

Community Hospitals of Indiana, Inc., 629 N.E.2d 900, 903 (Ind.Ct.App. 1994), rehearing denied, trans. denied.

30. Defendants have demonstrated that the documents attached to the Complaint and Motion for Summary Judgment do not list the proper mortgagee and that the failure to attach an assignment of mortgage from MERS to Countrywide is fatal to Countrywide's claim.

31. Additionally the attached Affidavit of Melisa Davis is likewise admissible evidence to create an issue on Countrywide's unclean hands in failing to act in good faith in foreclosure prevention.

32. All of the above demonstrates that Defendants are entitled to relief under either Ind. T.R. 60(B)(3) or 60(B)(8) and that Defendants have a good and valid claim or meritorious defense.

EMERGENCY MOTION TO VACATE SHERIFF'S SALE

33. The Sheriff's Sale is an act that is irreversible and will forever deprive the Defendants of their homestead.

34. An order from this Court vacating the Sheriff's Sale on June 9, 2010 at 2:00 p.m. does not prejudice Countrywide to any extent as it maintains the status quo and Countrywide does not stand to be further harmed.

35. Defendants have attempted to work within the system to obtain a loan modification but they have been thwarted by the failure of Countrywide to comply with its obligations after accepting bailout money from the Federal government.

36. It is only after trying all avenues available to them as individuals to work this issue out, did they reach out to an attorney to represent them to prevent this injustice.

37. All of the above facts and arguments provide this Court with sufficient admissible evidence and other facts which justify vacating the Sheriff's Sale until the Court can consider the evidence and hold a hearing on the issues.

38. The Court is well aware of the flood of foreclosures clogging the judicial system. Upwards of 80% of these foreclosure actions are not defended due to the unequal negotiating positions of the lender and individual. The individuals are at the mercy of the lenders in trying to negotiate foreclosure prevention programs and when the lenders completely abandon their responsibilities the Courts should step in to prevent an individual's homestead being ripped from their arms.

WHEREFORE, Defendants respectfully request that (1) this Court order that the Sheriff's Sale scheduled for June 9, 2010 at 2:00 p.m. be vacated, (2) this Court order that Defendants be granted relief from the judgment entered on September 15, 2009, (3) this Court order a hearing on Defendants' Motion to Dismiss, and (4) grant all other relief as is just and appropriate in this matter.

Respectfully submitted,



Clifford T. Rubenstein, 14064-47
MAURER RIFKIN & HILL, P.C.
11550 North Meridian Street
Suite 115
Carmel, Indiana 46032
(317) 844-8372 FAX 573-5564

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the following by United States first class mail or hand delivery, this 2nd day of June, 2010:

Brian C. Berger
UNTERBERG & ASSOCIATES, P.C.
3050 Cleveland Place
Merrillville, Indiana 46410



Clifford T. Rubenstein

STATE OF INDIANA)	IN THE SUPERIOR COURT OF RUSH COUNTY
) SS:	
COUNTY OF RUSH)	CAUSE NO. 70D01-0802-MF-017
COUNTRYWIDE HOME LOANS, INC.)	
)	
Plaintiff,)	
)	
v.)	
)	
DWAYNE RANSON DAVIS; MELISA)	
DAVIS,)	
)	
Defendants.)	

AFFIDAVIT OF MELISA DAVIS

The undersigned, Melisa Davis, having been first duly sworn upon her oath, states as follows:

1. I have personal knowledge of the facts contained herein and I am over the age of 18.
2. I, along with my husband Dwayne Ranson Davis, am the fee owner of the property located at 1906 West 1000 North, Knightstown, IN 46148 ("Property").
3. I am familiar with the matters relating to this lawsuit.
4. On May 8, 2008 we filed for protection under Chapter 13 of the United States Bankruptcy Code.
5. As part of our Chapter 13 bankruptcy we deposited certain money in the trustee's account for mortgage payments.
6. Sometime in the Fall 2008 I contacted Countrywide by phone and asked for a modification. Countrywide asked us to send in documentation which we did at that time.
7. For approximately three (3) months Countrywide did not respond.
8. Sometime before December 2008 I talked to a representative of Countrywide who said that we qualified for the modification and that we would be receiving our paperwork by December 28, 2008.
9. We never received any paperwork from Countrywide.
10. In February 2009 I faxed a letter to Countrywide requesting a hardship modification.
11. On May 22, 2009 I called Countrywide and spoke to Angela. I asked Angela if

Exhibit A

Countrywide had received the modification request that I had faxed to Countrywide on February 19, 2009. Angela told me Countrywide had received our request and that a negotiator would be assigned to us soon.

