

2:12-cv-1595

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

VITTI & VITTI & ASSOCIATES, P.C.)	
)	
Plaintiffs,)	No. 13-459
)	(Judge Braden)
v.)	
)	
UNITED STATES,)	
)	
Defendant.)	

DEFENDANT'S MOTION TO DISMISS

Pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests the Court to dismiss plaintiff, Vitti & Vitti & Associates, P.C.'s (Vitti) complaint for lack of subject matter jurisdiction. Vitti's tort claim falls outside the jurisdiction of this Court, and the Court does not possess jurisdiction to entertain Vitti's breach of contract claim because there is no privity of contract between Vitti and the United States. In support of our motion we rely upon the complaint, the following brief, and the attached appendix.

QUESTIONS PRESENTED

1. Whether this Court possesses jurisdiction to entertain Vitti's tort claim.
2. Whether this Court possesses jurisdiction to entertain Vitti's claim for money damages because of an alleged breach of the contract between the Pennsylvania Housing Finance Agency (PHFA) and the Department of Veterans Affairs (VA).

RECEIVED

DEC 11

CLERK, U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

STATEMENT OF FACTS¹

I. The VA Home Loan Guarantee Program

VA guarantees a portion of home mortgage loans made to veterans by private lenders pursuant to 38 U.S.C. § 3701 *et. seq.* See also 38 U.S.C. § 3703(a)(1)(A) (specifying amounts of guarantee). The VA's guarantee "operate[s] as the substantial equivalent of a down payment in the same amount by the veteran on the purchase price, in order to induce prospective mortgagee creditors to provide 100% financing for a veteran's home." *United States v. Shimer*, 367 U.S. 374, 383 (1961).

In the event of default on a loan guaranteed by VA, if the holder of the defaulted loan acquires the property securing the loan at a liquidation sale, the loan holder has the option, in certain circumstances, of conveying the property to the United States for payment by the Secretary of VA in an amount set by statute. 38 U.S.C. § 3732(c)(5)-(9) (describing circumstances when a loan holder can convey a property to the United States). To convey a property to VA, the holder must provide valid title "as . . . would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated." 38 C.F.R. § 36.4320(h)(5) (2009)²; Pl. Comp. ¶ 13 ("[T]he transfer is . . . conditional on the PHFA having secured good and marketable title through the foreclosure procedure.").

¹ For the purpose of this motion only, we generally accept as true the factual allegations as set forth in Vitti's complaint. Should the Court deny our motion to dismiss, we reserve the right to contest each and every allegation in the complaint.

² On June 15, 2010, VA redesignated regulations published at 38 C.F.R. § 36.4800 through 36.4893 to replace regulations previously found 38 C.F.R. § 36.4300 through 36.4393 ("the 36.4300 series"). 75 FR 33704-01 (June 15, 2010).

II. The Guaranteed VA Loan, Default, Foreclosure, And Reconveyance

Carmen Miller, a veteran, obtained a loan of \$45,750 on September 11, 1996, for a residential property located at 2116 Walton Avenue, Pittsburgh, Pennsylvania (the property). *See* Def. App. at 1 (Loan Guaranty Certificate)³; Pl. Compl. ¶ 7. The loan was initially financed through Allstate Financial Services, Inc., with a mortgage that was guaranteed by VA. *See id.*; Pl. Compl. ¶ 8. The loan was eventually transferred and serviced by the Pennsylvania Housing Finance Agency (PHFA). Pl. Compl. ¶¶ 8-9.

Ms. Miller defaulted on the loan, and PHFA instituted foreclosure proceedings. *Id.* at ¶¶ 10-11. The foreclosure proceeded with a liquidation sale of the property in October 2009, and the property was conveyed from PHFA to VA. Pl. Compl. ¶¶ 10-12. Pursuant to 38 U.S.C. § 3732(c), VA paid PHFA the net value of the property, which was calculated as \$42,303. Def. App. at 6 (check payable to PHFA); Pl. Compl. ¶ 23 (“VA paid the net value to PHFA”). *But see* Pl. Compl. ¶¶ 19-20 (indicating VA paid \$48,000 to PHFA).

On August 25, 2010, VA, through its contracted agent, Bank of America, sent a letter to U.S. Bank National Association (U.S. Bank)⁴ notifying it that VA could not accept the transfer because the foreclosure was invalid. Def. App. at 7; *see also* Pl. Compl. ¶ 18. VA further noted that when a holder conveys property to VA, such conveyance is conducted with the understanding that “the title should be in such condition ‘as is or would be generally acceptable to prudent lending institutions,

³ “Def. App at ___” refers to pages of the appendix attached to this motion.

⁴ U.S. Bank is the trustee for PHFA. Def. App. at 4.

informed buyers, title companies, and attorneys in the community in which the property is situated.” *Id.* (quoting 38 C.F.R. § 36.4320(h)(5)).

