WSJ: BANK STOCKS TUMBLING ON DOUBTS THAT MORTGAGES ARE ENFORCEABLE
Commentary Posted on June 6, 2011 by Neil Garfield, esteemed Esq., MBA and creator of the blog LivingLies Weblog for distressed homeowners.

"The battle liens are drawn: either the pretender lenders with nothing at stake except satisfaction of greed or the homeowner -borrowers who were duped by fraudulent appraisals and other predatory and fraudulent lending practices are going to get a free house. The tide has turned in favor of the victim (homeowner-borrowers) and against the pretender lenders who simply have no skin in the game)." — Neil Garfield

FROM THE ARTICLE:

"**These "show me the paper" cases have been winding through the courts for several years. But in recent months, some judges have been siding with borrowers and stopping foreclosures after concluding that banks' paperwork problems are more serious than previously thought and raise broader ethical questions.**

This year, cases in California, North Carolina, Alabama, Florida, Maine, New York, New Jersey, Texas, Massachusetts and others have raised questions about whether banks properly demonstrated ownership."

EDITOR'S COMMENT: When the Wall Street Journal and Bloomberg start questioning the viability of the mortgages, they are questioning the viability of the mortgage bonds. Since the money was always intended for parties other than those disclosed at the closing with the homeowner-borrower, it is obvious that the mortgage lien was not only not perfected, it didn't exist at all because the paperwork describes a transaction that never occurred. This in turn means that the megabanks are now at the point of the cliff where they can't go back and if they go forward they cease to exist in their present form.

Investors and traders are starting to get the complexity of this but they are also simplifying it down to the essentials, "where's the beef?" If there isn't any substance to these transactions, and the investors who were the source of the funds are suing on exactly that premise then you have a confluence in which both creditor and debtor are saying the same thing: there is no debt, there is no lien.

That being the case, there is a magnificent trading opportunity in shorting the bank stocks, and it turns out that both puts and shorts are increasing. From my own experience, traders make their own reality and companies live or die based upon the conventional wisdom amongst those companies and investors who make their money in the liquidity portion of trading activity — day trades, speed trades by supercomputers etc. My opinion is that the bank stocks are i for a fall not unlike the GM and that they are headed for bankruptcy and resolution whether anyone likes the idea or not.

It is also apparent that the holy grail for homeowners is coming within reach. In 2010 there were 2.9 million households that received foreclosure papers. The Obama administration claims over 600,000 successful permanent modification (many of which went back into foreclosure). The parties to those modifications, just like the parties to the enforcement of the obligation, just like the parties to would-be foreclosures are the same parties as those whose claims to standing and real party in interest have essentially been repeatedly struck down by every court that looked at the documentation and simply applied basic rules of law and basic rules of evidence, which is also law.

Since neither the pretender lenders nor the actual creditors (investor-lenders) have taken any steps to reform the transactions (and for good reason, because their proof would be lacking) that leaves a void where there would ordinarily be a creditor claiming damages from the the failure or unwillingness of the homeowner to pay on a debt that was fraudulently stated, in a transaction that never occurred. In plain language, the millions of foreclosures numbering some 7 million households, are subject to and

should be reversed restoring the homeowner to ownership of the home without the existing liens of record — i.e., by having the courts clear the existing liens off the title registry in a quiet title action. The battle liens are drawn: either the pretender lenders with nothing at stake except satisfaction of greed or the homeowner -borrowers who were duped by fraudulent appraisals and other predatory and fraudulent lending practices are going to get a free house. The tide has turned in favor of the victim (homeowner-borrowers) and against the pretender lenders who simply have no skin in the game).

Banks Hit Hurdle to Foreclosures

By NICK TIMIRAOS

Banks trying to foreclose on homeowners are hitting another roadblock, as some delinquent borrowers are successfully arguing that their mortgage companies can't prove they own the loans and therefore don't have the right to foreclose.

These "show me the paper" cases have been winding through the courts for several years. But in recent months, some judges have been siding with borrowers and stopping foreclosures after concluding that banks' paperwork problems are more serious than previously thought and raise broader ethical questions.

This year, cases in California, North Carolina, Alabama, Florida, Maine, New York, New Jersey, Texas, Massachusetts and others have raised questions about whether banks properly demonstrated ownership.

