



Jeffrey A. Befort
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816.412.1026 DIRECT FAX
jbefort@stinson.com

August 13, 2010

VIA FACSIMILE (785) 838-2455

Ms. Sherry Bernhardt
Administrative Assistant
Div. I, District Court of Douglas County, Kansas
Douglas County Courthouse
111 East 11th Street
Lawrence, KS 66044

Re: BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans
Servicing, L.P. v. Robbie J and Alice Stewart, et al. - Case No 10CV206 -
Div. I

Dear Ms. Bernhardt:

Enclosed for filing please find a chamber copy of *Plaintiff's Memorandum in Opposition to Defendants' Motion to Vacate* in the above-referenced case.

Thank you for your assistance in this matter.

Very truly yours,

STINSON MORRISON HECKER LLP

A handwritten signature in black ink that reads "Jeffrey A. Befort".

Jeffrey A. Befort

JAB:sew

Enclosure

cc: Robbie J. and Alice Stewart
Brian R. Hazel, Esq.

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL DEPARTMENT**

BAC HOME LOANS SERVICING, L.P.)	
f/k/a Countrywide Home Loans Servicing, L.P.,)	
)	Case No. 10CV206
Plaintiff,)	
)	Court Number: 1
v.)	
)	Pursuant to K.S.A. Chapter 60
ROBBIE J. STEWART and)	
ALICE STEWART, et al.,)	
)	
Defendants.)	

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTION TO VACATE**

A. INTRODUCTION

Defendants Robbie J. Stewart and Alice Stewart, acting pro se, have filed a motion to vacate the Judicial Foreclosure and Sheriff's Sale regarding the real property commonly known as 1266 North 100 Road, Baldwin City, Kansas 66006. Defendants' motion is purportedly filed pursuant to K.S.A. 60-260(b)(3) claiming fraud in the procurement of the foreclosure in that the Assignment of Mortgage is signed by Ashley B. Osborn, an attorney with South & Associates, P.C., the counsel of record in the foreclosure proceeding. Defendant's motion should be denied because Ashley B. Osborn is, in fact, expressly authorized to sign documents such as the Mortgage Assignment at issue, by the plaintiff corporation, as reflected by her designation as a Certifying Officer pursuant to the Agreement for Signing Authority (Ex. 1) and related Corporate Resolution (attached as Ex. 2) and the Limited Power of Attorney, recorded at Book 1056, Page 177 of the Douglas County Recorder of Deeds (attached as Ex. 3). Defendant's motion to vacate thus lacks any merit whatsoever and must be denied.

B. ASHLEY B. OSBORN WAS AUTHORIZED TO SIGN THE ASSIGNMENT OF MORTGAGE PERTAINING TO THIS PROPERTY

Defendants claim that the execution of the Assignment of Mortgage, attached as Ex. C to the Foreclosure Petition, is fraudulent and a forgery. Defendants' allegations are baseless. Ashley B. Osborn was authorized as an "assistant secretary and vice president of Mortgage Electronic Registration Systems, Inc." and she is authorized to "assign the lien of any mortgage loan registered on the MERS System that is shown to be registered to BAC Home Loans Servicing, LP or its designee." Ex. 4, Affidavit of Ashley B. Osborn, ¶ 2; Mortgage Electronic Registration Systems, Inc. Corporate Resolution, attached as Ex. 2. This corporate resolution of MERS implements the Agreement for Signing Authority that facilitates the foreclosure process for plaintiff. Ex. 4, Osborn Aff., ¶ 3; Ex. 1, Agreement for Signing Authority.

The authority of Ashley B. Osborn to execute the Assignment of Mortgage on behalf of MERS and plaintiff is also of public record as the Limited Power of Attorney that designates Ashley B. Osborn as having the power of attorney on behalf of plaintiff to execute "Assignments of Security Instrument" such as the Assignment of Mortgage at issue here, has been duly recorded with the Douglas County, Kansas Register of Deeds at Book 1056, Page 177 on November 16, 2009. Ex. 4, Aff. of Osborn, ¶ 4; Ex. 3, Recorded Limited Power of Attorney. Ms. Osborn's authority, far from being fraudulent, is a matter of public record. For each of these reasons, Defendant's motion to vacate must be denied.