On September 23, 2010, VA, through its agent, Bank of America, sent U.S. Bank a “Final-Reconveyance” letter stating that VA was reconveying the property because “[t]he property had been in inventory for 288 days. There is an open mortgage [and] there is no record of release.” Def. App. at 8-9 (Final Reconveyance Letter). Attached to the letter was a “Quit Claim Deed” transferring the property back to U.S. Bank. *Id.* at 10-14; *see also* Pl. Compl. ¶ 28. The letter also requested payment of the original net value of the property along with other expenses. *Id.* at 8; *see also* 38 C.F.R. § 36.4323(c). *But see* Pl. Compl. ¶ 29 (PHFA was required to refund VA the sum of \$48,000). As a result of the reconveyance, PHFA sought indemnification from Vitti. Pl. Compl. ¶ 31. PHFA conveyed the property to Vitti, who in return paid PHFA \$48,000. *Id.*

III. Vitti’s Claim

On May 24, 2012, VA denied an administrative tort claim submitted by plaintiff, Louis P. Vitti, Esquire, wherein Mr. Vitti alleged that VA was liable for damage (the removal of copper piping) to the property that occurred while the property was in VA’s possession. *See* Pl. Compl. ¶ 34, Ex. E. In denying the claim, VA found no “evidence of any negligent or wrongful act or omission of any employee of the federal government” *Id.* Vitti subsequently filed a complaint in the United States District Court for the Western District of Pennsylvania. On July 22, 2013, Vitti filed a motion to requesting that the district court transfer the case to the Court of Federal Claims. Def. App. at 15-17. On April 30, 2013, the district court granted Vitti’s motion and transferred Vitti’s case to this Court. *See* Def. App. at 18.

On July 22, 2013, Vitti filed an amended complaint in this Court alleging a tort and breach of contract claim. Specifically, Vitti alleges that VA “owed a contractual duty to the PHFA to preserve the property while it was it was in its possession . . . in such a way as to . . . prevent vandals from entering the property and taking copper pipes [and] that VA did not so maintain the property” Pl. Compl. ¶¶ 36-37. Vitti contends that as a result of VA’s breach of its contractual obligations to PHFA, VA is liable to Vitti in tort because he was required to indemnify PHFA for any damages that PHFA sustained when VA reconveyed the property due to issues with the property’s title. Pl. Compl. ¶¶ 35-42. Vitti’s complaint also includes a claim for breach of contract, but the basis of this claim is unclear because Vitti does not contend that it had a contract with the Government. Pl. Compl. ¶ 43. Vitti seeks \$42,400 in damages, or in the alternative offers to reconvey the property to VA in exchange for \$48,000. Pl. Compl., prayer for relief.

ARGUMENT

I. Standard Of Review For Motion To Dismiss Pursuant To RCFC 12(b)(1)

Subject matter jurisdiction is a threshold issue. *Int’l Mgmt. Servs., Inc. v. United States*, 80 Fed. Cl. 1, 4 (Fed. Cl. 2008) (citation omitted). The central provision granting consent to suit in this Court is the Tucker Act, 28 U.S.C. § 1491. *United States v. Testan*, 424 U.S. 392, 397 (1976); *Aetna Casualty & Surety Co. v. United States*, 655 F.2d 1047, 1051 (Ct. Cl. 1981). Pursuant to this statute, an action may be maintained in this Court only if it is “founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the

United States, or for liquidated or unliquidated damages in cases not sounding in tort.”

28 U.S.C. § 1491(a).

The plaintiff bears the burden of proving, by a preponderance of the evidence, that the Court possesses subject matter jurisdiction. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Myers Investigative and Sec. Servs., Inc. v. United States*, 275 F.3d 1366, 1369 (Fed. Cir. 2002) (citation omitted). In ruling upon a motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), “the Court accepts as true the undisputed allegations in the complaint, and draws all inferences in favor of the plaintiff.” *Lavezzo v. United States*, 74 Fed. Cl. 502, 507 (2006) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by Harlow v. Fitzgerald*, 47 U.S. 800 (1982)). Nonetheless, when considering an RCFC 12(b)(1) motion, the Court “may look outside the complaint and receive evidence for the purpose of resolving the jurisdictional issue of fact.” *Morris v. United States*, 33 Fed. Cl. 733, 742 (1995). If a defendant challenges the jurisdiction of the Court, the plaintiff may not rely merely upon allegations in the complaint, but must instead identify relevant, competent proof to establish jurisdiction. *McNutt*, 298 U.S. at 189. Indeed, “conclusory allegations unsupported by any factual assertions will not withstand a motion to dismiss.” *CC Distrib., Inc. v. United States*, 38 Fed. Cl. 771, 775 (1997). If jurisdiction is found to be lacking, this Court must dismiss the action. RCFC 12(h)(3).

As we establish below, Vitti has failed to meet its burden of proving this Court’s subject matter jurisdiction to entertain the claims in its complaint.

II. This Court Does Not Possess Jurisdiction To Entertain Vitti's Tort Claim

The gravamen of Vitti's complaint sounds in tort. Count one of Vitti's complaint—which forms the majority of its complaint—alleges that VA is liable to Vitti in tort for VA's purported failure to “preserve the property[,]” Pl. Compl. ¶ 36, and its value while it was in VA's “possession, custody, and control[,]” *id.*; *see also id.* at ¶ 40 (“[C]onsequently it [VA] is liable in Tort to Vitti.”). Vitti's specifically contends that by breaching its contractual duty to PHFA, VA is liable in tort to “third persons [presumably including Vitti] regardless of any privity of contract who might be injured as a result of the . . . [VA's] failure to properly perform its contractual duties and undertakings.” *Id.* at ¶38 (citing Section 324 of the Restatement of Torts 2nd). Vitti contends that this Court possess jurisdiction to entertain its tort claims pursuant to 28 U.S.C. § 2675 (Tort Claims Procedure) and 28 U.S.C. § 2401 (prescribing time and procedures for filing a tort claim). *See also* Pl. Compl. ¶ 34 (presumably alleging that its claim was filed “within the six month time period” prescribed by section 2401(b)).