During the fall, banks temporarily suspended foreclosures to address so-called robo-signing problems, where employees were approving legal documents without properly reviewing them. They said that in weeks they could fix what they considered to be simple clerical errors. But borrowers are uncovering new types of document problems, further delaying banks' efforts to get foreclosures back on track.

In some cases, borrowers are showing courts that banks failed to properly assign ownership of mortgages after they were pooled into mortgage-backed securities. In other cases, borrowers say that lenders backdated or fabricated documents to fix those errors.

"Flawed mortgage-banking processes have potentially infected millions of foreclosures, and the damages against these operations could be significant and take years to materialize," said Sheila Bair, chairman of the Federal Deposit Insurance Corp ., in testimony to a Senate committee last month .

Last month, the Maine Supreme Court reversed the foreclosure of Dana and Robin Murphy of Auburn, Me., after concluding that the mortgage company, a unit of HSBC Holdings PLC, filed "inherently untrustworthy" documents. An HSBC spokesman declined to comment.

The case began in 2008 when HSBC filed to foreclose on the Murphys, who hadn't made a mortgage payment in two years. A trial judge initially rejected HSBC's foreclosure because the bank couldn't show it owned the promissory note—in effect, the borrower's IOU. The court later granted the foreclosure after HSBC submitted new paperwork.

However, the Murphys found discrepancies and alleged that the documents were backdated. The court voided the foreclosure and sent the case back to the lower court to determine potential penalties.

Attorneys for borrowers reject the view that they are using arcane legal rules to secure free houses for clients who aren't paying their bills. Efforts to gloss over incomplete or falsified evidence "can't be tolerated by a free society," says Thomas Ice , an attorney in Royal Palm Beach, Fla., who has a similar case before the Florida Supreme Court. "This is a huge assault on our legal system" that risks "turning us into a banana republic."

Laurence E. Platt, a banking-industry lawyer at K&L Gates in Washington, concedes that banks may have been sloppy. But he says "the real assault on the legal system" are efforts by judges and local officials to strip lenders of their rightful ownership and make foreclosures impossible.
In March, an Alabama court said J.P. Morgan Chase & Co. couldn't foreclose on Phyllis Horace, a delinquent homeowner in Phenix City, Ala., because her loan hadn't been properly assigned to its owners—a trust that represents investors—when it was securitized by Bear Stearns Cos. The mortgage assignment showed that the loan hadn't been transferred to the trust from the subprime lender that originated it.
Specific deal agreements required Bear Stearns to assign the loan within three months of the securitization. Because it failed to do so, Alabama Circuit Court Judge Albert Johnson determined, the trust didn't own the mortgage. "The court is surprised to the point of astonishment that the defendant trust did not comply with the terms," of the securitization agreement, he wrote.
The ruling is one of the first in the nation to strip a mortgage trust of an asset it thought it owned. A similar case earlier this year was decided in the bank's favor when it held that the borrower wasn't a party to the securitization agreement.
Nick Wooten, the lawyer for Ms. Horace, says the case won't necessarily influence other decisions unless it is upheld by a higher court. But he says it is "another brick in the wall of trial-court-level cases that clearly show the wheels fell off the bus in the securitization industry during the bubble."
J.P. Morgan Chase hasn't appealed the case. A bank spokesman declined to comment.
Curing incomplete mortgage assignments can be tricky because many lenders that originated subprime loans are still listed as the owner but have gone out of business.
Bill Dallas, former chief executive of subprime lender Ownit Mortgage Solutions Inc., receives between 200 and 300 pieces of mail every month at his former company's California headquarters from companies looking to correct ownership flaws. "Am I surprised? Absolutely not," says Mr. Dallas, who founded and ran the subprime lender until its collapse in late 2006. "I knew this assignment problem was going to be an issue."
Loans with botched assignments or no assignment are "really problematic" because "the person that originated the loan is gone, the person that funded it is gone, and your servicers are confused," he says.

bailout, Bank of America, bankruptcy, borrower, countrywide, creditor, Deutsch Bank, disclosure, Eviction, foreclosure, foreclosure defense, foreclosure offense, foreclosures, fraud, MERS, mortgage meltdown, predatory lending, quiet title, rescission, securitization, TILA audit, trustee, Wells Fargo

Some other blog commentaries:

1. 

