**UNITED STATES DISTRICT COURT FOR THE**

**NORTHERN DISTRICT OF GEORIGA**

**ATLANTA DIVISION**

**Wekesa O. Madzimoyo,
Plaintiff,**

**v.**

 **THE BANK OF NEW YORK**

**MELLON TRUST COMPANY, NA., formerly known as The Bank of New
York Trust Company, N.A., JP MORGAN
CHASE BANK, NA, GMAC MORTGAGE, LLC , MCCURDY AND CANDLER, LLC
and ANTHONY DEMARLO, Attorney**

**CIVIL ACTION FILE**

**No. 1:09-CV-02355-CAP-GGB**

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**Defendants**

**PLAINTIFF’S MOTION FOR SUMMARY JUDGEMENT**

**AGAINST BANK OF NEW YORK MELLON TRUST COMPANY, NA., ET AL**

Comes now PLAINTIFF Wekesa O. Madzimoyo, appearing pro se, and makes the following motion for summary judgment based upon undisputable facts and controlling law.

**CONTROLLING LAW**

Federal Rule 56 (a) holds that:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Further 56 ( C ) 1 (A) adds that:

“A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

**(A)** citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

**(B)** showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Finally, 56 (e) states:

If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may:

**(1)** give an opportunity to properly support or address the fact;

**(2)** consider the fact undisputed for purposes of the motion;

**(3)** grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or

**(4)** issue any other appropriate order.

 **Support for Summary Judgement Motion**

PLAINTIFF MADZIMOYO contends that there is no genuine dispute and/or that the DEFENDANTS have admitted or failed to properly address the assertions of fact as required by Rule 56 ( c ) concerning the following statement of material facts :

1. PLAINTIFF MADZIMOYO signed a security deed with FT MORTGAGE COMPANIES DBA EQUIBANC MORTGAGE CORPORATION on March 23, 1999 which was recorded in the office of the clerk of the superior court of DEKALB COUNTY. (See Security Deed Attachment to ORIGINAL COMPLAINT.)
2. Plaintiff has maintained that the DEFENDANTS violated OCGA 44-14-162 (a-c). Defendants haven't presented any documents or evidence to challenge that assertion. OCGA 44-14-162 (b) specifically asserts

"The security instrument or assignment thereof vesting the secured creditor with title to the security instrument shall be filed prior to the time of sale in the office of the clerk of the superior court of the county in which the real property is located."

1. Defendants began the process without the proper filing. While this is the law, improper filing alone isn't fatal if such a valid security instrument or assignment exists prior to the foreclosure proceedings and can be validated; hence, DeKalb County Superior Court Judge Tangela Barrie's order, baring The DEFENDANTS from continuing the foreclosure process on The Plaintiff and SUBJECT PROPERTY until the Defendants “bring evidence of the chain of title.”
2. While the Defendants have not provided such evidence of the chain of title to either Court, they have filed an assignment with the DeKalb County Superior Court which admits that they broke GA Law as the Plaintiff contends, fails to establish the chain of title, and raises further serious questions about their standing on the matter of the Subject Property.
3. According to the attached Affidavit, Plaintiff Madzimoyo testifies

"On December 20, 2010 I searched both the State and Federal Records to see if the Defendants had complied with Judge Barrie's order, or have placed anything in the case or real estate file for our home at 852 Brafferton Place Stone Mountain, GA. To my surprise Clerk January Jackson of the Superior Court Real Estate Division searched, found and printed out - at my request – a document entitled ASSIGNMENT OF NOTE AND SECURITY DEED.

This document purports that:

[The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A.NYT as Trustee s/b/m to Bank One **(Assignor)**]

assigned Subject Property to
[The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee for RAMP 2006RP2 **(Assignee)**]

Madzimoyo continues: “I noticed several problems with this document. The first of which is the date of execution. It reads: "This Assignment of Note and Security Deed is executed on this **8th day of February, 2010.** Even if this document were legitimate, it comes 8 months after the DEFENDANTS commenced foreclosure actions against me and my house.” It is absolute fraud for the for MCCurdy and Candler to start to foreclose on my home in the name of The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee for RAMP 2006RP2 **when were not (and probably still are not) secured creditors for my home at 852 Brafferton Place Stone Mountain, GA 30083.**