It is well-settled that this Court does not possess jurisdiction over claims sounding in tort. The Tucker Act expressly precludes this Court from exercising jurisdiction over tort claims. 28 U.S.C. § 1491 (“The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States . . . in cases *not sounding in tort.*”) (emphasis added); *see also Gibbons v. United States*, 75 U.S. (8 Wall.) 269, 275 (1868) (“The language of the statutes which confer jurisdiction upon the Court of Claims, excludes by the strongest implication demands against the government founded on torts.”); *Keene Corp. v. United States*, 508 U.S. 200, 214 (1993) (“tort cases are outside the jurisdiction of the Court of Federal Claims today”) (footnote omitted).

Moreover, the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1), provides the United States District Court with exclusive jurisdiction over civil actions sounding in tort against the United States. Section 1346(b)(1) does not authorize this Court to hear civil tort actions. 28 U.S.C. § 1346(b)(1). Accordingly, the Court should dismiss Vitti's tort claim.

III. This Court Does Not Possess Jurisdiction To Entertain Vitti's Breach Of Contract Claim Because Vitti Lacks Privity With The United States

A plaintiff pursuing a breach of contract claim against the United States pursuant to the Tucker Act, 28 U.S.C. § 1491, must, as a threshold issue, demonstrate privity of contract with the United States. *Normandy Apartments, Ltd. v. United States*, 100 Fed.Cl. 247 (2011) (citing *Chancellor Manor v. United States*, 331 F.3d 891, 899 (Fed. Cir. 2003)). Privity of contract is a question of subject matter jurisdiction and a lack of privity deprives this Court of jurisdiction.⁵ *Id.* ("The lack of privity impacts the lack of waiver of sovereign immunity, which is available pursuant to the Tucker Act.") (citations omitted).

Vitti fails to meet its burden of establishing this Court's jurisdiction over its breach of contract claim because it fails to allege—nor does it have—a contract with the United States. *See Castle v. United States*, 301 F.3d 1328, 1339 (Fed. Cir. 2002) (holding that only direct parties to the contract have standing to allege breach of contract claims

⁵ Although a party who does not have privity of contract with the Government may maintain an action under the Tucker Act if the party is an intended third-party beneficiary to the Government contract, Vitti does not allege that it is an intended beneficiary to the contract that it alleges exists between VA and PHFA. Presumably, Vitti does not make such an allegation because it wisely recognizes that it could not make the requisite showing to establish that it is an intended beneficiary of the contract allegedly at issue in this case. *See Sioux Honey Ass'n v. Hartford Fire Ins. Co.*, 672 F.3d 1041, 1056 (Fed. Cir. 2012) (Third party beneficiary status is an "exceptional privilege" and "should not be granted liberally.") (citation omitted).

based upon the contract). In its complaint, Vitti alleges that PHFA had a contract with VA, Pl. Compl. ¶¶ 12, 14 (alleging a contract between PHFA and VA), and that Vitti had a separate and distinct “agreement” with PHFA, *id.* at ¶ 15 (describing Vitti’s agreement with PHFA). Accordingly, the only privity of contract that Vitti may possess is privity of contract with PHFA. Indeed, Vitti’s breach of contract claim is not based upon any contract that Vitti had with the Government. Rather, Vitti’s claim is based upon its obligation to indemnify PHFA, and Vitti’s damages stem from Vitti’s failure to fulfill its obligation under its agreement with PHFA: the obligation to obtain clear and marketable title. *See id.* at ¶ 15. Accordingly, this Court does not possess jurisdiction to entertain Vitti’s contract claim.

Because neither of Vitti’s claims fall within the jurisdiction of this Court, its complaint should be dismissed for lack of subject matter jurisdiction.⁶

CONCLUSION

For these reasons, we respectfully request that the Court dismiss Vitti’s complaint for lack of subject matter jurisdiction.

⁶ If, for the sake of argument, the Court were to find that it possesses jurisdiction to entertain Vitti’s complaint, we request that Vitti be required to file a more definite statement pursuant to RCFC 12(e) regarding the exact obligation, including the precise language of the contractual obligation, that it alleges VA owed to PHFA, as well as, the source that sets forth the obligation to which Vitti refers. RCFC 9(k) requires that “[i]n pleading a claim founded on a contract . . . a party must identify the substantive provisions of the contract . . . on which the party relies[,]” or attach to the complaint a copy of the contract indicating the relevant provisions. RCFC 9(k). Vitti’s complaint does not comply with this requirement. Should the Court deny our motion to dismiss, we respectfully request that the Court allow defendant 30 days from the date that plaintiff files a more definite statement to file defendant’s answer to the complaint.

