

2015

**Sterling Fiduciaries, LLC, a Utah Limited Liability Company as  
Trustee of Stone Unturned Trust, Appellant, vs. Jpmorgan Chase  
Bank, n.a., Appellee**

Utah Court of Appeals

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**IN THE COURT OF APPEALS  
OF THE STATE OF UTAH**

STERLING FIDUCIARIES, LLC, a Utah  
limited liability company as trustee of  
STONE UNTURNED TRUST,

Appellant,

vs.

JPMORGAN CHASE BANK, N.A.,

Appellee.

**BRIEF OF APPELLEE JPMORGAN  
CHASE BANK, N.A.**

Appellate Case No. 20150358

On Appeal from the Third Judicial District Court for Salt Lake County, State of Utah  
Civil No. 130412969; Honorable James D. Gardner

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## **JURISDICTION**

This Court has jurisdiction pursuant to Utah Code § 78A-4-103(2)(j).

## **ISSUE PRESENTED**

### ***1. Where appellant claims title under a December 19, 2011 Default***

***Judgment against only the originating lender, obtained without notice to the trustee or the beneficiary under a Deed of Trust recorded in 2007, or to appellant (an assignee of the original lender), is appellant a bona-fide purchaser of the subject real property free and clear of other parties of record?***

***Standard of Review.*** Appellate courts review a district court's rulings on summary judgment motions for correctness. *Prince, Yeates & Geldzahler v. Young*, 2004 UT 26, 94 P.3d 179, 182.

### ***2. Where appellant claims title under a December 19, 2011 Default***

***Judgment, obtained without naming or personally serving the trustee or the beneficiary under a Deed of Trust recorded in 2007, or to appellant (an assignee of the original lender), did the Default Judgment release the Deed of Trust from the Property?***

***Standard of Review.*** Appellate courts review a district court's rulings on summary judgment motions for correctness. *Prince, Yeates & Geldzahler v. Young*, 2004 UT 26, 94 P.3d 179, 182.

3. *Whether there are defects in the chain-of-title of Mortgage Electronic Registration Systems, Inc., which was the beneficiary of the Deed of Trust as nominee for lender and lender's successors and assigns?*

Standard of Review. Appellate courts review a district court's rulings on summary judgment motions for correctness. *Prince, Yeates & Geldzahler v. Young*, 2004 UT 26, 94 P.3d 179, 182.

### **STATEMENT OF THE CASE**

This case involves the parties' respective rights in real property located at 11213 South Portobello Road, South Jordan, Utah. On October 15, 2013, Sterling filed its Complaint in this case alleging that Chase's Trust Deed on the real property was extinguished by a December 2011 Default Judgment. On September 4, 2014, Chase filed a Motion for Summary Judgment arguing that its Trust Deed was not affected by the Default Judgment and that Chase has a senior lien interest in the real property. On March 30, 2015, the District Court granted Chase's Motion for Summary Judgment and dismissed Sterling's claims with prejudice. Sterling filed a Notice of Appeal on April 22, 2015.

### **STATEMENT OF FACTS**

On April 19, 2007, Kimberly and Kip McRae (the "McRaes") executed a promissory note (the "Note") in the original principal amount of \$900,000 for a mortgage loan on real property located at 11213 South Portobello Road, South Jordan, Utah (the

“Property”). (R. 46-48). The original lender under the Note was Taylor, Bean & Whitaker Mortgage Corp. (“TBW Mortgage”), which recorded a Deed of Trust in Salt Lake County, State of Utah, on April 24, 2007 as Entry No. 10076085 (the “Trust Deed”). (R. 51-67). The Trust Deed also named Mortgage Electronic Registration Systems, Inc. (“MERS”) as the beneficiary on behalf of “Lender and Lender’s successors and assigns,” and First American Title was named as the trustee. (R. 51). As is common in the industry, TBW Mortgage later sold the Note, which was subsequently transferred multiple times to other lenders. (R. 69). The individual transfers of the Note were not made part of the public record at the County Recorder’s office; however, MERS was the record beneficiary of the Trust Deed, and acted as an agent for all successors and assigns of the Note. (R. 51; 69). MERS tracked all transfers of the Note in its own electronic database. (R. 69).

It is undisputed that Chase became the servicer of the Note on or about March 31, 2009 and that the McRaes began making their monthly mortgage payments to Chase around that time. (R. 69; 71-84). On or about May 27, 2010, Chase became the owner of the Note and is currently in possession of the original endorsed-in-blank Note. (R. 43; 69).

On October 19, 2010, the McRaes filed a quiet title action in the Third District Court for Salt Lake County, Utah, Case No. 100920234 (the “Quiet Title Action”). (R. 98-103). The McRaes named only TBW Mortgage as a defendant, but failed to name or



serve MERS or any successor of TBW Mortgage, including Chase. (*Id.*). The McRaes also published notice of the Quiet Title Action to “unknown persons” on two occasions. (R. 228). On August 24, 2011, the McRaes transferred the Property to Sterling while the Quiet Title Action was still pending. (R. 105).

When TBW Mortgage failed to respond to the McRaes’ Complaint, the McRae’s obtained a Default Judgment on December 19, 2011(the “Default Judgment”) that quieted title in them against TBW Mortgage. (R. 107-108). The Default Judgment, prepared by the McRaes’ attorney, stated in pertinent part that:

Defendant Taylor, Bean & Whitaker (“Defendant”) having been served with a Summons and Complaint...and having failed to appear and answer..., now upon application of Plaintiffs, judgment is entered against Defendant, in conformity with the relief requested in the Complaint, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED: Plaintiffs are awarded quiet title judgment against Defendant.

(*Id.*). The Default Judgment was recorded on the Property on January 10, 2012. (*Id.*).

After having obtained the Default Judgment, the McRaes continued making their monthly mortgage payments to Chase for almost a year, until October 2012. (R. 43, 71-84). It was not until the Property was under contract for sale under a November 6, 2012 Real Estate Purchase Contract (“REPC”) that the McRaes stopped making payments under the Note. (R. 32). As a result, Chase received an assignment of the beneficial interest in the Trust Deed from MERS under a Corporate Assignment of Deed of Trust (the “Assignment”) on February 6, 2013 to allow Chase to commence foreclosure in its own name. (R. 69; 85-86).

On January 22, 2013, the prospective purchaser of the Property filed an action in Third District Court, Salt Lake County, Utah, seeking specific performance and damages against Sterling and the McRaes under the REPC when those parties refused to agree that the sales proceeds would be used to pay off the Trust Deed. (*See Woolf v. Sterling Fiduciaries et al.*, Case No. 130900470 (“Woolf Lawsuit”)). (R. 32; 110-158). On October 1, 2013, Chase filed a motion to intervene in the Woolf Lawsuit and subsequently filed a Complaint for foreclosure. (*Id.*). On October 15, 2013, Sterling filed this separate action against Chase. (R. 1-12). On September 4, 2014, Chase filed a Motion for Summary Judgment. (R. 26-39). On March 30, 2015, the District Court granted Chase’s Motion for Summary Judgment and dismissed Sterling’s claims with prejudice. (R. 273-277). Likewise, on October 2, 2015, the court in the Woolf Lawsuit entered summary judgment in favor of Chase, ruling that Chase’s Trust Deed is a senior lien and that Chase has the right to foreclose. (A copy of the October 2, 2015 ruling is provided herewith at Addendum A). The court in the Woolf Lawsuit also entered a Decree of Foreclosure and Order of Sale to allow commencement of the foreclosure. (Copies at Addendum B and Addendum C).

### **SUMMARY OF ARGUMENT**

Sterling appeals the District Court’s summary judgment ruling in favor of Chase on the grounds that Sterling claims it was a bona-fide purchaser of the Property, and that

Chase was served by publication as an “unknown” party in the quiet title action. These arguments fail.

First, Sterling did not preserve below its claim to be a bona-fide purchaser. At no time was the issue of bona-fide purchaser alleged, presented to the Court, or ruled on in order to preserve it for appeal. Sterling waived this claim.

Second, Sterling is not a bona-fide purchaser as a matter of law. Sterling had constructive notice of the Trust Deed, which was recorded four years prior to Sterling’s interest. There is also no dispute that Chase was the known servicer of the mortgage loan when Sterling acquired its interest. Moreover, knowing that Chase, MERS, and First American Title had interests separate and apart from TBW Mortgage, Sterling was on inquiry notice to investigate further into those parties’ interests.

Third, the Default Judgment applied only to TBW Mortgage and did not release the Trust Deed from the Property. The Default Judgment was obtained without notice to Chase, MERS, or First American Title. Due process and Utah’s quiet title statute required that those parties be named and personally served in order to affect their title. Service by publication was insufficient when MERS’s and First American Title’s interests were of record, and Chase was the known servicer of the loan. Notably, the court in the companion Woolf Lawsuit entered summary judgment in favor of Chase on these same grounds.

Fourth, there are no defects in Chase's chain of title. MERS held the beneficial interest under the Trust Deed for the benefit of "Lender and Lender's successors and assigns" from the date the loan was originated in 2007 until the beneficial interest was assigned to Chase in 2013. There is also no dispute that Chase acquired ownership of the Note in 2010, which was prior to entry of the Default Judgment. Even if Sterling could show any defects in the chain-of-title, those would be immaterial because Chase is in possession of the original, endorsed-in-blank Note, which carries with it all rights to enforce the Note and Trust Deed as a matter of law.

Therefore, the District Court's granting of Summary Judgment in favor of Chase should be affirmed.

### **ARGUMENT**

Sterling seeks to overturn the District Court's granting of Summary Judgment in favor of Chase. Sterling argues on appeal that it was a bona-fide purchaser for value of the Property under Utah Code § 57-3-103 because Chase had no recorded interest in the Property until February 6, 2013, when the Assignment of the Trust Deed from MERS was recorded. Sterling also argues that when the McRaes served unknown parties by publication in the Quiet Title Action, that was sufficient to effectuate service on Chase.

Appellate courts review a district court's rulings on summary judgment motions for correctness. *Prince, Yeates & Geldzahler v. Young*, 2004 UT 26, 94 P.3d 179, 182. "The appellate court will affirm the judgment, order, or decree appealed from if it is

sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and this is true even though such ground or theory is not urged or argued on appeal by appellee, was not raised in the lower court, and was not considered or passed on by the lower court.” *Blaisdell v. Dentrix Dental Sys., Inc.*, 2012 UT 37, ¶ 5, fn 1.

For the following reasons, Sterling’s arguments fail and the District Court’s Summary Judgment ruling should be affirmed.

**I. STERLING’S BONA-FIDE PURCHASER ARGUMENT WAS NOT PRESERVED BELOW**

Sterling’s argument that it is a bona-fide purchaser for value is not properly before this Court because it was not asserted in the District Court. *See, Wahnoutka v. Kelley*, 2014 UT App 154, ¶ 4. (“An issue is preserved for appeal only if it was presented to the trial court in such a way that the trial court had an opportunity to rule on it”). To claim this doctrine, Sterling would have had to assert that it purchased the Property in good faith and for value, and that it was the first to record its interest in the property. *See*, Utah Code § 57-3-103; *see also, FDIC v. Taylor*, 2011 UT App 416. This was not Sterling’s theory below. Rather, Sterling alleged in its Complaint that the Default Judgment stripped TBW Mortgage of its interest in the Property. (R. 1-3). Sterling claimed that, as a result, TBW Mortgage had no interest to convey to any of its successors, including Chase. (*Id.*). For the same reasons, Sterling argued that MERS had no authority to execute the Assignment to Chase and that fraud had been committed as a result. (R. 3-5).

Moreover, in its opposition to Chase's Motion for Summary Judgment, Sterling argued that the alleged securitization of the Note, and the terms of a purported Purchase and Sale Agreement (the existence of which has never been established), deprived Chase of the ability to enforce the Trust Deed. (R. 184-189). In other words, Sterling's challenge to Chase's interest below was centered on purported defects in Chase's chain-of-title, not on whether Sterling took its title in good faith, without notice of the Trust Deed.

It is telling that the only citation to the record that Sterling relies on to claim that this issue was preserved is a case that Chase included in a string-citation, with no further discussion, in its Memorandum in Support of Summary Judgment. (*See* R. 34; Appellant's Brief at p. 15). Sterling's reliance on *Gregerson v. Jensen*, 669 P.2d 396 (Utah 1983), is misplaced because Chase cited to *Gregerson* as authority that documents do not have to be recorded to be enforceable. (R. 34). There was never any reliance on that case by either party or the District Court for its discussion of the bona-fide purchaser doctrine. Whether Sterling was a bona-fide purchaser was never presented to or ruled on by the District Court. *Wohnoutka*, 2014 UT App 154 at ¶ 4. Therefore, Sterling waived any claim that it is a bona-fide purchaser of the Property and cannot raise it now for the first time on appeal.

## **II. STERLING IS NOT A BONA-FIDE PURCHASER**

Even if Sterling had preserved the issue, Sterling's claim that it is a bona-fide purchaser fails on the merits. Utah Code § 57-3-103 requires a bona-fide purchaser to purchase property in good faith and for value, and to be the first to record an interest. A



subsequent purchaser must take title without notice of a prior, unrecorded interest in the property. *FDIC v. Taylor*, 2011 UT App 416, ¶ 35. Notice can include: (1) constructive notice, “which results from a record or is imputed by the recording statutes”; or (2) inquiry notice, “which is presumed because of the fact that a person has knowledge of certain facts which should impart to him, or lead him to, knowledge of the ultimate fact.” *Id.* at ¶ 36. Utah law prescribes that “each document...shall, from the time of recording with the appropriate county recorder, impart notice to all persons of their contents.” Utah Code § 57-3-102(1).

It is undisputed in this case that Sterling had constructive notice of the Trust Deed by virtue of its recording with the County Recorder on April 24, 2007. (R. 50). Sterling’s interest, on the other hand, was not recorded until August 24, 2011, which was over four years after the Trust Deed was recorded. (R. 105). Therefore, Sterling took title with knowledge of the recorded Trust Deed.

Sterling attempts to get around this by arguing that, although the Trust Deed was of record, *Chase’s interest* was “unrecorded” until the 2013 Assignment. (Appellant Brief at pp. 15-16). This argument fails because MERS was the named “beneficiary” on the recorded Deed of Trust, and the “nominee” for “Lender and Lender’s successors and assigns.” (R. 51). As explained by the Tenth Circuit Court of Appeals:

MERS is designated in the deed of trust as a “nominee” for the lender and the lender’s successors and assigns as well as the “beneficiary” of the deed. ***MERS thus holds legal title to the security interest.*** If the lender sells or assigns the beneficial interest in the loan to another MERS member, the

change is recorded only in the MERS database, not in county records, because MERS continues to hold the deed on the new lender's behalf.

*Commonwealth Property Advocates v. MERS*, 680 F.3d 1194, fn. 1 (10th Cir. 2011)

(emphasis added).

Accordingly, MERS remained of record under the Trust Deed to ensure that the interests of all succeeding holders of the Note, including Chase, were protected. Ever since Chase acquired the Note in 2010, MERS was the beneficiary of record acting as agent for Chase. Due to MERS's assignment of the beneficial interest of the Trust Deed to Chase, Chase's interest relates back to the original date of recording in 2007. *McEwan v. EIA Properties, LLC*, 428 S.W.3d 633, 636 (KY App. Ct. 2014) ("The assignment of a mortgage generally does not affect its priority or inferiority as the mortgage's status is determined or fixed upon its initial recording"); *Coventry Parkhomes Condo Ass'n v. FNMA*, 827 N.W.2d 252, 257 (Mich. App. Ct. 2012) (A mortgage assignee has the same priority rights as the original mortgage assignor). This Court has upheld this role of MERS as valid under Utah law. *See, Commonwealth Property Advocates, LLC v. MERS*, 2011 UT App 232; *see also, Delo v. GMAC Mortgage, LLC*, 302 P.3d 658 (Ariz. App. 2013), discussed *infra*. Sterling attempts to sidestep its constructive notice of the recorded MERS interest by indicating (incorrectly) that only notice to TBW was required under the Note and Trust Deed and that MERS had no "independently recorded" interest. (Appellant Brief at p. 16, 17). These arguments are misplaced and do nothing to change the failure to serve any notice on MERS of either the Quiet Title action or the Default

Judgment therein on MERS, a party with an interest of record. Rather, as the District Court below correctly recognized, through MERS Chase held a recorded interest in the Property at all relevant times.

Sterling's argument further fails because only TBW Mortgage's interest was quieted by the Default Judgment. As discussed more fully in Section III below, MERS and First American were not named or served in the Quiet Title Action. (R. 98-103). Therefore, their respective interests under the Trust Deed as beneficiary and owner-in-trust of the Property were unaffected by the Default Judgment. Sterling has asserted no claim that it took title free of those recorded interests.

Sterling also had inquiry notice of Chase's interest. As stated, by virtue of the Trust Deed, Sterling was on notice of MERS's and First American's interests separate and apart from TBW Mortgage. Under the Trust Deed's plain language, Sterling was on notice that there may be *successors and assigns* to TBW Mortgage, and that the Property had been conveyed in trust to First American Title. (R. 51). Yet Sterling failed to investigate further. It is also undisputed that Chase's interest, at least as the loan servicer, was known prior to the entry of the Default Judgment. The McRaes had made payments to Chase for years and continued to do so for almost a year after Sterling took title to the Property. (R. 43, 69, 71-84). Had Sterling contacted MERS, First American Title, or Chase, it would have learned that Chase was the current owner of the Note secured by the Trust Deed. Utah law required Sterling to take those steps. *FDIC*, 2011 UT App 416 at

¶ 39 (“Where a duty to inquire further arises, the party is deemed to have notice of everything to which such inquiry might have led”). By failing to do so, Sterling cannot be a good faith, bona-fide purchaser as a matter of law.

### **III. THE DEFAULT JUDGMENT DID NOT QUIET TITLE AS TO CHASE**

Sterling also argues that the Default Judgment “nullified and removed” the Trust Deed from the Property. (Appellant Brief at p. 16). Sterling claims that only TBW Mortgage was entitled to notice of the Quiet Title Action under paragraph 15 of the Trust Deed. (*Id.*). By naming and serving TBW Mortgage, Sterling maintains that such was sufficient to release the Trust Deed. (*Id.*). Sterling also states that all other “unknown” parties, including Chase, were properly served by publication. (*Id.* at pp. 17-19). Those arguments fail.

First, on its face the Default Judgment unambiguously quieted title only as to TBW Mortgage. *See, Park City Utah Corp. v. Ensign Co.*, 586 P.2d 446, 450 (Utah 1978) (“If the language of a judgment be clear and unambiguous, it must be enforced as it speaks”). The Default Judgment expressly says that “Plaintiffs are awarded quiet title judgment against *Defendant*.” (R. 107-108, emphasis added). The Default Judgment defines “Defendant” as “Taylor, Bean & Whitaker,” and TBW Mortgage was the only named defendant in the Quiet Title Action. Also, nothing in the Default Judgment states that it released the Trust Deed from the Property. Therefore, the Default Judgment cannot be construed to apply to Chase or any party other than TBW Mortgage.

Second, under Utah law a quiet title order is only “conclusive against all the persons *named* in the summons and complaint who have been *served* and against all *unknown persons* as stated in the complaint and summons who have been served by publication.” Utah Code § 78B-6-1315(4) (emphasis added)(copy at Addendum D). It is undisputed that the McRaes did not name or serve First American Title, MERS, or Chase in the Quiet Title Action. By failing to name and serve these parties, legal title to the Property remained with First American Title and the beneficial interest of the Trust Deed remained with MERS. Likewise, the Default Judgment had no effect on Chase’s right to service and enforce the Note and the underlying Trust Deed. It is undisputed that Chase became the owner of the Note two years before the Default Judgment was entered. All that the McRaes accomplished by the Default Judgment was to remove TBW Mortgage as the lender, which had no interest in the Property to be quieted anyway since it had long since sold the Note.

Sterling’s arguments that personal service on TBW Mortgage and service by publication on unknown persons were sufficient notice also fail. Even if the contractual language of the Trust Deed required notice only to “Lender” (which, incidentally, was Chase at the time of the McRae's lawsuit), due process under the Utah R. Civ. P. 4 and 5, and Utah’s quiet title statute, § 78B-6-1315(4), required that all known parties be named and personally served with notice of the Quiet Title Action. To the extent that Sterling may have been unaware of Chase’s interests in the property at the time of its purchase,

Chase's interests would have been discovered by service on the known parties (and as such Sterling's arguments that the MERS Milestones were unavailable to them until Chase's Motion for Summary Judgment was filed in 2014 are unavailing). Because First American Title and MERS were known parties of record, Chase was the known servicer of the Note, and any service on MERS would have revealed Chase's interest as the Lender at the relevant time, service by publication was insufficient to effectuate service on these known parties.

A case directly on point is *Delo v. GMAC Mortgage, LLC*, 302 P.3d 658 (Ariz. App. 2013). *Accord, Commonwealth Property Advocates, LLC v. MERS*, 2011 UT App 232. There, the borrowers executed a Deed of Trust designating MERS as the nominee for lender and the beneficiary of the security instrument. When the original lender sold the loan to GMAC, the transfer was not recorded in the county records, but was maintained in the MERS database. Thereafter, the local county filed a tax lien on the property and sold the tax lien to Delo. Delo initiated judicial foreclosure proceedings against the original lender, recorded a *lis pendens* on the property, but failed to name or serve MERS or GMAC as defendants. Delo obtained a default judgment and became the owner of the property. In the meantime, MERS commenced non-judicial foreclosure proceedings under the Deed of Trust due to the borrowers' default in payment. GMAC was the successful bidder at the foreclosure sale and received a Trustee's Deed granting GMAC title to the property.



Delo filed a quiet title action against GMAC arguing that he was a bona fide purchaser because there was no public record of the assignment of the Deed of Trust to GMAC. Delo also argued that MERS was not a necessary party to the foreclosure action because MERS is “merely an agent for the lender.” The district court agreed with Delo and granted summary judgment concluding that, “because Delo had filed a lis pendens before any recorded interest of the GMAC Parties, the GMAC Parties had received sufficient notice and an opportunity to intervene in Delo’s tax-lien foreclosure action.” *Id.* at ¶ 10.

The Arizona Court of Appeals reversed the district court and held that GMAC must prevail because Delo failed to name and serve MERS in the foreclosure action. The court reasoned that, “because MERS was designated the lender’s nominee under the Deed of Trust, the GMAC Parties’ interests in the Property were protected by MERS’s recorded interests.” *Id.* at ¶ 12. The court further explained that, “MERS was identified in the recorded Deed of Trust, which Delo should have examined in ascertaining what parties had a legal or equitable interest in the Property. And through MERS, Delo could have identified the GMAC Parties’ interests.” *Id.* at ¶ 15. The court concluded that:

The Deed of Trust not only expressly identifies MERS as the nominee for the lender, but also as beneficiary, and the holder of legal title to the Property. And, even if MERS was merely an agent of [the original lender] and its successors, a diligent search for the true holder of the Note, for purposes of giving proper notice of the tax-lien foreclosure lawsuit, would have included providing notice of the lawsuit to MERS, who then could have forwarded it to the current holder of the Note. Delo’s recording of the lis pendens was a mere gesture that did not satisfy due process notice

requirements. And, the trial court erred by placing the burden on the GMAC Parties to intervene in Delo's tax-lien foreclosure lawsuit, rather than on Delo to ascertain those with a legal or equitable interest in the Property.

*Id.* at ¶ 17 (citations and quotes omitted).

Just like in *Delo*, the failure to name or serve MERS, First American Title, or Chase defeats any claim that the Default Judgment extinguished the Trust Deed. All interests separate and apart from TBW Mortgage survived the Default Judgment. Moreover, had MERS been served, MERS could have notified Chase of the Quiet Title Action in satisfaction of due process. The naming of only TBW Mortgage and the subsequent service by publication were "mere gestures" that did not meet due process notice requirements. In reality, the McRaes' and Sterling's objective was likely to keep Chase and MERS in the dark so they could try to sell the Property free and clear of any mortgage liens by referencing the Default Judgment against TBW Mortgage. Why else did McRaes continue to make payments to Chase for nearly a year after the Default Judgment, until the sale of the Property to a third party was imminent? But the burden was on the McRaes and Sterling to diligently ascertain all legal or equitable interests in the Property prior to obtaining the Default Judgment.

Finally, the Default Judgment did not release the Trust Deed because, under Utah law, "To succeed in an action to quiet title to real estate, a plaintiff must prevail on the strength of his own claim to title and not the weakness of a defendant's title or even its total lack of title." *Collard v. Nagle Constr.*, 2002 UT App 306, ¶ 18, 57 P.3d 603. In

the mortgage-loan context, this requires that the borrower pay the mortgage debt in full. *See, Marty v. MERS*, 2010 WL 4117196 (D. Utah 2010) (rejecting borrower's quiet title claim because he relied only on lender's alleged lack of title in trust deed, and not on borrower's payment of the mortgage loan).<sup>1</sup> There is no dispute in this case that the last payment under the Note was made in October 2012 and that the McRaes are now in default. (R. 43, 71-84). Although Sterling has argued that MERS is not challenging the default and is not represented in the instant Appeal (Appellant Brief at pp. 13, 17-18), these assertions are inapposite. The Default Judgment did not release the Trust Deed from the Property, or affect the interests of Chase, MERS, or First American Title, as a matter of law.

Notably, Sterling made these identical arguments in the companion case, the Woolf Lawsuit, in opposition to Chase's Motion for Summary Judgment filed in that case. Just like the District Court in the instant matter, Judge Stone rejected Sterling's arguments in the Woolf Lawsuit and entered summary judgment in favor of Chase. Judge Stone ruled that First American Title and MERS were the only parties under the

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<sup>1</sup> *See also, Dauenhauer v. Bank of New York Mellon*, 562 Fed. Appx. 473, 481(6th Cir. 2014) ("Because Borrowers have not alleged that they paid their debt in full, they do not have the right to obtain title of the property from the trustee"); *Benson v. Ocwen Loan Servicing LLC*, 562 Fed. Appx 567, 571 (9th Cir. 2014) (denying borrower's quiet title claim because borrower "has pointed to no evidence that he paid the debt or that he could pay it"); *Katz v. Cal-Western Reconveyance Corp.*, 2009 WL 3756337, \*4 (E.D.Cal 2009) ("A basic requirement of an action to quiet title is an allegation that plaintiffs are the rightful owners of the property, i.e. that they have satisfied their obligations under the Deed of Trust...A mortgagor cannot quiet his title against the mortgagee without paying the debt secured").

Trust Deed to receive interests in the Property under the original terms of the Trust Deed, and that TBW Mortgage as lender had no interest in the Property to be quieted. Judge Stone concluded that the Default Judgment did not release the Trust Deed from the Property as a matter of law. (*See* Addendum A). Judge Stone's ruling is consistent with the District Court's ruling in the instant matter.

#### **IV. CHASE HAS A VALID CHAIN OF TITLE**

Sterling argues that Summary Judgment should be reversed because of alleged defects in Chase's chain-of-title to the Trust Deed. Sterling relies on the MERS Milestones to argue that MERS transferred its beneficial interest under the Trust Deed prior to the Assignment to Chase. (Appellant Brief at p. 17). Sterling concludes that MERS had no beneficial interest to transfer to Chase in 2013 as a result. (*Id.*).

Again, this argument was not preserved below. Sterling's argument at the District Court was that TBW Mortgage had no interest to transfer after it was extinguished by the Default Judgment. Sterling never argued that, nor did the District Court rule on whether, MERS had assigned its beneficial interest prior to the 2013 Assignment. *See, Wohnoutka*, 2014 UT App 154 at ¶ 4. This novel theory cannot be raised for the first time on appeal.

Regardless, Sterling's argument fails because it misinterprets the MERS Milestones. The two entries dated September 7, 2007 and May 27, 2010 show that respective "Transfer Beneficial Rights" occurred on those dates. However, that document does not state that those transfers were from MERS. Rather, the respective

transfers were from TBW Mortgage to Bank of America, and then from Bank of America to Chase. As set forth in the Trust Deed, MERS remained as the beneficiary as nominee for those lenders. It is not until the final entry dated February 15, 2013 that MERS's interest in the Trust Deed is stated as being assigned to Chase. That is consistent with the Assignment recorded on the Property at that time. Therefore, the chain-of-title under the Trust Deed is simply that MERS was the beneficiary as nominee for "Lender and Lender's successors and assigns" from 2007 to February 2013, at which time MERS assigned the beneficial interest to Chase.

The chain-of-title of the Note is also undisputed. Sterling failed to produce any affirmative evidence below to dispute that Chase acquired the Note in 2010, which was prior to the entry of the Default Judgment. Even if Sterling had shown defects in Chase's chain of title, they would be immaterial because Chase is in possession of the endorsed-in-blank Note. (R. 43). Under Utah's Commercial Code, "[w]hen indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." Utah Code § 70A-3-205(2)). As such, the holder of the endorsed-in-blank note is entitled to enforce the note. *See* § 70A-3-301 ("Person entitled to enforce' an instrument means[, inter alia,] the holder of the instrument ...."); § 70A-1a-201(u)(i) ("Holder' means[, inter alia,] the person in possession of a negotiable instrument that is payable ... to bearer...."); *see also*, *Commonwealth Prop. Advocates, LLC v. JP Morgan Chase Bank*, 2012 UT App 126, ¶ 2 (applying the foregoing statutes

to hold that “it is undisputed that Chase was in possession or held the indorsed in blank note, [and] as a matter of law Chase was entitled to enforce that note”). Upon negotiation of the note, the rights under a Deed of Trust automatically transfer to the note holder by operation of law. Utah Code § 57-1-35. Accordingly, physical possession of an endorsed-in-blank note alone is sufficient for its enforcement and defeats any requirement to otherwise establish the holder’s chain-of-title. *See, Thomas v. FNMA*, 502 B.R. 344 (10th Cir. BAP 2013) (holding that ambiguities in a chain-of-title are “simply irrelevant” when a lender is in possession of an endorsed-in-blank note); *Henning v. OneWest Bank FSB*, 405 S.W.3d 950 (Tex. App. 2013) (holding that no material fact dispute exists when a lender can show “[1] [it] is the legal holder of an existing note, [2] the debtor’s execution of the note, and [3] that an outstanding balance is due and owing”); *compare to* R. 32, 43, 71-84 (establishing that the McRaes have not made a payment since October 2012).

Because no defects to Chase’s chain-of-title to both the Note and Trust Deed have been shown and are otherwise immaterial, the District Court’s Summary Judgment ruling should be affirmed.

### **CONCLUSION**

Based on the foregoing, Chase respectfully requests that the District Court’s Summary Judgment ruling in favor of Chase be affirmed.



DATED: October 19, 2015.

CALLISTER NEBEKER & McCULLOUGH

A handwritten signature in black ink, appearing to read "JTG" followed by a stylized flourish.

---

James D. Gilson

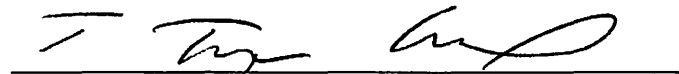
J. Tayler Fox

*Attorneys for defendant JPMorgan Chase Bank, N.A.*

### **CERTIFICATE OF COMPLIANCE**

I certify that in compliance with Utah R. App. P. 24(f)(1), this brief contains 5,902 words, excluding the Table of Contents, Table of Authorities, and addenda. I relied on my word processor to obtain the count, which is Microsoft Word. I further certify that this brief has been prepared in a proportionally spaced typeface using Microsoft Word in compliance with Utah R. App. P. 27(b). I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

CALLISTER NEBEKER & McCULLOUGH



James D. Gilson

J. Tayler Fox

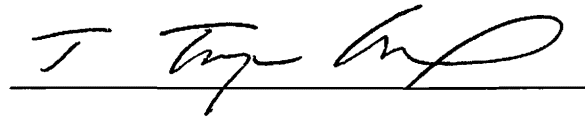
*Attorneys for defendant JPMorgan Chase Bank, N.A.*

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing **BRIEF OF APPELLEE JPMORGAN**

**CHASE BANK, N.A** was served by mail on October 19, 2015 on the following:

Dwight J.L. Epperson, Inc.  
420 E. South Temple, Ste 470  
Salt Lake City, UT 84111

A handwritten signature in dark ink, appearing to read "T. Tye", is written over a horizontal line.

4825-1378-1289.2

## **ADDENDA**

A.     October 2, 2015 Order Granting Motion to Reconsider Chase Bank's  
Motion for Summary Judgment and Denying Defendants' Cross-Motion to Reconsider,  
Related Case No. 130900470

B.     October 13, 2015 Decree of Foreclosure, Related Case No. 130900470

C.     October 13, 2015 Order of Sale, Related Case No. 130900470

D.     Utah Code § 78B-6-1315

# ADDENDA

# ADDENDUM A



The Order of Court is stated below:

Dated: October 02, 2015  
01:49:17 PM

/s/ ANDREW H. STONE  
District Court Judge



JAMES D. GILSON (5472) ([jgilson@cnmlaw.com](mailto:jgilson@cnmlaw.com))  
J. TAYLER FOX (12092) ([jtfox@cnmlaw.com](mailto:jtfox@cnmlaw.com))  
CALLISTER NEBEKER & McCULLOUGH  
Zions Bank Building, Suite 900  
10 East South Temple  
Salt Lake City, UT 84133  
Telephone: (801) 530-7300  
Facsimile: (801) 364-9127  
*Attorneys for Intervenor Plaintiff JPMorgan Chase Bank, N.A.*

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE DEPARTMENT

BENJAMIN WOOLF, an individual,

Plaintiff,

vs.

STERLING FIDCUIARIES, LLC, a Utah  
limited liability company; DM BUNKER,  
LLC, a Utah limited liability company; L. KIP  
MCRAE, an individual; KIMBERLY A.  
MCRAE, an individual; CRAIG VAN  
LEEuwEN, an individual; and DOES 1-20,

Defendants.

---

JPMORGAN CHASE BANK, N.A.,

Intervenor Plaintiff,

vs.

STERLING FIDCUIARIES, LLC, a Utah  
limited liability company; DM BUNKER,  
LLC, a Utah limited liability company; L. KIP  
MCRAE, an individual; KIMBERLY A.  
MCRAE, an individual, STONE UNTURNED  
TRUST; 4MACBOYS, LLC, a Utah limited  
liability company; NEW LANDS  
DEVELOPMENT, LLC, a Utah limited  
liability company,

Defendants.

ORDER GRANTING MOTION TO  
RECONSIDER CHASE BANK'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANTS' CROSS-MOTION TO  
RECONSIDER

Civil No. 130900470

Judge Stone

This matter came on regularly for hearing before the Court on August 26, 2015. Before the Court was the July 7, 2015 Motion to Reconsider Denial of Summary Judgment on Intervenor Plaintiff's Third Cause of Action ("Chase's Motion to Reconsider") filed by Intervenor plaintiff JPMorgan Chase Bank, N.A. ("Chase"), and the August 3, 2015 Motion to Reconsider filed by the Defendants in this case ("Defendants' Cross-Motion to Reconsider"). Also before the Court were the May 4, 2015 Rule 56(f) Motion ("56(f) Motion") and Motion to Strike Declaration of Amber Alegria and Exhibits Thereto ("Motion to Strike") filed by defendant New Lands Development, LLC ("New Lands"). James D. Gilson and J. Tayler Fox appeared on behalf of Chase; Kimberley L. Hansen appeared on behalf of DM Bunker LLC; Dwight Epperson appeared on behalf of Sterling Fiduciaries LLC and Stone Unturned Trust; and Shane D. Gosdis appeared on behalf of New Lands. This lawsuit relates to the parties' respective interests in real property located at 11213 South Portobello Road, South Jordan, Utah (the "Property").

On June 29, 2015, the Court entered its Ruling and Order on Chase's April 29, 2014 Motion for Summary Judgment. Therein, the Court granted summary judgment in favor of Chase on Chase's first cause of action for declaratory judgment, and on Chase's second cause of action for breach of contract. However, the Court denied summary judgment on Chase's third cause of action for foreclosure of the deed of trust securing Chase's loan. Chase moved the Court to reconsider its Ruling and Order as it relates to Chase's foreclosure claim.

Having reviewed the motions and memoranda on file in connection with the foregoing motions, and having considered the arguments of counsel, for the reasons set forth by the Court on the record at the August 26, 2015 hearing, and by Chase in its memoranda in support of

Chase's Motion to Reconsider and in support of Chase's Motion for Summary Judgment, and in Chase's opposition memoranda to Defendants' Cross-Motion to Reconsider and 56(f) Motion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. New Lands's Motion to Strike is granted in part and denied in part. The Court finds that on the face of the April 29, 2014 Declaration of JPMorgan Chase Bank, N.A. ("Declaration"), Chase has not set forth a sufficient basis to show that the records of third parties were incorporated into Chase's business records and relied on by Chase. However, Chase's declarant, Amber Alegria, is qualified to testify about transactions to which Chase was a party, and as to documents that are of public record. Therefore, the Motion to Strike is granted as to paragraphs 5 and 6 of the Declaration, which are hereby stricken. The Motion to Strike is denied in all other respects.
2. New Lands's 56(f) Motion is denied. The Court finds that there is only one chain-of-title involved with the mortgage loan at issue. On April 24, 2007, a Deed of Trust was recorded in Salt Lake County, State of Utah, as Entry No. 10076085 (the "Trust Deed"), which named Taylor, Bean, & Whitaker Mortgage Corp. ("TBW Mortgage") as lender, First American Title as trustee, and Mortgage Electronic Registrations Systems ("MERS"), as nominee for lender and lender's successors and assigns, as the beneficiary. First American Title and MERS are the only parties that received an interest in the Property under the original terms of the Trust

Deed. That chain-of-title remained consistent until MERS transferred its interest in the Trust Deed to Chase on January 31, 2013 under a Corporate Assignment of Deed of Trust recorded in Salt Lake County, State of Utah, as Entry No. 11571462. Defendants' request for additional discovery under Rule 56(f) of the Utah Rules of Civil Procedure on Chase's chain-of-title is denied inasmuch as Defendants seek discovery that is simply irrelevant given the foregoing undisputed facts.

3. Chase's Motion to Reconsider, and the underlying Motion for Summary Judgment, are granted in all respects. Only two issues of fact are material: (1) who has possession of the negotiable instrument evidencing the loan obligation, to wit: the April 19, 2007 promissory note (the "Note") executed by defendants Kimberly and Kip McRae; and (2) who holds senior title to the Property? It is undisputed that Chase is in possession of the endorsed-in-blank Note, which has been presented in open court to all the parties. *See* Utah Code § 70A-3-205(2). It is also undisputed that Chase holds senior title to the Property under the Trust Deed. The Trust Deed was recorded on April 24, 2007, which was prior to all Defendants' interests in the Property and imparted notice to all Defendants. Chase's interest under the Trust Deed relates back to the original date of recording. The subsequent December 19, 2011 Default Judgment obtained by the McRae defendants was only against TBW Mortgage and did nothing to quiet title as against MERS and First American Title, who were clearly

parties that were known to have interests in the Property. Utah's quiet title statute, Utah Code § 78B-6-1315(4), required that MERS and First American Title be served personally, and the McRaes' service by publication on unknown parties was insufficient to effectuate service on MERS and First American Title. Moreover, as lender under the Trust Deed, TBW Mortgage had no interest in the Property to be quieted by the Default Judgment. Because the Note and Trust Deed have been properly transferred and assigned to Chase, Chase is now entitled to enforce those instruments through foreclosure of the Property. Accordingly, Chase is granted summary judgment on its third cause of action in the Amended Complaint.

4. Chase's Motion for Summary Judgment is also granted as it relates to New Lands' Counterclaim. All claims asserted by New Lands against Chase in the Counterclaim are hereby dismissed with prejudice.
5. Defendants' Cross-Motion to Reconsider is also denied.

\*\*\*END OF ORDER\*\*\*  
THE COURT'S SIGNATURE APPEARS ABOVE

APPROVED AS TO FORM AND CONTENT BY:

CALLISTER NEBEKER & McCULLOUGH

/s/ J. Tayler Fox  
J. Tayler Fox  
*Attorney for Plaintiff*

DATED: September 14, 2015

DWIGHT J.L. EPPERSON LAW OFFICES

\_\_\_\_\_  
Dwight Epperson  
*Attorney for defendants Sterling Fiduciaries LLC and  
Stone Unturned Trust*

DATED: \_\_\_\_\_

COHNE KINGHORN

\_\_\_\_\_  
Kimberley L. Hansen  
*Attorney for defendant DM Bunker, LLC*

DATED: \_\_\_\_\_

GOSDIS LAW, PLC

\_\_\_\_\_  
Shane D. Gosdis  
*Attorney for defendant New Lands Development, LLC*

DATED: \_\_\_\_\_

**RULE 7(f) CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing proposed ORDER GRANTING  
MOTION TO RECONSIDER CHASE BANK'S MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANTS' CROSS-MOTION TO RECONSIDER was served  
pursuant to Utah R. Civ. P. 7(f) on September 14, 2015, on the following:

**Via Email:**

Kimberley L. Hansen  
Cohne Kinghorn  
*Attorney for Defendant DM Bunker, LLC*

Jonathan Rudd  
Meagan Rudd  
THE RUDD FIRM, P.C.  
*Attorneys for Plaintiff Benjamin Woolf*

Dwight JL Epperson  
*Attorney for Defendants Craig Van Leeuwen, Stone Unturned Trust, and Sterling  
Fiduciaries, LLC*

Shane Gosdis  
*Attorney for Iron Horse Fiduciaries, Contract Management Services, Inc., New Lands  
Development LLC, and Lou G. Harris*

Jared Anderson  
*Attorney for tenant Steven Bown*

By U.S. Mail, postage pre-paid:

L. Kip McRae  
PO Box 95168  
South Jordan, Utah 84095

Kimberly McRae  
11451 S Jordan Farm Rd  
South Jordan, UT 84095

/s/ J. Tayler Fox

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing proposed ORDER GRANTING  
MOTION TO RECONSIDER CHASE BANK'S MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANTS' CROSS-MOTION TO RECONSIDER was served on  
September 28, 2015, on the following:

**Via ECF Notification:**

Kimberley L. Hansen  
Cohne Kinghorn  
*Attorney for Defendant DM Bunker, LLC*

Jonathan Rudd  
Meagan Rudd  
THE RUDD FIRM, P.C.  
*Attorneys for Plaintiff Benjamin Woolf*

Dwight JL Epperson  
*Attorney for Defendants Craig Van Leeuwen, Stone Unturned Trust, and Sterling  
Fiduciaries, LLC*

Shane Gosdis  
*Attorney for Iron Horse Fiduciaries, Contract Management Services, Inc., New Lands  
Development LLC, and Lou G. Harris*

Jared Anderson  
*Attorney for tenant Steven Bown*

By U.S. Mail, postage pre-paid:

L. Kip McRae  
PO Box 95168  
South Jordan, Utah 84095

Kimberly McRae  
11451 S Jordan Farm Rd  
South Jordan, UT 84095

/s/ J. Tayler Fox



# ADDENDUM B

The Order of Court is stated below:

Dated: October 13, 2015

01:09:01 PM

/s/ ANDREW H. STONE

District Court Judge



JAMES D. GILSON (5472) ([jgilson@cnmlaw.com](mailto:jgilson@cnmlaw.com))

J. TAYLER FOX (12092) ([jtfox@cnmlaw.com](mailto:jtfox@cnmlaw.com))

CALLISTER NEBEKER & McCULLOUGH

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10 East South Temple

Salt Lake City, UT 84133

Telephone: (801) 530-7300

Facsimile: (801) 364-9127

*Attorneys for Intervenor Plaintiff JPMorgan Chase Bank, N.A.*

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE DEPARTMENT

BENJAMIN WOOLF, an individual,

Plaintiff,

vs.

STERLING FIDCUIARIES, LLC, a Utah  
limited liability company; DM BUNKER,  
LLC, a Utah limited liability company; L. KIP  
MCRAE, an individual; KIMBERLY A.  
MCRAE, an individual; CRAIG VAN  
LEEUEWEN, an individual; and DOES 1-20,

Defendants.

JPMORGAN CHASE BANK, N.A.,

Intervenor Plaintiff,

vs.

STERLING FIDCUIARIES, LLC, a Utah  
limited liability company; DM BUNKER,  
LLC, a Utah limited liability company; L. KIP  
MCRAE, an individual; KIMBERLY A.  
MCRAE, an individual, STONE UNTURNED  
TRUST; 4MACBOYS, LLC, a Utah limited  
liability company; NEW LANDS  
DEVELOPMENT, LLC, a Utah limited  
liability company,

Defendants.

DECREE OF FORECLOSURE

Civil No. 130900470

Judge Stone

The Court, having granted summary judgment in favor of intervenor plaintiff JPMorgan Chase Bank, N.A. ("Chase") on all claims in Chase's Amended Complaint,

HEREBY ORDERS, ADJUDGES, AND DECREES that:

1. The April 24, 2007 Deed of Trust recorded in Salt Lake County, State of Utah, as Entry No. 10076085 (the "Trust Deed") is a good and paramount lien upon real property located at 11213 South Portobello Road, South Jordan, Utah (the "Property"), which lien is superior in all respects to the rights, title, interests, and claims of all defendants and any persons claiming by, through or under said parties, or any of them;
2. The Property, or such portion thereof as may be sufficient to pay the amounts found to be due and owing under the promissory note and the Court's June 29, 2015 Ruling and Order, together with interest thereon at the legal rate, and accruing costs herein, and expenses of sale, shall be sold at public auction by the Sheriff of Salt Lake County, State of Utah, in the manner prescribed by law for such sales;
3. The Sheriff, if and when the Property is sold, out of the proceeds of such sale, shall retain first the Sheriff's costs, disbursements, and commissions; next, apply the balance of the proceeds of such sale first to Chase, or its attorneys, in payment of the accrued and accruing costs of this action; second, to the payment of the attorneys' fees of Chase incurred with respect to this action; third, to payment of the amount owing to Chase for principal, interest, costs and expenses, taxes, assessments, and insurance

premiums, together with accrued interest thereon or so much of said sums as said proceeds will pay; and fourth, the surplus, if any, shall be accounted for and paid over to the Clerk of this Court subject to this Court's further order;

4. All persons having an interest in the Property shall have the right, upon producing satisfactory proof of interest, to redeem the same within the time provided by law for such redemption; that from and after the expiration of the applicable periods of redemption as provided by law, the defendants above named, and each of them, and all persons claiming by, through, or under them, be forever barred, and foreclosed of all right, title, interest and estate in and to the Property and from and after the delivery of the Sheriff's Deed to the Property, the grantee named therein be given possession thereof;
5. Any rights Chase has to pursue any deficiency that results after due and proper application of the proceeds of such sale are hereby reserved for and to be asserted in the bankruptcy proceedings pending for Chase's borrowers, defendants Kimberly McRae and Kip McRae, as may be allowed by the Bankruptcy Code and other applicable law;
6. The Property is more particularly described as:

Lot 17, Nelson Farms Subdivision, According to the Official Plat Thereof on File and Of Record in the Salt Lake County Recorder's Office.  
Parcel No. 27-22-177-017

\*\*\*END OF ORDER\*\*\*

THE COURT'S SIGNATURE APPEARS ABOVE

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing proposed DECREE OF  
FORECLOSURE was served on September 28, 2015, on the following:

**Via ECF Notification:**

Kimberley L. Hansen  
Cohne Kinghorn  
*Attorney for Defendant DM Bunker, LLC*

Jonathan Rudd  
Meagan Rudd  
THE RUDD FIRM, P.C.  
*Attorneys for Plaintiff Benjamin Woolf*

Dwight JL Epperson  
*Attorney for Defendants Craig Van Leeuwen, Stone Unturned Trust, and Sterling  
Fiduciaries, LLC*

Shane Gosdis  
*Attorney for Iron Horse Fiduciaries, Contract Management Services, Inc., New Lands  
Development LLC, and Lou G. Harris*

Jared Anderson  
*Attorney for tenant Steven Bown*

By U.S. Mail, postage pre-paid:

L. Kip McRae  
PO Box 95168  
South Jordan, Utah 84095

Kimberly McRae  
11451 S Jordan Farm Rd  
South Jordan, UT 84095

/s/ J. Tayler Fox

# ADDENDUM C

The Order of Court is stated below:

Dated: October 13, 2015

01:09:15 PM

/s/ ANDREW H. STONE

District Court Judge



JAMES D. GILSON (5472) ([jgilson@cnmlaw.com](mailto:jgilson@cnmlaw.com))

J. TAYLER FOX (12092) ([jtfox@cnmlaw.com](mailto:jtfox@cnmlaw.com))

CALLISTER NEBEKER & McCULLOUGH

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10 East South Temple

Salt Lake City, UT 84133

Telephone: (801) 530-7300

Facsimile: (801) 364-9127

*Attorneys for Intervenor Plaintiff JPMorgan Chase Bank, N.A.*

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE DEPARTMENT

BENJAMIN WOOLF, an individual,

Plaintiff,

vs.

STERLING FIDCUIARIES, LLC, a Utah  
limited liability company; DM BUNKER,  
LLC, a Utah limited liability company; L. KIP  
MCRAE, an individual; KIMBERLY A.  
MCRAE, an individual; CRAIG VAN  
LEEUEWEN, an individual; and DOES 1-20,

Defendants.

JPMORGAN CHASE BANK, N.A.,

Intervenor Plaintiff,

vs.

STERLING FIDCUIARIES, LLC, a Utah  
limited liability company; DM BUNKER,  
LLC, a Utah limited liability company; L. KIP  
MCRAE, an individual; KIMBERLY A.  
MCRAE, an individual, STONE UNTURNED  
TRUST; 4MACBOYS, LLC, a Utah limited  
liability company; NEW LANDS  
DEVELOPMENT, LLC, a Utah limited  
liability company,

Defendants.

ORDER OF SALE

Civil No. 130900470

Judge Stone



TO THE SHERIFF OF SALT LAKE COUNTY, STATE OF UTAH:

WHEREAS, the Court, having granted summary judgment in favor of intervenor plaintiff JPMorgan Chase Bank, N.A. ("Chase") on all claims in Chase's Amended Complaint, and having entered a Decree of Foreclosure (the "Decree of Foreclosure") against the above-named defendants, which Decree of Foreclosure was duly recorded and docketed in the Clerk's office and a certified copy of the Decree of Foreclosure is attached hereto as Exhibit A and by this reference made a part hereof,

HEREBY ORDERS, ADJUDGES AND DECREES THAT the real property described in the Decree of Foreclosure be sold at public auction.

NOW, THEREFORE, you, the Sheriff of Salt Lake County, State of Utah, are hereby commanded and required to proceed to notice for sale, and to sell the real property described in the Decree of Foreclosure and apply the proceeds of the sale as directed in the Decree of Foreclosure, and you shall make and file your report of the sale with the Clerk of this Court within sixty (60) days from date of your receipt thereof, and you shall do all things according to the terms and requirements of the Decree of Foreclosure, and the applicable provisions and requirements of law.

\*\*\*END OF ORDER\*\*\*

THE COURT'S SIGNATURE APPEARS ABOVE

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing proposed ORDER OF SALE was served on September 28, 2015, 2015, on the following:

Via ECF Notification:

Kimberley L. Hansen  
Cohne Kinghorn  
*Attorney for Defendant DM Bunker, LLC*

Jonathan Rudd  
Meagan Rudd  
THE RUDD FIRM, P.C.  
*Attorneys for Plaintiff Benjamin Woolf*

Dwight JL Epperson  
*Attorney for Defendants Craig Van Leeuwen, Stone Unturned Trust, and Sterling Fiduciaries, LLC*

Shane Gosdis  
*Attorney for Iron Horse Fiduciaries, Contract Management Services, Inc., New Lands Development LLC, and Lou G. Harris*

Jared Anderson  
*Attorney for tenant Steven Bown*

By U.S. Mail, postage pre-paid:

L. Kip McRae  
PO Box 95168  
South Jordan, Utah 84095

Kimberly McRae  
11451 S Jordan Farm Rd  
South Jordan, UT 84095

/s/ J. Tayler Fox

# ADDENDUM D

West's Utah Code Annotated  
Title 78b. Judicial Code  
Chapter 6. Particular Proceedings (Refs & Annos)  
Part 13. Quiet Title (Refs & Annos)

U.C.A. 1953 § 78B-6-1315  
Formerly cited as UT ST § 78-40-13

§ 78B-6-1315. Judgment on default--Court must require evidence--Conclusiveness of judgment

**Currentness**

- (1) If the summons has been served and the time for answering has expired, the court shall proceed to hear the cause as in other cases.
- (2) The court may examine and determine the legality of the plaintiff's title and the title and claims of all the defendants and all unknown persons.
- (3) The court may not enter any judgment by default against unknown defendants, but in all cases shall require evidence of plaintiff's title and possession and hear the evidence offered respecting the claims and title of any of the defendants. The court may enter judgment in accordance with the evidence and the law only after hearing all the evidence.
- (4) The judgment shall be conclusive against all the persons named in the summons and complaint who have been served and against all unknown persons as stated in the complaint and summons who have been served by publication.

**Credits**

Laws 2008, c. 3, § 1084, eff. Feb. 7, 2008.

**Notes of Decisions (5)**

U.C.A. 1953 § 78B-6-1315, UT ST § 78B-6-1315  
Current through 2015 First Special Session

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End of Document

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