C. THIS COURT, AS A COURT OF GENERAL JURISDICTION UNDER KANSAS LAW, HAS AUTHORITY TO RULE IN THIS MATTER

Defendants spend several pages claiming that this Court does not have "subject matter jurisdiction" in this case. However, it is a "fundamental proposition that the Kansas district court has been granted all general original jurisdiction not otherwise provided by law." K.S.A. 20-301; Egnatic v. Wollard, 156 Kan. 843, 137 P.2d 188 (1943). As the Court held in Dipman v.

Dipman, 6 Kan. App. 2d 844, 635 P.2d 1279, 1280-81 (1981), "Inasmuch as this action was filed in the district court, our court of general jurisdiction, and in view of the fact that no statute limits the grant of jurisdiction contained in K.S.A. 20-301," this Court has jurisdiction to rule on this motion and deny defendant's motion to vacate. Finally, the discussion of standing, diversity jurisdiction and sanctions under Rule 11 of the Federal Rules of Civil Procedure, simply are not applicable to the judicial foreclosure granted in this case.

D. CONCLUSION

The entire premise of defendants' motion is flawed and has no basis in fact. Ashley B. Osborn is authorized to execute the assignment of security instruments on behalf of the plaintiff corporation as demonstrated by Exhibits 1, 2, 3, and 4. There is simply no factual or legal basis under K.S.A. 60-260(b)(3) to vacate the foreclosure and sheriff's sale in this case.

Respectfully submitted,

STINSON MORRISON HECKER LLP

By: *Jeffrey A. Befort*
Jeffrey A. Befort KS #24072
1201 Walnut Street
Kansas City, MO 64106-2150
Phone: (816) 842-8600
Fax: (816) 691-3495


**ATTORNEYS FOR BAC HOME LOANS
SERVICING, L.P. f/k/a Countrywide Home
Loans Servicing, L.P.**

CERTIFICATE OF SERVICE

I do hereby certify that on this 13th day of August, 2010, a copy of the above and foregoing was sent via e-mail and U.S. mail to:

Robbie J. and Alice Stewart
1266 North 100 Road
Baldwin City, KS 66006
Howard, KS 67349
Phone: (785) 594-3457
E-Mail: alcestewart73@yahoo.com

Brian R. Hazel, Esq.
South & Associates, P.C.
6363 College Boulevard, Suite 100
Overland Park, KS 66211
Phone: (913) 663-7600
Fax: (913) 663-7899
E-Mail: Brian.Hazel@southlaw.com



Attorney for BAC Home Loans Servicing, L.P.
f/k/a Countrywide Home Loans Servicing, L.P.

AGREEMENT FOR SIGNING AUTHORITY

MERSCORP, INC. ("MERS") and its subsidiary, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., BAC Home Loans Servicing, LP ("MEMBER") and South & Associates, P.C. ("VENDOR") hereby agree as follows:

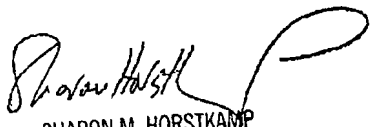
1. The purpose of this agreement for signing authority (the "Agreement") is to define the rights and obligations of the parties when Vendor performs certain duties, as described in the attached corporate resolution (the "Resolution"), relating to mortgage loans that are registered on the MERS® System and shown on the MERS® System to be serviced by Member.
2. BAC Home Loans Servicing, LP is a member of MERS, and has signed an agreement of membership that is incorporated herein by reference. Member has entered into a separate contract with Vendor to perform certain services for Member. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust, respectively, and any other form of security instrument under applicable state law.
3. The parties acknowledge that Mortgage Electronic Registration Systems, Inc. may be the mortgagee of record on Member's mortgages. Therefore, in order for Vendor to perform its contractual duties to Member, MERS, by corporate resolution, will grant employees of Vendor the limited authority to act on behalf of MERS to perform certain duties. Such authority is set forth in the Resolution, which is made a part of this Agreement.
4. The parties agree that Member will provide all necessary information and instructions to Vendor to perform certain duties where Mortgage Electronic Registration Systems, Inc. acts as the mortgagee of record. All parties agree that MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc. are not responsible for the accuracy of any information provided by Member to Vendor, or any information entered into the MERS® System by or on behalf of Member. Any problems regarding the information or instructions between Member and Vendor must be resolved between those two parties.
5. Member and Vendor agree to indemnify and hold harmless MERSCORP, Inc., Mortgage Electronic Registration Systems, Inc. and any employee, director, officer, agent or affiliate of MERSCORP, Inc. or Mortgage Electronic Registration Systems, Inc. ("MERS Party") from and against any and all third-party claims, losses, penalties, fines, forfeitures, reasonable attorney fees and related costs, judgments, and any other costs, fees and expenses that result from the negligence, errors and omissions, breach of confidentiality or willful misconduct of Vendor in performing certain duties where Mortgage Electronic Registration Systems, Inc. is the mortgagee of record.

Exhibit 1

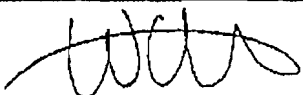
6. Vendor shall maintain appropriate insurance coverage that shall include coverage for any negligence, errors and omissions or willful misconduct of all employees authorized to sign as officers of Mortgage Electronic Registration Systems, Inc.
7. Upon termination of the contract between Member and Vendor, this agreement shall concurrently terminate and the corporate resolution shall be revoked at such time.
8. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its choice of law provisions.

The parties have executed this Agreement intending to be bound as of the dates indicated below.

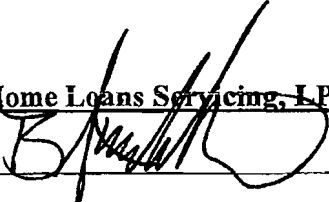
MERSCORP, INC.

By: 
 SHARON M. HORSTKAMP
 VICE PRESIDENT
 Title: Vice President
 Dated: 11/2/09


**MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.**

By: 
 WILLIAM C. HOLTMAN
 SECRETARY/TREASURER
 Secretary/Treasurer
 Title: Secretary/Treasurer
 Dated: 11/2/09

BAC Home Loans Servicing, LP

By: 
 Title: Brandon Sciumbato - Senior Vice President
 Dated: _____

South & Associates, P.C.

By: 
 Title: SECRETARY
 Dated: 10-06-2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

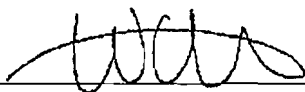
CORPORATE RESOLUTION

Be it Resolved that the attached list of candidates are employee(s) of South & Associates, P.C. and are hereby appointed as assistant secretaries and vice presidents of Mortgage Electronic Registration Systems, Inc., and as such, are authorized to:

Execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member, including but not limited to (a) substitution of trustee on Deeds of Trust, (b) Trustee's Deeds upon sale on behalf of MERS, (c) Affidavits of Non-military Status, (d) Affidavits of Judgment, (e) Affidavits of Debt, (f) quitclaim deeds, (g) Affidavits regarding lost promissory notes, and (h) endorsements of promissory notes to VA or HUD on behalf of MERS as a required part of the claims process;

Assign the lien of any mortgage loan registered on the MERS® System that is shown to be registered to BAC Home Loans Servicing, LP or its designee.

I, William C. Hultman, being the Corporate Secretary of Mortgage Electronic Registration Systems, Inc., hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Board of Directors of said corporation effective as of the 2 day of November 2009, which is in full force and effect on this date and does not conflict with the Certificate of Incorporation or By-Laws of said corporation.


Secretary WILLIAM C. HULTMAN
SECRETARY/TREASURER

South & Associates, P.C.
(for BAC Home Loans Servicing, LP #1000157)

Mortgage Electronic Registration Systems, Inc.