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

JEANNE E. DAVIDSON
Director

/s/ Steven Gillingham
STEVEN GILLINGHAM
Assistant Director

/s/ Shelley D. Weger
SHELLEY D. WEGER
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 616-1273
Fax: (202) 307-0972
Shelley.D.Weger@usdoj.gov

Dated: September 20, 2013

Attorneys for Defendant

APPENDIX



US BANK DOCUMENT CUSTODY

- 80 / L No. 5732 P. 2 -

UNITED STATES OF AMERICA

LOAN GUARANTY CERTIFICATE

631986

ISSUED TO:

ALLSTATE FINANCIAL SERVICES INC
 ONE FORESTWOOD DRIVE
 PITTSBURGH PA 15237

RECEIVED BY VHA

FEB 13 1997

PROGRAMS SECTION

LOAN NUMBER	DATE OF LOAN	AMOUNT OF LOAN	PERCENT GUARANTEED
11-11-6-0247126	09/11/96	\$ 45,750	49.18 %

CERTIFICATION TO FINANCIAL INSTITUTION

This is to certify that, in this case, the Department of Veterans Affairs (VA) has complied with the applicable provisions of the Right to Financial Privacy Act of 1978, title xi of Public Law 95-630. Pursuant to section 1113(h)(2) of the Act, no further certification shall be required for subsequent access by the Department of Veterans Affairs, Loan Guaranty Service or Division to financial records on this loan during the term of the loan guaranty.

This is to certify that pursuant to chapter 37, title 38, U.S.C., as amended, and the regulations effective thereunder on the date of this certificate, the indebtedness outstanding from time to time under the loan identified herein is guaranteed in the following amount(s):

FULL NAME(S) OF VETERAN(S)	AMOUNT OF LOAN	AMOUNT OF GUARANTY
CARMEN A MILLER	45,750	22,500

BY [Signature]
 (SIGNATURE OF AUTHORIZED AGENT)

for SECRETARY OF VETERANS AFFAIRS

DATE OF THIS CERTIFICATE 01/18/97

ISSUING OFFICE VARO Pittsburgh PA (MFB)

Upon full satisfaction of this loan by payment or otherwise, this certificate must be appropriately endorsed and signed, dated, and returned to VA pursuant to 38 CFR 36.4218 or 36.4333. Check the appropriate box to show the reason for the termination for VA's guaranty liability.

- PAID-IN-FULL CLAIM PAID CANCELED



Valerie McDonald Roberts
 Department of Real Estate
 Pittsburgh, PA 15219

Instrument Number: 2009-27760 BK-DE VL-14078 PG-7

Recorded On: October 22, 2009 As-Deed

Parties: MILLER CARMEN A BY SHFF

To UNITED STATES OF AMERICA BY SEC VETS AFFRS

of Pages: 6

Comment: GD 09 602

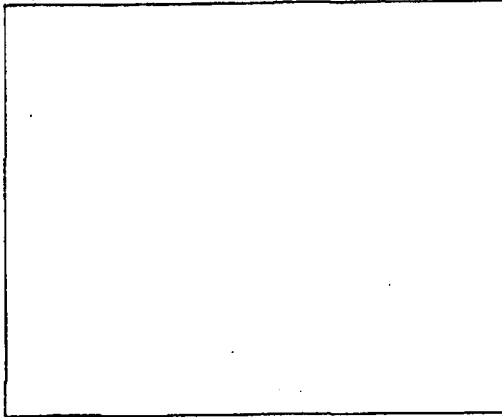
***** THIS IS NOT A BILL *****

Deed 67.00
 Pages > 4 1
 Names > 4 0
 Total: 67.00

Realty Transfer Stamp

Affidavit Attached-Yes	Stamp Num-T377251	
PITTSBURGH		EXEMPT
Ward-32-OVERBROOK		
Blk/Lot-85F89	Value	0.00
Commonwealth of Pennsylvania		0.00
Munic-Pittsburgh City of		0.00
School District-Pittsburgh		0.00
Munic-Penalty		0.00
Munic-Interest		0.00
School-Penalty		0.00
School-Interest		0.00

Department of Real Estate Stamp



I hereby certify that the within and foregoing was recorded in the Department of Real Estate in Allegheny County, PA

DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT*

File Information:

Document Number: 2009-27760
 Receipt Number: 1452839
 Recorded Date/Time: October 22, 2009 10:30:35A
 Book-Vol/Pg: BK-DE VL-14078 PG-7
 User / Station: A Matthews - Cash Super 04

Record and Return To:

SHERIFFS OFFICE
 WILL CALL
 PITTSBURGH PA 15219



Valerie McDonald Roberts, Manager
 Dan Omerate, County Executive

Form 38 SHERIFF

GD 09-602.
Sale No. 141, October 2009

Know All Men by these Presents,

That I, WILLIAM P. MULLEN, Sheriff, JOSEPH A. RIZZO, CHIEF DEPUTY SHERIFF
of the County of Allegheny, in the State of Pennsylvania, for and in consideration of the
sum of ONE THOUSAND SEVEN HUNDRED FIVE AND 95/100 (\$1,705.95)

_____ Dollars,

to me in hand paid, do hereby grant and convey to THE SECRETARY OF VETERANS AFFAIRS

I hereby certify that the precise residence of the Grantee _____
is VETERANS ADMINISTRATION
1240 EAST NINTH STREET
CLEVELAND, OHIO 44199

