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October 13, 2021

VIA Efile ONLY

**The Honorable James L. Garrity, Jr.
United States Bankruptcy Court for the Southern District of New York
One Bowling Green
New York, NY 10004**

**RE: Lahlouh vs. Ditech Financial LLC, et al.
AC 21-02276 jlg**

**NOTICE OF MEET AND CONFER ATTEMPTS RE PENDING MOTION
FOR CEASE AND DESIST ORDER**

Honorable Judge:

Plaintiffs have been contacted by Debtor's Counsel (Weil firm), regarding a proposed Scheduling Conference, that follows on 'meet and confer' contacts. The 'drift' has been an attempt to defer the pending 'cease and desist' motion and 'bundle' it with the Rule 10b motions set in November. Plaintiffs regard the 10b motions as having little chance of success. This is filed after the stipulation was refused by at least two defense counsel.

Plaintiffs will participate in a conference. However, plaintiffs are not willing to postpone the motion set October 26, 2021. Only further prejudice to both sides can ensue because defendant New Rez is pursuing a spurious private foreclosure in Nevada that poses much of the 'immediate harm' that prompted the motion. It can serve no lawful purpose-- FNMA can hardly foreclose its own title after accepting a deed in lieu. That point is discussed in detail in the attached 'meet and confer' email. A recently served pre-foreclosure notice from New Rez is also attached. An unlawful foreclosure is a blunder that will prejudice all parties, even including New Rez, and threatens to generate a perpetual 'round robin' of litigation based on a void trust deed.

Yours truly,



WILLIAM B. LOOK, JR.

WBL: bmc

Attachments: Exhibit 4: October 13, 2021 meet and confer email;
Exhibit 5: September 22, 2021 pre-foreclosure notice (front page only).

Fw: Pending Cease and Desist Motion and Scheduling teleconference: Meet and Confer for Stipulation

Yahoo Mail/Sent

 **William Look** <look_mtr@yahoo.com>
To: aabao@ww.com

Oct 13 at 8:50 AM

A: FYI

----- Forwarded Message -----

From: William Look <look_mtr@yahoo.com>
To: Hwang, Angeline <angeline.hwang@weil.com>; "jason.stjohn@akerman.com" <jason.stjohn@akerman.com>; Slack, Richard <richard.slack@weil.com>; Blaine, Michael <mblaine@winston.com>
Cc: Hill, David <david.hill@weil.com>; "jordan.smith@akerman.com" <jordan.smith@akerman.com>; Cummings, Kyle <kyle.cummings@weil.com>
Sent: Wednesday, October 13, 2021, 08:48:47 AM PDT
Subject: Re: Pending Cease and Desist Motion and Scheduling teleconference: Meet and Confer for Stipulation

All:

The purpose of this 'meet and confer' is to 'un-obfuscate' several counter-productive contentions and misconceptions evident in the defense thinking. I realize some may see that as 'presumptuous' but there is good cause for the pending 'cease and desist' motion, and that derives from some 'bad thinking' besides 'bad behavior.' And its relevant to any scheduling or other conference.

Attached is a copy of another pre-foreclosure notice received from New Rez, which in context of the remand of the Nevada appeal, is highly sinister. Its is also unlawful as are all the other similar notices sent since 2012. But let me 'fill out' that out with is a quote from an email from CA counsel for New Rez, Mr. Bao (8/13/2021), that in part is why the motion set the 26th is necessary: "Even if the Deed of Trust was no longer valid, your client still owes the monies to Fannie Mae / its servicers as an unsecured debt. If the deed of trust remains a valid encumbrance on the property, the property remains available to satisfy some of your clients' owed debt. " In other words New Rez conceives of itself as foreclosing the 2004 Trust Deed as if it still secured a debt owed by plaintiffs. But that is simply not the case nor is there an enforceable power of sale still extant in NV. The fact the 2004 Trust Deed is of record is immaterial— it is as a matter of law a null cloud on title that only persists in the title record because New Rez and its co-defendant loan servicers, have violated Nevada law by not reconveying it after the secured debt was paid.

Whatever rights any loan servicer defendant has in this dispute are derivative of FNMA's rights. Plaintiffs do not and never have owed any money to any loan servicer. Their original debt was to Countrywide, and acquired by FNMA by assignment. Thus New Rez and its co-defendants have only had such right to collect co-extensive with what rights FNMA had to payment at any time, including the present. Unless FNMA is still owed money, there is no longer any debt to be collected and no debt secured by Kookaburra that could be enforced by the 2004 Trust Deed.

The conveyance of title in 2012 was not a option which FNMA can shift in and out of. Recording is not required for the conveyance to be complete. Not recording and not reconveying the 2004 Deed of Trust are alleged to be elements of the fraud pleaded in the FAC, but motives do not affect whether title was transferred to FNMA in 2012 once the transaction was completed in 2012. And under Nevada law a deed in lieu is treated (by statute) as a sale. Thus the 2012 Settlement was a sale by plaintiffs of title to BANA as FNMA's agent, in exchange for the 2004 debt, and a 'payment' of debt forgiveness to plaintiffs in exchange for the deed conveying title, plus the additional consideration outlined in the 2012 Settlement, including tendering possession and dismissing a lawsuit. That in short was a completed sale and FNMA has held title not a lien or right to payment ever since.

