

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

7

8

9

LOUIS HOWARD FERRELL, JABEZ)  
INTERNATIONAL, LLC

No. CV 10-1231-PHX-MHM

10

Plaintiff,

**ORDER**

11

vs.

12

13

JOHN G. STUMPF, ANGELO MOZILO,  
R.K. ARNOLD, JAMES F. TAYLOR,  
BRIAN T. MOYNIHAN, LAW OFFICE)  
OF MILES BAUER, BERGSTROM &  
WINTERS

15

16

Defendant.

17

18

19

20

21

22

23

Pending before the Court is the Motion by Plaintiffs Louis Howard Ferrell and Jabez International LLC for Leave and to File Amended Complaint and Petition for Temporary Restraining Order to Estop Defendant, Taking Plaintiff's Real Property. (Doc. 18) Having reviewed the Motion and the Amended Complaint and Petition for Temporary Restraining Order, the Court issues the following Order.

24

**A. BACKGROUND**

25

26

27

28

Without representation, Plaintiff Louis Howard Ferrell filed a complaint in Maricopa County Superior Court on April 27, 2010 on his behalf and that of Jabez International, LLC. (Doc. 1, Ex. 1) Defendants removed the case to federal court and Plaintiffs filed a Motion for Temporary Restraining Order and Motion for Temporary Injunction on September 3,

1 2010. Arnold, Moynihan, Mozilo, Stumpf and Taylor filed a Motion to Dismiss the Case and  
2 a Motion to Dismiss Party on June 16, 2010 and Defendant MBBW filed a Motion to  
3 Dismiss and an Opposition to Plaintiffs' Petition for Temporary Restraining order on June  
4 21, 2010. The 120-page memorandum of points and authorities accompanying the  
5 complaint indicated that Plaintiffs' complaint pertained to property located at 29029 North  
6 122<sup>nd</sup> Drive, Peoria, Arizona whose deed of trust was foreclosed upon through non-judicial  
7 foreclosure. The Court granted Defendants' Motions to Dismiss after concluding that  
8 Plaintiffs' complaint failed to state a claim under Rule 8(a)(2). The Court found that the  
9 Plaintiff, Mr. Farrell, lacked standing to litigate on behalf of Jabez International, LLC. The  
10 Court also found that the Complaint did not contain "a short and plain statement of the claim  
11 showing" how Plaintiffs were entitled to relief as required by Rule 8(a)(2) of the Federal  
12 Rules of Civil Procedure. The Court pointed out that Plaintiffs' 120-page amalgam of  
13 statements and legal doctrines was anything but a short and plain statement. The Court also  
14 stressed that a plaintiff's complaint must give the defendant "fair notice of what the claim is  
15 and the ground upon which it rests." Porter v. Jones, 319 F.3d 483, 494 (9th Cir. 2003) and  
16 that Plaintiffs could not rely on conclusory allegations and statements. The Court noted that  
17 the Plaintiffs' complaint did not set out sufficient facts that explained either the harm  
18 suffered by the Plaintiffs' or how the named Defendants have caused that harm or what  
19 remedy Plaintiffs seeks. The Court further noted that Plaintiffs' Complaint advanced a  
20 number of legal theories often raised by Plaintiffs in cases involving foreclosures that have  
21 been definitively rejected by courts in this circuit, including the theory that Defendants have  
22 to produce the original note from the lender, the due process claims alleged in light of the  
23 private contract at issue in this case, the unconscionability of the deed of trust, and the theory  
24 that the bank had not really loaned any money to Plaintiffs.

25 The Court alerted Plaintiffs that they would have one chance to amend their pleadings.  
26 The Court directed Plaintiffs to file a motion for leave to amend the complaint, and to attach  
27 the amended complaint to the motion. The Court directed Plaintiffs to:

28 make clear [their] allegations in short, plain statements with each claim for

1 relief identified in separate sections. In the amended complaint, [Plaintiffs]  
2 must write out the rights [they] believe[] were violated, the name of the person  
3 who violated the right, exactly what that individual did or failed to do, how the  
4 action or inaction of that person is connected to the violation of [Plaintiffs']  
5 rights, and what specific injury [Plaintiffs] suffered because of the other  
6 person's conduct. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).  
7 Each claim of an alleged violation must be set forth in a separate count. Any  
8 amended complaint filed by [Plaintiffs] must conform to the requirements of  
9 Rules 8(a) and (e)(1) of the Federal Rules of Civil Procedure.

6 Kennedy v. Andrews, 2005 WL 3358205, \*3 (D. Ariz. 2005). The Court stressed that the  
7 Complaint was extremely disjointed and difficult to follow, relying on conclusory statements  
8 and abstract statements of law without reference to facts applicable to this case. The Court  
9 further advised Plaintiffs, that any amended complaint should focus on facts from which this  
10 Court can determine the harm Defendants caused to Plaintiffs and why Plaintiffs are entitled  
11 to seek relief for these alleged harms in this Court. The Court also denied Plaintiffs' request  
12 for temporary restraining order and hearing as moot, in light of the fact that it was dismissing  
13 Plaintiffs' complaint.

14 Plaintiffs have now filed a Motion to Amend the Complaint and a new Motion for a  
15 Temporary Restraining Order. Although the amended complaint attached to the motion is  
16 considerably shorter than the 120-page document that was previously filed, Plaintiffs only  
17 appear to have cut pages from the original complaint, so that the complaint still fails to  
18 correct the many fatal deficiencies enumerated in the Motions to Dismiss and by the Court.  
19 For instance Mr. Farrell still appears to claim to litigate on behalf of Jabez International  
20 without standing or authority to do so. The Plaintiffs continue to combine incoherent  
21 statements and conclusory allegations such as that the Defendant is committing fraud and has  
22 violated numerous Arizona statutes. The complaint does not set out facts explaining what  
23 harm Plaintiffs have suffered, or how Defendants' caused that harm other than through  
24 conclusory allegations.

25 As stated in the Court's prior order, the Court must liberally construe pleadings  
26 submitted by a pro se claimant, affording the claimant the benefit of any doubt. Karim-  
27 Panahi v. L.A. Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). However, the Court "may  
28 not supply essential elements of the claim that were not initially pled." Ivey v. Bd. of

1 Regents, 673 F.2d 266, 268 (9th Cir. 1982). In addition, “the court [is not] required to accept  
2 as true allegations that are merely conclusory, unwarranted deductions of fact, or  
3 unreasonable inferences.” Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.  
4 2001). Even applying the liberal standard used in pro se cases, for the reasons stated above  
5 the Court finds that Plaintiffs have failed to correct the errors identified in its original  
6 complaint.

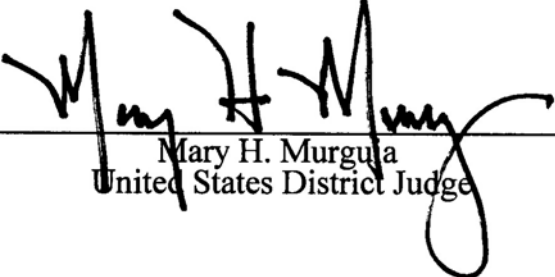
7 Accordingly,

8 **IT IS HEREBY ORDERED**, denying Plaintiff’s Motion to Amend. (Doc. 18)

9 **IT IS FURTHER ORDERED**, denying as moot, Plaintiffs’ Motion for Temporary  
10 Restraining Order to Estop Defendant in, Taking Plaintiff’s Real Property. (Doc. 18).

11 DATED this 1<sup>st</sup> day of October, 2010.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

Mary H. Murgula  
United States District Judge