ALL those certain lots or pieces of ground situate in the 32nd Ward of the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, being Lot No. 299 and the adjoining 12 1/4 feet of Lot No. 298 in the Enghart Brother's Plan of Lots called "Inglewood Gardens", as recorded in the Recorder's Office of Allegheny County, Pennsylvania, in Plan Book Volume 30, page 118, being bounded and described as follows, to-wit:—

BEGINNING at a point on the Westerly side of Walton Avenue at the dividing line between Lots Nos. 299 and 300 in said plan; thence along said dividing line South 81° 30' 40" West, a distance of 100 feet to a point on the Easterly side of Marland Way; thence along the Easterly side of Marland Way, North 8° 29' 20" West, a distance of 37.50 feet to a point; thence by a line through said Lot No. 298, North 81° 30' 40" East, a distance of 100 feet to a point on the Westerly line of Walton Avenue; thence along the Westerly side of Walton Avenue, South 8° 29' 20" East, a distance of 37.50 feet to the dividing line between Lots Nos. 299 and 300 aforesaid, the place of beginning.

UNDER and subject to reservations, restrictions, easements and rights of way as recorded in prior instruments of record.

HAVING erected thereon a dwelling known as 2116 Walton Avenue, Pittsburgh, Pennsylvania 15210. BEING the same premises which Carol R. McConnell, a single woman, by Deed dated September 11, 1996 and recorded in the Office of the Recorder of Deeds of Allegheny County on September 11, 1996 in Deed Book Volume 9780, page 633, granted and conveyed unto _____

BLOCK and Lot No. 95-F-99.

the same having been sold to me to the said grantee on the 5TH day of OCTOBER
Anno Domini two thousand and 09 after due advertisement
according to law, under and by virtue of a writ of EXECUTION issued
on the 28TH day of JULY Anno Domini 20 09, out of the Court
of Common Pleas of said County as of MG Term, two thousand and
09 Number 000602 at the suit of
U.S. BANK NATIONAL ASSOCIATION, (TRUSTEE FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY, PURSUANT TO A TRUST INDENTURE DATED
AS OF APRIL 1, 1982)

against CARMEN A. MILLER

In Witness Whereof, I have hereunto affixed my signature, this 13TH
day of OCTOBER Anno Domini, two thousand and 09

William P. Mullen



WILLIAM P. MULLEN, Sheriff

Commonwealth of Pennsylvania, ss:

Before the undersigned, Director of Court Records for The Court of Common Pleas of Allegheny County personally appeared WILLIAM P. MULLEN Sheriff of Allegheny County aforesaid and in due law declared that the facts as set forth in the foregoing deed are true, and that he acknowledged the same in order that said deed might be recorded.

Witness my hand and seal of said Court this 13th day of October
Anno Domini two thousand and 09

Kate Berkman

By *Raymond A. ...*
Director
Clerk

Commonwealth of Pennsylvania, } ss:
County of Allegheny,

Recorded on the _____ day of _____
A.D. 20 _____ in the Department of Real Estate of said County, in Deed Book
Volume _____, Page _____

Given under my hand and seal of said office the day and year aforesaid.

Director
By _____
Clerk

Vitti

Form 38

Sheriff's Deed

WILLIAM P. MULLEN,
Sheriff of Allegheny County

TO

**THE SECRETARY OF VETERANS
AFFAIRS**

For all the interests of _____

CARMEN A. MILLER

Consideration \$ 1,705.95

Sold on EX HG No. 09-000602
141 OCTOBER 2009

United States Treasury ¹⁸⁻⁵¹ / 000 A 544,924,212

10 21 09 98 AUSTIN, TEXAS

2221 90832554 36001200 M2 36

PA HOUSING FINANCE AGENCY
211 N FRONT ST
HARRISBURG PA 171011406

Check No. 2221 90832554
M101019403

\$**42303**00

VOID AFTER ONE YEAR

#631986
PER ENCLOSED MAILING NOTICE

1: [REDACTED] 2: [REDACTED] PER [REDACTED]

Bank of America 

Home Loans

Pre-Reconveyance of Loan/Property
Tracking # 7989 8363 4883
August 25, 2010

U.S. Bank NA
Foreclosure Department
4801 Frederica Street, West B
Owensboro, KY 42301

RE: Prior Mortgagor: Carmen Miller
Property Address: 2116 Walton Ave., Pittsburg, PA 15210
VA# 111160247126

Dear Foreclosure Department:

This letter is to notify U.S. Bank NA that BAC Home Loans Servicing, L.P. has requested authority from the Secretary of Veterans Affairs to reconvey the above referenced property for the following reason:

The property has been in our inventory for 288 days. There is an open mortgage. The foreclosing attorney was able to provide a Letter of Indemnity, but it is no sufficient as the underwriter for the buyer was not addressed/indemnified. There is no recorded release.

When a holder seeks to convey property to the VA, the title should be in such condition "as is or would be generally acceptable to prudent lending institutions, informed buyers, title companies, and attorneys in the community in which the property is situated. Title 38 Code of Federal Regulations. section 36.4320 (h) (5).

The VA cannot accept transfer of U.S. Bank, NA (\$42,302.00) because of the invalid foreclosure. Therefore, any itemized expenses will concerning this loan/property must be returned to the VA. The "**Bill of Collection**" will be furnished to your company at a later date by the VA. This serves only as an advance notice of the reimbursement for acquisition that your company will be required to make upon receipt of VA's request for funds. VA's request for funds may also include any claim under guaranty paid.

