UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 09-CV-01890 (JRT-LIB)

Steven Gewecke; and

Tamara Gewecke,

Plaintiffs,

v.

US Bank, N.A. as trustee for CitiGroup Mortgage Loan Trust, 2007-AMC1;

CitiGroup Mortgage Loan Trust 2007-AMC1;

Argent Mortgage Company, LLC;

ACC Capital Holdings Corporation; and

Countrywide Home Loans, Inc.

Defendants.

US BANK, N.A, AS TRUSTEE, CITIGROUP MORTGAGE LOAN TRUST 2007-AMCI, CITIGROUP MORTGAGE LOAN TRUST 2007 AMC1 AND COUNTRYWIDE HOME LOANS, INC.'S REPLY MEMORANDUM

INTRODUCTION

Defendants US Bank, N.A. as trustee for CitiGroup Mortgage Loan Trust, 2007-AMC1, CitiGroup Mortgage Loan Trust 2007-AMC1 and Countrywide Home Loans, Inc. (hereinafter sometimes collectively "**Countrywide Defendants**") submit this Memorandum in reply to Plaintiffs Steven Gewecke and Tamara Gewecke (hereinafter "**Geweckes**") memorandum in opposition to the motion to dismiss. In the midst of public scrutiny, Geweckes, like many others, want this court to believe that the foreclosure of

securitized mortgages involves a complicated process leaving borrowers without the ability to determine who rightfully has the power and authority to foreclosure. Here, this is not the case. No mortgage and note have been split or severed. Rather, US Bank, as trustee's right to foreclose the mortgage follows longstanding Minnesota law and Counts I, II, III, IV and V of the Second Amended Complaint are appropriate for dismissal because those claims fail to state a claim upon which relief can be granted as a matter of law.

I. ALL "ACTUAL" ASSIGNMENTS OF THE MORTGAGE HAVE BEEN RECORDED AND ONLY THE EQUITABLE INTERESTS THROUGH TRANSFER OF THE ORIGINAL NOTE HAVE NOT.

The motion to dismiss Counts I, II and III of the Second Amended Complaint rests on whether all assignments of the September 5, 2006 mortgage Geweckes executed in favor of Argent Mortgage Company, LLC (the "**US Bank Mortgage**") have been recorded as required under Minnesota Statute Sections 580.02 and 580.04 (2008). "Actual assignments" of the mortgage must be recorded, but "equitable assignments" need not. In sum, all actual assignments of the US Bank Mortgage have been recorded and Geweckes fail to set forth any well pleaded facts actual assignments of the US Bank Mortgage have not been recorded.

This court "need not 'conjure up unpled allegations' to save a complaint", *Gregory v. Dillard's, Inc.*, 565 F.3d 464, 473 (8th Cir. 2009) (quoting *Rios v. City of Del Rio*, 444 F.3d 417, 421 (5th Cir. 2006)), but get past the "labels and conclusions" to determine whether well-pleaded factual allegations "plausibly give rise to an entitlement to relief". *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007). Geweckes' claims

for relief under Counts I, II and III of the Second Amended Complaint are either legally wrong or legally irrelevant. Legally wrong and legally irrelevant claims do not set forth plausible claims for relief and those claims are appropriate for dismissal.

The dismissal of these claims falls squarely on two simple and clear principles of Minnesota law. The rights under the mortgage follow the transfer of the original promissory note, including "all right, title and interest", and these equitable assignments of the mortgage need not be recorded to comply with Minnesota foreclosure law. By these same principals, the US Bank Mortgage has not been split and severed from the promissory note. US Bank, as trustee has been given all rights, title and interest to both the promissory note and US Bank Mortgage and established of record the only "actual" assignment of mortgage. Thus, US Bank, as trustee has the legal right to foreclose and complied with Minnesota foreclosure by advertisement laws.