ANONYMOUS, on June 7, 2011 at 6:21 am said:

They should be — but not sure what the government will do – the fraud is so large-scale. They cannot continue as is — doing nothing. 50 state AGs not competent to negotiate a settlement — they have done little investigation.

The subprime fraud (includes Alt- A) – and any loan "refinanced" with an "originator" associated with subprime lending – and may include jumbo loans.
These were loans that did not qualify for Freddie/Fannie refinance – for one reason or another (largely blemished credit), thus, did not qualify as valid MBS. The subprime market took over what Freddie/Fannie could not do. And, to get you out of Freddie/Fannie — banks (servicers) would

"manufacture" default — allowing only collection rights to survive. When you got the refinance — the collection rights to false default debt would be sold to banks and reaffirmed — by the borrowers – by the so-called "refinance." Insurance paid to GSEs. GSE, in turn, invested in the "synthetic" subprime securities (got triple A rating by creating many layers of credit enhancement). Subprime — a gold mine — interest rates high – much better than traditional market. .
If you refinanced again — the prior refinance would not be paid off to a prior (shell/sham) subprime trust. Insurance would again get in to the shell trust. And, borrower simply reaffirms collection rights again. As far as mortgage title — there is none — home is not vendible.

The process would continue until borrower is in actual default — then foreclosure takes places. Recorded Discharges (thanks to LPS and Docx and others) — false — invalid numbers, invalid format, robo-signed, etc. There is no way title companies were not aware. Credit reports may show "Paid" — for prior refinance/loan — but, not paid by you. And, if examine carefully — will find flaws in credit reporting.

Payoff checks, by refinance, likely "cleared" by depository bank clearing house bank (derivatives). But, funds not paid to "trusts" — because insurance paid-out. All the while borrowers thought they were getting a new mortgage.

Only when foreclosure takes place is Collection rights assigned (assigned is different from SOLD) (this is where you see them scurrying about trying to get docs in order — trying to show that Note went to trust). But, note could NEVER have gone to trust — note was NEVER a valid note..

But, just because someone else pays out by insurance — does not mean borrower does not owe the money. However, since mortgage was not valid to begin with — that would be the reason do not owe the money.

At very least, BK should allow discharge of all unsecured debt (refinances that were not really refinances) — but, Congress has voted down BK reform TWICE. WHY??? All would eventually be be disclosed.

2.

Pat, on June 7, 2011 at 6:01 am said:
Never had so much trouble with a loan in my 35 yrs as a homeowner.
Anonymous your posts make me question my loans.
I had ALT- A Jumbo Option Arm with Countrywide on a new purchase in 2004 and then refinanced in 2007 to avoid reset. Same broker did new loan and now I see two robo signers from Docx on my PAID in FULL at courthouse for Countrywide loan. If this document is false then we have even bigger issues!

If ALT-A's Option Arms are consider predatory were they lumped in with suprime by the banks and then sold off to a debt buyer probably one they control under another idenity ?
If that is right that is a problem?

Based on the recent articles by Neil It could be very possible that my original loan satisfaction due to my refi may not have really been paid off?
New loan was Alt -A Jumbo Option Arm but not with Countrywide with Chevy Chase. (not an easy bank to work with!)

Both loans were MERS and securitized loans this post makes me think could the loan now on this home and the one I sold in 2004 all be caught in this mess!!!
This is making my head spin and my blood pressure boil..I am just a homeowner who wanted a place to raise my family and have peaceable occupancy..The last three years have been a nightmare!! I am not an investor, I know nothing about the stock market I feel like I am in a bad dream and want it over!

If what you are saying is making any sense I as a homeowner could be exposed to two different sets of investors who could make a claim in the future if they wanted to. This goes for all who are paying or not paying of loans through MERS.
Heaven Help all Americans if what Neil and others have uncover is true.!!

3.

Hanna L, on June 6, 2011 at 9:52 pm said:
This was written by Jan van Eck in the Wall Street Journal in May: (on I & O)

"What you folks have missed is that, in cases of Indentures and "securitized mortgages" sold into trust pools, the Wall Street entities that did this ALSO purchased "insurance" in the form of "credit-default swaps" on the pools.

