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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/22/2016 11:09 AM PG: 1 OF 6

For Use by Recorder of Deeds

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BANK OF AMERICA, NATIONAL
ASSOCIATION, a national banking
association,

Plaintiff,

v.

JESUS FONSECA

Defendant

Case No.: 2015 CH 13915

Judge Pamela McLean Meyerson
Room 2305

KA: #527.055

Judge Pamela McLean Meyerson

Property at:
3358 South Kostner Avenue
Chicago, IL 60632

DEC 21 2016

Circuit Court - 2097

DECLARATORY JUDGMENT ORDER

This cause comes before the court on the plaintiff's Motion for Summary Judgment on Count I of its complaint for a declaratory judgment that a mortgage lien on certain real estate hereinafter described remains valid and in full force and to declare null and of no affect certain documents recorded by Defendant declaring himself to be assignee of a Land Patent dated October 1, 1839 and a Deed granted to himself claiming Allodial title to the subject real estate superior to and free and clear of the lien of the Plaintiff's Mortgage. The court having jurisdiction over the parties, and having considered the allegations and exhibits to the complaint, the admissions in the answer of the Defendant and the Affidavit of Defendant in which he attests

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Bank of America, N.A. v. Jesus Fonseca
2015 CH 13915

that he filed the documents in question on the advice of a third party who was assisting him with a loan modification, and being fully advised of the premises, finds as follows:

1. BANK OF AMERICA, N.A. ("*Plaintiff*" or "*Bank of America*") holds a mortgage dated March 26, 2009 granted by JESUS FONSECA ("*Fonseca*" or "*Defendant*") to Mortgage Electronic Registration Systems, Inc. ("*MERS*"), as nominee for EverBank in the amount of \$324,458.00 and recorded in Cook County on April 14, 2009 as document number 0910404013 ("*Mortgage*"). The Mortgage (a copy of which is attached to the Complaint as **Exhibit 3**) encumbers certain residential real estate commonly known as 5358 South Kostner Avenue, Chicago, IL 60632, ("*Property*"), which is legally described as follows:

THE SOUTH 36.42 FEET OF LOT 5 IN BLOCK 7 IN ARCHER HIGHLAND ADDITION, BEING H. H. WESSEL AND COMPANY'S SUBDIVISION OF THE WEST 1/4 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 10, ALSO THE EAST 1/4 (EXCEPT THE RAILROAD RIGHT OF WAY) OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 19-10-325-030-0000

2. Defendant has admitted that he executed and delivered the mortgage. (Answer ¶5).

3. Defendant acquired fee simple title to the Property by warranty deed dated August 6, 2004 by Victoria Tellez, as grantor, to Defendant, as grantee. The deed was recorded in Cook County on August 31, 2004 as document 0424426021. (Answer ¶3).

4. By instrument dated September 20, 2011, MERS, as assignor, assigned the Mortgage to Plaintiff, successor by merger to BAC Home Loans Servicing, LP formerly known as Countrywide Home Loans Servicing, LP, as assignee. The Assignment was recorded in Cook County on September 30, 2011 as document 1127357229. A certified copy of the Assignment is

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Bank of America, N.A. v. Jesus Fonseca
2015 CH 13915

attached to Plaintiff's summary judgment motion as Exhibit 2 and is self-authenticating under Rule 902(4) of the Illinois Rules of Evidence.

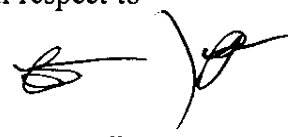
5. On November 17, 2015, Fonseca and Urban Settlement Services, LLC as attorney in fact for Bank of America entered into a Loan Modification Agreement that was recorded in Cook County on November 27, 2015 as document 1533149624, a copy of which was attached to the answer of Defendant and admitted at paragraph 20 of the Answer.

6. Defendant caused the following documents to be recorded with the Cook County Recorder of Deeds:

- a. Document No. 1407848013 captioned Declaration of Assignee Update of Land Patent- Land Patent No. 2314, Dated October 1, 1839, signed only by Defendant and in which he declares himself to be the lawful assignee to a land patent dated October 1, 1839 which had been signed by President Martin Van Buren conveying certain land (which included the land described in Paragraph 1 of this Order) to John Ogden, a certified copy of which is attached to the summary judgment motion as **Exhibit 3** and self-authenticating.
- b. Document No. 1407848014 captioned *Notice of Cease and Desist* ("Notice") recorded March 19, 2014 in which Defendant demands that the "holder of Deed of Trust #09104013" take no further action and threatening that he will "sue out for a wrongful foreclosure." A copy of which is attached to the Complaint as **Exhibit 6** and admitted by Defendant (Answer ¶12).
- c. Document No. 1407848015 captioned *Deed of Revocation* recorded March 19, 2014 in which Defendant stated he was "free and discharged from any further responsibility" for his mortgage, a certified copy of which is attached to the summary judgment motion **Exhibit 4** and self-authenticating.
- d. Document No. 1407848018 captioned *Deed* recorded March 19, 2014 in (Complaint **Exhibit 8**) which Defendant purports to re-convey the Property to himself as "assignee of the Deed and Beneficiary of land patent. . . 2314." Defendant has admitted recording the Deed. (Answer ¶ 14).
- e. Document No. 1411854055 captioned *Notice of Fraudulent [sic] Assignment* recorded April 28, 2014 (Complaint **Exhibit 9**) in which Defendant declares MERS was never a holder in due course and has no power to grant any other party holder in due course status. Defendant has admitted recording the Notice. (Answer ¶ 15).

