

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR PASCO COUNTY

**Wells Fargo Bank, National Association,
as Trustee for the Certificateholders of
Structured Asset Mortgage Investments II,
Inc., Bear Sterns Mortgage Funding Trust
2006-AR5, Mortgage Pass-Through
Certificates, Series 2006-AR5,**

Plaintiff,

v.

**CASE No. 51-2009-CA-000763-ES
Division No. J1**

**Anthony J. Valle a/k/a Tony J. Valle
and Tara M. Valle, Husband and Wife;
et al.**

Defendants.

**DEFENDANTS MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION AND/OR MOTION FOR MORE DEFINITE STATEMENT**

COMES NOW the Defendants, **Anthony J. Valle a/k/a Tony J. Valle**, and **Tara M. Valle, Husband and Wife**, by and through their undersigned attorney, and move the Court to dismiss for Lack of Subject Matter Jurisdiction and/or Motion for More Definite Statement, under authority of Florida Rules of Civil Procedure, rule 1.140(b)(1), and shows:

1. This Court lacks subject matter jurisdiction to proceed. Subject

matter jurisdiction has never been established on the record. The jurisdiction question can be raised at any time and can never be time-barred. DeClaire v. Yohanan, 453 So. 2d 375 (Fla. 1984).

2. The Court should dismiss this action pursuant to Rules 1.210(a) and 1.140(7) of the Florida Rules of Civil Procedure because the record is clear from the promissory note submitted as evidence that a person other than Plaintiff is the true owner of the claim sued upon and that Plaintiff, **Wells Fargo Bank, N.A.**, is not the real party in interest and is not shown to be authorized to maintain this foreclosure action.
3. In Florida, the prosecution of a foreclosure action is by the owner and holder of the Mortgage and Note. Plaintiff is not entitled to maintain this action in which it seeks to foreclose on a Note which Plaintiff does not own. Your Construction Center, Inc. v. Gross, 316 So. 2d 596 (Fla. 4th DCA 1975).
4. Plaintiff, **Wells Fargo Bank, N.A.**, alleges that it owns and holds the subject Note and Mortgage pursuant to an assignment. There is no evidence of assignment of the Note or the Mortgage. In fact, all the exhibits attached to the Complaint specifically and conclusively demonstrate the opposite.

5. Rule 1.210(a) of the Florida Rules of Civil Procedure provides, in pertinent part:

Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought...

Plaintiff in this action meets none of these criteria.

6. Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bringing the claim be recognized in the law as being a real party in interest entitled to bring the claim. This entitlement to prosecute a claim in Florida courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. Kumar Corp. v. Nopal Lines, Ltd, et al, 462 So. 2d 1178, (Fla. 3rd DCA 1985).
7. No Florida case holds that a separate entity can maintain suit on a Note payable to another entity unless the requirements of Rule 1.210(a) of the Florida Rules of Civil Procedure and applicable Florida law are met. Corcoran v. Brody, 347 So. 2d 689 (Fla. 4th DCA 1977).
8. Fla.R.Civ.P. Rule 1.130(a) requires a Plaintiff to attach copies of all

bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought to its complaint. Plaintiff has failed to attach any document that supports its pleadings.

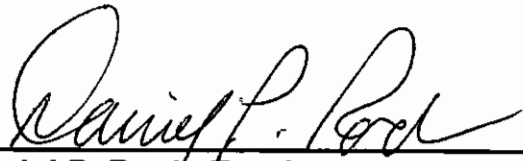
9. As a result, although Plaintiff names **Wells Fargo Bank, N.A.**, as the owner of the promissory note, the promissory note submitted as evidence conflicts with this allegation, making no mention of **Wells Fargo Bank, N.A.** Defendants suspect that Wells Fargo Bank, N.A., as Trustee or otherwise, is only a servicer of the loan.
10. When exhibits are inconsistent with Plaintiff's allegations of material fact as to who the real party of interest is, such allegations cancel each other out. Fladell v. Palm Beach County Canvassing Board, 772 So. 2d 1240 (Fla. 2000); Greenwald v. Triple D Properties, inc., 424 So. 2d 185, 187 (Fla. 4th DCA 1983); Costa Bella Development Corp. v. Costa Development Corp., 441 So. 2d 1114 (Fla. 3rd DCA 1983).
11. Plaintiff is not the real party in interest and is not shown to be authorized to bring this action. In re: Shelter Development Group, Inc., 50 B.R. 588 (Bankr.S.D.Fla. 1985) [It is axiomatic that a suit cannot be prosecuted to foreclose a mortgage which secures the payment of a promissory note, unless the Plaintiff actually holds the

original note, citing Downing v. First National bank of Lake City, 81 So. 2d 486 (Fla. 1955); Your Construction Center, Inc., v. Gross, 316 So. 2d 596 (Fla. 4th DCA 1975), See also 37 Fla. Jur. Mortgages and Deeds of Trust '240 (One who does not have ownership, possession, or the right to possession of the mortgage and the obligation secured by it, may not foreclose the mortgage).

12. Plaintiff's pleadings fail to contain sufficient facts to establish who the actual Plaintiff is and its relationship to Defendant and to the claim for foreclosure of the subject promissory note. The record also fails to sufficiently identify who Plaintiff is and fails to allege facts sufficient to determine the standing of Plaintiff, or when (and how) Plaintiff allegedly became the "owner" of the Note and Mortgage.
13. The record does not show that **Wells Fargo Bank, N.A.**, has standing to maintain an action in the State of Florida.
14. The Trust and/or the Trustee duties must be spelled out in the Trust and the Trust documents made a part of the Complaint.
15. The record does not show that **Wells Fargo Bank, N.A.**, is authorized as an entity to own a promissory note.
16. Neither **Wells Fargo Bank, N.A.**, nor its attorneys, **Jillian L. Tefft &**

Jonathan Rosser, Shapiro & Fisherman, LLP, have validated the alleged debt as required by the Fair Debt Collection Practices Act. The refuse to identify the owner of the alleged debt and refuse to provide ana accurate accounting of the alleged debt. Such lack of validation prohibits these debts collectors from taking any action to collect on the alleged debt.

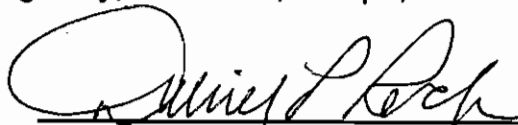
WHEREFORE, Defendants request that this action be dismissed for lack of subject matter jurisdiction.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true copy of the foregoing document has been sent via regular U.S. Mail, on this 8th day of **December 2009**, to: Jillian Tefft, Esquire & Jonathan Rosser, Esquire, **Shapiro & Fishman, LLP**, Attorneys for Plaintiff, at: 10004 N. Dale Mabry Highway, Suite 112, Tampa, FL 33618.



Daniel P. Rock, Esquire