

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, NC
MAR 02 2011

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

U.S. ex rel. [UNDER SEAL],)
)
Plaintiff,)
)
v.)
)
ACE SECURITIES CORPORATION,)
et al.,)
)
Defendants.)

CIVIL NO. 3:10CV575-RJC

UNDER SEAL and
in Camera

MEMORANDUM IN SUPPORT OF THE UNITED STATES'
THIRD MOTION TO PARTIALLY UNSEAL CASE

The United States, on behalf of the State of North Carolina, the District of Columbia, and the States of California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Rhode Island and Virginia, respectfully moves the Court for a third partial lifting of the seal in this case for the limited purpose of disclosing the sealed complaint in the captioned action, any amended complaints, or a subset of information contained therein to the defendants, at the government's discretion and at the government's discretion as to timing.

This case was filed by Lynn E. Szymoniak on or about November 12, 2010. It was served on the Office of the United States Attorney for the Western District of North Carolina on or about November 12, 2010. An Order was entered on January 18, 2011, extending the seal through July 18, 2011. In the North Carolina case, the relator alleged that when the defendants needed to bring foreclosure actions, they used fraudulent mortgage assignments to conceal that over 200 mortgage-backed securities trusts are missing critical mortgage assignments and notes.

I. BACKGROUND

Ms. Szymoniak filed both the North Carolina case and the South Carolina case, both containing allegations of mortgage fraud, under the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, which provides for the award of treble damages and civil penalties for, *inter alia*, the presentation of a false claim or the making of a false statement in order to obtain a payment from the United States Government. 31 U.S.C. §§ 3729(a)(1) and (2). Section 3730(b) of the Act permits a private person, known as the “relator,” to bring a *qui tam* action for the person and for the United States Government.” 31 U.S.C. § 3730(b)(1).

The United States Government is investigating the allegations as allowed by statute in order to make an intervention decision. An initial interview session, including the Government plus state agency representatives, was conducted on January 5 - 6, 2011. More interviews are underway, and other districts may need to participate in these interviews.

There are 26 defendants, all mortgage lenders, named in this District and various other districts. Considering the number of documents in a single, simple refinance, plus the documents related to the establishment of the trusts which were created for a number of years and portions of years, reviewing and storing even one package of documents by a single defendant lender would be a massive undertaking. The relator initially provided the Government with 6 compact discs of documents to review, constituting an initial overview of the allegations. Special agents of the Federal Bureau of Investigation and the Internal Revenue Service - Criminal Investigation Division are investigating this matter for the Western District of North Carolina. Pursuant to the Order partially unsealing the case entered on December 13, 2010, the Government is able to call upon the assistance of the North Carolina Office of the Attorney General, and other North

Carolina agencies, including, the Commissioner of Banks, the Commissioner of Insurance, the Secretary of State and the State Treasurer. Further, employees of the Federal Reserve Bank of New York are coordinating their own investigation, and a parallel criminal investigation is being undertaken in this District.

II. DISCUSSION

Under Section 3730(b) of the FCA, *qui tam* complaints are filed under seal so that the United States has “an adequate opportunity to fully evaluate the private enforcement suit and determine both if the suit involves matters the Government is already investigating and whether it is in the Government’s interest to intervene and take over the civil action.” *See* Legislative history of the FCA, S. Rep. 99-345, 99th Cong., 2d Sess., *reprinted in* 1986 U.S. Code Cong. & Admin. News 5266, 5289. Once the government intervenes, it has the primary responsibility for prosecuting the action pursuant to the terms of 31 U.S.C. § 3730(c)(1). The lifting of the seal in *qui tam* matters is expressly authorized by 31 U.S.C. § 3730(b)(3).

The United States seeks a partial lifting of the seal so that it may disclose the sealed complaint in the captioned action, any amended complaints, or a subset of information contained therein to the defendants, at the government’s discretion. The goal of this request to unseal is to facilitate settlement discussions among the government and the various defendants.

In order for the investigation to proceed, the relator has consented to the filing of this motion and to the entry of an order partially unsealing this case for the express purpose of allowing the United States to furnish the complaint, disclosure statement and all other relevant documents, whether or not under seal, to the defendants, at the discretion of the government.

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CERTIFICATE OF SERVICE AND NO SERVICE

I hereby certify that on the 2^d day of March, 2011, a true and correct copy of the foregoing United States' Third Motion for Partial Lifting of the Seal was served upon the parties below by mailing a copy thereof, postage prepaid and properly addressed as indicated. The Memorandum in Support of that Motion has not been served upon the parties noted below because that pleading refers to details of the Government's investigation of this case.

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