

IN THE CIRCUIT COURT, FOURTH JUDICIAL
CIRCUIT. IN AND FOR DUVAL COUNTY,
FLORIDA.

CASE NO: 16-2004-CA-003956-XXXX-MA

DIVISION: CV-A

**MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
AS NOMINEE FOR COUNTRYWIDE
HOME LOANS, INC.,**

Plaintiff,

vs.

ANGELA D. FOSTER, et al.,

Defendants.

**ORDER GRANTING DEFENDANT DONALD RICHARDSON'S
MOTION FOR RELIEF FROM ORDER AND CORRECTED ORDER
GRANTING MOTION TO DISMISS**

The Court entered and Order on December 17, 2004, denying the Motion to Dismiss filed by Defendant DONALD RICHARDSON. Said Order erroneously identified Co-Defendant, ANGELA FOSTER, as the party who filed the Motion to Dismiss. For reasons unknown to the Court, the parties did not receive a copy of the Court's Order in the mail.

The Court has reviewed the pleadings and issues raised by Defendant Richardson, and finds as follows:

1. Rule 1.210(a) of the Florida Rules of Civil Procedure provides, in pertinent part:

Every action may be prosecuted in the name of the real party in interest, but...a party with whom or in whose name a contract has been made for the benefit of another...may sue in the person's own

name without joining the party for whose benefit the action is brought...

2. The style of this action identifies the Plaintiff as: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.. AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.

3. The Complaint filed by the Plaintiff seeks to foreclose a mortgage and re-establish a note and mortgage. Attached to the Complaint is the mortgage which reads in pertinent part:

THIS MORTGAGE ("security instrument") is given on January 31, 2000. The mortgagor is ANGELA D. FOSTER, AN UNMARRIED WOMAN AND DONALD RICHARDSON, AN UNMARRIED MAN (borrower). This Security Instrument is given to Mortgage Electronic Registration, Inc. ("MERS") (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as beneficiary.

4. Defendant Richardson has moved to dismiss this action stating:

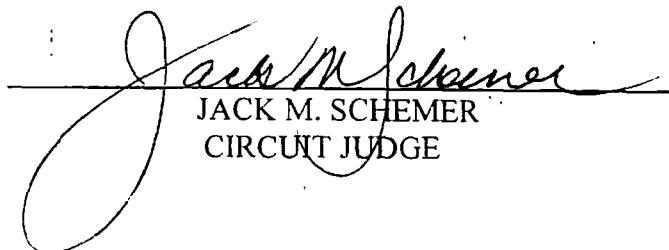
[I]t appears on the face of the Complaint that a person other than the plaintiff is the true owner of the claim sued upon and that the plaintiff is not the real party in interest and is not shown to be authorized to bring this foreclosure action.

5. Since F.R.C.P. 1.210(a) permits a nominee to sue in its own name for the benefit of another, and the mortgage attached to the Complaint identifies MERS as the nominee for the lender and its successors and assigns, MERS is permitted to bring this action for the benefit of the lender or its assignees or successors. MERS has brought this action as nominee for Countrywide Home Loans, Inc. The flaw in the Complaint is that Countrywide Home Loans, Inc.. is not identified as an assignee or successor to the original lender. Therefore, it is **ORDERED AND ADJUDGED:**

1. The Separate Defendant's Motion for Relief from Order filed by Defendant Richardson is granted and the earlier Order Denying the Motion to Dismiss is set aside.

2. Defendant Richardson's Motion to Dismiss is granted and Plaintiff shall have twenty (20) days to file an amended complaint. Defendant Richardson shall have ten (10) days to respond to the amended complaint.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 8th day of April, 2005.


JACK M. SCHEMER
CIRCUIT JUDGE

Copies to:

Suzanne Barkett, Esq.
April Charney, Esq.
E. Ellen Winslow, Esq.
Bruce D. Page, Assistant General Counsel
Patric R. Penn, Deer Cove Owners Assoc.. Inc.
Angela D. Foster

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