

IN THE CHANCERY COURT FOR MONTGOMERY COUNTY, TENNESSEE
AT CLARKSVILLE

FILED UNDER SEAL

A TRUE COPY ATTEST
FILED 4-28 2010
TED A. CROZIER, JR., C & M

STATE OF TENNESSEE, ex rel BARRETT BATES, *RELATOR*, on behalf of real parties in interest, all the counties of the State of Tennessee, namely: Anderson County; Bedford County; Benton County; Bledsoe County; Blount County; Bradley County; Campbell County; Cannon County; Carroll County; Carter County; Cheatham County; Chester County; Claiborne County; Clay County; Cocke County; Coffee County; Crockett County; Cumberland County; Davidson County; Decatur County; DeKalb County; Dickson County; Dyer County; Fayette County; Fentress County; Franklin County; Gibson County; Giles County; Grainger County; Greene County; Grundy County; Hamblen County; Hamilton County; Hancock County; Hardeman County; Hardin County; Hawkins County; Haywood County; Henderson County; Henry County; Hickman County; Huston County; Humphreys County; Jackson County; Jefferson County; Johnson County; Knox County; Lake County; Lauderdale County; Lawrence County; Lewis County; Lincoln County; Loudon County; Macon County; Madison County; Marion County; Marshall County; Maury County; McMinn County; McNairy County; Meigs County; Monroe County; Montgomery County; Moore County; Morgan County; Obion County; Overton County; Perry County; Pickett County; Polk County; Putman County; Rhea County; Roane County; Robertson County; Rutherford County; Scott County; Sequatchie County; Sevier County; Shelby County; Smith County; Stewart County; Sullivan County; Sumner County; Tipton County; Trousdale County; Unicoi County; Union County; Van Buren County; Warren County; Washington County; Wayne County; Weakley County; White County; Williamson County; and, Wilson County,

Plaintiffs,

v. : Civil Action No.: MCCREURE 10-10

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; BANK OF AMERICA, N.A.; CHASE MORTGAGE SERVICES, INC.; CITIMORTGAGE, INC.; COUNTRYWIDE HOME LOANS, INC.; COUNTRYWIDE HOME LOANS OF TENNESSEE, INC; GMAC MORTGAGE, LLC; GMAC MORTGAGE LLC, OF TENNESSEE; WELLS FARGO BANK, N.A.; and, DOES H-MMM,

Defendants.

FILED April 28 2010
TED A. CROZIER, JR., CLERK & MASTER
BY D. Bryant
DEPUTY CLERK
4:12 P.M.

COMPLAINT

COMES the State of Tennessee *ex rel.* Barrett Bates, on behalf of real parties in interest, the counties of the State of Tennessee, above-named and hereby complains of Defendants as follows:

STATEMENT OF THE CASE

Plaintiff Barrett Bates seeks recovery pursuant to Tenn. Code Ann. § 4-18-103, the False Claims Act, because Defendants made false representations in order to avoid payment in full of all recording fees reflecting the establishment and/or transfer of secured interests in real property in the State. After having recorded false, fraudulent, misleading and untruthful documents with the land records of the counties of this State, Defendants intentionally failed to cure/correct said false, misleading and untruthful documents and further failed to record subsequent assignments, deeds and other documents evidencing accurate changes in ownership interests in real property and, thereby, avoided, decreased and/or diminished their obligation to pay fees or monies to the counties of the State of Tennessee, the above-named real parties in interest.

PARTIES

1. Barrett Bates, *relator*, is a resident of the State of Nevada and an original source of information and authorized to bring this action pursuant to Tenn. Code Ann. § 4-18-101, *et seq.*, and as the qui tam Plaintiff because Bates has worked in the secondary mortgage market business and, during the course of his work in June 2009, became aware Defendants were concealing and avoiding the payment of recording fees or other monies to the above-named counties in this and other states and brings this action under Tenn. Code Ann. § 4-18-103 against Defendants for violations of these sections.

2. The State of Tennessee, (“the State and the counties, as political subdivisions have suffered damages as the result of the conduct of Defendants as described in this Complaint.

3. *Qui tam* Plaintiff brings this action on behalf of the real parties in interest, the State and its counties.

4. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) has done business and is doing business in each of the above-named counties with its principal place of business in Reston, Virginia.

5. Defendant Bank of America, N.A. (“BoFA”) is a national association that originated and serviced residential home loans in the State.

