

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

CitiMortgage, Inc.,)	
Plaintiff - Appellee,)	
)	
vs.,)	Supreme Court Case No.: 20120208
Delbert L Adolph Jr.; Katherine L Adolph;)	District Court Case No.: 09-2011-CV-115
and any person in possession,)	
Defendants - Appellants.)	
)	
)	
)	

APPEAL FROM THE JUDGMENT OF DISTRICT COURT

TRAILL COUNTY

EAST CENTRAL JUDICIAL DISTRICT

HONORABLE STEVEN L. MARQUART, PRESIDING

APPELLEE CITIMORTGAGE, INC.'S BRIEF

MACKOFF KELLOGG LAW FIRM
Mark C. Sherer, Attorney #06749
Office Address:
38 Second Avenue East
Dickinson, North Dakota 58601
Telephone: (701) 456-3210
msherer@mackoff.com

Attorneys for Plaintiff/Appellee, CitiMortgage, Inc.

TABLE OF CONTENTS

Table of Authorities	ii
I. Statement of the Issues	¶ 1
II. Statement of the Case	¶ 2
III. Statement of the Facts	¶ 4
IV. Standard of Review	¶ 9
V. Law and Argument	¶ 10
A. Sufficient Evidence Exists to Support Citi's Motion for Summary Judgment	¶ 12
B. Citi Met its Burden to Obtain Summary Judgment, but the Adolph's Failed to Provide Sufficient Evidence to Avoid the Entry of Summary Judgment	¶ 18
C. No Improper Bifurcation of the Note and Mortgage Occurred	¶ 20
D. The Adolph's Claim That They Were Denied Due Process is Unsupported	¶ 24
E. The Adolph's Were Not Denied Their Right to Appeal The District Court Decision	¶ 26
VI. Conclusion	¶ 28
VII. Certificate of Compliance	¶ VII
VIII. Certificate of Service	¶ VIII

TABLE OF AUTHORITIES

CASES

<i>Berg vs. Lien</i> 1994 ND 2005, ¶ 6, 522 N.W.2d 455	¶18, 19
<i>Carpenter vs. Longan</i> 83 U.S. 271 (1872)	¶20, 22
<i>Dakota Bank & Trust Co. vs. Reed</i> 402 N.W.2d 887, 889	¶ 14
<i>Grinnell Mut. Reinsurance Co. vs. Thies</i> 2008 ND 164, ¶5, 755 N.W.2d 852	¶ 9
<i>Hovland vs. City of Grand Forks</i> 1997 ND 95, ¶5, 563 N.W.2d 384	¶ 9
<i>Kane vs. Bosco</i> 2010 U.S.Dist. LEXIS 128476, 36 (D.Ariz. Nov. 23, 2010)	¶ 22
<i>Lassiter vs. Dept. of Social Services</i> 452 U.S. 18, 26 (1981)	¶ 27
<i>Reardean vs. CitiMortgage, Inc.</i> 2011 U.S.Dist. LEXIS 87567, 11 (W.D.Tex. July 24, 2011)	¶ 22

CONSTITUTIONS

N.D. Cons., Art. 1, §21	¶ 26
U.S. Cons., Art. IV, cl. 2	¶ 26

RULES

N.D.R.Civ.P. 55(a)(1)	¶ 14
N.D.R.Evid. 1001(4)	¶ 14
N.D.R.Evid. 1003	¶ 14

I. STATEMENT OF THE ISSUES

1. Whether the District Court properly granted summary judgment in favor of CitiMortgage, Inc., when it demonstrated that Delbert L. Adolph and Katherine L. Adolph had defaulted upon the terms and conditions of the Promissory Note and Mortgage that they signed by failing to make the required monthly payments.

II. STATEMENT OF THE CASE

2. This case arises out of a mortgage foreclosure action filed by the Plaintiff-Appellee, CitiMortgage, Inc., (hereinafter "Citi" or "CitiMortgage") against the Defendants-Appellants, Delbert L. Adolph, Jr. and Katherine L. Adolph (hereinafter "Adolphs"), in the Traill County District Court. (Appellee's App., Pg. 1) The Adolphs filed an Answer to the Complaint in which they challenged the assertion that Citi was the holder or agent for the holder of the mortgage. (Appellee's App., Pg. 29).

3. After both parties conducted written discovery, Citi filed its Motion for Summary Judgment, together with its Brief and supporting documents on January 10, 2012. (Appellant's App., Pg. 18, et. Seq.). The Adolphs filed their Response, objecting to Citi's Motion, together with several exhibits, on February 7, 2012. (Appellant's App., 53, et. Seq.). On February 9, 2012, Citi filed a reply Brief. The District Court entered its Judgment granting Citi's Motion for Summary Judgment, and against the Adolphs, on February 28, 2012. (Appellee's App., Pg. 3). Thereafter, on or about April 26, 2012, the Adolphs filed their Notice of Appeal. (Appellant's App., Pg. 85). Their Brief, dated June 4, 2012, was served upon the undersigned counsel via United States Mail, only.

III. STATEMENT OF THE FACTS

4. On February 25, 2008, the Adolphi executed a Promissory Note, whereupon they promised to repay the sum of \$187,600.00, which they borrowed from Bremer Bank, National Association, for use in purchasing real property located in Traill County, North Dakota, and which is commonly known as 14885 11th Street NE, Portland, ND 56274. (Appellee's App., Pg. 8). The Note was secured by a Mortgage which was signed by the Adolphi. (Appellee's App., Pg. 11). The Mortgage identified Bremer Bank, National Association as the Lender, but stated that Mortgage Electronic Systems, Inc., ("MERS") was the mortgagee under the terms of the security instrument. The Mortgage also stated that "MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." (Appellee's App., Pg. 11). The Note provides that the Adolphi were required to make payments of \$1,050.51, beginning April 1, 2008, and continuing on a monthly basis until the Note was paid in full. (Appellee's App., Pg. 8).

5. The Note contains an endorsement which reads as follows: "Pay to the order of Citi Mortgage, Inc. without recourse, Bremer Bank National Association." That endorsement was signed by Susan Elkins, in her capacity as an Officer of Bremer Bank. (Appellee's App., Pg. 10). Citi alleged in the Complaint that it was "the lawful holder, or agent authorized to act on behalf of the holder, of the above-described note and mortgaged...." (Appellee's Appendix, Pg. 4). The Affidavit of Proof, submitted by Citi in support of its Motion for Summary Judgment, states that "CitiMortgage, Inc., is the holder/owner, or party entitled to enforce, the promissory note and mortgage. (Appellant's Appendix, Pg. 44).

6. The terms of the mortgage signed by the Adolphi contained provisions allowing for the transfer of that mortgage, as well as the promissory note, to other parties, and without notice to

the Adolph's. (Appellee's App., Pg. 21). MERS assigned the note to Citi on August 24, 2011. The Assignment of Mortgage was recorded in the office of the Traill County, North Dakota, Recorder, as Document Number 177191, on August 24, 2011. (Appellant's Appendix, Pg. 32-33).

7. The Adolphs did not pay the monthly installment due on February 1, 2011, nor did they make subsequent payments due thereafter. (Appellant's Appendix, Pg. 44). Their failure to pay constituted a default under the terms of the Note. (Appellee's App., Pg. 9). The foreclosure proceedings initiated by Citi in the District Court were authorized under the terms of the mortgage in the event of Default by the Adolphs. (Appellee's App., Pg. 23).

8. In their Answer, the Adolphs denied that CitiMortgage was the holder, or the agent for the holder, of the note and mortgage and alleged that the original lender, Bremer Bank, National Association, was the proper party to foreclose. (Appellee's App., Pg. 29-30). They maintained that position when objecting to the Motion for Summary Judgment filed by Citi, although the Adolphs did admit to being in default in the body of their objection. (Appellant's App., Pg. 53).

IV. STANDARD OF REVIEW

9. This Court has outlined the standard for review of summary judgment:

Summary judgment is a procedural device for promptly resolving a controversy on the merits without a trial if either party is entitled to judgment as a matter of law, and if no dispute exists as to either the material facts or the inferences to be drawn from undisputed facts, or if resolving disputed facts would not alter the result. A party moving for summary judgment has the burden of proving there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion for summary judgment, a court must view the evidence in the light most favorable to the party opposing the motion and must give that party the benefit of all favorable inferences that reasonable can be drawn from the evidence. Whether a district court properly granted summary judgment is a question of law that we review de novo on the record.

Grinnell Mut. Reinsurance Co. v. Thies, 2008 ND 164 ¶ 5, 755 N.W.2d 852 (internal citations omitted). The Court reviews summary judgment by viewing “the evidence in the light most favorable to the non-moving party and then determin[ing] if the trial court properly granted summary judgment as a matter of law.” *Hovland v. City of Grand Forks*, 1997 ND 95, ¶ 5, 563 N.W.2d 384.

V. LAW AND ARGUMENT

10. The Adolph’s Brief contains many unsupported allegations covering a variety of legal theories. Those theories include the following: 1) the District Court lacked sufficient evidence on which to base its decision to grant Citi’s Motion for Summary Judgment; 2) the Adolphs were not treated equally under the law because they did not receive a bailout from the Federal government; 3) they were denied due process, and 4) the lien was extinguished by operation of law as the not and mortgage were allegedly bifurcated.

11. Out of the multiple issues listed by the Adolphs, however, most of their Brief focuses on two primary allegations. First, they assert that the evidence did not support the District Court’s decision to grant Citi’s Motion for Summary Judgment. Second, they continue to allege, without supplying evidence to demonstrate that their allegation is anything other than mere speculation, that Citi is not the holder of the note, or agent thereof, and is not entitled to enforce it through foreclosure proceedings. Each of these allegations will be addressed, below.

A. Sufficient Evidence Exists to Support Citi’s Motion for Summary Judgment

12. The Adolphs believe that the District Court’s decision to grant Citi’s Motion for Summary Judgment was erroneous because it lacked sufficient evidence to rule that Citi was entitled to enforce the note and mortgage through foreclosure. Their position seems to take issue with the fact that much of the evidence presented to the court, including the note, the mortgage,

the assignment of the mortgage, as well as the payment history consisted of photocopies of the originals, all of which were verified by the Affidavit of Proof signed by Jessica Rivera, a Document Control Officer for CitiMortgage, Inc.

13. The Adolphs argue that the court cannot reasonably make a decision based on photocopies. The North Dakota Rules of Evidence clearly provide that photocopies of documents may be submitted as evidence to the Court, and a rich body of case law has been developed which also supports the ability of a party to submit photocopies. Rule 1003 states: "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity or continuing effectiveness of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." N.D.R. Ev. Rule 1003. [emphasis added] The notes to this rule point out that because of technology advancements of today, inaccurate copies are rare. There has been no claim in this instance that the copy of the note which was submitted was not readable, or may have been inaccurate. Instead, the Adolphs merely speculate that other endorsements or allonges, other than the endorsement from Bremer Bank to CitiMortgage, Inc., might be attached to the original. This does not rise to the level of a "genuine question" about the authenticity of the duplicate.

14. The North Dakota Supreme Court has confirmed that the admission of duplicates of an original instrument, including a promissory note, are sufficient to permit the District Court to issue a default judgment.

While Rule 55(a)(1), N.D.R.Civ.P., calls for "production of the written instrument, if any," before entry of a default judgment for a sum certain, our rules of evidence do permit use of a copy. Pursuant to Rule 1003, N.D.R.Evid., a duplicate is admissible unless a genuine question is raised as to the authenticity or continuing effectiveness of the original or where it would be unfair under the circumstances to admit the duplicate in lieu of the original. *See also* Rule 1001(4), N.D.R.Evid. An affidavit by the Bank's vice-president attached a copy of

the note, stating that it was "a true and correct copy of the Promissory Note. . . ." Reed never questioned the authenticity of the original promissory note. *Dakota Bank & Trust Co. vs. Reed*, 402 N.W.2d 887, 889 (1987).

15. The Adolph's claim that the only way to know for certain that the note, attached to the Complaint, is correct is for the District Court to personally view the original. They postulate that perhaps the original contains other endorsements which may reveal that some other entity is actually the holder. They also allege that the copy of the note contains no "certification" or attestation. This position is similar to the position taken in their Brief opposing Citi's Motion for Summary Judgment. The Adolphs did not provide any evidence to demonstrate that their claims are anything other than mere speculation and conjecture, nor did they raise any genuine questions about the copies submitted.

