

FILED

MAY 21 2015

SUPERIOR COURT OF THE STATE OF CALIFORNIA By _____ FRESNO COUNTY SUPERIOR COURT
COUNTY OF FRESNO - B.F. SISK COURTHOUSE LP - DEPUTY

UNLIMITED CIVIL DIVISION

THOMAS A. GLASKI

Plaintiff,

v.

BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO "LASALLE BANK NA AS TRUSTEE FOR WAMU MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR17", CHASE HOME FINANCE LLC, CALIFORNIA RECONVEYANCE COMPANY, AND DOES 2-100, inclusive,

Defendants.

Case No: 09CECG03 601
Assigned for all purposes to:
Hon. Kristi Culver Kapetan
Department 403

"By Fax"

Affidavit and Testimony of Thomas J. Adams

DATE: May 20, 2015

TIME:

DEPT: 403

TRIAL DATE: May 26, 2015

Action Filed: October 1, 2009

09CECG03601
AF
Affidavit
39816



AFFIDAVIT AND TESTIMONY OF THOMAS J. ADAMS

The deponent, being first duly sworn, deposes and says on oath as follows:

1. My name is Thomas J. Adams.
2. I am a partner with the firm of Paykin, Krieg & Adams in New York, New York.
3. My area of expertise is in the field of securitization. My curriculum vitae is attached to this affidavit.
4. Let me briefly summarize my experience for the Court. I began my career as an Associate at Thatcher, Proffitt & Wood in New York City working on Mortgage securitizations in 1989.

5. In this position I was one of the lawyers who worked on the very first vintage of pooling and servicing agreements which dealt with the 1986 amendments to the IRS tax code creating the REMIC Structures.

6. My career progressed from Thatcher, Proffitt & Wood through a series of industry positions which all dealt with various aspects of Mortgage loan securitization as set out in my Curriculum vitae.

7. I am familiar with the industry standards, customs, practices and legal requirements of mortgage loan securitizations.

8. I am also familiar with the law governing the creation, powers, authorities and limitations of the securitization trusts and their counterparties including the Trustees and Servicers for the securitization trusts.

9. I have been retained by the Plaintiff, Thomas A. Glaski, in this matter to review the documents presented to the Court and to opine as to whether the Defendant, Wamu Mortgage Pass-Through Certificates Series 2005-AR17, in this action is in fact the owner of the promissory note secured by a deed of trust, executed by Thomas A. Glaski (Glaski), upon which the Defendant has foreclosed and claimed ownership.

10. In formulating my opinion I have reviewed various pleadings including the Complaint filed by the parties including the attachments with my primary emphasis on the subject deed of trust, the assignment of deed of trust, and the securitization documents which are filed with the SEC which includes the Pooling and Servicing Agreement which is the trust agreement specified by the Defendants in this lawsuit.

11. The trust agreement which created the Trust that is Defendant, Wamu Mortgage Pass-Through Certificates, Series 2005-AR17 (the Trust) in this action is called a Pooling and Servicing Agreement (the PSA) and is filed under oath with the Securities and Exchange Commission. According to the PSA, the Trust was created on December 21, 2005.

12. The Trust agreement for this securitization is filed as exhibit 1 to the Declaration of Amber Allegria. In preparing this affidavit I have used this version of the document.

13. I am familiar with the industry standards, customs and practices which existed at the time of this securitization and continue in force through the date of this affidavit. I have personal knowledge of these standards as a result of my employment, training, education and experience as set out in my Curriculum Vitae.

14. Section 10.05 of the PSA is an election by the parties to the Trust that the Trust will be governed under the laws of the State of Delaware. This Court would be required to consider the impact of the actions of any party to the Trust agreement which violated the Trust agreement under Delaware Law. Based on my background as a credit analyst, attorney and expert witness I am generally familiar with the applicable Delaware law.

15. The Trust agreement sets forth how the trust acquires its assets. The Trust agreement sets forth both powers and the limits of the powers of the Trust and details the transfer of the mortgage loan documents that occurred in conjunction with the securitization.

16. The PSA requires that each party to the sale of the mortgage loans endorse each promissory note to the next party in the chain of title until the promissory note is endorsed to the Trustee for the benefit of the Trust, provided however if Washington Mutual Bank was the seller of the mortgage loan to the Trust the promissory note need not be endorsed in blank or to the Trust.

17. This requirement is included in the definition of "Mortgage File" in Section 1.01 of the PSA.

18. In this case, a copy of the promissory note has not been provided to the Plaintiff or to me for review so I cannot opine as to whether the promissory note was properly endorsed in accordance with the terms of the PSA.