The VA makes the final decision to reconvey and if you have any objections to the decision please contact the VA at vareo.vbaco@va.gov.

If you have any questions, please contact Ken Schreiber @ (972) 498-5487.

Sincerely,
Ken Schreiber
MTG Servicing Specialist II
Bank of America VA/REO Department
2375 N. Glenville Dr. Bldg B

Mail Stop: TX2-983-01-01
Richardson, TX 75082

james.schreiber@bankofamerica.com

cc: Vitti and Vitti and Associates, PC, 916 Fifth Avenue, Pittsburgh, PA 15219 (412) 281-1725

Tracking # 7938 5186 6152

Bank of America VA/REO Department 2375 N. Glenville Dr. Bldg B Mail Stop: TX2-983-01-01 Richardson, TX 75082



Final-Reconveyance of Property
Tracking # 7962 7271 3098

September 23, 2010

U.S. Bank, N.A.
Foreclosure Department
4801 Frederica Street, West B
Owensboro, KY 42301

RE: Prior Mortgagor: Carmen Miller
Property Address: 2116 Walton Ave., Pittsburg, PA 15210
VA# 111160247126

Dear Foreclosure Department:

This letter is to notify **U.S. Bank, N.A.** that the Secretary of Veterans Affairs is re-conveying the above-referenced property. The reason for this reconveyance is because:

The property has been in our inventory for 288 days. There is an open mortgage. The foreclosing attorney was able to provide a Letter of Indemnity, but it is not sufficient as the underwriter for the buyer was not addressed/indemnified. There is no record of release.

A property acquisition payment was paid to your company when the property was originally conveyed to the Secretary of Veterans Affairs. Therefore, this payment must be returned to VA along with the estimated expenses indicated below, which expenses **total \$ 55,754.19**

Consideration Amount	\$ 42,302.00
Yard Maintenance	\$ 270.00
REM Electrical	\$ 1,987.00
Appraisal Fee	\$ 575.00
Insp Vacant	\$ 15.00
REO Misc	\$ 398.18
Utilities	\$ 29.30
Winterization	\$ 1,600.00
Snow Removal	\$ 270.00
Property Preservation	\$ 277.00
Cleaning/Maintenance	\$ 525.00
Repairs/REO Val Enhc	\$ 2,000.00
Service Call	\$ 250.00
Agent Management Fee	\$ 1,000.00
BAC Management Fee (\$200.00 per month)	\$ 2,000.00
Equator Program Service Fee	\$ 125.00
Quit Claim Deed/Mailing Fees	\$ 1,946.65
Total	\$ 55,754.19

This is a courtesy notice only and funds are not to be forwarded to the BAC Home Loans Servicing, L.P. The "Bill of Collection" will be furnished by the VA. This serves only as an advance notice of the reimbursement for acquisition that your company will be required to make upon receipt of VA's request for funds. VA's request for funds may also include any claim under guaranty paid.

Bank of America VA/REO Department 2375 N. Glenville Dr. Bldg B Mail Stop: TX2-983-01-01 Richardson, TX 75082
This reconveyance also means that your company now has physical custody and ownership of the property.
Therefore, effective immediately **U.S. Bank N.A.** is now fully responsible for the continued security and maintenance of the property.

A copy of the recorded Quit Claim Deed will be forwarded to you under a separate cover if it is not attached to this letter. The cost for preparing and recording the Quit Claim Deed is included in the itemized expenses above.

If you have any questions, please contact Ken Schreiber @ (972) 498-5487.

Sincerely,

Ken Schreiber
MTG Servicing Specialist II

Bank of America VA/REO Department
2375 N. Glenville Dr. Bldg B
Mail Stop: TX2-983-01-01
Richardson, TX 75082
james.schreiber@bankofamerica.com

cc: Vitti and Vitti and Associates, P.C. 916 Fifthe Avenue, Pittsburgh, PA 15219 (412) 281-1725
Tracking # 7962 7271 6410

Quit Claim Deed Attached

Bank of America VA/REO Department 2375 N. Glenville Dr. Bldg B Mail Stop: TX2-983-01-01 Richardson, TX 75082

Doc-24280

Allegheny County
Valerie McDonald Roberts
Department of Real Estate
Pittsburgh, PA 15218

*** Electronically Filed Document ***

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

Document Number: 2010-24280
Recorded As: ERX-DEED
Recorded On: September 09, 2010
Recorded At: 03:35:43 pm
Number of Pages:4
Book-VI/Pg: Bk-DE VI-14374 Pg-520
Recording Fee: \$78.50
Parties:
SECRETARY OF VETERANS AFFAIRS
US BANK NATIONAL ASSOCIATION
Receipt Number: 1659788
Processed By: Joanna Clark

Department of Real Estate Stamp

0095F00099000000

Realty Transfer Stamp

Consideration Amt	\$42302.00	Commonwealth of Pennsylvania	\$423.02
Tax Code :	PITTSBURGH	Munic-Pittsburgh City of	\$848.04
Tax Amount:	\$1692.08	School District-Pittsburgh	\$423.02
Ward :		Munic-Penalty	\$0
32-OVERBROOK		Munic-Interest	\$0
Stamp Num:	T403436	School-Penalty	\$0
Bk/Lot:	0095F00099000000	School-Interest	\$0
Affidavit:	No		
Exempt:	No		

