

**IN THE PROBATE DIVISION OF THE CIRCUIT COURT**

**STONE COUNTY, MISSOURI**

**IN THE ESTATE OF:**

**MARILYN GAY HASTINGS,**

**Deceased**

**Case No. 11SN-PR00073**

**BETTY G. ROBERSON, heir**

**AND**

**JAMIE EUGENE HASTINGS, heir**

**AND**

**SHEILA RENEE HASTINGS, heir**

**SECOND MOTION TO DISMISS AND  
SUGGESTIONS IN SUPPORT THEREOF**

Come now the Heirs in this matter, and for their Motion to Dismiss, state to the court as follows:

**HISTORY OF THE MOVANT**

1. During the year 2005, the Nomura Home Equity Loan, Inc., Home Equity Loan Trust, Series 2005-HE1 was created. The 2005 in its name refers to the year of its creation.

2. The Trust was created in light of the Real Estate Mortgage Investment Conduit Trust rules. These trusts, often called REMICs, were introduced in 1987.
3. Legal form is irrelevant to REMICs: trusts, corporations and partnerships may all elect to have REMIC status.
4. Without these sales, the certificate holders would have no assurances that a bankruptcy or receivership by the originators of these mortgages would not allow all funds therein to be "clawed back" by a trustee or receiver.
5. In this particular case, according to the Pooling and Servicing Agreement ("PSA") of this trust (supplied on disc as "Exhibit A"), dated October 1, 2005, Nomura Home Equity Loan, Inc. was Depositor, Nomura Credit and Capital, Inc was Seller, Option One Mortgage was one of the Servicers, Wells Fargo Bank was Master Servicer and Securities Administrator, and HSBC was Trustee.
6. According to Section 2.01 of the PSA, for a mortgage to be properly transferred it should have gone through the following transfers, all prior to October 31, 2005:
  - a. from H&R Block to Option One;
  - b. from Option One to Nomura Credit and Capital, Inc (the Seller);

- c. Nomura Credit & Capital (Seller) to the Depositor, Nomura Home Equity Loan, Inc.;
- d. Nomura Home Equity Loan, Inc. (Depositor) to the HSBC Bank USA, N.A., in its role as Trustee for the Nomura Home Equity Loan, Inc., Home Equity Loan Trust, Series 2005-HE1.

7. These transfers were not at all capricious or arbitrary. Had they not been made, the transactions would have lost the tax-free status of the interest, which was one of the advantages of being a REMIC Trust, and they also would have run the risk of not being bankruptcy remote in the case of a bankruptcy of one of the institutions.

8. The alleged value of the trust at the time of the agreement (October 1, 2005) was \$1,112,737,000.

9. The closing date of the Pooling and Service Agreement was October 31, 2005.

10. All mortgage documents under Sections 2.01 to 2.05 had to be in the trust by the closing date. In the case of a loan where there were irregularities as discovered by the trustee, *the last possible date for inclusion in the trust was two years from the closing date: In this case, October 31, 2007.*

11. This action is brought in the name, "HSBC Bank USA, National Association, as Trustee for Nomura Home Equity Loan Inc, Asset-Backed Certificates, 2005-HE1"

12. According to Section 2.09 of the PSA, an express trust named Nomura Home Equity Loan, Inc., Home Equity Loan Trust, Series 2005-HE1 was created.
13. This would be the correct "person" to have filed suit in this matter: the Trustee (holding legal title) and the Trust (holding equitable title).
14. "In suits involving trust property, both trustees and beneficiaries are necessary parties." *Roth v. Lehmann*, 741 SW2d 860 (Mo. App E.D. 1987)
15. The certificates themselves are pieces of paper, which are then owned by certificate holders, in accordance with the very detailed rules of the trust.

### **THE NOTE**

16. The Note which the "Trustee for the Certificates" claims is the original promissory note contains no endorsement on its face.
17. It is now accompanied by two "allonges," pieces of paper which claim to assign the Note first from H&R Block to Option One, and then Option One in blank, allowing theoretically anyone in possession of this Note to claim ownership. A copy of the alleged note and allonges is attached hereto as "Exhibit B"
18. Counsel for Defendant was allowed to examine the original Note on September 26, 2011.

19. At that time, Counsel for Defendant took still pictures and videos. Each of the four pages was separate from each other and not attached by staple, glue, or tape. The pictures are attached to this pleading as "Exhibit C".

20. The allonges do not comport with RSMo. 400.3-204, in that for an attachment to be considered part of the Note, it must be permanently affixed to the instrument.