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Bank of America, N.A. v. Jesus Fonseca
2015 CH 13915

7. The Court does not find it necessary at this time to make findings with respect to the intent of Defendant or the extent of his involvement in ~~the~~ drafting the documents. 

8. Defendants recording of the documents cloud title to the Property purportedly impacting on the lien mortgage held by Bank of America's Mortgage.

9. Under Illinois law, the property owners recording of instruments declaring themselves the assignee of a land patent signed only by the purported assignee and claiming allodial title as a result thereof are of no legal force or effect and insufficient as a matter of law to defeat or impair the lien of a validly executed and recorded prior mortgage. See, *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, 2 N.E.3d 1052 (1st Dist. 2013); *Britt v. Federal Land Bank Assoc.*, 152 Ill.App.3d 605 (2nd Dist. 1987).

10. Fonseca was served with a complaint and summons on October 7, 2015. Fonseca subsequently entered his appearance through counsel and answered the complaint.

IT IS ORDERED, ADJUDGED, AND DECREED:

A. The document captioned *Declaration of Assignee Update of Land Patent – Land Patent No 2314, Dated October 1, 1839* and recorded in Cook County on March 19, 2014 as document number 1407848013 is null and void and of no force or effect whatsoever and any interest in the Property which Defendant has or claims to have by reason of such document is terminated.

B. The document captioned *Notice to Cease and Desist* recorded in Cook County on March 19, 2014 as document 1407848014 is null and void and of no force or effect whatsoever and any interest in the Property which Defendant has or claims to have by reason of such document is terminated.

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Bank of America, N.A. v. Jesus Fonseca
2015 CH 13915

C. The document captioned *Deed of Revocation* recorded in Cook County on March 19, 2014 as document 1407848015 is null and void and of no force or effect whatsoever and any interest in the Property which Defendant has or claims to have by reason of such document is terminated.

D. The document captioned *Deed* recorded in Cook County on March 19, 2014 as document 1407848018 is null and void and of no force or effect whatsoever and any interest in the Property which Defendant has or claims to have by reason of such document is terminated.

E. The document captioned *Notice of Fraudulent [sic] Assignment* recorded in Cook County on April 28, 2014 as document 1411854055 is null and void and of no force or effect whatsoever and any interest in the Property which Defendant has or claims to have by reason of such document is terminated.

F. Consequently, the Mortgage recorded in Cook County on April 14, 2009 as document 0910404013, and as modified in the Loan Modification Agreement recorded in Cook County on November 27, 2015 as document 1533149624, remains in full force and effect as a valid and binding first lien on the Property described in Paragraph 1 above. In addition, Bank of America retains all of its rights and interests as mortgagee under said Mortgage.

G. This is a final order effective this 21st day of December, 2016

as to Cont P of the case

ENTERED:

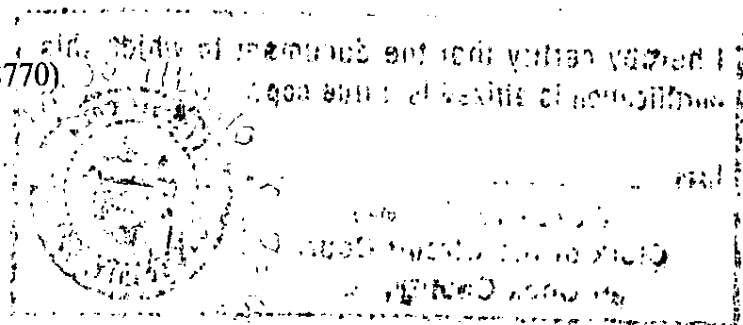
Judge Pamela McLean Meyerson

DEC 21 2016

Judge

Circuit Court - 2097

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I hereby certify that the document to which this certification is affixed is a true copy.

DOROTHY BROWN DEC 21 2018
 Date *Dorothy Brown*

Dorothy Brown
 Clerk of the Circuit Court
 of Cook County, IL