1. This ASSIGNMENT OF NOTE AND SECURITY DEED filed in DeKalb Superior Court on Feb. 18th, 2010 (Attached to Affidavit) amounts to DEFENDANTS admission that they violated OCGA 44-14-162 (b) to begin foreclosure of SUBJECT PROPERTY without being the actual holders in due course.
2. The requirements of OCGA 44-14-162 (a-c) is not so loose so as to provide that any party can foreclose on a property, so long as it later obtained title from the true owner.
3. In U.S. Bank V. Ibanez – COMMONWEALTH OF MASSACHUSETTS, October 14, 2009, Judge J. Long denied lenders attempt to foreclose based on assignments after the fact.

“The issues in this case are not merely problems with paperwork or a matter of dotting i’s and crossing t’s. Instead, they lie at the heart of the protections given to homeowners and borrowers by the Massachusetts legislature. To accept the plaintiffs’ arguments is to allow them to take someone’s home without any demonstrable right to do so, based upon the assumption that they ultimately will be able to show that they have that right and the further assumption that potential bidders will be undeterred by the lack of a demonstrable legal foundation for the sale and will nonetheless bid full value in the expectation that that foundation will ultimately be produced, even if it takes a year or more. The law recognizes the troubling nature of these assumptions, the harm caused if those assumptions prove erroneous, and commands otherwise.

For the foregoing reasons, the plaintiffs’ motions to vacate the Judgment in these cases are DENIED.
SO ORDERED.
By the court (Long, J.)

1. This ASSIGNMENT OF NOTE AND SECURITY DEED document also calls into question whether they have had any right to collect monthly payments from Plaintiff at any time and points to conduct by the DEFENDANTS already admonished by the Courts. Afiya Madzimoyo’s attached Affidavit reveals:
	1. When I looked closely at the Feb 8, 2020 ASSIGNMENT OF NOTE AND SECURITY DEED to determine who executed the documents, I saw what amounted to scribble marks to represent the signature of the “Limited Signing Officer,” Jeffrey Stephan. The name seemed familiar. It was – he has been identified as a key “robo-signer.” Little did I know how much and for how many companies did Mr. Stephan assume “signing,” review, and vice presidential duties.” They include: GMAC, MERS, JP Moran Chase, Bank of America, and now The Bank of NY Mellon Trust Company, National Association fka The Bank of New York Trust Company, NA as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, NA.
	2. His depositions prove that Wekesa was correct in asking for debt verification in March of 2009. He testifies under oath that he signs between 400-1000 per day. When asked if he actually reviewed or verified those documents he said: “no”; adding that he just signs them. And though the Assignment file on our property has a notary stamp, Mr. Stephan has testified via deposition that he routinely signs this without a notary present.
2. This is no isolated incident. Three months ago, (9/24/2010) Hon. Judge Kenneth A. Powers, Main District Court in Federal National Mortgage Assoc. vs. Nicolle Bradbury, refers to those depositions and admonished DEFENDANT GMAC, saying:
	1. “The facts underlying Defendant’s motion are for the most part undisputed. Plaintiff does not dispute that its affiant, Jeffery Stephan, in his role as limited signing officer for GMAC, Plaintiff’s servicing agent, signed the affidavit which Plaintiff submitted in support of its Motion for Summary Judgment without even reading it and without signing in the presence of a notary. These facts came into the record because the Defendant went to the time and expense of traveling to Pennsylvania to take Stephan’s deposition. In that deposition, which took place on June 7, 2010, Stephan testified that he signs some 400 documents per day, and that the process he follows in signing summary judgment affidavits is consistent with GMAC’s policies and procedures.”
	2. “The Court is particularly troubled by the fact that Stephan’s deposition in this case is not the first time that GMAC’s high-volume and careless approach to affidavit signing has been exposed. Stephan himself was deposed six months earlier, on December 10, 2009, in Florida. His Florida testimony is consistent with the testimony given in this case: except for some limited checking of figures, he signs summary judgment affidavits without first reading them and without appearing before a notary. Even more troubling, in addition to that Florida action, in May, 2006, another Florida court not only admonished GMAC, it sanctioned the Plaintiff lender for GMAC’s affidavit signing practices. As part of its order, the Florida court required GMAC to file a Notice of Compliance, indicating its commitment to modify its affidavit signing procedures to conform to proper practices. The experience of this case reveals that, despite the Florida Court’s order, GMAC’s flagrant disregard apparently persists.”
	3. “It is well past the time for such practices to end.”
3. Jude Powers also rules that DEFENDANT GMAC acted in “bad faith:”
	1. “The Court agrees with Defendant, and finds to its satisfaction that the Stephan affidavit was submitted in bad faith. Rather than being an isolated or inadvertent instance of misconduct, the Court finds that GMAC has persisted in its unlawful document signing practices long after and even in the face of the Florida Court’s order, and that such conduct constitutes “bad faith” under Rule 56(g). These documents are submitted to a court with the intent that the court find a homeowner liable to the Plaintiff for thousands of dollars and subject to foreclosure on the debtor’s residence. Filing such a document without significant regard for its accuracy, which the court in ordinary circumstances may never be able to investigate or otherwise verify, is a serious and troubling matter. Accordingly, the Court orders Plaintiff to compensate Defendant’s counsel for his attorney’s fees and costs “which the filing of the Affidavit caused (him) to incur” – in other words, that Plaintiff pay Defendant’s counsel for his time and expenses in preparing for and taking Stephan’s deposition, as well as for his time and expenses in preparing for, filing and prosecuting Defendant’s Rule 56(g) motion.”

1. The State of Ohio is suing Mr. Stephan asserting:
	1. Plaintiff, State of Ohio, by and through counsel, Ohio Attorney General Richard Cordray (the “Ohio Attorney General”), has reasonable cause to believe Defendants GMAC Mortgage LLC (“GMAC Mortgage”), Ally Financial Inc (“Ally) and Jeffrey Stephan (“Stephan”) (GMAC Mortgage, Ally and Stephan collectively the “Defendants”) have committed frauds and unfair, deceptive and unconscionable acts and practices on Ohio consumers and the courts of Ohio through, among other ways, the signing of and causing the filing in Ohio courts of hundreds of false affidavits and assignments of notes. GMAC Mortgage has been the plaintiff and/or services in hundreds of Ohio mortgage foreclosure cases in at least the last two years and in those cases used false affidavits, assignments and other documents to increase its profits at the expense of Ohio consumers and Ohio’s system of justice.
2. Attorney General Corday further states:
	1. “The actions by lenders that I am talking about today show gross disregard for the integrity of this legal process and for the private property rights of homeowners.
	2. We are talking about lenders and servicers treating foreclosure not as a legal proceeding that deserves the careful attention of the property owner, the servicer of the mortgage and the courts, but rather as a production line making widgets, that accords foreclosures little deliberate accuracy that the law – or for, that matter, basic courtesy and common sense – mandates be given to such serious matters.”
3. **Pursuant to FR 9027(i)** “When a claim or cause of action is removed to a District Court… the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.”
4. On July, 29, 2009 Judge Barrie’s ordered for the DEFENDANTS to bring “proper evidence of the chain of title.”
5. DEFENDANTS didn’t attempt to be address the standing order for 7 months.
6. Since the DEFENDANTS have ignored this order completely, we can only speculate that the time earned by the DEFENDANT’S MOTION FOR REMOVAL was needed to retroactively assign the SUBJECT PROPERTY.
7. The ASSIGNMENT OF NOTE AND SECURITY DEED filed by the DEFENDANTS on Feb. 8, 2010 is still woefully inadequate if not completely fraudulent for three reasons:
	1. Jeffrey Stephan’s signature and testimony in two separate depositions disqualifies the assignment as “proper.”
	2. Since it’s not disputed that the Plaintiff executed the Mortgage with FT Mortgage Company, DEFENDANTS have failed to show how the **Assignee** came to own the Note and Security Deed for SUBJECT PROPERTY so that it could lawfully assign it on Feb. 8, 2010 to the **Assignee.**
	3. The DEFENDANTS admit to being a successor to various trusts. However, becoming a “successor” to another securities fund, doesn’t provide proper evidence that the Plaintiff’s mortgage note or security deed was including in either the initial or succeeding the successions.

**Party cannot produce admissible evidence to support the fact.**

1. The DEFENDANTS’ inability to produce evidence to successfully challenge these facts are evidenced by their:
	1. Attempts to redirect the COURTS attention away from their breech of the aforementioned GA laws governing property recordation, assignment and foreclosure
	2. Attempts to direct the COURT away from their wanton disregard for Federal Laws (FDCPA), 15 U.S.C. §§ 1692-1692p protecting PLAINTIFF’S right to debt verification- including knowing the actual SECURED CREDITOR and holder in due course for his property
	3. Ignoring Judge TANGELA BARRIE’S standing ORDER that followed the case with Removal
	4. Alleging that the PLAINTIFF defaulted on his mortgage payments and that Plaintiff sought unjust court relief, when they refused to provide the PLAINTIFF debt validation under (FDCPA), 15 U.S.C. §§ 1692-1692p was commenced. See Affidavits (EXHIBIT A and ORIGINAL COMPLAINT)
	5. Attempts to redirect the COURT and restate the PLAINTIFF’S case as an Internet-inspired “Produce the Note Scam.” In this regard the DEFENDANTS have even said “that Plaintiff cannot produce a Georgia law requiring “either a lender or its attorney conducting the foreclosure sale” to “Produce The Note.” (See DEFENDANTS MOTIONS FOR JUDGEMENT ON THE PLEADINGS)
2. The aforementioned attempts at redirection while ignoring their obligation to follow GA Law OCGA§ 44 – 14 – 162.2 (a-c) and comply with a standing Court ORDER by DEKALB Superior Court Judge, Tangela Barrie proves that they cannot provide such evidence - now or in the future.

**STANDARD OF REVIEW**

Summary judgment is proper if “the pleadings, the discovery and disclosure

materials on file, and any affidavits show that there is no genuine issue as to any

material fact and that the movant is entitled to judgment as a matter of law,” Fed.

R. Civ. P. 56(c)(A).

Federal Rule Civ. P. 56(a) provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact,” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original). The non-movant may not “rely merely on the mere allegations or denials of the [non-movant’s] pleading; rather, its response must – by affidavits or as otherwise provided in this rule – set forth specific facts showing a genuine issue for trial.” Fed. R. Civ. P. 56(e).

 An issue is not genuine if it is created by evidence that is “merely colorable” or is “not significantly probative.” Substantive law will identify which facts are material. Id. at 248. Anderson, 477 U.S. at 249-50.

**CONCLUSION**

For all of the foregoing reasons, PLAINTIFF respectfully submits that he is entitled to summary judgment and the following:

1. Injunctive relief - permanently enjoining DEFENDANTS from foreclosing or any collection of alleged debt on SUBJECT PROPERTY.
2. Declaratory relief - granting the Plaintiff a Quiet Title for SUBJECT PROPERTY
3. Restorative relief ordering the Defendants to return to PLAINTIFF all monies collected by them under false pretence and paid to them while PLAINTIFF was under the induced assumption that they were indeed the SECURED CREDITOR and holder in due course.
4. Sanctions against the DEFENDANTS for continued egregious violation of GA State and Federal Law
5. Exacting Civil Penalties to discourage continued behavior by DEFENDANTS
6. COMPENSATORY DAMAGES – including all monies paid to the DEFENDANTS, plus interest. Also compensation for slander, case time, effort preparation, lost business, and emotional suffering
7. Granting of other relief as deemed appropriate by the COURT that takes into consideration damages done to the PLAINTIFF during the process of pursuing his lawful right to know the SECURED CREDITOR and holder in due course on SUBJECT PROPERTY (as provided for both by GA Law and Fair Debt Credit Protection Act.)
8. If the Court deems it INAPPROPRIATE to grant the aforementioned, Plaintiff believes it within his right and respectfully asks the court to accept our AMENDED COMPLAINT and reset the discovery calendar (four months) to begin in February, 2010 OR when the Plaintiff’s Amended Complaint is accepted.

Submitted this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2010

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Wekesa O. Madzimoyo

 Pro See Litigant

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Stone Mountain, GA 30083

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 **FONT VERIFICATION**

Pro se Litigant, Wekesa Madzimoyo, certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1C, namely Times New Roman (14 point).

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 Wekesa O. Madzimoyo

 Pro se Litigant

**CERTIFICATE OF SERVICE**

 I hereby certify that I have served the foregoing on the following by electronic mail or by placing a copy of the same in the United States mail, postage prepaid and properly addressed, this the 26th day of October, 2010 to:

Frank R. Olson, Esq.

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