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8 United States Bankruptcy Court
Northern District of California

9 In re:) Case No.: 07-54109
10 Richard Souza Caporale) **R.S. No. WGM-1348**
Isabel Ann Caporale) **OPPOSITION TO MOTION FOR RELIEF**
11) **FROM THE AUTOMATIC STAY**
12)
Debtors.) Date: December 17, 2008
13) Time: 10:30
14) Crtrm: 3020

15 **1. Statement of Facts:**

16 On February 23, 2007, the debtor's executed a promissory note in favor of New Century
17 Mortgage. This note was secured by a Deed of Trust (Goodpaster Dec. Exh. 1 and 2). On
18 October 11, 2007, MERS as nominee for New Century Mortgage Corporation assigned the
19 underlying deed of Trust to Saxon Mortgage Services, Inc. On April 28, 2008, Saxon transferred
20 it's interest in the underlying deed of trust to Deutsche Bank Trust Company Americas formerly
21 known as Banker's Trust Company, as Trustee and Custodian for Morgan Stanely, MASC 2007-
22 NC3: BY Saxon Mortgage Services, Inc. F/K/A/ Meritech Mortgage Services, Inc. as its
23 attorney-in-fact.

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1 **2. Argument:**

2 **a. Movant Lacks Standing**

3 A security interest cannot exist independent from the obligation which it secures. In Re
4 Leisure Time Sports, Inc., 194 B.R. 859, 861 (9th.Cir.Bap 1996) A security interest cannot exist,
5 much less be transferred, independent from the obligation which it secures. In re DiSanto &
6 Moore Associates, Inc., 41 B.R. 935, 938 (C.D.Cal. 1984); Union Supply Co. v. Morris, 220 Cal.
7 331, 338-39, 30 P.2d 394, 397 (1934). The security interest follows the debt. Id. If the debt is
8 not transferred, neither is the security interest. Id. The note and mortgage are inseparable; the
9 former as essential, the latter as an incident. An assignment of the note carries the mortgage with
10 it, while an assignment of the latter alone is a nullity. Carpenter v. Longan, 83 U.S. 271 (1872)

11
12 It is well established that a plaintiff must prove standing by showing: (1) injury in fact;
13 (2) a causal connection between the injury and the defendant's conduct; and (3) a likelihood that
14 a favorable outcome will redress the injury. See Lujan v. Defenders of Wildlife, 504 U.S. 555,
15 560-61 (1992).

16 To proceed with this action, Saxon must demonstrate that it is the holder of not only the
17 deed of trust but also the promissory note. If not, it has no injury in fact. See In re Foreclosure
18 Cases, 521 F. Supp. 2d 650, 653 (S.D. Oh. 2007) (stating that, "[t]o show standing in a
19 foreclosure action, . . . the plaintiff must show that it is the holder of the note and the mortgage at
20 the time the complaint was filed [and] . . . that the holder of the note and mortgage is harmed,
21 usually by not having received payments on the note").

22
23 In the context of a relief from stay motion, a motion for relief from the automatic stay must
24 satisfy both substantive and procedural requirements. The substantive requirements are provided
25 by § 362(d). The procedural requirements are imposed by the United States Constitution (due

1 process) and the Federal Rules of Bankruptcy Procedure (which mostly incorporate the Federal
2 Rules of Civil Procedure). The applicable rules here are the "real party in interest" rule and the
3 "required joinder" rule. See In re Kang Jin Hwang, 393 B.R. 701, 712 (C.D. Cal.2008).

4 There is no evidence that New Century Mortgage ever assigned the underlying promissory
5 not to Saxon. In fact, the evidence seems to show that Saxon has no interest in the subject
6 property and no standing to bring this motion.

7 However, the debtors, who are both in their seventies, would be injured if the motion were
8 granted because Saxon is seeking relief to foreclosure on their residence. As such, they have
9 standing to oppose this motion.

10 Wherefore, the debtors pray this motion be denied.

11 Dated: December 15, 2008

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13 /s/ Marc Voisenat
14 Marc Voisenat, Attorney for
15 Debtor
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1 **PROOF OF SERVICE**

2 I am over the age of 18 and not a party to the within action; my business address is 1330
3 Broadway, Suite 1035, Oakland, California 94612

4 On December 15, 2008, I served the foregoing document described as: **OPPOSITION**
5 **TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY; REQUEST FOR**
6 **JUDICIAL NOTICE** on the interested parties by placing a true copy thereof enclosed in a
7 sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland
8 addressed as follows:

9 William G. Malcolm
10 Malcolm Cisneros
2112 Business Center Drive, Second Floor
Irvine, Ca. 92612

11 Suzanne Decker
12 1271 Washington Avenue, #318
San Leandro, Ca 94577

13
14 I declare, under penalty of perjury, under the laws of the State of California that the
foregoing is true and correct.

15 Executed on December 15, 2008 at Oakland, California.

16
17 /s/ Marc Voisenat
18 Marc Voisenat, Attorney for
19 Debtor
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