Certifying Officers

(effective 11/2/09)

Michael L. Zevitz

Douglas A. Hick

Steven L. Crouch

Brian R. Hazel

Emily M. Hovater

Courtney K. Blasi

Mark L. Mellor

Daniel A. West

Edward E. Brink

Kristen G. Stroehmann

Ashley B. Osborn

Alan E. South

Nancy M. Wilson

Please fax: 913-660-1482 or email: debbiec@ctitle.com

This recording page with recording clearance.

Date of recording: _____

Book: _____ Page: _____

Time: _____ Charge \$: _____

Check # _____

Thank you very much: Debbie 913-660-1010

November 12, 2009 ¹³

REI

Continental Title Company (KC)
4550 West 109th Street
Suite 200
Overland Park, KS 66210

T: 913-663-7800
F: 913-663-7899
www.southlaw.com

Please record the following document as soon as possible:
Limited Power of Attorney

16 We request the following for this order:

Please record the attached Limited Power of Attorney in Douglas County, KS, and return the original to South & Associates, P.C., Attn: Ashley Osborn

You are required to meet the above request within ten (10) working days. Please fax confirmation that the deed has been placed of record on the date of recording to our office at (913)663-7899. Additionally, please return to our office the original recorded deed, the original note (if supplied), and your invoice as soon as possible.

Date Recorded	Document	Book	Page	Name
11/16		1056	177	DL



Douglas County Register of Deeds
Book: 1056 Page: 177

Receipt #: 401085
Pages Recorded: 3
Cashier Initials: rec

Recording Fee: \$18.00
Authorized By: *[Signature]*

Date Recorded: 11/16/2009 1:25:38 PM



CONTINENTAL TITLE COMPANY



Douglas County Register of Deeds
Book: 1056 Page: 177

Receipt #: 401055
Pages Recorded: 3
Cashier Initials: rec

Recording Fee: \$16.00
Authorized By: *Kay Penell*

Date Recorded: 11/16/2009 1:26:39 PM



MARGIN ABOVE RESERVED FOR RECORDING INFORMATION

LIMITED POWER OF ATTORNEY

DATE OF INSTRUMENT: November 2, 2009

GRANTOR: BAC Home Loans Servicing , LP
400 Countrywide Way
Simi Valley, CA 93065-6298

GRANTEE: South & Associates, P.C.
6363 College Blvd., Ste. 100
Overland Park, KS 66210

Env.
Continental Title
Overland Park, KS

BOOK 1056 PAGE 177

LIMITED POWER OF ATTORNEY

KNOW ALL PERSON BY THESE PRESENTS, THAT **BAC Home Loans Servicing, LP**, formerly known as Countrywide Home Loans Servicing, LP, a limited partnership organized under the laws of the State of Texas, ("Principal"), and a subsidiary of Bank of America, N.A., has made, constituted and appointed, and by these presents does make, constitute and appoint, Alan E. South, Michael L. Zevitz, Douglas A. Hick, Steven L. Crouch, Brian R. Hazel, Emily M. Hovater, Courtney K. Blasi, Mark L. Mellor, Daniel A. West, Edward E. Brink, Kristen G. Stroehmann, Ashley B. Osborn, or Nancy M. Wilson of **South & Associates, P.C.**, a Missouri professional corporation, with its principal place of business at 6363 College Boulevard, Suite 100, Overland Park, Kansas 66210 (see List of Authorized Individuals on Exhibit 1, *infra*), as its attorney-in-fact ("Attorney-in-Fact") to act with the following limited powers:

Execution on behalf of Principal of the following document or documents:

- Assignments of Security Instrument
- Appointments of Successor Trustee

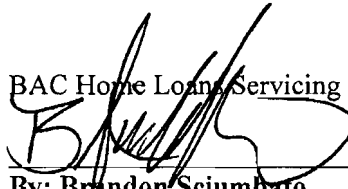
FURTHER, the Attorney-in-Fact is authorized to execute, acknowledge and deliver any instrument under seal or otherwise, and to do all things necessary to carry out the intent in this instrument granting full power and authority to act in and concerning the conduct of real estate foreclosures and related post-foreclosure proceedings as fully and effectually as the Principal may do if personally present, limited however, to the purpose for which this authorization is executed, and subject to the terms and conditions set forth in this instrument and in accordance with the standard of care of a fiduciary agent.

