

Exhibit A

Exhibit A

- Fax Transmission

To: Legal Support Group

From: James Stout

Fax: +1 (866) 3807701

Date: 12/27/2011

RE: Maria Lebayan, Trustee Sale, Complaint

Pages: 11

Comments:

Please find attached correspondence requesting a postponement of the trustee sale and copy of the Complaint for 2539 Red Planet Street, Henderson, NV

COMP

JAMES R. STOUT, ESQ.
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 STOUT LAW FIRM
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 Las Vegas, Nevada 89134
 Tel: (702) 318-8801
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 Attorneys for Plaintiff BELLA HOMES, LLC

DISTRICT COURT**CLARK COUNTY, NEVADA**

BELLA HOMES, LLC, a Limited Liability
 Company;

Plaintiff,

v.

RECONTRUST COMPANY, N.A.; an entity of
 unknown form; BANK OF AMERICA, N.A.; an
 entity of unknown form; and DOES 1-100,
 inclusive,

Defendants.

Case No.:

Dept. No:

COMPLAINT
(NRS 598D)

COMPLAINT

COMES NOW Plaintiff BELLA HOMES, LLC (hereinafter referred to as "Plaintiff"),
 by and through its attorneys, James R. Stout, Esq. and STOUT LAW FIRM, and for its
 Complaint, pleads and alleges as follows:

JURISDICTION

1. Plaintiff is the owner of a residence located at 2539 Red Planet Street, Henderson,
 Nevada, APN# 190-19-314-013 (hereinafter referred to as "Subject Property") via warranty
 deed. The previous owner of the Subject Property was Maria Sarah Labayen (hereinafter
 collectively referred to as "Borrower").

1 2. The Borrower assigned all of their rights regarding the Subject Property to
2 Plaintiff.

3 3. Based upon information and belief, Defendant, RECONTRUST COMPANY,
4 N.A. (hereinafter referred to as "Recon") is a company, authorized to conduct business, and
5 conducted business at all times relevant herein, in Clark County, Nevada.

6 4. Based upon information and belief, Defendant BANK OF AMERICA, N.A.
7 (hereinafter referred to as "Bana") is a company, authorized to conduct business, and conducted
8 business at all times relevant herein, in Clark County, Nevada.

9 5. Recon and Bana are collectively referred to hereinafter as "Defendants".

10 6. The residential real property which is the subject of the dispute underlying this
11 action aka Subject Property is situated in Clark County, Nevada.

12 7. Plaintiff is informed and believes and thereon alleges that the true names and
13 capacities, whether individual, corporate, associate or otherwise, of DOES 1-100 inclusive, are
14 unknown to Plaintiff who therefore sues said Defendants by said fictitious names. Plaintiff
15 believes that each of the Defendants designated as a DOE Defendant is responsible in some
16 manner for the events and happenings described in the Complaint which proximately caused or
17 contributed to the damages to Plaintiff as alleged herein. Plaintiff will seek leave of Court to
18 amend the Complaint to insert the true names and capacities of the DOE Defendants and state
19 appropriate charging allegations at such time that the true identities of these Defendants becomes
20 known or ascertained by Plaintiff. Defendants and each of them are the employees, assignees,
21 and/or agents of each other, and at all times relevant herein, were acting within the course and
22 scope of that employment, assignment and/or agency.
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GENERAL ALLEGATIONS

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2 8. On or about December 6, 2006, the Borrower purchased the the Subject Property
3 and financed it by taking out a Mortgage Loan with Bana, the original lender (hereinafter
4 referred to as "Loan").

5 9. The Borrower became delinquent in their mortgage payments for the Loan.

6 10. On August 22, 2011, based on information and belief, Recon caused to be filed
7 with the County Recorder's Office, a Notice of Default and Election to Sell the Subject Property.
8

9 11. The Clark County Recorder's website does not list a Notice of Trustee Sale filed
10 after the NOD. Thus, based on information and belief, Recon failed to give legal notice of the
11 trustee sale.

12 12. A trustee sale date is scheduled for December 28, 2011, according to Foreclosure
13 Radar, a third party data company.

NOTE AND TRUST DEED SPLIT

14
15 13. The Deed of Trust and Note have taken two distinctly different paths. The Deed
16 of Trust was never transferred; however, the Note was pooled, sold and transferred.
17

18 14. Plaintiff believes that the Deed of Trust securing the note, while naming Bana as
19 the lender separately names a third party, Mers aka Mortgage Electronic Registration Systems,
20 Inc. aka MERS as a beneficiary. The conveyance language granted the Deed of Trust to Mers
21 "solely as nominee for the Lender and successor's and assigns." Bana was a "correspondent
22 lender" that originated the Deed of Trust for the Loans which in turn was sold and transferred to
23 Bana. The Loan was securitized. The written agreement that created the Pooling and Servicing
24 Agreement (PSA), to securitize the Loan is a matter of public record, available on the website of
25 the Securities and Exchange Commission (SEC). The Trust is also described in a "Prospectus
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Supplement", also available on the SEC website.