21. In addition, there was ample room on the Note itself for the endorsements. "An endorsement pinned or clipped to the instrument is not sufficient. The endorsement must be on the instrument itself or on a paper called an allonge, which is so firmly affixed to the instrument as to become an extension or part of it." *Bremen Bank and Trust Co. v. Muskopf*, 817 SW2d 602 (Mo. Ct. App. E.D.).

## **VARIOUS ATTEMPTS TO ASSIGN THE NOTE**

22. The following attempts to assign the Note and Deed of Trust have been made:

- a. None on the face of the Note
- b. Two allonges bearing the signature of Rhiannon Sheviln:  
Supposedly on the day of the creation of the Note, in Colorado, on May 20, 2005. The first assignment is from H&R Block to Option One; the second is from Option One in

blank. These are invalid because they were not permanently affixed to the Note.

- c. H&R Block attempting to again assign to Option One, this time both the Note and Deed of Trust, on November 29, 2005 (Exhibit D);
- d. AMHSI "as successor in interest" to Option One to Movant on October 6, 2008, signed by Linda Green and Jessica Ohde. This assignment is wholly invalid, for the reasons stated below.

23. The Note would only be valid to either H&R Block, or to Option One Mortgage by virtue of the assignment of Deed of Trust which includes language about the note, which was done on November 29, 2005 (Please note: this was already a month after the Closing Date of the Trust).

24. As stated above, In October of 2008, a document purporting to be an Assignment of Deed of Trust was placed into the Stone County Recorder of Deeds office, transferring the Deed of Trust from Option One to the Certificates via the auspices of American Home Mortgage Servicing, Inc, as they claimed to be the Successor In Interest to Option One.

25. There is nothing recorded that shows that authority.

26. Such a document was created at the behest, and for the benefit of, Movant, who, by its own account, should have had this Note in its trust three years earlier.

27. The Document bears Instrument Number 200800017022, and was created by DocX, a company in Alpharetta, Georgia.

28. The document purports to be signed by Linda Green, purportedly a Vice-President and Jessica Ohde, purportedly an Assistant Vice-President of AHMSI. Both were employed in Alpharetta, Georgia.

29. AHMSI's offices were in Coppell, Texas.

30. Linda Green, if she exists, was "employed" for many years in the Alpharetta, GA offices of Lender Processing Services. She signed many different job titles on mortgage-related documents, often using different titles on the same day. She often signed as an officer of MERS ("Mortgage Electronic Registration Systems, Inc.") There are at least seven distinct versions of the Linda Green signature, indicating that several different persons signed the name "Linda Green." Titles attributed to Linda Green include the following: Vice President, Loan Documentation, Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc.; Vice President, MERS, as nominee for American Home Mortgage Acceptance, Inc.; Vice President, American Home Mortgage Servicing as successor-in-interest to Option One Mortgage Corporation; Vice President, MERS, as nominee for American Brokers Conduit; Vice President & Asst. Secretary, American Home Mortgage Servicing, Inc., as servicer for Ameriquest Mortgage Corporation; Vice President, Option One Mortgage Corporation; Vice President, MERS, as nominee for HLB Mortgage; Vice President,

American Home Mortgage Servicing, Inc.; Vice President, MERS, as nominee for Family Lending Services, Inc.; Vice President, American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation; Vice President, Argent Mortgage Company, LLC by Citi Residential Lending Inc., attorney-in-fact; Vice President, Sand Canyon Corporation f/k/a Option One Mortgage Corporation; Vice President, Amtrust Funsing (sic) Services, Inc., by American Home Mortgage Servicing, Inc. as Attorney-in-fact; and Vice President, Seattle Mortgage Company.

31. Jessica Ohde, if she exists, was "employed" for many years in the Alpharetta, GA offices of Lender Processing Services. She signed many different job titles on mortgage-related documents, often using different titles on the same day. She often signed as an officer of MERS ("Mortgage Electronic Registration Systems, Inc.") There are at least four distinct versions of the Jessica Ohde signature, indicating that several different persons signed the name "Jessica Ohde." Titles attributed to Jessica Ohde include the following: Assistant Vice President, American Home Mortgage Servicing, Inc.; Assistant Vice President, American Home Mortgage Servicing, Inc., as successor-in-interest to Option One Mortgage Corp.; Assistant Secretary, MERS, as nominee for American Brokers Conduit; Assistant Secretary, MERS, acting solely as nominee for American Home Mortgage; Assistant Secretary, MERS, acting solely as nominees for American

Home Mortgage Acceptance, Inc.; and  
Vice President, Seattle Mortgage.

32. Neither Linda Green, nor Jessica Ohde, if either of them actually exists, were employees of AHMSI, and neither had any ability or authority to pass on any interest in the property.

33. In addition, no documentation of any sort has ever been presented that AHMSI had any authority to act as successor in interest for Option One.

34. On August 23, 2011, AHMSI took the extraordinary step of suing DocX and another document forger, Lender Processing Services, in state court in Texas.

35. In that petition, AHMSI claims “without AHMSI’s knowledge or consent, [Lender Processing Services and DocX] improperly executed, notarized and recorded thousands of assignments upon which AHMSI relied in pursuing foreclosure proceedings on behalf of the securitizations trusts that owned the loans ... Without AHMSI’s knowledge or approval and in violation of their contract with AHMSI, [Lender Processing Services and DocX] engaged in a practice they have described as “surrogate signing” in which persons **not** authorized by AHMSI’s board executed assignments of mortgage by signing the names of the Special Officers who were explicitly authorized.”

36. Because the Movant cannot claim under the allonges to the Note, it must attempt to claim under the Note itself, which is not in any way indorsed.

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37. In *In re Wilhelm*, 407 B.R. 392, 398 (Bankr. D. Idaho 2009), quoted in Missouri cases, the court set forth a non-holder's rights as follows:

*Because the transferee's rights are derivative of the transferor's rights, those rights must be proved. Because the transferee is not a holder, there is no presumption under [UCC provision] 3-308 that the transferee, by producing the instrument, is entitled to payment. The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it.*

38. By its own terms, this trust could not accept any additional property, past, at latest, October 31, 2007. By the records contained in this case, no transfer was allegedly attempted until October 6, 2008, when the fictitious Linda Green attempted to do so.

## **STANDING**

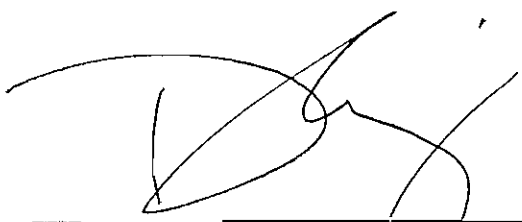
39. RSMo 473.020 establishes that an "interested person" may seek to open an estate.

40. RSMo 472.010 (15) states as follows: ' "Interested persons" mean heirs, devisees, spouses, creditors or any others having a property right or claim against the estate of a decedent being administered.'

41. The Movant in this case cannot prove its standing as a creditor or holder of a property right for the following reasons:

- a. It is not a proper party to sue; it is a stack of paper, and not the express trust created in the Pooling and Servicing Agreement;
- b. This REMIC creation cannot own something except as expressed by its own terms, and those terms do not allow for the late inclusion which is contemplated here;
- c. Nothing in the Pooling and Servicing agreement allows for late inclusions or additional property to be included;
- d. The allonges containing the blank endorsement were not permanently affixed and are therefore of no consequence;
- e. If the Movant attempts to claim that the Note and Deed of Trust were conveyed by the Assignments of Deed of Trust, it would have been to Option One and no one else;
- f. Option One is now defunct and no one has made application otherwise.

WHEREFORE, the Heirs pray for an Order of this Court dismissing this petition, and for such and other relief as deemed just and fair in the premises.



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**CERTIFICATE OF SERVICE**

I hereby certify that an above copy of this pleading was served on counsel  
for Movant this 24<sup>th</sup> day of October, 2011.



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AND

JAMIE EUGENE HASTINGS, heir

AND

SHEILA RENEE HASTINGS, heir

JUDGMENT OF DISMISSAL

This matter comes on for hearing this 24<sup>th</sup> day of October, 2011, having been scheduled for hearing by the court on September 12, 2011 for this day. Movant/Petitioner appears not. Heirs appear by attorney Dale Wiley.

The court overrules the Heirs' first Motion to Dismiss. The heirs file a second Motion to Dismiss, which deals with the standing of Movant/Petitioner to bring an action under RSMo. 473.020. As this was the


hearing scheduled for today, the court takes up the matter now, and will treat the Heirs' motion as suggestions.

Under RSMo. 473.020, the following may open an estate:

- (a) All persons provided for in subdivision (15) of section 472.010
- (b) And, additionally, any person who has attached a claim supported by an affidavit setting forth the basis upon which such person has a claim against the decedent.

The court finds that HSBC Bank USA, National Association, as Trustee for Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2005-HE1 is not a "person" under the auspices of either section. They are certificates, which have buyers and sellers, and have no legal standing to sue.

The Movant/Petitioner has no standing to sue because they do not qualify under either RSMo. 473.020 or 472.010. The petition is therefore dismissed.

 10-24-11  
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Hon. Mark Stephens