A deed of trust is a security device and it has been the law since the 19th Century that a deed of trust has no legal effect of itself and must secure a current debt to have any legal effect. Once the debt it secures is paid in some way, the trust deed ceases to have any legal effect and is a nullity. Because of the pernicious effects of having a null trust deed in the title record (this case illustrates one of them), every state (and some US regulations) have a provision obliging the trustee or beneficiary or both to reconvey a deed of trust after the debt is paid because leaving a paid-off trust deed of record works mischief, chiefly impeding marketability of title.

So what does that mean in regard to the impending private foreclosure New Rez is 'gearing up' to conduct in Nevada? It will be an extension of the title hoax already perpetuated in Nevada by taking the 2020 judgment. And it will be both a fraud and unlawful. And possibly more important, it will constitute a legal absurdity of the 'first order.' (Or maybe 'last' is better.)

That is, just who is New Rez going to foreclose against? New Rez contends plaintiffs have no interest in the real property. So who's title are they intending to foreclose against? That would be FNMA or maybe its surrogate, BANA. The absurdity is the circularity of FNMA as beneficiary obliging its trustee to foreclose a lien against FNMA's own title. Is the trustee, since FNMA knows about its own off-record deed, going to have the trustee send notices to itself, and no doubt, New Rez expects to be submitting a credit bid by FNMA to the cryer to bid for FNMA's own title at the sale. Uh, what? Absurd, circular, and such an auction would be both farce, illusory, void, a public fraud, and arguably the crime of obtaining money from any third party bidders by trick and device. Relevant to the latter is the issue the failure to record the deed in lieu and reconvey the trust deed is unlawful in Nevada, and adds to the unlawful nature of the proposed private foreclosure, and adding to the sinister nature of the farce.

That is not to say FNMA has no conceivable remedies. As discussed in the legal Memorandum filed in support of the 'cease and desist' order, there is an equitable doctrine of survival of intervening liens, that applies in context of deeds in lieu. Whether it applies in this case or not is a matter of proof, but that doctrine does not give any life to a null trust deed. What survives is seniority of the original lien which can be enforced directly against the intervening lien holder. The fact New Rez submitted a copy of a Wells Fargo lien (its' Exhibit B) indicates that is the chief target, as also appears from the plaintiffs' declarations in support and attachments. Putting aside issues such as BANA and FNMA took title with at least constructive notice of that lien, foreclosing the 2004 Trust Deed is not the competent remedy. An action to quiet title or declare seniority of the deed in lieu, brought against WF is one, along with naming any other intervening liens that show up in a title report—the same report BANA should have obtained in 2012 before accepting plaintiffs' deed.

But a sale is a sale. So plaintiffs' debt that was once upon a time secured by the 2004 Trust Deed has been paid and all rights between plaintiffs and the lender under the trust deed including the power of sale were and are extinguished— even if or maybe especially if, New Rez, FNMA or other defendants continue to violate the law in Nevada and refuse to record the 2012 deed or reconvey the 2004 Trust Deed.

Whatever destructive impulses New Rez intends to indulge by initiating a private foreclosure or taking any legal action against plaintiffs in Nevada (that would in substance simply be another step taken in the fraudulent scheme underway since July 2012 as alleged in the complaint as well as a fresh breach of the 2012 Settlement), the bankruptcy court has jurisdiction and power to order all defendants to cease and desist from harming plaintiffs by a third, spurious foreclosure. And as the attached notice and admissions show, that foreclosure is imminent.

Thus for the 'nth' time, plaintiffs ask defendants to make things simple, reduce the exposure of all defendants to damages, and exposure of the bankruptcy estate to avoidable administrative cost (including damages), and stipulate to an order that conserves the status quo. But otherwise plaintiffs intend to proceed and obtain a cease and desist order on the 26th.

William B. Look, Jr.
Attorney for AC Plaintiffs

On Tuesday, October 12, 2021, 03:10:52 PM PDT, William Look <look_mtr@yahoo.com> wrote:

All:

I waited but so far can't confirm about Wed. I may have an out of town ex parte in a.m., but movant has not yet confirmed he got court time. So could only 'maybe' make

EXHIBIT 4 LETTER II
SCHEDULING CONF. AC 21-01176



Correspondence: P.O. Box 10826
Greenville, SC 29603-0826

Business Hours: **Mon - Thurs:** 8:00AM-6:00PM
Fri: 8:00AM-5:00PM

Phone Number: 866-214-5733

Fax: 866-467-1187

Email: Lossmitigation@shellpointmtg.com

Website: www.shellpointmtg.com

09/22/2021

EXHIBIT 5 LETTER II
SCHEDULING CONF. AC 21-021176