A. THE NOTE AND MORTGAGE HAVE NOT BEEN SPLIT OR SEVERED. POSSESSION OF THE ORIGINAL NOTE CREATES AN "EQUITABLE ASSIGNMENT" OF THE MORTGAGE PUTTING "ALL RIGHT, TITLE AND INTEREST" IN THE MORTGAGE TO THE HOLDER OF THE NOTE.

The claim the note and mortgage have been split or severed perceivers that separate rights exist under the note and mortgage. This is not the case and has never been the Countrywide Defendants' position. Geweckes simply fail to recognize and understand longstanding Minnesota law.

Longstanding Minnesota law states that the only way to separate the note and mortgage is through an express stipulation by the parties to the transfer. *First Nat'l Bank of Mankato v. Pope,* 85 Minn. 433, 435, 89 N.W. 318, 319 (1902); *Jackson v. Mortgage*

Electronic Registration Systems, Inc., 770 N.W.2d 487, 497 (Minn. 2009). Otherwise, an assignment of the promissory note operates as an equitable assignment of the underlying security instrument. *Pope*, 85 Minn. at 434-35, 89 N.W. at 318-19; *Jackson*, 770 N.W.2d at 497. The record contains no agreement to sever or split the note and mortgage. Thus, every assignment of the original promissory note operated as an equitable assignment of the US Bank Mortgage.

This longstanding principal clarifies CitiGroup Global's interest as a prior owner of the loan without an "actual" assignment of mortgage of record and also that "all right, title and interest" in both the loan and US Bank Mortgage have been transferred under the Pool and Servicing Agreement (the "**PSA**"). Minnesota law defeats: (1) Geweckes claims the note and US Bank Mortgage have been severed and split; (2) CitiGroup Global is identified as a prior owner of the loan without a recorded assignment of mortgage; and (3) the PSA transferred "all right, title and interest" in both the loan and US Bank Mortgage without recorded assignments of mortgages.

1. ALL RIGHT, TITLE AND INTEREST IN THE US BANK MORTGAGE IS TRANSFERRED BY OPERATION OF LAW.

Geweckes' use of the PSA supports Minnesota's automatic transfer of all right, title and interest both the note and mortgage through an assignment of just the promissory note. In an attempt to show "actual assignments" have occurred rather than "equitable assignments", Geweckes point to the terms of the PSA. (Pls. ['] Mem. Opp'n Mot. To Dismiss, p. 12-13). The basis of this argument is that "all right, title and interest in the security agreement" has been transferred supporting the belief that "actual" assignments

of both the note and mortgage must have occurred under the terms of the PSA. *Id.* Geweckes argue that "[b]ased upon the unequivocal language of the Pool and Servicing Agreement, it is clear that parties were transferring all interests in *both* the note and mortgage." *Id.* at 12. The Geweckes are correct.

As the Minnesota Supreme Court recently recognized, "[i]n the context of real property interests, equitable title refers to 'a beneficial interest in property' and 'gives the holder of the right to acquire formal legal title.'" *Jackson*, 770 N.W.2d at 497 (citing *Black's Law Dictionary* (8th ed. 2004) 1523). In addition, the Minnesota Supreme Court reached this same conclusion over one hundred years ago. In 1902, the Minnesota Supreme Court stated, "the mortgagee, made no formal assignment when he indorsed and transferred the notes to the present plaintiff, a national bank, the mortgage followed the debt as an incident thereto. That transfer carried with it the security and all remedies which [mortgagee] had or held." *Pope*, 85 Minn. at 434, 89 N.W. at 318–319. US Bank, as trustee obtained all right, title and interest in both the note and US Bank Mortgage by: (1) possession of the original note; and (2) the right to acquire formal legal title of the US Bank Mortgage.

This is the exact situation recognized in law and contemplated under the terms of the PSA. The PSA requires possession of the original note, but no immediate assignment of mortgage. Possession of the note provides equitable title to the mortgage and the right to acquire formal legal title. When an assignment of mortgage is required, such as in the event of an "occurrence of a foreclosure", the assignment is obtained and recorded.

