



SO ORDERED.

SIGNED this 24 day of March, 2011.


JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

OPINION NOT DESIGNATED FOR
PRINT PUBLICATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

DAVID ANTONIO CAMPOVERDE.

Case No. 10-41685

Chapter 7

Debtor.

**ORDER GRANTING TRUSTEE'S MOTION TO SET MOTION TO COMPEL
FOR EXPEDITED HEARING AND TO REQUIRE RESPONSE FROM
CITIMORTGAGE**

CitiMortgage, Inc., "or its Successors and Assigns,"¹ filed a Motion for Relief from Automatic Stay on certain non-exempt real property located in Emporia, Kansas on

¹The motion never identifies who those "successors and assigns are." If, for example, CitiMortgage assigned the note to ABC Company, and ABC Company later assigned it to XYZ Company, and CitiMortgage and XYZ Company have no relationship, it is difficult for the Court to understand how CitiMortgage would have standing (without something more) to file a Motion for Relief from Stay on behalf of XYZ Company.

November 12, 2010.² In that motion, it asserted it was the “holder of a Mortgage ... and Promissory Note” relating to this real estate, and that the pay off on the note was \$158,615.90.³ The Motion does not indicate in what capacity CitiMortgage “held” those instruments. For that reason, this Court originally assumed CitiMortgage was claiming to be the beneficial owner of the instruments since no other capacity was stated.

CitiMortgage’s motion also states that a copy of the note is attached, but is silent on whether it is an authentic copy of the original in existence on the date of the filing of the motion. The Trustee suggests that in light of what she has found on a public website about this loan, it cannot be true that it is an authentic copy because the note contains no endorsements.

CitiMortgage also claimed in its Motion that “[b]y reason of the aforesaid facts, **Movant** lacks adequate protection of **its** interest in said property.”⁴ In so stating, again, the Court assumed that CitiMortgage held the beneficial interest in the note, because if it did not, it is unclear why **it** (as opposed to its principal if it is serving as an agent) would be deserving of adequate protection.

The contents of this Motion, however, are inconsistent with information that the

²Doc. 18.

³Interestingly, CitiMortgage never alleges that any of this \$158,615.90 is owed to it. It also does not plead (if it is really merely the servicer, as the Fannie Mae documents suggest) that the true beneficial owner of the note has authorized it to file this action on its behalf.

⁴*Id.* at ¶ 9 (emphasis added).

Trustee has been required (in order to do her job) to ferret from a public website suggesting that CitiMortgage is, at best, the servicer of the documents in this case. Because of that perceived inconsistency, for which counsel for CitiMortgage had no explanation at the hearing, the Court ordered CitiMortgage to provide additional information to the Trustee within 30 days of a lengthy hearing conducted on February 9, 2011.

A review of the notes taken at this hearing, coupled with a review of the oral transcript of the hearing, reveal that the Court essentially required CitiMortgage to provide the following within 30 days:

1. The MERS milestone report;
2. Whatever information/documents that were in CitiMortgage's possession or control that would trace the ownership interests in the note and mortgage from the date that CitiMortgage originally made the note to the present. The Trustee has represented to the Court that as a member of MERS, Mortgage Electronic Registration Systems, CitiMortgage has computer access to as many as 9 different reports that would capture this information;
3. An exact copy of the note as it exists today (showing any and all endorsements since the date it was executed), with a certification that it is an exact copy of the original of that document;⁵

⁵The Trustee indicates that counsel for CitiMortgage has offered to allow her to drive the 60 plus miles to Lenexa, Kansas to view the original of this note, but has declined (or just ignored requests) to simply mail to her a complete copy of the original with a certification that it is a complete and accurate copy of what the note looks like today.

4. Information how the mortgagor's signature could have been notarized by a New Jersey notary public on the same date that the mortgage was recorded in office of the Lyon County, Kansas Register of Deeds.

The Court then continued this matter to a status conference on **April 13, 2011**.

The Trustee has now filed a Motion to Compel⁶ that demonstrates that she has received only the MERS milestone report—five days after everything was due, plus an email communication dated March 16, 2011, from CitiMortgage counsel indicating it has fully complied with the Court's orders. At first blush, that does not appear to be the case, but the Court will give CitiMortgage an appropriate opportunity to reply before the April 13, 2011 hearing.

Accordingly, the Court orders CitiMortgage to file a written response to the Trustee's Motion to Compel by **April 5, 2011**. Since this is a contested matter, and since this Motion for Relief from Stay is not a dispositive motion, this provides CitiMortgage exactly the 14 days typically allowed for such a response under local rule. In addition, CitiMortgage is ordered to **immediately** fax and mail to the Trustee a full and complete copy of the note that counsel alleges he has in his possession with a notarized certification that the copy sent is an exact copy of the original note in his possession and in its current form. Counsel is then ordered to also bring the original to the hearing on April 13, 2011 for the Trustee's review.

IT IS, THEREFORE, ORDERED THAT the Court will hear the Trustee's Motion

⁶Doc. 43.

to Compel on **April 13, 2011 at 3:00 p.m.** It is further ordered that CitiMortgage file a written response to the Motion to Compel, which shall include (but not be in any way limited to) information⁷ why it has failed to provide the chain of title information that the Trustee represents is within CitiMortgage's custody or control by virtue of its MERS membership, by **April 5, 2011.** That brief shall also explain what support exists for the statement in its Motion for Relief that it lacks adequate protection for "its interest" in the subject property, and to the extent any document corroborates that statement, to produce it to the Trustee and the Court with that response.⁸

IT IS SO ORDERED.

#

⁷This "inclusion" language certainly is not intended to mean that is the only obligation CitiMortgage has in responding to this Motion to Compel.

⁸The bottom line is that we can do this the easy way, or we can do this the hard way. So far, it appears CitiMortgage has elected to do things the hard way. The Court will not hesitate to require that CitiMortgage make a witness(es) available in Topeka, Kansas for a Rule 30(b)(6) deposition(s), with the deposition costs (and possibly the Trustee's fees) to be borne by Citimortgage, on the issues in this case if it finds the Trustee's Motion to Compel meritorious.