

FILED

MAY 07 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

Paul John Hansen
As Trustee
T.J. Herbst Trust 1

Plaintiffs,

Vs.

ROBIN P. ARKLEY, SN SERVICING
CORPORATION, ANDY CECERE, AND
US BANK TRUST NATIONAL
ASSOCIATION,

Defendants,

2:20-CV-02436-KJM-CKD (PS)

PLAINTIFF'S OBJECTION TO
DEFENDANT'S MOTION TO
DISMISS

MAGISTRATE JUDGE
CAROLYN K. DELANEY

BY FAX

Comes now Paul John Hansen and T.J. Herbst Trust 1, herein after known as Plaintiffs and hereby files this PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS complaining of ROBIN P. ARKLEY, SN SERVICING CORPORATION, ANDY CECERE, AND US BANK TRUST NATIONAL ASSOCIATION hereinafter known as Defendants and for the following good and sufficient reasons would show the Honorable Court the following;

I.

JURISDICTION

This court having jurisdiction over all matters pertaining to 42-USC-1983, 42-USC-1985, 42-USC-1986, 12-USC-2602 & 15-USC-1692, the "Fair-Debt-Collection-Practices-Act".

II.

BACKGROUND

On May-24th 2005 Plaintiff, Thomas Herbst entered into a loan agreement with Defendant, American Family Lending, located at 900 E. Hamilton Ave #525, Campbell, California 90058 for the amount of three hundred and eleven thousand dollars and no cents with regards to a property that Plaintiff purchased located at 3635 Bellinger Court, North Highlands, California 95660. These instruments, i.e. Note and Deed-of-Trust were entered into and signed by Plaintiff Thomas Herbst own hand. On June-20th 2020 the property was conveyed to the T.J. Herbst Trust 1 with Paul J Hansen as Trustee.

Since the time of origination of the aforementioned Note and Deed-of-Trust agreement bearing Plaintiffs' original signature made in Plaintiff's own hand, more than one individual has made claim to be due payment on the aforementioned debt and there is evidence to the effect that the aforesated monitory instrument had been sold and/or conveyed more than once. Multiple individuals have now attempted to claim service on the aforementioned debt. The original recording of the Deed-of-Trust is de-facto evidence that one such document exists and its related debt, and will continue to be evidence of such long after the debt has been paid off. However, possession of a copy of these instruments does not constitute an indebtedness to any individual as copies are readily available from the Clerk of the County. Only the original monitory instrument bearing Plaintiff's own "wet" signature can be considered the valid monitory debt instrument for which Plaintiff is indebted. As there is question as to how many times and to whom this

debt instrument may have been conveyed, Plaintiff now demands that any and all parties claiming due on the aforementioned Note & Deed-of-Trust, that they produce the original Note & Deed-of-Trust agreement before any further monetary consideration/payment on the debt is tendered. This is most critical as Plaintiff wishes to complete the transaction for which Plaintiff entered into the aforesaid Note & Deed-of-Trust agreement and has no desire to make any payments to one claimant/party and then have another party produce the original debt-instrument/agreement and/or seek foreclosure.

III.

CITIZENS RIGHTS

Citizens rights come in many forms. Plaintiff, as with all citizens, have the right to know who to whom they are indebted to; and for how much and have the right to request confirmation at any time. This is most especially true when a question arises regarding a claimant party when multiple different claimants have come forward demanding payment on the same debt. All Defendants have been served with multiple requests to provide an accounting and evidence that they are the legal holder of the alleged debt and for how much without response.

IV.

15USC1692

Additionally formal requests to confirm this indebtedness per 15USC, CH41, Subchapter V. sect 1692g were made to all parties on both May-20th 2020 and May-28th 2020 which statute reiterates and affirms Plaintiffs rights to aforesaid

accountings/disclosures. None of the personal requests nor demands made under Federal statute have been to date responded to thus further calling into question any/all of Defendants claims. And although the FDCPA reiterates those rights, that is not the primary basis for Plaintiff's contention. Therefore, should the FDCPA not apply in some fashion, then Plaintiff's original contention of the aforementioned rights still apply under 42USC1983 & 42USC1985. Defendant refers to 15USC1692a(6)(F) and contends that a beneficiary, originator or an agent of officer of the valid holder of the debt is exempt from the FDCPA. However, those individuals must first prove that they are in fact the valid holder of the debt by producing the borrowers "wet-signed" monitory instrument to qualify for this immunity and Defendant has to date failed to do so and therefore does not qualify for immunity from the FDCPA 15USC1692a(6)(A)statute

V.