Geweckes further point out why mere "record title"[1] to the security agreement has little value rendering Argent Mortgage Company, LLC's ("**Argent**") interest worthless. Geweckes state, "It is a long-standing principle of property law that parties do not and should not separate the mortgage and note:

> The security is virtually inseparable from the obligation unless the parties to the transfer expressly agree to separate them. The reason is that the security is worthless in the hands of anyone except a person who has the right to enforce the obligation, it cannot be foreclosed or otherwise enforced. Hence, separating the security and the obligation is ordinarily foolish, since it will leave one person with an unsecured debt and the other with a security instrument that cannot be enforced."

(Pls. ['] Mem. Opp'n Mot. To Dismiss, p. 25-26) (citing Grant S. Nelson and Dale A. Whitman, *Real Estate Finance Law* at 366 (4th ed. 2002)). When US Bank, as trustee obtains possession of the original note, the record title in Argent is worthless because Argent no longer has the authority to enforce the mortgage or to foreclose.

As Geweckes' recognize, all right, title and interest in the security instrument is transferred under the terms of the PSA. This longstanding principal is not a creation of our current mortgage market, but a precedent well established in Minnesota law. US Bank's possession of the original note gave it equitable title to the mortgage and the right to acquire formal legal title to the US Bank Mortgage in the future, which it did by the recorded assignment of mortgage from Argent to US Bank, as trustee.

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[1] Record title refers to a title "as it appears in the public records after the deed is properly recorded." *Jackson*, 770 N.W.2d at 497 (citing *Black's Law Dictionary* (8th ed. 2004) 1523).

2. TRANSFER OF THE ORIGINAL NOTE ONLY CREATES "EQUITABLE" ASSIGNMENTS, NOT "ACTUAL" ASSIGNMENTS, PUTTING "TITLE" TO THE MORTGAGE BEYOND DOUBT.

Consistent with their other legal arguments in this case, Geweckes claim the Countrywide Defendants' reliance upon the Minnesota Supreme Court's *Jackson,* 770 N.W.2d at 487, decision as "odd" and that the holding of that case actually supports the "legal underpinnings" of the Geweckes' claims. (Pls. ['] Mem. Opp'n Mot. To Dismiss, p. 9). This could not be further from the truth and Minnesota law.[2]

Part of this argument is that the note and mortgage were split and separated to "avoid the creation of a public chain of title prior to foreclose." *Id.* at 11. As discussed above, evidence does not exist the note and mortgage was severed defeating this assertion.

However, the Geweckes still want to confuse this court into believing there should be an assignment of mortgage from CitiGroup Global to CitiGroup Mortgage Loan Trust 2007-AMC1 because the records indicate CitiGroup Global was the prior owner of the loan. *Id.* at 8. This argument is founded on the purpose of the foreclosure by advertisement statues requirement to "make the *title to the mortgage* [a] matter of record." *Jackson,* 770 N.W.2d at 497 (emphasis added). "[T]he requirement is that the

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[2] Although the Geweckes do not want to make this recognition, the court and counsel in the *Peterson-Price* decision recognized this very fact. 2010 WL 1782188*9. The assignment of mortgage in *Peterson-Price also* did not involve Mortgage Electronic Registration Systems, Inc.. However, the court states, "Plaintiff clarifies that her claim is *not that U.S. Bank lacked the power to foreclose due to an unrecorded assignment of the note, an argument foreclosed by the Minnesota Supreme Court's decision in Jackson v. Mortgage Elec. Registration Sys., 770 N.W.2d 487 (Minn. 2009);* rather, her claim is that the assignment from Trimark to U.S. Bank was invalid, meaning that U.S. Bank was not the holder of the underlying note and did not have the *right* to enforce the security interest through foreclosure". *Id.* (emphasis added).

record, without the aid of extraneous evidence, "put[s] the *title of the assignee* of a mortgage *beyond doubt.*" *Id.* at 498 (citing *Soufal v. Griffith*, 159 Minn. at 255, 198 N.W. at 808-09 (1924)) (emphasis added). These legal principles are correct.