I further declare that any act or thing lawfully done and within the powers in this instrument stated shall be binding on the Principal, provided however that such power shall be limited to the purposes stated in the instruments. Third parties may rely upon the representations of the Attorney-in-Fact and as to all matters relating to any power granted to them, and the powers granted in this instrument shall continue for three years from the date of execution of this Appointment or until the Appointment is revoked in writing by Principal, whichever occurs first.

Nothing contained in this Limited Power of Attorney shall be construed or interpreted to relieve the Attorney-in-Fact from a proper accounting of its actions to Principal and its successors and assigns, but persons dealing with the Attorney-in-Fact shall be under no duty to see that this is done.

IN WITNESS, BAC Home Loans Servicing LP has caused this document to be executed by its undersigned officer/authorized agent who has set his hand and seal this 2nd day of November, 2009.

BAC Home Loans Servicing LP


By: **Brandon Sciumbato**

Title: **Senior Vice President**

LIMITED POWER OF ATTORNEY—Page 1 of 2

BOOK 1056 PAGE 0178

State of California
County of Ventura

On Nov 2, 2009 before me, Jamie L. Monostori, personally appeared **Brandon Sciumbato**, who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

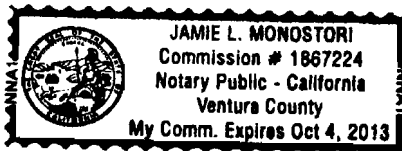
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Notary Public

My Commission Expires: Oct 4, 2013



**IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL DEPARTMENT**

BAC HOME LOANS SERVICING, L.P.)	
f/k/a Countrywide Home Loans Servicing, L.P.,)	
)	Case No. 10CV206
Plaintiff,)	
)	Court Number: 1
v.)	
)	Pursuant to K.S.A. Chapter 60
ROBBIE J. STEWART and)	
ALICE STEWART, et al.,)	
)	
Defendants.)	

AFFIDAVIT OF ASHLEY B. OSBORN

ASHLEY B. OSBORN, being duly sworn, of lawful age and sound mind, states as follows:

1. I am an attorney duly licensed to practice in the State of Kansas. The following statements are made upon my personal knowledge, and I am competent to testify thereto.
2. I am authorized as an assistant secretary and vice president of Mortgage Electronic Registration Systems, Inc. and I am authorized to assign the lien of any mortgage loan registered on the MERS System that is shown to be registered to BAC Home Loans Servicing, L.P. or its designee.
3. The corporate resolution of MERS implements the Agreement for Signing Authority that facilitates the foreclosure process for BAC Home Loans Servicing, L.P., f/k/a Countrywide Home Loans Servicing, L.P. ("BAC").
4. My authority to execute the Assignment of Mortgage on behalf of MERS and BAC is also of public record as the Limited Power of Attorney that designates me as having the power of attorney on behalf of BAC to execute "Assignments of Security Instrument"

such as the Assignment of Mortgage at issue here, has been duly recorded with the Douglas County, Kansas Register of Deeds at Book 1056, Page 177 on November 16, 2009.

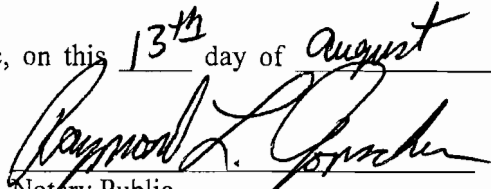
5. Exhibits 1, 2 and 3 that are attached to the Plaintiff's Memorandum in Opposition to Defendant's Motion to Vacate are true and accurate copies of business records of South & Associates, P.C.

AFFIANT FURTHER SAYETH NAUGHT


Ashley B. Osborn

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Subscribed to before me, a Notary Public, on this 13th day of August, 2010.


Notary Public

My Commission Expires:

