

20120208

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SUPREME COURT OCT 11 2012

SUPREME COURT, STATE OF NORTH DAKOTA

**Delbert L. Adolph Jr.;
Katherine L. Adolph;**

vs.

Citimortgage, Inc



} **PETITION FOR**
} **REHEARING**
}
} **SUPREME COURT**
} **No. 20120208**
}
} **Trial Court Case**
} **No. 49-2011-CV-00115**
}
}

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

OCT 09 2012

STATE OF NORTH DAKOTA

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STATEMENT OF ISSUE FOR REVIEW

New evidence has been submitted to the district court that will prove Citimortgage has no legal grounds to foreclose as they have converted the Promissory note into stock as a perminate fixture. If the Deed of Trust and the Note are separated, foreclosure CANNOT occur. The Adolphs request this honorable court grant relief from the judgment and send the case back to the district court for re-trial under North Dakota Civil Procedure, Rule 59 (b) (4).

STATEMENT OF FACTS

From the beginning of this process the Adolphins have questioned the ownership of the mortgage by Citimortgage. When asked for proof of said ownership, Citimortgage repeatedly avoided the question.

The Adolphins, diligently pursued a way to prove Citimortgage was committing fraud. The Adolphins found a company that conducted forensic audits of mortgage loans and in the middle of May 2012 the Adolph's contracted with them to conduct such an audit. On June 26th 2012 the report was completed and the Adolphins received the notarized copy of the report on or about the middle of July. Having spent several weeks searching the state's court website attempting to learn how to submit new evidence and finding none, the Adolphins believed that a pleading of special matter, being form of a motion, would work and wrote the motion following the government's web site guide. The Adolphins were prepared to discuss this during oral arguments. The Adolphins were informed the pleading was rejected by the clerk of the Supreme court's clerk on September 5th the same day the Adolphins were informed that they would not be allowed to plead their case to the court via oral argument. The Adolphins attempted to speak with three attorneys to assist in filing new evidence. One did not return our phone calls; one stated he had a conflict of interest because he represents banks in foreclosures and the third did meet with them, however, would not look at our new evidence. He only

attempted to talk the Adolphins out of further pursuit and finally admitted that he also conducts foreclosures. On September 12th the Adolphins went to the Trail county court house and with the assistance of the Trail county clerk of court was able to submit the new evidence.

The Adolphins have done everything in these court proceedings with the utmost integrity and honesty. The Adolphins have kept nothing from Citimortgage, their attorneys or this honorable court.

ARGUMENT

The Adolphs have new evidence that will prove Citimortgage has no legal Grounds to foreclose as they have converted the Promissory note into stock as a perminate fixture. If the Deed of Trust and the Note are not together with the same entity, there can be no legal enforcement of the Note. The deed of trust enforces the Note and provides the capability for the lender to foreclose on the property. Thus, if the Deed of Trust and the Note are separated, foreclosure CANNOT occur. (Bellistri v Ocwen 2009 Missouri Court of Appeals). Furthermore since the Promissory Note has been converted into a stock as a permanent fixture. It is now a stock and governed as a stock under the rules and regulations of the SEC/or other; hence the requirement for the filing of the registration statements, pooling and servicing agreements, form 424B-5, and/or other similar type circular/offering notifications necessary for investors to make an informed decision. No Entity can be a Creditor if they do not hold/own the Asset in question (i.e. The NOTE and/or the property); a Mortgage Pass Trough Trust (i.e. R.E.M.I.C., as defined in Title 26, subtitle A. Chapter 1, Sub chapter M , Part II 850-862) cannot hold assets, for if they do, their tax exempt status is violated and the Trust itself is void *ab inito*. Therefore, either the Trust has voided its intended Tax Free Status, or the asset is not in fact owned by it.

The Note cannot be enforced through the Deed of Trust if each contains a different mortgage/beneficiary; and, if the Deed of Trust is not itself a legally enforceable instrument, there can be no valid foreclosure on the homeowner's property.

The Adolphs believe that when the trial court reviews the new evidence that there will be a different verdict.

CONCLUSION

The Adolphs know the judicial system has a very important responsibility by balancing law and fact. The Adolphs believe that our judicial system operates for truth and justice, for this is the American way. The fact is Citimortgage has no legal grounds to enforce a foreclosure. The Adolphs request this honorable court grant relief from the judgment and send the case back to the district court for re-trial under North Dakota Civil Procedure, Rule 59 (b) (4).

By sending the case back for re-trial, if Citimortgage wins the case there is no damage to Citimortgage; at most it would cost them time.

By refusing the new evidence to be heard it could cost the Adolph's their home. Furthermore, truth and justice would be denied, thus creating a stain in the people's trust in the judicial system, a system I took an oath to protect when I entered the U.S. Army some 28 years ago.

Dated: October 8th, 2012



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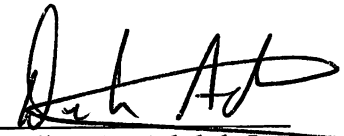


Katherine L. Adolph

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the attached objection to the summary was sent by U.S. Postal Service October 8th, 2012 to:

Mark C. Sherer
Mackoff Kellogg Law Firm
38 Second Avenue East
Dickinson, North Dakota 58601


Delbert L. Adolph Jr.