When the "Obligor" on the "Note" (to the extent it can even be identified) fails to remit for three months, the Trustee of the Trust demands payment of the entire principal from the insurer (which is why AIG and Radian Insurance went bust).

As these contracts were "non-recourse," i.e. without subrogation onto the Note, the payment did not require that the "Note" be handed over to the insurer. So what happens? The "note" is fully paid (by the insurer), but is not stamped "Paid." So the Wall Street hustlers then set up some subsidiary outfit (for example, DLJ Mortgage Capital, a paper front for Credit Suisse) and dump the "Note" in there, and then go file a foreclosure, representing to the Court that the Note is not paid. In fact, the Note is fully paid, just not by the homeowner.

So what? It matters not under the U.C.C. who pays the Note: you, your rich uncle, your church group, whatever: "Paid" is still "Paid." The guys who are laughing literally at the Bank are the guys who foreclose and flip the house, stuff the fresh cash into big bonus checks for themselves, and collect twice on the same Note. Sometimes, they have figured out how to collect THREE TIMES on the same Note."
I told my judge this in 2009. Guess he didn't get it.
One couldn't prove it without discovery, anyway.

4.

saveamericaone, on June 6, 2011 at 9:11 pm said:
LOOPHOLES:
Don's fall for the buzz word "sub-prime'
Mortgage Loans bank owners benefitted from really were Alt-A loans. 'conforming' or 'agency' mortgages
Ones guaranteed by Government-Sponsored Enterprises (GSE's) Fannie Mae and Freddie Mac.
Alt-A Alt-A loans should be not be confused with alternative documentation loans.
US mortgage products defined by how they qualify for 'conforming' or 'agency' mortgages, ones guaranteed by Government Sponsored Enterprises (GSE's) Fannie Mae and Freddie Mac.

Alt-A loans are alternatives to the standard of conforming GSEbacked mortgages.
Alt-A borrower would have sufficient financial profile to qualify for a ‘conforming’ mortgage but if for (one) factor.
Borrower property and loan characteristics meet agency guidelines Fannie and Freddie automated preapproval systems grant reduced doc features automatically at no extra cost.
How many consumers were charged more who had no idea they were charged more benefitting the broker, agent, dealer, distributor?
Consumer simply charged more for ‘label’ they had no control over affixed to their ‘mortgage loan application.’
Consumers now labelled they are ‘sub-prime’ fact is we were not sub-prime when we started but banks created spin and labelled us subprime to justify paying $100 for the property they claim to own and recycle.
Alt-A and subprime differ in that, generally speaking, an Alt-A borrower would have had a sufficient financial profile to qualify for a “conforming” mortgage, if only it weren’t for one of the factors
Subprime borrower would suffer from exceptionally weak credit, income or asset characteristics
‘Mortgage Broker’ who took application ‘positioned consumer (by creating the loan application and controlling the appearance of a consumer) qualify for the ‘more expensive Alt-A or subprime loans in order to expedite their applications (placed onto the purchase order sheet of a Master Servicer’s pipeline).
ANONYMOUS, on June 6, 2011 at 5:03 pm said:
Neil
Thanks for always keeping on top of things.
Only problem with your post — is those darn “investors.”. The investors in the subprime refinanced “loans” — were the debt buying banks!! Not mortgages because — already was a (false) default loan – at – or before — so-called “refinance.”
How do you think market share changed from GSEs to the banks during the decade of subprime “refinance” fraud??? There was no magic marketing — all orchestrated — GSEs complied by purchasing the false “MBS” to their false charged-off debt — falsely represented as mortgages — but actually just collection rights that can only be transferred by assignment — as there is no valid NOTE. And, falsely securitized as “MBS.” Only security investors to the false MBS were also victims — not the “investors.” And, of course, the security investors have been paid back their principal investment.
Thank insurance — as to why homeowners — just never knew.
All subprime “refinances” — fraudulent from onset.
Government cannot hide forever. .Economy will not survive.
” I WOULD NOT INVEST IN BANKS” “WHY?” “MANY REASONS…MOSTLY BECAUSE PEOPLE ARE AFRAID OF WHAT THE BANKS MIGHT ACTUALLY HOLD…”
That my friends iS a direct quote from the talking heads just NOW on CNBC TV.
FASTEN YOUR SEATBELTS!!!!!!!!!!!!