I hereby certify that the within and foregoing was recorded in the Department of Real Estate's Office in Allegheny County, PA

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****



Valerie McDonald Roberts, Manager
Dan Donato, County Executive

Doc-24280

11373

08-Sep-2010 03:15PM By: J F

Return to and mail tax statements to:
U.S. Bank National Association
4801 Frederica Street, West B
Owensboro, KY 42301

Property Tax ID#: 95-F-99

QUIT CLAIM DEED

Made this 27th day of August, 2010, by and between THE SECRETARY OF VETERANS AFFAIRS, as Grantor, and U.S. BANK NATIONAL ASSOCIATION, of 4801 Frederica Street, West B, Owensboro, KY 42301, as Grantee;

Witnesseth, that said Grantor, for in consideration of the sum of FORTY-TWO THOUSAND THREE HUNDRED TWO and 00/100 (\$42,302.00) DOLLARS, and other good and valuable considerations in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said Grantee forever, all the right, title, interest, claim and demand which the said Grantor has in and to the following described lot, piece or parcel of land, situate, lying and being in Allegheny County, Pennsylvania, to-wit:

SEE COMPLETE LEGAL ATTACHED AS EXHIBIT "A"


Property Address: 2116 Walton Avenue, Pittsburgh, PA 15210

To have and to hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or in equity, to the only proper use, benefit and behalf of the said Grantee forever.

In witness whereof, Grantor has hereunto set a hand and seal the day and year first written above.

THE SECRETARY OF VETERANS AFFAIRS,
An officer of the United States of America.

By the Secretary's duly authorized property management contractor, Countrywide Home Loans Servicing, L.P., nka BAC Home Loans Servicing, L.P., pursuant to a delegation of Authority found at 38 C.F.R. 36.4845 (f)



Marishella James
Printed Name and Title

Return to and mail tax statements to:
U.S. Bank National Association
4801 Frederica Street, West B
Owensboro, KY 42301

Property Tax ID#: 95-F-99

QUIT CLAIM DEED

Made this 27th day of August, 2010, by and between THE SECRETARY OF VETERANS AFFAIRS, as Grantor, and U.S. BANK NATIONAL ASSOCIATION, of 4801 Frederica Street, West B, Owensboro, KY 42301, as Grantee;

Witnesseth, that said Grantor, for in consideration of the sum of FORTY-TWO THOUSAND THREE HUNDRED TWO and 00/100 (\$42,302.00) DOLLARS, and other good and valuable considerations in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said Grantee forever, all the right, title, interest, claim and demand which the said Grantor has in and to the following described lot, piece or parcel of land, situate, lying and being in Allegheny County, Pennsylvania, to-wit:

SEE COMPLETE LEGAL ATTACHED AS EXHIBIT "A"

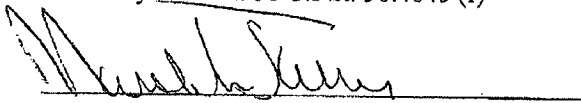
Property Address: 2116 Walton Avenue, Pittsburgh, PA 15210

To have and to hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or in equity, to the only proper use, benefit and behalf of the said Grantee forever.

In witness whereof, Grantor has hereunto set a hand and seal the day and year first written above.

THE SECRETARY OF VETERANS AFFAIRS,
An officer of the United States of America.

By the Secretary's duly authorized property management contractor, Countrywide Home Loans Servicing, L.P., nka BAC Home Loans Servicing, L.P., pursuant to a delegation of Authority found at 38 C.F.R. 36.4845 (f)



Marishelia James
Printed Name and Title

STATE OF TEXAS)

COUNTY OF COLLIN)

On this 27th day of August, 2010, before me Patti Lynne Oost the undersigned officer, Marishelia James, Assistant Secretary, the Secretary's duly authorized property management contractor of THE SECRETARY OF VETERANS AFFAIRS, who is personally known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and who acknowledged and executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Patti Lynne Oost

Notary Public
My commission expires:



Certificate of Residence

I, Keen Kellogg, do hereby certify that the correct address of the within-named Grantee is 4801 Frederica Street, WAB, Owensboro, KY 42301.

Witness my hand this 3rd day of September, 2010.

Keen Kellogg
Agent of Grantee

No title search was performed on the subject property by the preparer. The preparer of this deed makes no representation as to the status of the title, nor property use or any zoning regulations concerning described property herein conveyed nor any matter except the validity of the form of this instrument. Information herein was provided to preparer by Grantor/Grantee and /or their agents; no boundary survey was made at the time of this conveyance.