16. Their claims that the note submitted to the District Court herein was neither certified nor attested to are baseless and without merit. Specifically, those contentions completely ignore the fact that the Affidavit of Proof in Support of Summary Judgment specifically states: "7. That a true and correct copy of the said promissory note is attached to the Complaint and marked as Exhibit 'A.'" (Appellant's App., Pg. 43). These claims appear to have been made in the hopes of merely delaying or forestalling foreclosure. Indeed, the authenticity of the copy of the note was sworn to in the Affidavit of Proof submitted by Citi in support of its Motion for Summary Judgment. Rule 56(e) clearly allows evidence, either supporting or opposing, a Motion for Summary Judgment to be submitted to the Court. N.D.R.Civ.P. 56(e).

17. The second exception set forth in Rule 1003, allowing the submission of a copy of a document, requires the original document to be submitted in instances where the admission of a duplicate, instead of the original, would be unfair. In this case, however, there is nothing to suggest that admission of the copy herein resulted in unfairness to the Adolphs. Any information

that needs to be procured through an examination of the originals can easily be done through the examination of duplicates. Any duplicate would provide all information of the originals, without the risk of loss or damage to originals. In the case at hand, Citi submitted highly legible copies of all documents, including the note and mortgage, to the District Court. The authenticity of the copy of the note submitted herein was certified by the Affidavit of Jessica Rivera to be a true and correct copy of the original note which was in Citi's possession. (Appellant's App., Pg. 42-3). Given the absence of any claim of fraud, the court found these documents to be reliable. There was no prejudice to the Adolphs in using duplicates. As such the District Court did not err in granting the motion for summary judgment.

B. Citi Met its Burden to Obtain Summary Judgment, but the Adolphs Failed to provide Sufficient Evidence to Avoid the Entry of Summary Judgment

18. The standard of review of a summary judgment has been reiterated in North Dakota by several cases.

“Summary judgment is appropriate when, after viewing the evidence most favorable to the party against whom summary judgment is sought, there is no genuine issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law. Even if a factual dispute exists, summary judgment is appropriate if its resolution will not alter the result.”

Berg v. Lien, 1994 ND 205, ¶ 6, 522 N.W.2d 455. In the present case, Citi presented an affidavit of proof establishing, through both that affidavit and accompanying documentation, that no genuine issue of material fact existed. This Affidavit was based upon the personal review of Citi's business records for the Adolph's loan file, by the Affiant, and which were kept in the normal course of business. That Affidavit, and the accompanying records, clearly and unequivocally established that Citi was the holder of the note, or entitled to enforce it, that the mortgage had been assigned to Citi, by recorded assignment, prior to the initiation of the lawsuit,

that the Adolphins had failed to make the required monthly payments, and that by failing to pay, they were in default. The payment history attached to the Motion clearly demonstrated the Adolph's failure to make the required payments. (Appellant's App., Pg. 47 et. seq).

19. Having established all necessary facts through admissible evidence the burden of proof then shifts to the non-moving party. "A party resisting summary judgment has the burden of presenting competent admissible evidence or at least the responsibility of directing "the court's attention to evidence in the record by setting out the page and line in depositions or other comparable document[s]" containing such information." *Id.* at ¶8. The Adolphins made accusations, speculation and allegations that there were genuine issues of material fact so as to preclude the entry of summary judgment. However, they submitted no evidence to support their speculations, allegations and conjecture. Indeed, they did not even contradict the basic premise underlying the Complaint, that the Adolphins had failed to make the required monthly payments. Instead, they admitted that they had experienced financial difficulties which resulted in their inability to make all of the required payments. Their defense, then centered on accusations and speculation which they failed to support with any evidence. Because they did not offer admissible evidence which tended to demonstrate the existence of any genuine issue of material fact, the District Court granted Citi's Motion for Summary Judgment. The Court's decision was correct and should be upheld.

C. *No Improper Bifurcation of the Note and Mortgage Occurred*

20. The Adolph's also allege that the note and mortgage were improperly bifurcated, rendering them unenforceable. This appears to challenge the sufficiency of the chain of title herein. They cite a United States Supreme Court in support of their contention that a mortgage and note cannot be separated when transferred. See *Carpenter v. Longan*, 83 U.S. 271 (1872).