19. According to the requirements set forth in the Trust Agreement I would expect to see a series of endorsements of the promissory note reflective of each party who had an

ownership interest in the promissory note culminating with a blank endorsement from the seller.

20. I have reviewed the assignment of deed of trust attached as Exhibit 5 to the Declaration of Amber Allegria. I note that it states that the deed of trust was transferred by JP Morgan Chase Bank, National Association, as successor in interest to Washington Mutual Bank, FA to Bank of America, National Association as successor by merger to LaSalle Bank NA, as trustee for WaMu Mortgage Pass-Through Certificates Series 2005-AR17 Trust. This transfer is purported to have occurred on June 11, 2009, approximately four years after the closing date of the Trust.

21. I note for the Court's benefit that a transfer to the Trust on June 11, 2009 is a legal impossibility for a number of reasons:


- a. First of all, the trust's period for funding (receiving assets) ended on the Closing Date which is December 21, 2005. An attempted transfer by the seller (or its successor) to the trust in 2009, after the closing day and after the certificates were issued, would mean the Defendants claim to have transferred an asset to a trust that has by its own terms been closed for more than four years at the time the alleged transfer took place.
- b. Secondly, the loan was, according to the Defendants, in default at the time of the purported transfer in 2009. Consequently, the loan cannot be a "qualified mortgage loan" under the IRS tax code, which requires a qualified mortgage loan to be a performing mortgage loan.

22. Based on my experience in this industry, its customs, requirements and practices, I cannot conclude that this particular mortgage loan was ever owned by any of the parties to this securitization. In addition, the attempt to transfer the mortgage loan to the Trust through the assignment of deed of trust in 2009 would appear to be an invalid according to the terms of the PSA.

23. Based on my knowledge of the terms of this transaction as well as my review of the documents presented to the Court as the evidence that this Trust owns the promissory note executed by Glaski, it is my opinion that this Trust does not own this mortgage loan. My opinion is based upon the pleadings, testimony, securitization documents and loan documents that I have reviewed.

24. I make this affidavit on personal knowledge.

Further affiant saith not.

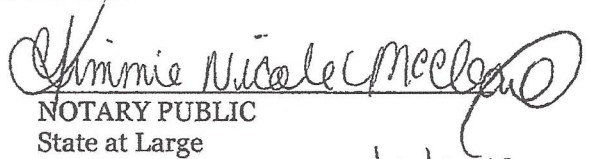


Thomas J. Adams,
Affiant

STATE OF NEW YORK

COUNTY OF NEW YORK

SWORN TO AND SUBSCRIBED BEFORE ME on this 20th day of
May 2015, witness my hand and official seal of office.



NOTARY PUBLIC

State at Large

My Commission Expires: 11/14/2015

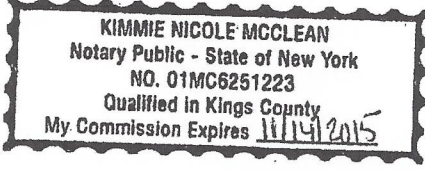

KIMMIE NICOLE MCCLEAN
Notary Public - State of New York
NO. 01MC6251223
Qualified in Kings County
My Commission Expires 11/14/2015

EXHIBIT A

THOMAS J. ADAMS

99 Hudson Street | New York, NY 10013
917-355-3087 | thomasadams3@mac.com

Credit & Regulatory Analysis □ **Portfolio Management** □ **Due Diligence**

Over 24 years of professional experience across financial markets. Demonstrated leadership, entrepreneurial, mentoring, and team building capabilities; adept at successfully coordinating multiple projects simultaneously. Provides expert analysis on credit and portfolio issues along with counterparty assessment regarding mortgage loans and structured finance. Strong, effective communicator able to leverage established relationships with senior level executives, regulators, law firms, and industry leaders.

Areas of Expertise:

Credit Analysis • Market Research & Analysis • Mortgage and Consumer Finance
Entrepreneurship • Risk Assessment • Credit Ratings
Corporate and Securities Law • Litigation Strategy • Expert Witness Testimony • Securitization
• Organizational Leadership

PROFESSIONAL EXPERIENCE

PAYKIN KRIEG & ADAMS, LLP, New York, NY

Partner (2009-2011; 2014 to present)

- **Corporate and Securities Law Practice:** Assist public and private companies with securities offerings and regulatory compliance. Advise on securities law developments and assist with reporting, disclosure, and compliance requirements.
- **Market Expertise:** Appeared numerous times on business news programs such as BNN (Canada) and Bloomberg TV as an attorney and expert on securitization.

INDEPENDENT CONSULTING AND ADVISORY SERVICES, New York, NY

Consultant, (2008 to present)

- **Entrepreneurship:** Built a new consulting business from the ground up, developing a client roster of top tier banks, law firms and private litigants primarily by word of mouth and personal marketing. Offering the hands-on experience of an active participant and business leader in the markets.
- **Litigation Strategy and Expert Witness Testimony:** Consult for law firms and companies engaged in litigation regarding mortgages, asset-backed securities, collateralized debt obligations, and credit default swaps. Deposed as an expert witness numerous times, and also submitted detailed expert reports in support of clients' legal arguments, providing crucial information on high profile claims.
- **Credit and Regulatory Analysis:** Deliver expert analysis to institutional investors, hedge funds, regulatory agencies and advisory groups on legal, credit, and regulatory issues relating to mortgage-backed securities, mortgage loans, mortgage servicing and foreclosures, and related transactions.
- **Market Expertise:** Consult with numerous lawmakers, politicians, regulators, investors, and consumer advocates on issues relating to the financial crisis and financial regulatory reform.

FAIRHOPE CAPITAL CORPORATION, New York, NY

Principal (December 2012 to March 2013)

Start-up pursuing the acquisition, servicing, and rehabilitation of distressed residential mortgage loans.

- **Entrepreneurship:** Collaborated with partners to pursue investors, develop strategy for acquisitions, and manage capital market relationships and transactions.
- **Credit and Market Analysis:** Managed bids on mortgage pools and successfully developed exit strategies for mortgage pool acquisitions. Correctly anticipated an area of growth and opportunity, and strategized the best ways to capitalize on these opportunities.

TRADE METRICS CORPORATION, New York, NY

Principal (2010-2012)

Credit rating firm.

- **Entrepreneurship:** Developed corporate infrastructure and managed marketing strategy and fund raising from potential investors.
- **Credit Rating and Analysis:** Completed and submitted regulatory application and approval process for Nationally Recognized Statistical Rating Organization (NRSRO) status with Securities and Exchange Commission. Managed credit analysis procedures.
- **Regulatory Expertise:** Navigated the Securities and Exchange Commission (SEC) regulatory process, interacting regularly with members of the SEC, outside attorneys, and clients to produce and submit an application.

FINANCIAL GUARANTY INSURANCE CORPORATION, New York, NY

Senior Managing Director, Residential Mortgage Backed Securities and Consumer Asset Backed Securities, Collateralized Debt Obligations and Risk Transfer (2003-2008)

- **Credit and Market Analysis:** Built and led team responsible for business development and credit analysis for structured financial products including mortgage-backed securities, student loan securities, credit cards and collateral debt obligations, across US and international markets.
- **Strategic Planning and Crisis Management:** Member of senior management team responsible for analysis of markets, strategy, and company resources, including credit crisis issues and distressed securities valuations.
- **Organizational Leadership:** Member of Senior Management Team and Senior Credit Committee.

AMBAC ASSURANCE CORPORATION, New York, NY

Managing Director, Mortgage-Backed Securities (1996-2003)

- **Organizational Leadership:** Established and developed company's mortgage-backed securities team, including credit risk analytics and structural criteria. Developed and managed key industry clients and relationships.
- **Credit and Market Analysis:** Extensive marketing and analytical experience, including first insured residential mortgage-backed securities in United Kingdom and Korea.

MOODY'S INVESTORS SERVICE, New York, NY

Senior Credit Officer, Asset-Backed Securities, Mortgage-Backed Securities Group (1992-1996)

- **Credit and Regulatory Analysis:** Analyzed credit, structural, and legal issues of non-conforming residential mortgage-backed securities, including prime and sub-prime assets. Analyzed credit, structural and legal issues for U.S. credit card, auto, and esoteric asset backed securities transactions. Extended overseas participation in London and Sydney offices.

THACHER PROFFITT & WOOD, New York, NY

Associate, Mortgage-Backed Securities Practice Group (1989-1992)

- **Market Expertise:** Managed securitizations and whole loan sales for investment banks and issuers.

EDUCATION & CREDENTIALS

Juris Doctor - 1989

FORDHAM UNIVERSITY SCHOOL OF LAW, New York, NY

Bachelor of Arts - 1986

COLGATE UNIVERSITY - Hamilton, New York