MERS ROBO-SIGNED THE LOAN

15. Based on information and belief an employee of MERS purportedly "robo signed" or fraudulently assigned the Subject Property over to Bana, who claims to hold the Deed of Trust.

16. Based on information and belief the "robo-signed" alleged assignment from MERS to Bana constitutes a bifurcation or "splitting" of the security interest.

17. Based on information and belief each Defendant who has been assigned or been transferred rights, or holds a position or interest under this loan transaction failed to perform their due diligence in investigating the legal requirements that this loan should have complied with; and as such the transactions subsequent to the execution of the Deed of Trust and Note (including, but not limited to assignments and all notices) are faulty and have been handled according to Nevada and Federal statutes.

18. Plaintiff believes Bana does not have the original Note nor a proper endorsement, thus, it never became the duly negotiated holder of the Note. Therefore, Bana does not have the authority to enforce the Note and foreclose.

19. Plaintiff believes that Bana did not have authority, and knew that it did not have authority as servicer for the Trusts to enforce invalidly transferred Notes.

20. Plaintiff believes that Bana made misrepresentations, and the misrepresentations made by its agents and successors in interest, about the true holders of Nevada mortgage Notes and its authority to pursue collections or foreclosures as a matter of law constitute deceptive practices where and because failed to properly transfer these Notes to the

1 securitization Trusts on whose behalf it serviced the debts. In addition, Defendants
2 misrepresented their authority to collect payments to the Borrower

3 21. Plaintiff contends that due to the splitting of the security interest, Defendants
4 lack standing to foreclose on the Subject Property pursuant to the legal holding in U.S. BANK
5 NATION ASSOCIATION, Trustee vs. Antonio IBANEZ, Mass. Sup. Ct. Appeals, No. SJC.,
6 10694. (January 7, 2011), (hereinafter "Ibanez").

7 22. The central focus of the *Ibanez* ruling holds:

8 *Recognizing the substantial power that the statutory scheme affords to a mortgage holder*
9 *to foreclose without immediate judicial oversight, we adhere to the familiar rule that*
10 *"one who sells under a power [of sale] must follow strictly its terms. If he fails to do so*
11 *there is no valid execution of the power, and the sale is wholly void."* U.S. Bank Nat'l
Ass'n v. Ibanez, 458 Mass. 637, 646 (2011). (Citation Omitted).

12 23. Plaintiff contends that the *Ibanez* holding should be the law in the State of
13 Nevada. Plaintiff also contends that Recon's Notice of Trustee's Sale be found null and void and
14 believes that Recon did not have the legal authority to notice the trustee sale.

15 **FIRST CAUSE OF ACTION**

16 **(Rescission and Declaratory Relief)**

17 24. Plaintiff repeats and re-alleges and incorporates by reference the foregoing
18 Paragraphs of this Complaint as though fully set forth at length herein.

19 25. Bana has made demands for mortgage payments to Borrower under the Loan.

20 26. Based on information and belief, Plaintiff believes that Defendants are not the
21 holders of the Note and therefore, lack ownership of the Note, and a right to demand payment.
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23 27. Defendants have failed to provide proof that they have rights or standing under
24 the Note.
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1 28. Plaintiff requests a declaratory judgment wherein the Defendants are decreed to
2 lack standing to pursue rights under the Note, and therefore, Defendants and/or their agents are
3 prohibited from exercising rights under the Note, including, without limitation, foreclosure and
4 eviction of the Subject Property, and demanding payments under the Note.

5 29. Plaintiff requests a rescission of the Trust Deed.

6 30. As a result of Defendant's violation of the aforementioned laws, including
7 without limitation, wrongful foreclosure, Plaintiff suffered damages in excess of \$10,000.

8 31. Plaintiff was required to retain an attorney to prosecute this action and is entitled
9 to reasonable attorneys' fees and costs.
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11 SECOND CAUSE OF ACTION

12 (Injunction)

13 32. Plaintiff repeats and re-alleges and incorporates by reference the foregoing
14 Paragraphs of this Complaint as though fully set forth at length herein

15 34. Defendants recorded a lien against the Subject Property which was contrary to the
16 statutory requirements of NRS 108.080 *et seq.* and Plaintiff is entitled to a set-aside of the
17 foreclosure or alternatively to enjoin the foreclosure, recording of the deed and any potential
18 eviction proceedings.
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20 35. Defendants' actions have made it necessary for Plaintiff to hire an attorney to
21 pursue this matter and to obtain the requested relief. Therefore, Plaintiff is entitled to attorney's
22 fees and costs incurred as a result of being forced to file this action.
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24 THIRD CAUSE OF ACTION

25 (Violation of NRS 598D, Unfair Lending Practices)

26 36. Plaintiff repeats and re-alleges and incorporates by reference the foregoing
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1 Paragraphs of this Complaint as though fully set forth at length herein.