This United States Supreme Court stated that assigning a mortgage which has not yet matured is presumed to lack notice to the debtor, meaning that when a mortgage is transferred, the individual paying the mortgage may not know who to pay. The Supreme Court went on to state that until sufficient proof is given, presumption for lack of notice stands. More specifically, this case states that a mortgage and the note are inseparable. “The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.” *Carpenter* at 274. And furthermore, “the mortgage can have no separate existence. When the note is paid the mortgage expires. It cannot survive for a moment the debt which the note represents. This dependent and incidental relation is the controlling consideration, and takes the case out of the rule applied to choses in action.” *Id.* at 275.

21. The Adolphs seem to be claiming that because the Assignment of Mortgage was not signed and recorded at the same time as the Note was endorsed by Bremer Bank and transferred to CitiMortgage, Inc., that the security interest is void and the promissory note unenforceable. Their contention ignores the fact that the clear language of the mortgage states that MERS was designated as the Mortgagee and was acting solely as the nominee for the Lender, initially Bremer Bank, as well as its successors and assigns, in this case CitiMortgage, Inc. They seem to be implying that ownership of the note and mortgage was vested at one point in time in two different entities and that because of that, they were rendered unenforceable.

22. There is nothing to indicate that North Dakota has not addressed this issue specifically; however several other courts have found the premise of *Carpenter* dealing with loan bifurcation to be outdated:

“[I]t is unconvincing when studied in context: the loan at issue in Carpenter had not yet matured and was not a home mortgage in default as in the present case. . . .Carpenter was written almost 120 years ago and has no relevance regarding whether, in this modern day and age, sending a deed of trust to an electronic title-holding company for storage and transfer renders a mortgage invalid and unenforceable. . . . Mortgages are incredibly common and engender a lot of litigation; if [Plaintiff’s] claim w[as]remotely viable, he should be able to find more support for it than. . . from one nineteenth-century case. (emphasis added)

Reardean v. CitiMortgage, Inc., 2011 U.S. Dist. LEXIS 87567, 11 (W.D. Tex. July 24, 2011).

"Carpenter 'concerns a loan that had not yet matured and not a home mortgage in default as in the present case.' . . . Accordingly, Plaintiffs' assertion that the Deed of Trust is invalid, because the Promissory Note and the Deed of Trust were not physically together, fails to state a claim upon which relief can be granted.

Kane v. Bosco, 2010 U.S. Dist. LEXIS 128746, 36 (D. Ariz. Nov. 23, 2010).

Accordingly, the contention that bifurcating the promissory note and the mortgage invalidates the note or the mortgage is false. Moreover, in the process of “splitting” the mortgage, the intention of the process was never to separate completely the mortgage and the note. Mortgage Electronic Registration System (“MERS”) acts as a clearing house to more effectively allow the transfer of mortgages as securities between member banks. MERS never acted as a separate entity for the purpose of holding the note, but rather held the note as a trustee until such time would arrive that would allow the final owner of the note to exercise the rights as note holder. This Occurred when the mortgage was assigned to Citi from MERS as indicated in the “Assignment of Mortgage” dated August 24, 2011.

23. Citi submitted documents demonstrating a clear, unbroken chain of title. The mortgage was properly assigned from Bremer Bank, N.A. to MERS. The mortgage was then held in trust by MERS until Adolphs defaulted on the mortgage. Citi which

previously purchased the note, began foreclosure proceedings by first bringing the note and mortgage together. The chain of title remains unbroken, and Citi, as the mortgage and note holder is completely within their right to foreclose. Having a proper chain of title established by documentation in the motion for summary judgment, Adolphs raise no new issue of material fact that needs to be addresses. As such, the motion for summary judgment entered in favor of Citi should be affirmed by the court.

D. The Adolph's Claim that they were Denied Due Process is Unsupported

24. The Adolph's claim that they have been denied their due process rights as a result of the foreclosure action initiated by Citi. Their claim appears to rest on the assertion that they were not advised of the identity of the real party in interest. This argument is analogous to their claim that Citi is not the holder of the note because a copy of the note, not the original, was submitted to the District Court. As discussed above, the submission of a photocopy, which was attested to by the Affidavit of Proof, was sufficient evidence in this case to demonstrate that Citi had the right to enforce the Note.