6. Defendant Chase Mortgage Services, Inc. is a corporation that originated and serviced residential home loans in the State and is wholly owned by J. P. Morgan Chase Inc.

7. Defendant CitiMortgage, Inc. is a corporation that originated and serviced residential home loans in the State. CitiMortgage, Inc. has the active assumed name “ABN AMRO Mortgage Group, Inc. in the State.

8. Defendants Countrywide Homes Loans, Inc. and Countrywide Home Loans of Tennessee, Inc. are corporations that originated and serviced residential home loans in the State. Countrywide Homes Loans, Inc. has the active assumed name “America’s Wholesale Lender” in the State.

9. Defendants GMAC Mortgage, LLC and GMAC Mortgage, LLC of Tennessee are limited liability corporations that originated and serviced residential home loans in the State and are wholly owned by GMAC Mortgage Corporation. GMAC Mortgage, LLC has the active assumed name “DITECH” in the State.

10. Defendant Wells Fargo Bank, N.A. is a national association that originated and serviced residential home loans in the State. Wells Fargo Bank, N.A. has the active assumed name “America’s Mortgage Outsource Program” in the State.

11. Defendants Doe H-MMM are corporations, partnerships, limited liability companies, or some other entities which are liable and responsible for concealing, avoiding or decreasing fees or monies which were owed to the above-named counties.

FACTS

12. Recovery is sought pursuant to the Tennessee False Claims Act, Tenn. Code Ann. § 4-18-101, *et seq.*, and, in particular, Tenn. Code Ann. § 4-18-103(a)(7) which authorizes a civil action for penalties and damages where defendant “knowingly makes, uses , or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or to any political subdivision.” Tenn. Code Ann. § 4-18-106 provides for a ten year statute of repose for such civil actions.

13. During the ten years immediately preceding the filing of this Complaint, Defendants made false representations and continue to make false representations in recorded documents in order to avoid payment in full of all fees for recordation of documents reflecting the establishment, transfer, maintenance and/or release of secured interests in real property in the State, and further failed to record documents with the intent of avoiding payments of recording fees to the counties evidencing transactions which in the ordinary course of business in the absence of the MERS scheme, would have been recorded and for which fees would have been paid.

14. The Defendants adopted the MERS’ scheme to deprive county and state governments of revenue used among other things to maintain county real property records, fund the judiciary, fund school systems, and provide other government services. But for the recordation of false statements, Defendants would have paid additional recording fees to county governments.

15. MERS is named in excess of a million recorded documents in the State. Defendants recorded or caused to be recorded deeds of trust and other documents which identified MERS as

the “beneficiary,” which MERS is not, or the “nominee of the lender” and “lender’s successors and assigns,” which MERS never was, and as holding “legal title” when MERS did not, thereby falsely naming, appointing and/or characterizing MERS in any of those capacities in documents recorded throughout the State over the last ten (10) years.

16. Defendants have used these characterizations for MERS despite the fact that MERS never had and has no employees, and instead purported to act since MERS’ inception, through alleged authorized certifying officers and signatories who were never authorized by any official act or corporate resolution of MERS or to act in any MERS’ representative capacity whatsoever. Further, such alleged signatories or certifying officers were not and are not authorized by any applicable law to take any action on behalf of MERS with regard to any documents recorded in the State bearing MERS’ name or on MERS’ behalf.

17. Additionally, these documents affected the interests in property and were, therefore, to be recorded pursuant to Tenn. Code Ann. § 66-5-106, and should be recorded truthfully so as to maintain the veracity and sanctity of the land records, allowing reliance on the truth of any document filed therein.

18. Defendants recorded documents containing false statements regarding security interests and rights to real property in the State with the purpose of avoiding recording fees established by Tenn. Code Ann. §§ 8-21-1001 and 67-4-409 due to the counties of the State. Defendants recorded documents that did not reflect and do not reflect the truth of the security instruments in the land recording systems throughout the State. The documents were required to be recorded with the county recorders of the above-named counties where the property was situated.

19. The recording of deeds of trust and other security instruments and/or assignments, by Defendants was done for the purpose of protection of such security interests from the competing claims of subsequent bone fide purchasers.

20. Defendants' contractual and agency relationships with MERS also required that additional documents be truthfully recorded if the status of the loans and/or documents changed to a non-MERS Member. Specifically, MERS' policies and promises with their members oblige them to record and pay for recordation of documents reflecting the establishment and/or transfer of secured interests in real property, or beneficial interest in the underlying promissory notes, when a non-MERS member acquires an interest in any debt evidenced by a security instrument. Defendants failed to record or cause to be recorded any such documents of a non-MERS member interest in the applicable loans and security instrument with the specific intent of avoiding payments to the counties. This scheme was utilized in the creation of securitized mortgage trusts by Defendants where no such trust was a MERS member.

21. Based on the false representations, the recorded documents in the property records do not reflect the true beneficial ownership of the loans in question or accurately represent the ownership of the security instruments securing the loans. Thus, Defendants' own contractual relationships with MERS and with the residential mortgage backed securitization trusts Defendants represent were also breached. Specifically, the required disclosures to investors in those securitization schemes obliged Defendants truthfully to record deeds of trust, deeds of trust, assignments, and other documents evidencing the non-MERS Member investors' interest in real property, and, in an event of default, substitution of trustee and other documents related to the transfer of property subject to the foreclosure.

22. But for the initial recordation of false statements and documents, which false documents, Defendants, absent the MERS scheme, would have paid additional recording fees to county governments allowing the use of those funds for the benefit of all residents of the State.

23. Using false statements, Defendants rendered the property records of each county to be inaccurate and misleading. Secret and unrecorded instruments were used to induce investors to purchase residential mortgage backed securities issued from mortgage securitization pools that the Defendant financial institutions created, aggregated, sponsored, underwrote, and sold in the securities markets around the world.

24. But for the false assertions and claims in the recorded documents, MERS and/or the other Defendants would have recorded documents and paid county governments fees that accurately reflected the status of the respective loans.

25. Falsely recording MERS as the beneficiary on their deeds of trust created an illusory, misleading and false chain of title that purported to justify payment of less money in recording fees, depriving the State and the counties of revenue in a time of financial hardship.

26. In the event of foreclosure, Defendants recorded false and misleading documents to facilitate non-judicial foreclosures including falsely asserting that MERS was authorized, as a “nominee of lender or beneficiary of lender” to commence foreclosure proceedings, as well as authentication of “appointment of substitute trustee” instruments by person falsely and fraudulently represented to be officers of MERS.

27. When a promissory note secured by a MERS deed of trust was assigned to a mortgage backed security entity (“MBS”), a securitized mortgage investor pool, mortgage loan pool, special purpose vehicle (“SPV”), or property mortgage investment conduit (“REMIC”), pursuant to MERS’ own rules and membership agreements, the relationship of MERS and all of its members to

the promissory note and deed of trust was extinguished, and a truthful recording was required accurately to reflect the change of status.

28. The MERS membership agreement obliged Defendants to make two separate recordings in the event of a transfer to a mortgage backed security pool or trust (MBS, SPV, or REMIC) outside the MERS system: 1) an assignment of beneficial interest; and, 2) a designation of substitute trustee or beneficiary.

29. Immediately upon every such assignment to a securitized mortgage pool trust, the assignment of the Note and/or Deed of Trust to a new beneficiary was required to be recorded in the county where the property was located. Defendant MERS and the named Defendants, however, failed to make such recordings or pay the fees established by Tenn. Code Ann. §§ 8-21-1001 and 67-4-409 relative to those recordings to the county where the property was situated.

30. Despite the execution and recordation of more than 1,000,000 deeds of trust in the State being executed to secure promissory notes, which notes were then allegedly transferred to various MBS, SPV or REMIC's that were non-MERS Members, Defendants intentionally failed to record the documents described above, and other documents, so as to reflect the non-MERS' Members' interest in the loans and in the property records.

31. The false statements in county recordings obscured and facilitated defendants' scheme to deprive the State of Tennessee and its counties of revenue.

32. As of September, 2009, MERS had been named as the mortgagee or beneficiary on approximately 62 million mortgages and deeds of trust in the United States.

33. Defendants scheme to defraud included preparation and recordation of documents containing information Defendants knew were false, including without limitation, documents which incorrectly and untruthfully designate MERS as a beneficiary or nominee of lender, including: 1)

deeds of trust; 2) deeds of appointment of substitute trustee; 3) deeds of sale following foreclosure; 4) release of liens; 5) security agreements; 6) recording documents which purported to assign *from* MERS to some other entities, even entities that are not MERS Members, a deed of trust without first transferring the underlying promissory note evidencing such indebtedness; and, 7) Preparing and recording other documents intended to avoid and/or decrease recording fees that would otherwise have reflected the truth.

34. Defendants intentionally recorded, and continue to record documents wherein employees of companies other than MERS falsely identify themselves as being “officers and/or vice presidents” of MERS, or in some instances, of the Federal Deposit Insurance Corporation or other entity which has no knowledge of the actions of these supposed authorized signatories or certifying officers. These so called certifying “officers and/or vice presidents” have no employment relationship with MERS and are not, in fact, officers or vice presidents of MERS.

35. MERS and other Defendants allowed non-MERS employees to identify themselves as officers or vice presidents of MERS, because it creates the illusion of a recorded chain of title whereby the actual creditors and/or loan beneficiaries remain hidden from public record. Because promissory notes were frequently assigned, the falsely recorded documents decreased the number of recording fees paid by Defendants.

36. Defendants knowingly, intentionally or with reckless disregard of the truth and with requisite actionable *scienter*, caused, and continue to cause, to be made and used, false records and statements designed to conceal, avoid and/or decrease their obligations to pay recording fees.

37. The stated MERS’ business model was to eliminate the recordation of assignments and transfers of interests that affect property throughout the State and the remaining jurisdictions of the United States. MERS advertises itself, on its website and written material as providing the ability

to avoid the expense of recording through a scheme whereby MERS falsely holds itself out to the world as a beneficiary, or as a nominee or mortgagee. Each Defendant herein was aware, at all relevant times, that this recording fee avoidance scheme was predicated upon the false recordings disclosed in this Complaint.

38. Defendants affirmatively acted to cause MERS to be listed as the lien holder of record on all recorded security instruments relating to notes registered on the MERS System.

39. When ownership of any loan was transferred to a non-MERS member (i.e., an MBS), MERS and any of its Members had no further rights, interest or authority to act relative to every one of such deeds of trusts and mortgages. As such, the applicable property records do not provide a clear and verifiable chain of title on any property interest bearing MERS' name. The recorded instruments failed to show that MERS or any of its members had no rights, interest or authority to act relative to such deeds of trusts, assignments of security interest, lien releases and other documents.

40. When a note associated with a deed of trust on property was transferred to a non-MERS member, the rules and policies of MERS required the assignment of the loan to the non-MERS member be executed by MERS and recorded in the county where the real property was located. The loan would thereafter be deactivated from the MERS System.

41. MERS maintains a list of all MERS Members, and no MBS pool or trust (i.e. MBS, SPV, REMIC) which owned loans secured by MERS deeds of trust on property in the State was or is a MERS Member.

42. Despite knowing that notes had been assigned outside the MERS system, Defendants intentionally recorded documents which they knew were false and fraudulent because the documents purported to reflect a continuing relationship to those loans.

43. Defendants' conduct enabled them to hide their activities with respect to: 1) acquisition of credit default swaps; 2) credit derivatives; 3) lack of any loan origination underwriting standards; 4) lack of any underwriting standards for the securitized mortgage trusts Defendants created; 5) hide/clouded their failure to comply with any IRS REMIC rules regarding transfer of loans to the REMIC entities; and, 6) create the appearance of an arms-length transaction.

44. The designation of MERS as a beneficiary or nominee of the lender on a deed of trust was an intentional and knowing false designation by MERS in numerous ways, namely: 1) neither MERS nor the "lender" so designated was the true lender; 2) MERS was not the nominee of the true lender of the funds for which the promissory note was executed; 3) MERS did not collect or distribute payments, pay escrow items, hold client funds on deposit, pay insurance for clients or borrowers, or pay taxes; 4) MERS had no right to collect money on the note or to receive any proceeds or value from any foreclosure; and, 5) the name "MERS" does not appear on any promissory note secured by property in the State.

45. Defendants have foreclosed on borrowers knowingly using false documents.

46. MERS and other Defendants transfer property by "electronic handshake(s)" which should have been recorded by the counties' registers of deeds for the purpose of providing an accessible public record that reflects the actual transfers of interests in property available to the public and, particularly, by other interested secured creditors and judgment holders where the property is situated.

47. Defendants knew or should have known that the MERS scheme was a sham; was intended wrongfully to bypass the counties' recording requirements; frustrated the borrowers' rights to know the identity of the holder of the note that was secured by the deed of trust.

48. Defendants' actions were taken at the instruction of or with full knowledge by MERS and other Defendants that the recording of false documents and the failure to record truthful documents jeopardized the real property recording system enacted by the State for the purpose of maintaining certainty in property transactions and for public knowledge.

