

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

FILED
CHARLOTTE, NC
JAN 14 2013

US District Court
Western District of NC

UNITED STATES OF AMERICA, *et. al, ex rel.*
LYNN E. SZYMONIAK,

Plaintiffs,

v.

ACE SECURITIES CORPORATION, *et al.*,

Defendants.

CIVIL NO. 3:10CV575-RJC
UNDER SEAL

**MEMORANDUM IN SUPPORT OF
RELATOR'S MOTION TO TRANSFER
THIS CASE TO THE DISTRICT OF SOUTH CAROLINA**

Pursuant to 28 U.S.C. § 1404(a), because transfer will serve the interests of justice, because this case could have been brought in the District of South Carolina, with the consent of the United States, and for the reasons stated in this memorandum in support, the Relator moves to transfer this action to the United States District Court for the District of South Carolina so that it can be heard with the related case: *United States et al. ex rel. Syzmoniak, v. American Home Mortgage Servicing, Inc., et al.*, Civil No. 0:10-cv-01465-JFA (D.S.C.) (J. Anderson).

On November 12, 2010, the Relator, a resident of Florida, filed this *qui tam* complaint under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, alleging that defendants, ACE SECURITIES CORPORATION, ALLY FINANCIAL INC., AURORA LOAN SERVICES LLC, BANK OF AMERICA, BAC HOME LOANS SERVICING, LLP, BANC OF AMERICA MORTGAGE SECURITIES, INC., BAYVIEW LOAN SERVICING LLC, CALIFORNIA RECONVEYANCE COMPANY, CARRINGTON MORTGAGE SERVICES, CHASE HOME

FINANCE, CITIMORTGAGE INC., DOCX, LLC, HOME Q SERVICING CORPORATION, CAPITAL REAL ESTATE, INC., HSBC MORTGAGE SERVICES INC., LENDER PROCESSING SERVICES, INC., LITTON LOAN SERVICING, NATIONWIDE TITLE CLEARING, OCWEN LOAN SERVICING, ONEWEST BANK, ORION FINANCIAL GROUP, PROMMIS SOLUTIONS, SECURITIES CONNECTION, INC., SELECT PORTFOLIO SERVICES, INC., VERICREST FINANCIAL INC., WELLS FARGO HOME MORTGAGE and JOHN DOE CORPORATIONS 1 THROUGH 100, violated the False Claims Act. About half a year before bringing this action, on May 31, 2012, Relator filed a False Claims Act *qui tam* complaint alleging claims identical to those asserted here, against fifteen defendants, in the United States District Court for the District of South Carolina. *United States et al. ex rel. Syzmoniak, v. American Home Mortgage Servicing, Inc., et al.*, Civil No. 0:10-cv-01465-JFA (D.S.C.). Defendants WELLS FARGO HOME MORTGAGE and the BANK OF AMERICA CORPORATION are defendants in both the South Carolina and the Western District of North Carolina cases. The remaining defendants in South Carolina are not before the Court in this action.¹

In both cases, Relator alleges that when defendants formed Residential Mortgage Backed Securities they failed to prepare or obtain mortgage assignments or note endorsements, and that defendants charged improper costs to trusts, falsified documents, misrepresented corporate authority, forged signatures, and impaired the value of the collateral in trusts. Relator further

¹ The defendants in South Carolina are AMC Mortgage Services, Inc. s/k/a Citi Residential Lending, Inc., a/k/a Citimortgage, Inc., American Home Mortgage Servicing, Inc., Bank of America Corporation as successor in interest to Lasalle Bank, the Bank of New York Mellon Corporation, Citibank National Association, Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas, DOCX, LLC, HSBC Bank USA, National Association, J.P. Morgan Chase Bank National Association, Lender Processing Services, Inc., Saxon Mortgage Services, Inc., U.S. Bank National Association, Wells Fargo Bank National Association, and Wells Fargo Home Mortgage D/B/A America's Servicing Company.

alleges that defendants made improper claims for Federal Housing Administration, Veterans Administration and Department of Agriculture insurance on foreclosed mortgages.

According to Relator, the United States purchased defective securities in three different ways: 1) as part of the Federal Reserve's Maiden Lane transactions; 2) in Treasury's Public Private Investment Program (PPIP); and 3) in the Federal Reserve's and the Treasury's Agency RMBS Purchase Programs. Relator alleges that knowing misrepresentations made by defendants in SEC filings and transactional documents related to the RMBS trusts caused the United States to buy defective securities in these programs.

In both cases, Relator asserts claims under the federal False Claims Act, 31 U.S.C. §§ 3729-3732 (FCA), and under the false claims acts of seventeen states and three municipalities,² against defendants that served as trustees, servicers and depositors in connection with RMBS.

Although many of the defendants in the two cases are different, legal and factual issues will overlap. Judicial efficiency and savings in the time and effort for all involved will be achieved by consolidating these two cases.

Pursuant to the False Claims Act a *qui tam* action can be brought "in any judicial district in which defendant or, in the case of multiple defendants, any one defendant can be found, resides or transacts business, or in which any act proscribed by section 3729 occurred." 31 U.S.C. § 3732(a). 28 U.S.C. § 1404(a) provides that "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other

² California, Delaware, Florida, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Virginia, the District of Columbia, Chicago and New York City.

district or division where it might have been brought." Because some or all of the defendants in this case transact business in South Carolina, Relator could have brought this case there.

The Relator believes that it is in the interests of justice for this case to be transferred to South Carolina to be consolidated with the case already pending in that District.

The United States agrees with Relator's request to transfer of the case to the District of South Carolina.

WHEREFORE, Relator respectfully requests that this case be transferred to the District of South Carolina.

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January 14, 2013

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2013, the foregoing **MEMORANDUM IN SUPPORT OF RELATOR'S MOTION TO TRANSFER THIS CASE TO THE DISTRICT OF SOUTH CAROLINA** was served on the following persons listed below via United States

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