UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE: CASE NO: 10-00730-WSS-13
ANTHONY EDWARD STEWART
BRENDA D. STEWART
DEBTORS

OBJECTION TO MOTION FOR TERMINATION OF AUTOMATIC STAY FILED BY BAC HOME LOANS SERVICING, L.P.

COME NOW the Debtors, by and through counsel, and objects to the Motion for Termination of Automatic Stay to Permit Foreclosure of Real Estate Mortgage filed by BAC Home Loans Servicing, L.P (herein referred to as the "Creditor") on the following grounds:

1. Creditor has no standing to bring this action because the real estate mortgage described in and attached to the Motion of Creditor (herein referred to as the "Mortgage") on the principal residence of Debtors (herein referred to as the "Property) was given by Debtors to the Mortgage Electronic Registration Systems, Inc ("MERS") as nominee for Countrywide Home Loans, Inc. (herein referred to "Countrywide Loans"). Upon information and belief, Countrywide Loans was acquired by BAC Home Loans, Inc and not BAC Home Loans Servicing, LP. In fact, the affidavit filed by Creditor in this action admits that it is a successor to Countrywide Home Loans Servicing LP and not Countrywide Home Loans, Inc. Accordingly, BAC Home Loans (and not BAC Home Loan Servicing LP-Creditor) is the real party in interest and Creditor has no standing.

2. Creditor does not hold the power of sale of the Mortgage and no evidence has been presented that it holds such power of sale.

3. Creditor is not a 'holder' of the Note and Mortgage and accordingly has absolutely no right, at law or equity, to enforce the Note and Mortgage.

4. There are necessary parties who have not been joined and who must be joined in the Motion for relief to be granted. These necessary parties are BAC Home Loans and MERS. The power of sale is ostensibly held by MERS and MERS is not a party and there is no proof that the power of sale was transferred with the Note and Mortgage, and, in fact, there is no proof that the Note and Mortgage were ever properly negotiated to Creditor.

5. Even if the two parties mentioned in 4 above were joined, the Court could not grant termination of the stay because, upon information and belief, based largely upon the existence of MERS as nominee under the Mortgage, this Mortgage and the associated

Note are one of those instruments transferred to a pass through pool of investors who then created a trust and resold parts of the loan pool to various tranches of derivative securities. These derivative securities may then have been sold and resold. Accordingly, either the Creditor has absolutely no right to bring this case or, even if it does, it cannot obtain a judgment or any other relief as the right to recover on the Note and Mortgage has been pledge to hundreds, perhaps thousands, of other investors in the pool. Alternatively, the Creditor may only have rights to the Note and Mortgage as a security position itself, in which case it is not the proper "holder" to bring this action. Any foreclosure of a pooled mortgage would violate Ala Code section 35-10-12 (1975) in that the persons entitled to the money "thus secured" have not been located and perhaps scattered throughout America and the world. Compare Crum v LaSalle Bank, NA, No. 2080110 (Ala.Civ App. 2009)(Attached hereto as Exhibit A).

6. MERS is a necessary and indispensable party to this action and the failure of MERS to be a party renders the rights of Creditor nonexistent.

7. Creditor is not a continuation of or successor in interest to the original mortgagee, who was MERS as nominee for Countrywide Home Loans (not Countrywide Home Servicing). See Argent Classic Convertible Arbitrage Fund, LP v. Countrywide Financial Corp 07-CV-07097 (CD CA 2009).

8. MERS is a necessary party and is not qualified to do business in Alabama and, accordingly, may not sue on any contract in Alabama since MERS does considerable business in Alabama. In fact, MERS was formed for, inter alia, escaping mortgage transfer taxes that otherwise would have been required to pool investments such as the Mortgage.

9. Creditor will find it impossible to prove that it is a holder in due course of the Note and Mortgage and hence it is subject to any of the foregoing defenses that is deemed substantive and not jurisdictional.

10. There is absolutely no evidence that the original Note has been endorsed or that an allonge has been signed an affixed to the Note in any manner effective to make Creditor a holder of the Note much less a holder in due course of the Note. See UCC 7-3-201.

11. The Note was a negotiable instrument under Alabama's Uniform Commercial Code and the Creditor did not properly acquire the Note via negotiation. See Union Bank & Trust Co. v Thompson, 202 Ala. 537, 81 So. 39, 40 (1919) and Crum, supra. See also, Alabama Code Sections 7-3-104(a) and 7-3-301.

12. In order to endorse a note, the current holder must either sign the instrument itself or an allonge (a paper so firmly affixed to the note that it becomes part of the note). See, e.g. Crossland Sav. Bank FSB v. Constant, 737 S.W. 2d 19 (Tex Ct.App. 1987). The text of the UCC suggests mere assignment of an instrument is not sufficient to make the assignee a holder. This is because when an instrument is assigned, it is not necessarily

indorsed to the assignee. Courts have supported this interpretation and in a bankruptcy proceeding, one court held that assignment alone does not make the note owner a holder in the absence of endorsement and delivery to the to the person currently in possession. In re Governor's Island, 39 B.R. 417 (Bankr E.D.N.C. 1984)(holding mere assignment of a note without endorsement by the note's previous owner prevents the note's current owner from being a holder of the note). Without status as a holder, one can never be a holder in due course. There is no evidence whatsoever, and, indeed, Creditor will not be able to produce any evidence that it is the "holder" of the Note or Mortgage.

13. Alternatively, even if the Creditor can show an assignment, if the assignment is not firmly affixed to the Note, there has not been a valid endorsement. See Adams v Madison Realty & Development, 853. F.2d 163 (3rd Cir 1998).

13. Finally, there have been serious questions raised concerning the execution of documents by Bank of America by what are being referred to as "robosigners" to the point that Texas has suspended all foreclosures by BOA in Texas and moves are afoot in other jurisdictions to similarly ban BOA foreclosures. A copy of the letter sent by the Attorney General of Texas to BOA is attached hereto as Exhibit B.

WHEREFORE, the Court is respectfully requested to deny the Creditor's Motion to Terminate Automatic Stay.

/s/ Ronald F. Suber
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CERTIFICATE OF SERVICE

I do hereby certify that on the 7th day of October 2010 I caused a copy of the foregoing document to be served upon the Trustee, J.C. McAleer, III, by the ECF system and by mailing a copy of the foregoing by first class mail to Goodman G. Ledyard and Jeanna D. Chappell at PO Box 161389, Mobile, AL 36616 .

/s/ Ronald F. Suber