49. Defendants' scheme created a cloud on title as to property secured by MERS' deeds of trusts, security instruments, and lien releases throughout the State.

50. Unlike the recordation system adopted by the State, MERS' scheme lacks a reliable monitoring system to ensure that an accurate chain of title is available to the public.

51. Defendants have used these security instruments with MERS being falsely designated as the "beneficiary" as a means of effectuating foreclosures by use of the county registers of deeds just prior to the foreclosure by recording documents only to the extent of effectuating the foreclosure without recording any of the interim transfers prior to the foreclosure.

52. MERS claims that use of its scheme has "saved" at least \$2.4 billion dollars in recording costs for its members.

CLAIM FOR RELIEF

I. Violation of T.C.A. §4-18-101 et seq.: the False Claims Act

53. MERS was formed and has been operated for the ten (10) years immediately preceding the filing of this Complaint in this matter and continues to operate with the intent and purpose of avoiding recording requirements and to avoid and/or decrease payment of fees or monies to the county recorders of each county of the State in violation of Tenn. Code Ann. §§ 8-21-1001 and 67-4-409 and in order to proceed falsely under the provisions of and other provisions of Tennessee law.

54. Defendants prepared false documents, including security instruments (i.e. deeds of trusts), deeds of assignment, appointment of substitute trustees, and others for the purpose of avoiding and/or decreasing their statutory obligation to pay recording fees.

55. As a direct and proximate result of Defendants' actions, as described herein, the above-named counties have been deprived of revenues to which such governmental bodies were legally entitled.

56. Defendants intentionally failed to pay these recording fees and intentionally failed to disclose the transfers and assignments of interests in property for the purpose of avoiding and decreasing the recordation fees owed to the counties and the State.

57. Pursuant to Tenn. Code Ann. § 4-18-101, *et seq.*, Defendants are liable for three times the damages actually sustained; the costs of bringing this action; and, liquidated damages for each violation of the False Claims Act.

58. Pursuant to the Tennessee False Claims Act, *relator* Bates has incurred and is entitled to recover reasonable expenses and attorneys' fees.

59. Defendants' acts in violation of the False Claims Act are continuing and included as claims on behalf of the real parties in interest and by the *relator*.

WHEREFORE, Plaintiff State of Tennessee, *ex rel.* Barrett Bates requests the Court enter judgment in favor of the State and its counties against Defendants as follows:

1. For treble damages for all recording fees which were not paid in full as required by the laws of the State on any and all such avoided recording fees during the ten (10) years immediately preceding the filing of the original complaint herein;

2. For civil penalties of not less than \$2,500 and not to exceed \$10,000 for each unpaid and/or underpaid recording fee in the ten (10) years immediately preceding the filing of this action;

3. For civil penalties of not less than \$2,500 and not to exceed \$10,000 for each false document recorded, without limitation, each deed of trust, appointment of substitute trustee, substitute trustee's deed, and other documents recorded in the ten (10) years immediately preceding the filing of the Complaint, which security instrument purported to secure an obligation by property in the State and in which MERS was named as beneficiary and/or nominee of the lender and for each transaction which in the ordinary course of business, absent the MERS scheme, would have been recorded;

4. For civil penalties of not less than \$2,500 and not to exceed \$10,000 for each act during the ten (10) years immediately preceding the filing of this action for having knowingly made, used and caused to be made or used, false records and/or statements to conceal, avoid or decrease obligations to pay or transmit money duly owed to the State and its counties for recording fees reflecting the assignments of rights or interests in real property in the State;

5. For pre-judgment interest on all damages awarded;

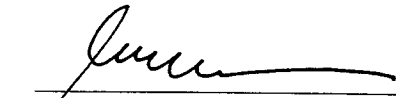
6. For reasonable costs and attorneys' fees;

7. For an award to Plaintiff Bates in an amount consistent with the Tennessee False Claims Act; and,

8. For such other relief that the Court or jury deems just and equitable.

Respectfully submitted,

**BLACKBURN, McCUNE,
HAPPELL & ZENNER, PLLC**



W. Gary Blackburn (#3484)
Malcolm L. McCune (#2660)
Mathew Zenner (#18969)
John Ray Clemmons (#25907)
101 Lea Avenue
Nashville, Tennessee 37210
Telephone: (615) 254-7770
Facsimile: (615) 251-1385