Prepared By:
National Deed Network
28100 US Highway 19 North, Suite 300
Clearwater, Florida 33761

Exhibit "A"

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN THE 32ND WARD OF THE CITY OF PITTSBURGH, COUNTY OF ALLEGHENY AND COMMONWEALTH OF PENNSYLVANIA, BEING LOT NO. 299 AND ADJOINING 12 ½ FEET OF LOT NO. 298 IN THE ENGLERT BROTHER'S PLAN OF LOTS CALLED "INGLEWOOD GARDENS", AS RECORDED IN THE RECORDER'S OFFICE OF ALLEGHENY COUNTY, PENNSYLVANIA, IN PLAN BOOK VOLUME 30, PAGE 118, BEING BOUNDED AND DESCRIBED AS FOLLOWS TO-WIT:

BEGINNING AT A POINT ON THE WESTERLY SIDE OF WALTON AVENUE AT THE DIVIDING LINE BETWEEN LOTS NOS. 299 AND 300 IN SAID PLAN; THENCE ALONG SAID DIVIDING LINE SOUTH 81° 30' 40" WEST, A DISTANCE OF 100 FEET TO A POINT ON THE EASTERLY SIDE OF MARLAND WAY; THENCE ALONG THE EASTERLY SIDE OF MARLAND WAY, NORTH 8° 29' 20" WEST, A DISTANCE OF 37.50 FEET TO A POINT; THENCE BY A LINE THROUGH SAID LOT NO. 298, NORTH 81° 30' 40" EAST, A DISTANCE OF 100 FEET TO A POINT ON THE WESTERLY LINE OF WALTON AVENUE; THENCE ALONG THE WESTERLY SIDE OF WALTON AVENUE, SOUTH 8° 29' 20" EAST, A DISTANCE OF 37.50 FEET TO THE DIVIDING LINE BETWEEN LOTS NOS. 299 AND 300 AFORESAID, THE PLACE OF BEGINNING.

UNDER THE SUBJECT TO RESERVATIONS, RESTRICTIONS, EASEMENTS AND RIGHTS OF WAY AS RECORDED IN PRIOR INSTRUMENTS OF RECORD.

HAVING ERECTED THEREON A DWELLING KNOWN AS 2116 WALTON AVENUE, PITTSBURGH, PENNSYLVANIA 15210.

BEING THE SAME PREMISES WHICH CAROL R. MCCONNELL, A SINGLE WOMAN, BY DEED DATED SEPTEMBER 11, 1996 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF ALLEGHENY COUNTY ON SEPTEMBER 11, 1996 IN DEED BOOK VOLUME 9780, PAGE 633, GRANTED AND CONVEYED UNTO _____.

BLOCK AND LOT NO. 95-F-99

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Vitti & Vitti & Associates, P.C., successors in
interest to Louis P. Vitti & Associates, P.C.,
Louis P. Vitti and Edith Moen Vitti,

Plaintiffs,

vs.

United States Department of Veterans Affairs,

Defendant.

NO. 12-1595

PLAINTIFFS' MOTION TO TRANSFER JURISDICTION PURSUANT TO 28 USCA § 1631

NOW, come the Plaintiffs, Vitti & Vitti & Associates, P.C., Louis P. Vitti and Edith Moen Vitti, by and through their attorneys Lois M. Vitti, Esquire, Louis P. Vitti, Esquire, and Vitti & Vitti & Associates, P.C., and file this Motion to Transfer Jurisdiction Pursuant to 28 USCA § 1631 whereof the following is a statement:

1. Plaintiffs come now to this Honorable Court and request transfer of jurisdiction to the Court of Federal Claims.
2. Counsel for Plaintiffs contacted Counsel for Defendant regarding the transfer and Counsel for Defendant has indicated no objection.
3. Pursuant to 28 USCA § 1631, this Honorable Court may transfer to cure want of jurisdiction and in the interest of justice such transfer is requested.

Wherefore, Plaintiff respectfully requests this Honorable Court enter an Order transferring jurisdiction of the within case to the Court of Federal Claims.

Respectfully submitted:

/s/ Louis P. Vitti
Louis P. Vitti, Esquire
PA Attorney ID No. 01072
Plaintiff/Attorney for Plaintiffs

Vitti & Vitti & Associates, P.C.
215 Fourth Avenue
Pittsburgh, PA 15222
(412) 281-1725

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Vitti & Vitti & Associates, P.C., successors in
interest to Louis P. Vitti & Associates, P.C.,
Louis P. Vitti and Edith Moen Vitti,

NO. 12-1595

Plaintiffs,

vs.

United States Department of Veterans Affairs,

Defendant.

ORDER OF COURT

AND, now, this _____ day of _____, 2013, upon consideration of Plaintiffs' Motion to Transfer Jurisdiction Pursuant to 28 USCA § 1631, it is hereby Ordered that jurisdiction of Plaintiffs' Amended Complaint and all Counts and Claims contained therein is transferred to the Court of Federal Claims.

BY THE COURT:

_____, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Vitti & Vitti & Associates, P.C., successors in
interest to Louis P. Vitti & Associates, P.C.,
Louis P. Vitti and Edith Moen Vitti,

NC. 12-1595

Plaintiffs,

vs.

United States Department of Veterans Affairs,

Defendant.

ORDER OF COURT

AND, now, this 30th day of April, 2013, upon consideration of Plaintiffs' Motion to Transfer Jurisdiction Pursuant to 28 USCA § 1631, it is hereby Ordered that jurisdiction of Plaintiffs' Amended Complaint and all Counts and Claims contained therein is transferred to the Court of Federal Claims, *forthwith*.

BY THE COURT:

For the use of the Clerk J.

ECF DOCUMENT	
A TRUE COPY:	DEC 12 2013
TEST:	
Hazel C. Keahey	
Clerk, U.S. Court of Federal Claims	
By:	<i>[Signature]</i>
Deputy Clerk	