Ronald Ryan
Ronald Ryan PC
Attorney at Law
1413 E. Hedrick Drive
Tucson, Arizona 85719
(520)298-3333 phone (520)743-1020 fax
AZ #018140 Pima County #65325

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA TUCSON

ANTHONY TARANTOLA, DEBTOR _____ **DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2004-W8, ITS ASSIGNEES AND/OR SUCCESSORS, MOVANT** **VS.** **ANTHONY TARANTOLA, DEBTOR RESPONDENT**	**Case # 4:09-bk-09703-EWH** **DEBTOR'S LIST OF ISSUES, WITNESSES AND EXHIBITS** **HEARING: 6/23/10 @ 9:00 AM** **PERTAINING TO CONTESTED MATTER (STAY RELIEF), OBJECTION TO CLAIM, AND ANY FUTURE HEARINGS** Chapter 13

I. ISSUES[1]

1. This chapter 13 case was commenced by the filing of a petition on 11/4/2009. Debtor served discovery and almost every question was objected to. Attempts to discuss the issues have not been fruitful and Debtor hopes to bring a Motion to Compel prior to the hearing on the issues that are critically relevant to stay relief, although Debtor could also go forward, because the burden of proof is on Movant. Debtor's Securitization Master Brief

[1] Certainly, issues 1 to 3 are Stay Relief issues, because they pertain to 1) Standing; 2) Cause (Default); and 3) Prima Faci or colorable claim issue.

is incorporated in Debtor's Response to Motion for Relief from Stay and in all matters pertaining to Debtor's Primary Mortgage. In this case, Deutsche, the Trustee of MBS Trust,[2] would arguable have authority to act on behalf of the Real Party in Interest.[3] The Real Party in Interest ("RPI") would be the Certificate Holders ("CH"), since they are the party whose own financial interest is hypothetically at stake in the outcome of the litigation. And because the action is brought in the name of the RPI there would be no problem there. But this presumes that the Trust became the owner of the Note in Question ("Note") for the benefit of the CH. It is contractually and legally impossible for the Trust to ever have owned the Note if the Note had not been transferred from the original Lender as listed in the Deed of Trust, dated November 7, 2003 ("DOT"), Argent Mortgage Company LLC ("Lender" or "Originator"), to Argent Securities Inc., "Depositor," to Ameriquest Mortgage Company, "Seller," to Deutsche Bank National Trust Company, as "Pool Trustee," by the "Cut-off Date" of May 1, 2004, or "Closing Date" of May 6, 2004, according to the terms in the Pooling and Servicing Agreement ("PSA"),[4] which mirrors federal REMIC law.[5] Both

---

[2] The MBS Trust in question is that in the Argent Securities Inc., Asset-backed Pass-through Certificates, Series 2004-W8, as set forth in the heading of this action.

[3] The point is conceded only for purposes of Stay Relief, though in another action Debtor would argue that its authority is too limited, and "MBS Trusts" are not really Trusts, because the loyalty of the Trustee is the the Wall Street Investment Banking Firm ("WSIBF") that created the Trust and make all the important decisions, and its key people.

[4] See PSA, p.73 of 376, SECTION 2.01. Conveyance of Mortgage Loans, through subsection "(i) the original Mortgage Note, endorsed in blank, without recourse, or in the following form: "Pay to the order of Deutsche Bank National Trust Company, as Trustee under the applicable agreement, without recourse," **with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee**. . . " Emphasis added. See also PSA, "MORTGAGE LOAN PURCHASE AGREEMENT," 323 of 376 full page, p.324, § 2, showing all loans to be listed in "Mortgage Loan Schedule;" p.325, top subsection (I);

> The sale and delivery on the Closing Date of the Mortgage Loans described on the Mortgage Loan Schedule in accordance with the terms and conditions of this Agreement is mandatory. It is specifically understood and agreed that each Mortgage Loan is unique and identifiable on the date hereof and that an award of money damages would be insufficient to compensate the Purchaser for the losses and damages incurred by the Purchaser in the event of the Seller's failure to deliver the Mortgage Loans on or before the Closing Date.

the date and the order of sells, negotiations and transfers, is crucial to successful Pooling. But the Allonge purports to sell and transfer the Note directly from Lender-Originator to Deutsche as Trustee, and it has a number at the top "AZ-09-15363." Also in 2009, 11/12/2009, the Assignment of Deed of Trust ("ADOT") and ownership of Note, was purportedly transferred directly to Deutsche as Trustee by Lender-Originator (through Servicer AHMSI). The question of both Constitutional Standing and RPI[6] is contingent upon proof that the Trust owned the Note. The burden of proof on standing is Movant's responsibility. We never reach the question of a "colorable claim" to the extent the phrase has any real meaning in the context of securitized mortgages, until the Standing issue is resolved.[7] Debtor has challenged the validity, authenticity and authority of the negotiations on the Note. Although Movant must prove (or adequately explain, according to some authorities) the serial sales, negotiation and transfers of the Note through the securitization parties as precisely detailed above, because anything less does not establish that the loan could have ever been owned by the Trust. But even if we turn the law on its head and the Court does not require Movant to prove that which is essential for Standing, the Debtor has enough evidence to carry the burden of proof for Movant. The fact is that the evidence is crystal clear that the serial sales, negotiation and transfers of the Note through the securitization parties were not perfected by the Cutoff date, and thus the Trust could not

---

SECTION 13. MANDATORY DELIVERY; GRANT OF SECURITY INTEREST, p.341 of 376.

[5] Perfection of sales, transfers and negotiations are briefed at MB, p.2, line 3 to p.4, line 9; p.8, line 20 to p.10, line 17; p.14, line 17 to p.19, line 5.

[6] Constitutional Standing and RPI Standing are briefed in Debtor's Securitized Mortgage Loans Master Brief ("MB"), p.4, line 10 to p.8, line 19.

[7] It is important to remember that "colorable claim" does not mean "colorable claim to standing."

have owned the Note. At worst, there is no evidence that the necessary sales, negotiations and transfers were made, and all the available evidence is to the contrary. The "Mortgage Loan Schedule," which shows the Notes that were successfully Pooled.is blank.[8] Ironically, Movant's Attorneys have objected to discovery requests that would have established these facts and made their case. Movant's case is premised upon the Note having been successfully Pooled into the MBS Trust for which Deutsche is the Trustee. For that to be possible, the transfers would have had to take place by the Cut-off Date, May 1, 2004. That would mean that the Lender-Originator, Argent Mortgage Company, LLC, would have had to sell the Note prior to that date. But the Allonge and the ADOT purport to sell and/or transfer the Note ownership by Lender-Originator to Deutsche as Trustee six (6) years after it would have had to happen for the transfer to be valid, and if the transfer was valid then Lender-Originator sold and/or transferred it six (6) years after it no longer owned it.[9]

2. There should also be no argument that "cause" for stay relief requires that there be a "default." There is no question that Debtor has both a contractual right to have their account credited for "Miscellaneous Proceeds" pursuant to the precise terms of the Deed of Trust ("DOT"), as well as pursuant to statutory law sometimes called the "Discharge by Payment" rule in the U.C.C.[10] The Debtor's DOT states at ¶ M, on page 2, "Miscellaneous Proceeds," states:

> (N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds **paid by any third party** (other than insurance proceeds paid under the coverages described in Section 5) for: (I) damage

[8] PSA, p.373 of 376.

[9] Sales, negotiations and transfers of Notes by one who does not own it are invalid.

[10] U.C.C. § 3.602(A), "Discharge by Payment" rule, set forth in the Arizona version at ARS § 47-3602(A).

> to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

The DOT governs in what order "Miscellaneous Proceeds" are to be applied to the Obligation, and the provision is set forth ¶ 2, page 5 of the DOT. In places within the language in the DOT, when discussing the application of Miscellaneous Proceeds, it is specifically stated that the application of such proceeds is governed by ¶ 2 of the DOT. See 3 separate statements with such language in ¶ 11, page 9 of DOT.

> Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, **with the excess, if any, paid to Borrower**. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

See ¶ 11, page 9 of DOT. Emphasis added. Said paragraph 2, paraphrased basically states that they are applied first to the mortgage payments starting with the oldest due at the time, then to accrued late fees if any, then to reduction of the principal, and then surprisingly, that any excess should be paid to Debtor. In the MLS, Movant cites authority that states that a Debtor that has not made mortgage payments bears the burden of proof on whether there has been a default.[11] In the first place, Debtor has proof to a 90% probability that Debtor is not in default when these credits are applied, and this evidence will almost assuredly be uncontroverted. Secondly, Debtor's proof could be precise, but Movant is the party with access to more precise information as to 3rd Party Payments, and Movant has objected to Debtor's Discovery Requests for this information. The Miscellaneous Proceeds are payments made by all 3rd Party Sources, with the exception

[11] Failure to make post-petition mortgage payments can constitute cause for lifting the stay. The debtor has the burden of showing there is no cause to terminate the stay. *In re Ellis*, 60 B.R. 432 (9th Cir. BAP 1985).

of Mortgage Insurance and "Property Insurance," both of which are common and traditional forms of insurance, and are defined in the DOT.[12] It is important to leave behind preconceived notions that "cause" is nothing more than counting the mortgage payments made by Debtor. This does not match up with reality in the context of securitized mortgages as they have been implimented in this case (and almost all cases that have Notes executed between 2001 and 2008.[13] There is a probability of over 50% that Debtor's obligation has been completely discharged by Miscellaneous Proceeds payments from 3rd Parties. After the Stay hearing Debtor will have a better idea if there is an identifiable RPI, and may have already filed an adversary including Objection to Claim by that time.

3. A third argument that establishes that Movant cannot make a prima faci case or make a case of a "colorable claim" is because a Note headed for securitization is a Negotiable Instrument, if all expected actions have been performed properly, until it has been Pooled for the benefit of Certificate Holders. At this point, the Note loses its status as a Negotiable Instrument, which can still be enforced as a contractual obligation to pay, but the issue of "holder" status is no longer applicable.[14]

4. The Note may have been intentionally separated from the DOT.

II. LIST OF WITNESSES

1. Anthony Tarantola, Debtor, hereby file this List of Witnesses and Exhibits, by

---

[12] These principles of Miscellaneous Payments, in the Deed of Trust ("DOT"), "Discharge by Payment" rule in the U.C.C., and 3rd Party Sources are in MB, p.23, line 21 to p.27, line 14. See contractual provisions in DOT ¶ M, on page 2; at least 3 separate places on DOT, such as ¶ 11, page 9 of DOT; and order of payment of Miscellaneous Proceeds ¶ 2, page 5 of the DOT.

[13] The fact that Debtor is entitled to credit for 3rd Party Payments may offend the Court's sensibilities, but if the Court wants to address the topic, Debtor's expert is prepared to explain why this is perfectly fair and just, and how and why the alternative would be far more unjust and offensive.

[14] MB, p.19, line 6 to p.20, line 11.

and through attorney, Ron Ryan.

WITNESSES:

Neil Garfield, Expert Witness, Resume Attached, live by video

Anthony Tarantola, Debtor

All Witnesses listed by Movant.

III, LIST OF EXHIBITS

EXHIBITS:

1) All Exhibits Listed and Provided by Movant;

2) Declaration of Neil Garfield, if prepared (may or may not use-may testify live by phone and CV;

3) a) Purported Note with purported Allonge; b) purported Assignment of Deed of Trust and Ownership of Note - **Movant must produce original note** -[15]; c) DOT; d) MLS;

4) Securitization Documents filed with SEC pertaining to the MBS Trust in question: Pooling and Servicing Agreement; Prospectus

5) All responses to Discovery from Movant, including to Interrogatories, Requests for Admission, Requests for Production.

6) All things filed on the Court's Docket as well as on the Court's Claims Registry, including Response to MLS and Exhibits; Master Brief and Exhibits; Motion for Rehearing and Exhibits

[15] MB, p. 20, line 12 to p.23, line 20 has 9 unassailable reasons that belittling this right by calling it the "show me the note defense," is not valid, nor is the Arizona case that said "there has never been a case requiring that the original note be produced" does not apply for the reasons provided. Also, MB, p.27, line 15, to p.33, line 20 points out that the DOT provides the right to contest a judicial foreclosure by bringing a court action, and the State Remedies available and the fact that non-judicial foreclosure was never meant as a usurpation of due process, but as a judicial economy and convenience device meant for cases in which there is really no dispute, but the circumstances prevailing in today's environment dealing with securitized mortgages, and the way there were handled between 2001 and 2008. Equities are also discussed showing that Debtors are not looking for a free lunch and they were also victimized by the (some large number-ions), and that the scheme that was pulled off could not have been accomplished without the loans to borrowers that were doomed to fail from the start.

7) All exhibits previously filed by either party attached to any filing.

Dated: June 17, 2010.

Respectfully submitted,
/s/ Ronald Ryan
Ronald Ryan, Debtor's Counsel

CERTIFICATE OF SERVICE

I certify that on this date, a true copy of the forgoing was emailed to: Matthew A. Silverman and Jessica R. Kenney McCarthy Holthus Levine 3636 North Central Avenue Suite 1050 Phoenix, AZ 85012 through Jessica R. Kenney Attorneys for Movant, Deutsche Bank National Trust Company, as Trustee in trust for the benefit of the Certificateholders for Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-W8; Chapter 13 Trustee; and Debtor.

/s/ Ronald Ryan