12. Countrywide did not contact us.
13. On June 2, 2009 I called Countrywide about our modification request and I spoke with Latrise. Latrise told me that we may have to look at different avenues for a loan modification. When I asked her what the other avenues were she would not tell me. Latrise stated that a negotiator still had not been assigned to us.
14. On July 17, 2009 I sent a letter to Bank of America ("BAC") explaining our financial hardship for review on our loan modification and other alternatives.
15. Also on July 17, 2009, we submitted a letter to BAC from Momentive CCCS, a HUD approved housing counseling service stating that we were working with Momentive to implement an action plan to resolve their mortgage situation.
16. We never received any documentation from Countrywide until we received a notice of Sheriff's Sale scheduled for November 4, 2009.
17. Countrywide postponed the November 4, 2009 sale because Countrywide said we were under review for a modification.
18. On or about February 1, 2010 we sent the "Making Home Affordable Program Hardship Affidavit" to BAC Home Loans Servicing LP.
19. On February 8, 2010 I received a letter from BAC Home Loans Servicing LP requesting information to determine our eligibility for assistance. A copy of the letter is attached.
20. On March 18, 2010 I called BAC Home Loans Servicing LP ("BAC Servicing") in response to a letter I received from them concerning modifying the terms of my mortgage. I spoke to a person named Raymond and told him this was the third time I had contacted them about the documents I had sent in for a loan modification. Raymond said they were going to send me out another packet.
21. On or about April 7, 2010 I resubmitted to BAC Servicing all the documents for a workout package in response to a letter I received from them dated March 18, 2010.

22. We never received any further documentation from Countrywide until we received notice of the Sheriff's Sale scheduled for June 9, 2010 at 2:00 p.m.

I affirm under the penalties for perjury, that the foregoing representations are true.


DATED this 2nd day of June, 2010.

Melisa Davis
Melisa Davis

Respectfully submitted,

Clifford T. Rubenstein
Clifford T. Rubenstein, 14064-47
MAURER RIFKIN & HILL, P.C.
11550 North Meridian Street
Suite 115
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Please complete, sign and return all
the enclosed documents by
February 8, 2010

Bank of America  Home Loans

DWAYNE RANSON DAVIS
MELISA DAVIS
1906 W 1000 N
Knightstown, IN 46148
Reference #: 164703728

Dear DWAYNE RANSON DAVIS and MELISA DAVIS

Thank you for calling us recently to discuss your home loan needs. You let us know that it is becoming increasingly difficult for you to make your mortgage payment. We want to help you stay in your home.

To help us determine your eligibility for payment assistance, **the next step is for you to return the requested documents and enclosed forms.** For your convenience, we have enclosed a documentation checklist.

You will need to complete and return the following information:

- The **Hardship Affidavit**, signed and dated by each borrower
- The original, signed **Authorization and Acknowledgment** form
- The original, signed **Negotiation Agreement**
- A signed and completed, **Authorization** form if you would like us to discuss your request for payment assistance with a third party acting on your behalf
- **Documentation supporting your financial difficulties** such as divorce papers or medical bills
- Past two months bank statements and **Additional Income Documentation** as described on the attached **Documentation Checklist**
- A copy of a recent utility bill to verify occupancy of the property

There are no fees associated with our programs. However, you will be responsible for fees and costs which have already accrued as a result of any default on the loan such as property inspection fees and or foreclosure related fees.

We want to help you make your mortgage payment more affordable. It is important that you provide us with a complete package for review. We have enclosed a FedEx envelope for you to return the documents at no cost to you. **Please call us at 1-877-767-0670** if you have any questions.

Sincerely,



Ken Scheller
Senior Vice President
Home Retention Division
BAC Home Loans Servicing, LP

Attachment to
Exhibit A