Here, title to the mortgage is a matter of record and the title of the assignee is beyond question. The *Jackson* court did not just address Mortgage Electronic Registration Systems, Inc. ability to foreclosure in its own name while only having a nominee interest in the mortgage. *Id.* The holding went well beyond that limited principal. It establishes US Bank, as trustees compliance with putting title of the assignee of the US Bank Mortgage beyond doubt.

After doing an expansive review of Minnesota precedent regarding foreclosure by advertisement law, it affirmed long standing principles of Minnesota law. They hold,

> "We affirm today the principles set forth in the foregoing cases. Our case law established that *a party can hold legal title to the security instrument without holding an interest in the promissory note*. The cases demonstrate that *an assignment of only the promissory note, which carries with it an equitable assignment of the security instrument, is not an assignment of legal title that must be recorded for purposes of foreclosure by advertisement.*

Id. at 500-01 (emphasis added). Clear from this express affirmation is the fact that Argent can hold legal title to the mortgage without holding an interest in the promissory note. Moreover, an assignment of the promissory note from Argent to CitiGroup Global Markets Realty Corp., then to CitiGroup Mortgage Loan Trust, Inc., and finally CitiGroup Mortgage Loan Trust 2007-AMC1 carries with it an equitable assignment of the mortgage and is not an assignment of legal title that must be recorded for the purposes

of foreclosure by advertisement.[3] These legal linchpins support the dismissal of Geweckes claims US Bank, as trustee lacks the authority to foreclose.

Geweckes argue that actual assignments of mortgage have not been recorded. This argument follows the Minnesota Supreme Court's decision in *Hathorn v. Butler*, 73 Minn. 15, 75 N.W. 743 (1898). In *Hathorn*, both the promissory note *and* the security instrument had been assigned. *Id.* at 20, 75 N.W. at 744 (emphasis added). The assignments of the security instrument were both executed and delivered. *Id.* The executed and delivered assignments of the security instrument constituted the passing of legal title, assigning legal title to the mortgage and requiring the assignment to be recorded. *Id.*

Similar to the facts before the *Jackson* court, 770 N.W.2d at 499, the situation before this court does not follow the holding in *Hathorn*. 73 Minn. at 20, 75 N.W. at 744. There is no evidence that any equitable assignment to CitiGroup Global Markets Realty Corp. or CitiGroup Mortgage Loan Trust, Inc. exists with both an executed and delivered actual assignment of the mortgage. Only two executed assignments of mortgage exist. The void original unrecorded assignment of mortgage to no one contained in the Collateral File, as explained later, and the executed and delivered assignment of mortgage from Argent to US Bank, as trustee for the benefit of Citigroup Mortgage Loan Trust

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[3] The transfer of promissory note to each party left Argent with apparent ownership of the mortgage, but with equitable title and the right to acquire formal legal title with the entity holding the note. *See* Second Goerlitz Aff. ¶ 2, Ex. 1 for a diagram of the transfers of interest in the note and mortgage.

2007-AMC1, Asset-Backed Pass-Through Certificates, Series 2007-AMC1.[4] Since only one actual assignment of mortgage exists, this is the only assignment that passes legal title, assigns legal title to the mortgage and required for recording under the foreclosure by advertisement statutes.

B. THE UNRECORDED ASSIGNMENT OF MORTGAGE LEFT BLANK VIOLATES THE STATUTE OF FRAUDS AND IS VOID.

Geweckes still want this court to rely upon an unrecorded assignment of mortgage left blank – assigned to no one – to support their claim "actual" assignments of mortgage have not been recorded. Instead of setting forth the legal viability of an unrecorded assignment of mortgage to no one, Geweches focus on distinguishing our facts from the *Peterson-Price v. U.S. Bank Nat. Ass'n*, 2010 WL 1782188 (D. Minn. 2010) decision. Geweckes do not address the legal viability of an unrecorded assignment of mortgage to no one because it has no legal viability.

Not only does the Minnesota Recording Act require an assignment of mortgage to be recorded, Minn. Stat. § 507.34 (2010), but any agreement for an interest in land must comply with the statute of frauds. Minn. Stat. § 513.05 (2010). In order to comply with the statute of frauds, there must be a writing, signed by the vendor, *that identifies the parties*, land, and terms and conditions of the transaction. *Doyle v. Wohlrabe,* 243 Minn.

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[4] The Geweckes still maintain that the use of "US Bank, as trustee for the benefit of Citigroup Mortgage Loan Trust 2007-AMC1, Asset-Backed Pass-Through Certificates, Series 2007-AMC1" fails to identify the proper legal name of the assignee because we conflated together two legal entitles. This novel theory never addresses the fact the proper party to assignment is the trustee and the only required party. *See In re Admiral Merchants Motor Freight, Inc.*, 11 B.R. 63, 64 (Bkrtcy. Minn. 1981) (the real party in interest is the one who can bring the action and the party with the capacity or legal right to bring or to defend an action on behalf of the trust is the trustee).The remaining information merely designates the beneficiaries of the trust.

107, 110, 66 N.W.2d 757, 761 (1954) (emphasis added). The blank unrecorded assignment of mortgage, clearly an interest in land, does not contain a grantee violating the statute of frauds and making the assignment void.

Geweckes are correct that US Bank, as trustee has notice of this unrecorded mortgage because it was in their own Collateral File. However, an assignment of mortgage that does not contain a grantee cannot put someone on notice of the grantee's interest. A grantee is an essential function of knowing an interest exists, which is why it is required by the statue of frauds.

Moreover, unlike the ability to transfer an original note, an assignment of mortgage cannot be transferred by possession alone. If that were true, then the original unrecorded assignment of mortgage in the Collateral File is in the possession US Bank, as trustee and would further support the fact US Bank, as trustee was properly assigned the US Bank Mortgage.

Geweckes cannot legally rely upon a void assignment of mortgage. Moreover, US Bank, as trustee cannot possibly have notice of a grantee that it is left blank. The facts in the Second Amended Complaint and in the record result in only one legally viable assignment of mortgage that meets the statute of frauds and also the Minnesota Recording Act – the assignment of mortgage from Argent to US Bank, as trustee. Thus, just like in *Jackson v. Mortgage Electronic Registration Systems, Inc.,* [b]ased upon the record before us, there is not evidence that the security agreements connected to plaintiffs' mortgages have been assigned" to anyone other than US Bank, as trustee. *See* 770 N.W.2d 487, 496 (Minn. 2009).

C. THE PRIVATE RELATIONSHIP BETWEEN BORROWER AND SERVICER PROVIDING THE BORROWERS THE NECESSARY TOOLS TO MEET THEIR OBLIGATIONS UNDER THE MORTGAGE CANNOT BE LOST.

Relying upon public policy arguments and alleged undocumented transfers of their loan throughout the mortgage industry, Geweckes argue borrowers have a right to know whether the lender foreclosing has the legal right to do so. To make this argument appear legitimate, little discussion is made of the everyday realistic fundamentals of having a mortgage loan; namely, the fact the borrowers almost always works with a mortgage servicer who is, and has been, servicing the loan since its inception including accepting payments, sending statements and fielding phone calls. On the other hand, when it comes to foreclosure this everyday fundamental of working with the servicer is lost. Somehow, this private, personal relationship with the servicer gets put aside and the only thing that matters is what information has been placed of record in the county recorder's office.

The non-judicial foreclosure process set forth the by the Minnesota legislature, however, is not complicated and provides borrowers sufficient information. A borrower is served with a Notice of Mortgage Foreclosure Sale that sets forth the original lender, any assignments, the servicer, the balance, the legal description, the tax identification number and the fact a default exists allowing the agreed upon right to foreclose. The identification of the servicer in the Notice of Mortgage Foreclosure Sale allows the borrower to verify that the person accepting payments is also the one commencing foreclosure.

Servicing a mortgage loan and the obligations of a servicer are federal legislated processes created by elected officials. Similarly, Minnesota's non-judicial foreclosure is a

state legislated process created by elected officials. Lenders have followed these processes to set up the mortgage lender system we presently know. The fact people think, speculate and believe they are victims of some undocumented scam is misplaced. Lenders, like US Bank, as trustee here, are following the legislated foreclosure laws and laws confirmed by the Minnesota Supreme Court.

II. US BANK, AS TRUSTEE HAS ESTABLISHED THE POWER TO FORECLOSE BY HOLDING AND POSSESSING THE ORIGINAL NOTE AS A MATTER OF LAW, IN ADDITION TO ITS "LEGAL TITLE".

Borrowers have commenced actions around the country raising the "show me the note" defense to foreclosure of their homes by lenders. As recognized by this district's judges, courts have routinely rejected the defense on the ground the foreclosure statutes do not require production of the original note during the foreclosure process. *See Stein v. Chase Home Fin.,* Civ.No. 09-1995, Doc. No. 165, Aug. 13, 2010 (MJD/JJG) (report and recommendation that describes the "show me the note" foreclosure defense and gathers cases rejecting the defense); *Hintz v. JP Morgan Chase Bank*, 2010 WL 4220486 *2, (D. Minn. 2010) (stating Minnesota Foreclosure Statutes do not require the production of the original note at any point during a foreclosure proceeding). However, US Bank, as trustee has gone beyond its legal obligation to foreclose. US Bank, as trustee has shown Geweckes the original note in its possession and Gewecks still find that insufficient while maintaining claims US Bank, as trustee does not have the right to foreclose. By holding and producing the original promissory note, US Bank, as trustee has confirmed its right foreclose.

Similarly, this argument defeats Geweckes slander of title claim. Geweckes' slander of title claim requires a false statement concerning the property that was published with malice to others and that such publication caused pecuniary loss in the form of special damages. *See Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000). Filing an inoperative document, if done maliciously, may constitute slander of title. *Id.* at 280; *see also Kelly v. First State Bank,* 177 N.W. 347, 347 (Minn. 1920) ("Filing for record an instrument known to be inoperative is a false statement within the rule, and if done maliciously it is regarded as slander of title."). "'It is clear, however, that if a man does no more than file for record an instrument which he has a right to file, he commits no wrong.'" *In re Nielsen*, 1998 WL 386384, at *4 (Bankr. D. Minn. July 9, 1998) (quoting *Kelly v. First State Bank*, 145 Minn. 331, 332, 177 N.W. 347 (Minn. 1920)).

Here, US Bank, as trustee possesses the original note giving it the clear authority to enforce the indebtedness. As clearly supported above, the right to enforce the indebtedness gives US Bank, as trustee an interest in the US Bank Mortgage regardless if it meets Minnesota foreclosure by advertisement laws. US Bank, as trustee has done nothing more than "record an instrument which he has a right to file". *See Id.* Geweckes' slander of title claim fails as a matter of law and should be dismissed.

III. STANDING DOES NOT EXIST FOR BORROWERS SPECULATING THE PARTY WITH "LEGAL" AND "RECORD" TITLE HAS NO RIGHT TO FORECLOSE.

The Geweckes lack of standing is clear under Minnesota law. Minnesota law does not allow borrowers to merely challenge the validity of the assignment recorded against their property when faced with foreclosure without something more. Based upon the

longstanding principles of Minnesota law, the Minnesota Supreme Court in *Jackson* stated:

> "In essence, any disputes that arise between the mortgagee [Argent] and the assignee of the promissory note holding equitable title [US Bank, as trustee] do not affect the status of the mortgagor [Geweckes] for the purposes of foreclosure by advertisement."

770 N.W.2d at 501. The issue regarding legal title to foreclose is specifically between the mortgagee and the assignee of the promissory note holding equitable title, if any.

The speculative situation posed by Geweckes sets forth a completely different requirement under the foreclosure by advertisement statutes. A borrower does not simply have to allow whomever to foreclose and evict them. Clearly, a borrower could stop a foreclosure if some default in a condition of the mortgage has not occurred triggering the power to foreclose. *See* § 580.02 (1).

This principal is established through the determination a borrower's only interest is paying the person authorized to receive payment and to discharge them from liability. *See Farmers' & Merchants' State Bank of Hutchinson v. Rush*, 165 Minn. 121, 124, 205 N.W. 951, 951 (1925). The equitable and legal rights between lenders has no consequence to a borrower who is able to pay the person authorized to received payment.

Here, Geweckes have never alleged an event of default does not exist. Instead, Geweckes want to object to the equitable and legal rights that may or may not exist between US Bank, as trustee, Argent and someone else they have failed to identify. This very situation follows the Minnesota Supreme Court's prior holding in *Bottineau v. Aetna Life Ins. Co.,* 31 Minn. 125, 127, 16 N.W. 849, 850 (Minn. 1883). The court held a

mortgagor is not affected by the mere equitable rights in the mortgage and could not object to a person with equitable rights in the mortgage use of the person with legal title to foreclose. *Id.* Thus, even if someone else with equitable rights existed, this alone does not give the Geweckes the right to object. Geweckes fail to establish any injury in fact from US Bank, as trustee foreclosing that does not otherwise already exists.

IV. THIS MOTION IS NOT BASED UPON SOME SEPARATE SET OF FACTS CREATING MORE ISSUES. RATHER, THIS MOTION IS BASED UPON A LEGAL POSITION SET FORTH IN A COMPLAINT RENDERED MOOT BY THE MINNESOTA SUPREME COURT AND NOW LEGALLY IMPOSSIBLE.

This motion is not based upon some "separate set of facts". It is rightfully based upon the allegations in the Second Amended Complaint that attempt to set forth a legal claim equitable assignments the mortgage must be recorded with the county recorder in order for US Bank, as trustee to foreclose. These same allegations were made in the original Complaint dated July 15, 2009 before the Minnesota Supreme Court decided *Jackson*, 770 N.W.2d at 487, on August 13, 2009. Because this legal theory has been rendered moot by the Minnesota Supreme Court, Geweckes rely upon legally incorrect and legally irrelevant arguments.

Geweckes also attempted to establish in the Second Amended Complaint, as well as in their prior complaints, the assignment of mortgage from Argent to U.S. Bank, as trustee dated August 11, 2008 could not have occurred because the PSA closed on March 9, 2007. No mention was made of the longstanding recognized principal under Minnesota law that an assignment of the promissory note equitably assigned the US Bank Mortgage allowing a party to obtain legal title at some point in the future. Presumably, Geweckes

no longer maintain this argument because: (1) Minnesota law clearly allows the transfer of this loan into the trust without an "actual" assignment of mortgage; and (2) the loan show ups in the Mortgage Loan Schedule for Citigroup Mortgage Loan Trust 2007-AMC1. The reality is the securitization of the US Bank Mortgage follows Minnesota law and Geweckes attempts to attack that process fail. Counts I, II, III and V of Geweckes Second Amended Complaint are, thus, appropriate for dismissal.

CONCLUSION

For the reasons stated above, and in Countrywide Defendants Memorandum in Support, the Court should grant the Countrywide Defendants motion to dismiss Counts I, II, III, IV and V of Geweckes Second Amended Complaint entirely for failing to state claims upon which relief can be granted and dismissing those clains with prejudice.

PETERSON, FRAM & BERGMAN, P.A.

DATED: December 2, 2010

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