeser@ohioattorneygeneral.gov

Phillip Cameron
4300 Carew Tower
441 Vine Street
Cincinnati, OH 45202
513-421-4343
Email: pfclaw@gmail.com

Richard Hackerd
2000 Standard Building
1370 Ontario Street
Cleveland, OH 44113
440-526-8780
Email: richard@hackerd.com

The Defendants are GMAC Mortgage, LLC, Ally Financial, Inc., and Jeffrey Stephan.

Defendants' counsel are as follows:

David Wallace
Jeffrey Lipps
Barton Keyes
Carpenter, Lipps & Leland
Suite 1300, 280 North High Street
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DESIGNATION OF MOVING PARTY

Plaintiffs State of Ohio and Ohio Attorney General Michael DeWine are hereby designated as the moving parties. The Clerk of the United States District Court for the Northern District of Ohio, Western Division, is directed to serve copies of this Certification Order upon counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

May 18, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CERTIFICATE OF SERVICE

3:10CV2537
1:10CV2709

In re: STATE OF OHIO, ex rel. MICHAEL DEWINE, ATTORNEY GENERAL OF
OHIO, et al. vs. GMAC MORTGAGE, LLC, et al.

This is to certify that copies of the foregoing Order Certifying Question of State Law
to the Supreme Court of Ohio was filed electronically on the 18th day of May, 2011, to
all counsel of record listed below:

Phillip F. Cameron, Susan A. Choe, Richard E. Hackerd, Christopher R. Hall, Khary I.
Hanible, Richard M. Kerger, Barton R. Keyes, Jeffrey A. Lipps, Jeffrey R. Loeser, Saul
Ewing, Gregory G. Schwab, David A. Wallace,

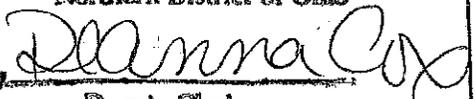
Geri M. Smith, Clerk of Court
Northern District of Ohio

S/DeAnna L. Cox
Courtroom Deputy Clerk

Toledo, Ohio

**I hereby certify that this
instrument is a true and
correct copy of the original
on file in my office.**

**Attest: Geri M. Smith Clerk
U.S. District Court
Northern District of Ohio**


Deputy Clerk