25. They also allege that due process affords them the right to work out a way to reinstate their loan and renew payments so that they may keep the real property secured by the mortgage. However, no authority is cited to support the assertions that their due process rights have been violated. Instead, their inclusion of this claim in the Appellant's Brief appears to be an attempt to grasp at any argument, whether supported by law or not, which might persuade the Supreme Court to overturn the District Court's decision out of sympathy to their plight.

E. The Adolph's Were Not Denied Their Right to Appeal the District Court Decision

26. It has also been asserted that Citi and the Adolph's have been treated unequally under the law in this case. Their argument takes two forms. First, it is asserted that because CitiMortgage received a "bailout" from the Federal Government, which they did not receive, that constitutes a special privilege which is prohibited by Article 1, Section 21 of the North Dakota Constitution. A review of that section clearly demonstrates that it is clearly referencing actions by the North Dakota Legislature and is not meant to govern actions by the United States Congress. Further, their reliance upon the North Dakota Constitution to object to an action on the part of the Federal Government ignores the supremacy clause of the United States Constitution, which reads:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
U.S.Cons., Art. IV, cl. 2

27. They also appear to assert that they have somehow been denied the right to appeal the District Court's decision to grant Citi's Motion for Summary Judgment. In support of that assertion, the Adolph's cite a number of United States Supreme Court cases which discuss the rights of indigent convicted criminals to court appointed counsel at the appellate stage. They cite no authority for the proposition that indigent persons in civil cases have the right to counsel appointed by the Court. Indeed, the United States Supreme Court has expressly shot down the assertion that an indigent person in a civil case has a right to court appointed counsel: "The pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical

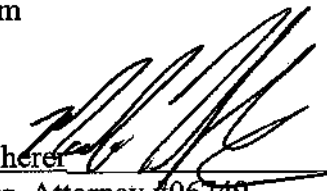
liberty if he loses the litigation." *Lassiter vs. Department of Social Services*, 452 U.S. 18, 26 (1981). Although they do not have a right to court appointed counsel, the Adolphs have been free to pursue an appeal of the District Court's decision.

VI. CONCLUSION

28. The Adolphs argue that the District Court overlooked several genuine issues of material fact, however; they failed to submit admissible evidence which is required to elevate such contentions to the level of a "genuine issue" so as to preclude the entry of summary judgment and proceed to trial. Citi met their burden of proof for disclaiming any issues of material fact, while Adolphs failed to meet their burden as opposing parties. There were no genuine issues of material fact before the District Court, and its decision to grant Citi's Motion for Summary Judgment was correct and should be affirmed.

Dated this 5th day of July, 2012.

MACKOFF KELLOGG LAW FIRM
Attorneys for Plaintiff/Appellee CitiMortgage, Inc.
Office and Mailing Address:
38 Second Avenue East
Dickinson, North Dakota 58601
Telephone: (701) 4566-3210
Facsimile: (701) 227-4739
msherer@mackoff.com

By:  /s/ Mark C. Sherer
Mark C. Sherer, Attorney #06749

VII. CERTIFICATE OF COMPLIANCE


The undersigned, as attorney for the Appellee, CitiMortgage, Inc., and as author of the above Brief, hereby certifies compliance with the North Dakota Rules of Appellate Procedure, including specifically Rule 32, as to proper form of Appellee's Brief. Counsel certifies that consistent with Rule 32(a)(5), the above Brief was prepared with proportional type face and that the total number of words in the above brief, excluding words in the table of contents, table of authorities and certificate of compliance, totals 4134.

VIII. CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Appellee CitiMortgage, Inc.'s Brief**, was, on the 5th day of July, 2012, by first class United States Mail, postage prepaid, served upon the following:

Delbert Adolph
14885 11th Street, NE
Portland, North Dakota 85274

Katherine Adolph
14885 11th Street, NE
Portland, North Dakota 85274

By:  /s/ Mark C. Sherer
Mark C. Sherer, Attorney #06749