2 37. Defendants in so making the Loan to Borrower knew that there existed an
3 unreasonable probability that the Plaintiff could not perform their obligations pursuant to the
4 Loan, engaged in predatory lending practices against Plaintiff.

5 38. Defendants, knowingly and intentionally made the Loan to the Plaintiff based
6 solely on the Plaintiff's equity in the Subject Property and without determining that the Plaintiff
7 had the ability to repay the Mortgage Loan from other assets, including, without limitation,
8 Plaintiff's income.

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10 39. It has become necessary for Plaintiff to bring this Complaint and, therefore,
11 Plaintiff is entitled to recover reasonable attorney's fees and costs.

12 40. As a result of Defendants' violation of NRS 598D, Plaintiff suffered damages in
13 excess of \$10,000.

14 **FOURTH CAUSE OF ACTION**

15 **(Breach of Covenant of Good Faith and Fair Dealing)**

16 41. Plaintiff repeats and re-alleges and incorporates by reference the foregoing
17 Paragraphs of this Complaint as though fully set forth at length herein.

18 42. An express contractual relationship existed between each Plaintiff and
19 Defendants, for the financing of the Subject Property for the terms and conditions set forth
20 therein, through the Agreements executed between each Plaintiff and Defendants.

21 43. Plaintiff duly, faithfully and in reliance upon all representations made by
22 Defendants performed all conditions precedent to Defendants' performance and fulfilled the
23 obligations to Plaintiff under the contract(s) between the parties for the financing of the Subject
24 Property.
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1 44. Based upon the foregoing express and implied contractual relationships between
2 Plaintiff and Defendants, Defendants were bound by a legal and equitable duty to deal with
3 Plaintiff in good faith and in a fair manner.

4 45. Based upon the foregoing acts, omissions and conduct by Defendants and each of
5 them, Defendants breached their promise not to foreclose including breaching their duty of good
6 faith and fair dealing inherent in their relationships with Plaintiff. Defendants deliberately
7 contravened the intention and spirit of the foregoing agreement.

8 46. Because Defendants' conduct toward Plaintiff was fraudulent, malicious, and
9 egregiously in bad faith, was conducted with a willful disregard for Plaintiff's rights and
10 subjected Plaintiff to a cruel and unjust hardship, Plaintiff are entitled to punitive damages
11 against Defendants in amount appropriate to make Plaintiff whole in light of Defendants'
12 misconduct, to punish Defendants and to set an example thereof, at least treble the damages
13 suffered by Plaintiff.

14 47. As a direct and proximate result of Defendants' foregoing conduct, Plaintiff has
15 suffered and continues to suffer severe and irreparable damages, in an amount in excess of
16 \$10,000.00.

17 48. It has become necessary for Plaintiff to bring this Complaint and, therefore,
18 Plaintiff is entitled to recover reasonable attorney's fees and costs.

19 WHEREFORE, Plaintiff prays for relief and damages as follows:
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- 21
- 22 1. For general, special, and compensatory damages;
 - 23 2. For interest accruing at the lawful rate on the total of any and all unpaid monetary
 - 24 sums owed to Plaintiff;
 - 25 3. For attorney's fees and costs of suit;
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- 1 4. For economic losses associated with the loss of the Plaintiff's homes;
- 2 5. For such relief as is necessary, including punitive damages, to satisfy and punish
- 3 Defendants' violations of NRS 7.285 et seq., including equitable and monetary
- 4 relief;
- 5 6. For injunctive relief to enjoin the Defendants from foreclosure, recording of the
- 6 deed of trust and/or eviction proceedings; and
- 7 7. For any and all such other and further relief as the Court may deem just and
- 8 proper.
- 9

10 DATED this 27 day of December, 2011.

11 STOUT LAW FIRM

12 By: 

13 JAMES R. STOUT, ESQ.
14 Nevada Bar No. 008680
15 9555 Hillwood Dr., Suite 150
16 Las Vegas, Nevada 89134
17 Attorneys for Plaintiff
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STOUT LAW FIRM

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Licensed in Nevada, California and Arizona

December 27, 2011

VIA FACSIMILE AND U.S. MAIL

Recontrust Company
(866) 380-7701

Re: NOTICE OF LITIGATION

Property Address: 2539 Red Planet Street, Henderson, Nevada
APN# : 190-19-314-013
Prior Homeowner: Maria Lebayan
Foreclosure Sale Date: December 28, 2011

Dear Sir/Madam:

This office represents Bella Homes in the above referenced matter (homeowners). We have filed a lawsuit on their behalf under NRS 598(D) (unfair lending practices). As you may know, that filing stays any foreclosure actions, including a trustee sale for 30 days:

NRS 107.085(2) states:

2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless:

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

Attached hereto is a copy of the Complaint. As such, we request that you do not proceed with the trustee sale.

If you have questions at any time, please do not hesitate to contact me.

Respectfully yours,
STOUT LAW FIRM


James R. Stout, Esq.