SPS and the Chase Servicer Shell Game

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Many Judges have expressed their concern about the constant movement of servicers and trustees. They are asking why the servicer keeps changing and why the trustees are changing. And now they are asking for legal argument why the substitution of the only named Plaintiff is not an amendment to the Complaint which must specifically allege facts in support of the claim of the "new Plaintiff." This is a result of the multifaceted fraudulent scheme where claims of securitization are unfounded and claims of debt are fictitious — in derogation of the rights of both investors on Wall Street and borrowers on main Street.

Taking an example from one case being litigated now, we have a fact pattern where WAMU was the "lender" in the purchase money mortgage. Chase steps in and refinances the loan. Long after these events and long after the "default" was declared by Chase, SPS is said to be the servicer, not Chase. This successor entity is thus the party whose corporate representative is brought to trial to testify. The witness admits to having no direct personal knowledge and has no job other than testifying. The witness has no knowledge nor employment history with Chase, WAMU or the Trust or Trustee (usually US BANK where Chase is involved). The borrower, despite encouragement to take more money on refinancing, elected only to get enough money to make repairs due to storm damage. They received $45,000 in this example.

This is an issue which is slowly dawning on me that could shake things up considerably. Whether we use it or not is a different story.

It might mean that the real loan was only $45k — in total. That would affect the collections on the loan, which could have paid off the actual loan in its entirety, as well as the validity of the declaration of default and the truth of the matters asserted in the judicial complaint or the notice of non-judicial default and notice of sale. Specifically the "reinstatement" figure or "redemption" figure might actually be a negative figure — money due from the parties stating that they are the creditors, which claim they can hardly deny since they are pursuing foreclosure.

LOAN #1 was with WAMU. WAMU according to the FDIC receiver had sold the loans into the secondary market for securitization. This was the purchase money mortgage. So at some point before the refinancing in LOAN#2 the purchase money loan was sold into the secondary market. Thus WAMU only had servicing rights — if the "purchaser" entered into an agreement for WAMU to service the loan. In the case where the loan is subject to securitization, the "purchaser" is a REMIC Trust. But it appears as though few, if any, of the REMIC Trusts ever achieved the status of the owner of the debt, holder in due course, or owner of the mortgage or note. While it is possible to start a lawsuit to collect on the note, that lawsuit can never be resolved in favor of the Plaintiff unless the maker of the note defaults.

LOAN#2 was with Chase. This was supposedly a refinancing. The loan closing documents show that WAMU was paid and WAMU issued the satisfaction of mortgage and did not return the old note cancelled.

WAMU usually retained servicing rights so it would be claimed that WAMU had every right to collect the money and issue the satisfaction. But the servicing rights only existed if LOAN#1 actually made it into a Trust. If not, the loan was NOT subject to the Pooling and Servicing Agreement. If WAMU — or Chase as successor or SPS as successor are actually the servicers, it MUST therefore be by virtue of some other document. That is why we are seeing some rather strange Powers of Attorney and other "enabling" documents appear out of nowhere in which the issues are further confused.

The borrowers received $45k which was for roof repairs from storm damage. So the borrowers did receive $45k presumably from Chase, but not necessarily as we have already seen, where the originator, even if it was a big bank was using money from an illegally formed pool outside of the REMIC Trust that the investors thought was getting the money from the proceeds of sale of mortgage backed securities.

So the witness probably has absolutely no access to information and therefore no testimony about whether LOAN#1 got paid off. And in fact it is most likely that WAMU was either paid or not depending upon internal agreements with Chase. And the witness can only testify using hearsay about the preceding records of Chase, US Bank and WAMU. Several trial judges have refused to accept such testimony saying directly that the witness and the company represented by the witness are too far removed from the actual transactions to have any credibility as to the authenticity or accuracy of the business records of other entities and that the SPS records are simply an attempt to get around the hearsay rules without exposing the predecessors to direct discovery and questioning where the answers would either be embarrassing or perjury.

If WAMU was paid in the refinancing (proceeds from LOAN#2) the wrong party was paid and the debt still exists unless Chase can show that the real creditor was paid off. It is unlikely they can show that because it probably is not true. Chase was hiding the default status of loans, as we have seen in Matt Taibbi's story in Rolling Stone. The reason was simple — the more it looked like these Mortgage backed Securities were performing as expected, the more the investors were inclined to buy more mortgage bonds — and that is where the bulk of the money is for Chase.

By selling loans at 100 cents on the dollar (Par Value) when the true value might only have been 1/10th that amount, the profit was enormous and it all went to Chase (not the investors whose money was used to start the string of transactions in the first place).

The witness will not be able to say that WAMU was definitely paid, and if it was paid, whether the money was paid to the real creditor. This is probably a primary reason why SPS was inserted between Chase and the foreclosure proceedings. It is also why they are attempting to rely on the business records of SPS instead of the business records of Chase.

SPS is usually inserted AFTER all events have occurred relating to the debt, note, mortgage, "default," and foreclosure. Using a witness from SPS is, on its face, allowing a witness with zero

personal knowledge about anything to verify records of other companies whose records the witness has never seen.

This is done to camouflage the actual events — wherein the money from investors was stolen or diverted from its intended target (REMIC Trust) and then used to fund loans in the name of a naked nominee whose interest in the loan was only that of a vendor whose name was being rented to withhold disclosure of the real creditor, the compensation received, and the identity of all the real parties who were getting paid as a result of the “loan origination.”

This is a direct conflict with TILA, requiring that disclosure and Reg Z which states that such a loan is “predatory per se.” If the loan is predatory per se it might be “unclean hands” per se which would mean that the mortgage could never enforced even if the consideration was present.