CALIFORNIA LAW

Defendant makes argument that "California" does not recognize the demand to produce the actual monitory instrument as proven by the "wet-ink" signature. Yet no such statute exists in California. Nor will one ever exist because this would be unlawful and void by Supreme Court decision *Marbury v. Madison (1803)*. The critical element in a "negotiable monitory instrument" is the maker's signature. And while Courts sometime rely on other Courts decisions for reference, those decisions are not law and cannot be construed as law.

VI.

**ATTEMPT TO DEPRIVE PLAINTIFF OF HIS CIVIL RIGHTS “UNDER
COLOR OF LAW”**

Defendants, without any confirmation of possession of Plaintiff’s original “wet-signed” Note & Deed-of-Trust, in an attempt to evade proof of possession of Plaintiff’s original “wet-signed” and Deed-of-Trust, now under California Civil Code Div-3. Pt-4, Title-14, CH-2 2924 claim “NON-JUDICIAL-FORECLOSURE” without complying with any of Plaintiffs multiple personal requests to verify the debt are seeking to foreclose on Plaintiff. Defendants have also not responded to either demand made under 15USC1692 or provide any proof of being the possessor of Plaintiffs original “wet-signed” Note & Deed-of-Trust having Plaintiffs original wet signature thus depriving the Defendant his civil rights under color of California Civil Code under 42USC1983.

FURTHERMORE; as two of the Defendants have communicated “conspired” to use the California Civil Code section 2924 to proceed to foreclose without providing evidence of their legal, lawful right to do so, 42 USC 1985 now correctly applies.

FURTHERMORE; As all of the facts surrounding the aforementioned acts have not been fully ascertained at this time, discovery will be required to join all of the individuals aware of the aforementioned facts. Thus 42 USC 1986 correctly applies.

VII.

ALLEGED DEFAULT ON THE LOAN

Defendants make claim that “Herbst failed to cure the default on the Loan” however, Plaintiff has no legal responsibility to pay any claim for payment that has not been “proved-up” by producing the original “wet-signed” monitory instrument. Therefore, until Defendant’s produce Plaintiff’s original “wet-signed” monitory instrument, Defendant’s are automatically barred from making any claim to right of service on Plaintiff’s note and this argument must fail.

VIII.

DEFENDANT’S REFERENCE TO PLAINTIFF’S BANKRUPTCIES

Defendants make reference to Plaintiff’s multiple bankruptcies. Plaintiff objects to this reference entirely on the bases of relevance. The issue at hand is whether Defendants have legal and justiciable standing to foreclose as proven by possession of Plaintiff’s original “wet-signed” monitory instrument. Due to Defendants apparent resistiveness to prove-up the debt or provide Plaintiff’s original “wet-signed” Note and Deed-of-Trust as a simple demonstration of honesty and the right to service or foreclose on said debt, the integrity of Defendants is now called into question and the validity of Defendant’s alleged possession of Plaintiff’s original “wet-signed” Note and Deed-of-Trust. Possession of Plaintiff’s debt instruments must be confirmed to prove authenticity of Defendant’s claims and the following verifications must be required;

IX.

DEFENDANT'S CLAIM THAT PLAINTIFF'S CANNOT PROCEED PRO-SE

Thomas Herbst established and set-up the aforementioned "T.J. Herbst Trust 1" on his own. After consulting with a friend of a religious organization and at that personal friend's recommendation, Thomas Herbst asked Paul J. Hansen to be the trustee for his newly formed trust. Defendant's apparently claim that neither party has standing to sue. This is false and this contention must fail. Thomas Herbst did-not and has-not paid Paul J. Hansen anything.

X.

CONCLUSIONS

If Defendant's contentions are that copies of negotiable monitory instruments are valid for consideration and commerce in California then Plaintiff would be very happy to provide all of the aforementioned Defendants with sufficient quantity of photo-copies of U.S. notes in any denomination that they request to cover the alleged debt. Defendant is also very happy to have the originals of those U.S. notes recorded with the Clerk of the County before Plaintiff forwards them to Defendants. However, unless Defendants are able to provide written, certified statements that they personally agree to, and that copies of negotiable monitory instruments are valid for consideration and commerce the Plaintiff demands that the Plaintiff's original, "wet-signed" negotiable monitory instrument be provided as evidence of to whom Plaintiff is indebted so that Plaintiff may complete Plaintiff's responsibility to pay-off the debt.

XI.

PRAYER

WHEREFORE; Premises considered Plaintiff hereby objects to Defendant's MOTION TO DISMISS and prays that the Honorable Court deny Defendant's motion.

Respectfully submitted



Paul John Hansen,
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I hereby certify that I electronically transmitted to the E-Mail address, Fax number or mailed via CRRR the attached document to the Defendant's address of record on this 7th day of May, 2021:



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21-05-01 PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS