

IN THE EIGHTEENTH CIRCUIT COURT IN AND FOR SEMINOLE COUNTY,  
FLORIDA

U.S. BANK, NATIONAL ASSOCIATION, AS  
TRUSTEE FOR MASTR ASSET BACKED  
SECURITIES TRUST 2006-FRE1,

Plaintiff,

CASE NO.: 2006-CA-001346

v.

CATHERINE F. VELARDO & NELSON J. VELARDO

Defendant's,

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**EMERGENCY MOTION TO CANCEL/POSTPONE SALE, VACATE FINAL  
JUDGMENT AND REQUEST AN EVIDENTIARY HEARING BASED UPON  
FRAUD ON THE COURT AND THE COURTS LACK OF JURISDICTION TO  
ENFORCE THE SALE**

Comes now, The Defendant's Catherine F. Velardo and Nelson J Velardo, and pursuant to Florida Rules of Civil Procedure 1.100(b), 1.140(b)(1)(6) and (h)(2) and 1.210(a) and 1.540(b)(3) and (b)(4) requests this Court to Cancel/Postpone the sale date of July 1, 2010, Vacate the Final Judgment and Request an Evidentiary Hearing Based Upon Fraud on the Court and the Courts lack of jurisdiction to enforce this foreclosure action and as grounds thereof state:

1. The Plaintiff, US BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MASTR ASSET BACKED SECURITIES TRUST 2006-FRE1, filed their complaint on July 19, 2009, without proper standing to do so, and made material misrepresentations in their pleadings.
2. A fraudulent assignment was attached to the Complaint that was not recorded until August 21, 2006, or approximately one month and seven days after Plaintiff filed the foreclosure action.

3. Said Assignment is bogus, and was delivered to the Court by Plaintiff (or Plaintiff' counsel), when Plaintiff knew, or should have known, that the purported Assignment was fraudulent. (See attached Exhibit "A")
4. In the assignment scheme, the purported author signator for MERS transferring the mortgage (**and Note, which they claimed they did not have**) to US Bank, N.A. is but an employee from the foreclosure mill of David J Stern, Cheryl Samons (Operations Manager for the Law Office of David J Stern) the same foreclosure mill filing the foreclosure action. The same foreclosure mill (Law Offices of David J Stern) acted as counsel for US Bank against Defendant MERS, that is, even though it had initially acted as counsel for Defendant MERS in this very case! After the foreclosure mill (Law office of David J Stern) represented MERS -*vis a vis* the fraudulent assignment- and then filed lawsuit against MERS, on behalf of US Bank, N.A., the foreclosure mill (Law office of David J Stern) then moved for and obtained a Clerks Default against MERS, its own client, on behalf of US Bank, its other client. Thousands of these foreclosure actions filed across FL show a clear pattern of a scheme to defraud in violation of FL §817.034 (3)(c)(d) and (4)(a) (1)(c), and also constitute a patent conflict of interest. This seems to be a common mode of operation by the Law offices of David J Stern that has resulted in cases being thrown out of by alert judges across the state.
5. US Bank, N.A., violated Florida Statutes-Notary Public Laws- by creating, or allowing to be created on its behalf, a fraudulent document and filing it with the Clerk of the Court in Seminole County, FL.
6. US Bank, N.A. is a trustee in this case, and does not and cannot own the mortgage, as they are acting on behalf of the investment trust. US Bank has claimed that they are the owner and the holder of the note, which is a fraudulent statement.
7. In addition to not having standing and claiming that they own and hold the note and mortgage, US Bank, N.A., falsely alleged, "The Plaintiffs is not presently in possession of original Note and Mortgage. However, a) the plaintiff was in possession of the Note and Mortgage and was entitled to enforce THEM when the loss occurred

b) the loss of possession was not the result of a transfer by plaintiff or lawful seizure; and c) the plaintiff cannot reasonably obtain possession of the Note and Mortgage because THEIR whereabouts cannot be determined.

8. A fraudulent Affidavit in Support of Plaintiffs Motion for Summary Judgment was also filed. The affidavit was signed by a purported custodian of records and as a supposed “person of personal knowledge” Sean Nix. This document has been researched by a forensic document fraud expert and it has been proven to be a fraudulent instrument of absolutely no legal validity. The Defendant looks forward to exposing this document in court. (See Exhibit “B”)
9. Since US Bank, N.A. is not the owner and holder of the note, nor where they at the time of filing this foreclosure action, they cannot simultaneously claim, "The original note has been lost."
10. US Bank, N.A. as trustee for mortgage-backed securities has been filing foreclosure actions across the United States under false, deceptive, and misleading representations without any legal standing to do so, representing a pattern of corrupt and illegal activity.
11. US Bank’s own complaint clearly establishes that an entity other than US Bank was in fact the true owner of the claim at the time the lawsuit was filed. US Bank has failed to establish, through any of its filings, that it owned or held the mortgage or the promissory note at the commencement of this action. US Bank is not, and never was the real party in interest, and is not authorized to bring this foreclosure action.
12. US Bank, attached to its complaint a copy of a Mortgage dated October 19, 2005, containing terms of the agreement between the parties that contracted to same, the Borrower (Defendants), CATHERINE F VELARDO and NELSON J VELARDO, and the Lender, Fremont Investment and Loan of Irvine, California.
13. In Florida, the prosecution of a residential mortgage foreclosure action must be brought by the owner and holder of the mortgage and note. Plaintiff is not entitled to maintain an action if it does not own and hold the note which is purportedly secured by the subject mortgage. *Your Construction Center, Inc. v. Gross*, 316 So. 2d 596 (Fl. 4<sup>th</sup>

DCA 1975), *Greenwald v. Triple D Properties, Inc.*, 424 So. 2d 185, 187 (Fla. 4th DCA 1983).

14. The plaintiffs' US Bank's lack of ownership of the mortgage and promissory note in this case goes to the heart of its claim of standing, permeates the entire proceeding and subverts the integrity of the action. *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794 (Fla. 3rd DCA 1999).
15. Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bringing the claim be recognized in the law as being a real party in interest entitled to bring the claim. This entitlement to prosecute a claim in Florida courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. *Kumar Corp. v. Nopal Lines, Ltd, et al*, 462 So. 2d 1178, (Fla. 3d DCA 1985).
16. In an attempt to cover up their sham pleadings, US Bank, N.A. filed a purported "original note" with the court on February 06, 2007, over seven months after the filing of the lawsuit.
17. This filing, besides being over seven months late, **as opposed to the statutory requirement of being included with the filing of the complaint**, still failed to give US Bank standing.
18. In addition to the non-recorded fraudulent purported assignment (see above paragraphs 2-3), the Note that was filed was endorsed in blank, through a fraudulent non dated, and at clear site bogus, allonge purporting to endorse the note to U.S. Bank N.A. as trustee. Defendant looks forward to revealing to the court the deliberate fraud behind this instrument. (See attached Exhibit C).
19. Even the bogus assignment provided was not recorded as required by Florida Law, meaning that this court overlooked the fact that the Plaintiff was filing a foreclosure lawsuit, without presenting/filing the Note and without a valid assignment having been recorded prior to or the time the Plaintiffs filed their foreclosure action completely in opposition to the statutory requirement of being included with the filing

of the complaint to at minimum prove the standing of the party attempting to foreclose on a FL homestead.

20. Fla. Stat. §701.02 states in pertinent part: (1) An assignment of a mortgage upon real property or of any interest therein, is not good or effectual in law or equity, against creditors or subsequent purchasers, for a valuable consideration, and without notice, unless the assignment is contained in a document that, in its title, indicates an assignment of mortgage and is recorded according to law.
21. Not only has US Bank, N.A. failed to provide any documentation whatsoever that they are the real party in interest in this case, their status as Trustee limits their authorization to act, and they are barred from taking any action not specifically authorized under the Pooling and Servicing Agreement (PSA).
22. The Pooling and servicing agreement are in possession of the Defendant and will be presented as evidence at the evidentiary hearing, excerpts of which are attached here as exhibits.
23. Florida law is clear that a bank is acting ultra vires if its trust department exercises a power not expressly granted to it by the trust agreement.
24. The respective powers of a Trustee must be interpreted by the Plan Documents, especially the Trust Agreement. *Celotex Corp v City of New York* 487 F.3d 1320 (11th Cir. 2007). Furthermore, "From the trust, the trustee derives the rule of his conduct, the extent and the limit of his authority, the measure of his obligation." *Jones v. First Nat 'l Bank in Fort Lauderdale* 226 So. 2d 834, 835(Fla. Dist. Ct. App 1969). Also, "The trustee can properly exercise such powers and only such powers as (a) are conferred upon him in specific words by the terms of the trust, or (b) are necessary or appropriate to carry out the purposes of the trust and are not forbidden by the terms of the trust." Restatement (Second) of Trusts Sec. 186 (1959).
25. In the majority of Mortgage Backed Securitized Trusts, as in the case at present, the applicable Trust documents are public record and filed and recorded online at [www.secmf.com](http://www.secmf.com). The applicable Pooling and Servicing agreement which governs US Bank's conduct and outlines their specific powers conferred upon them in the

administration of The MASTR ASSET BACKED SECURITIES TRUST 2006-FRE1 is a 695 page document, which applicable parts referenced will be attached to this motion. (See Attached Exhibit “D”).

26.

“SECTION 2.01. CONVEYANCE OF MORTGAGE LOANS

The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee without recourse, for the benefit of the Certificate holders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Assignment Agreement, payments made to the Trust Administrator by the Swap Administrator under the Swap Administration Agreement and the Swap Account and all other assets included or to be included in REMIC I. Such assignment includes all interest and principal received by the Depositor or the Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed original Assignment Agreement. **(The cutoff date of MASTR ASSET BACKED SECURITIES TRUST 2006 FRE1 was February 1, 2006 as stated in the Mortgage Loan Pooling and Servicing Agreement FRE1 page 206 as Exhibit A-1, yet, in the instant case, the assignment was purported to have been executed on July 1, 2010 and shows no chain of assignments, endorsements nor true sales throughout the pass-through certificates)**

In connection with such transfer and assignment, the Depositor does hereby deliver to, and deposit with, the Custodian (on behalf of the Trustee), with respect the related Mortgage Loans, the following documents or instruments with respect to each Mortgage Loan so transferred and assigned (a “*Mortgage File*”):

(i) the original Mortgage Note, endorsed in blank or in the following form: “*Pay to the order of U.S. Bank National Association, as Trustee under the applicable agreement,*

*without recourse, ” **with all prior and intervening endorsements showing a complete chain of endorsement from the Originator to the Person so endorsing to the Trustee;***

*---(Emphasis Added, **THE ORIGINATOR CANNOT ENDORSE DIRECTLY TO THE TRUSTEE!** this is not only a fact in the Pooling and Servicing Agreement, but is also a legal requirement from the Internal Revenue Code governing the REMIC status tax exemption these investments vehicles benefited from, yet the Velardo Assignment showed no chain of endorsement through the pass through in violation of both IRS laws and the plaintiffs own Pooling and Servicing Agreement)---*

(ii) **the original Mortgage, noting the presence of the MIN of the Mortgage Loan and language indicating that the Mortgage Loan is a MOM Loan if the Mortgage Loan is a MOM Loan, with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;** (Emphasis Added)

(iii) unless the Mortgage Loan is registered on the MERS® System, an original Assignment in blank;

(iv) **the original recorded Assignment or Assignments showing a complete chain of assignment from the Originator to the Person assigning the Mortgage to the Trustee (or to MERS, if the Mortgage Loan is registered on the MERS® System and noting the presence of the MIN) as contemplated by the immediately preceding clause (iii); ”** (Emphasis Added)

27. As emphasized above in items (i), (ii), (iii) and (iv) for a mortgage loan to be included into this trust it MUST include a recorded Assignment (Which it never had!) as well as an Original Note, both endorsed in blank or "Pay to the order of US Bank National Association, as trustee **with a full chain of endorsement from originator to trustee**". Under the Plaintiffs own filed bogus documents, their assignment was not executed until July 1, 2006 and not recorded until August 21, 2006, well after the loan was supposedly in default and well after the REMIC I cutoff date of February 1, 2006, in violation of their own Pooling and Servicing Agreement.

28. A Trust cannot sue outside the parameters of its own contract that gives it life and powers. Outside the PSA the Trust has no existence and no powers.
29. Furthermore, **A Broken Chain of Assignments renders the “Deed of Trust” Void and Unenforceable under UCC 3-201, 3-204 & 3-302 and as such no triggering of the foreclosure clause in the “Deed of Trust” is possible.**
30. These are therefore all fabricated/fraudulent documents filed with the full intent of defrauding the Defendants to illegally foreclose on their property and defrauding the court as to illicitly obtain standing where none existed. Yet, of most importance is the fact that the above stated behavior seems to be a common ongoing scheme by US Bank and the foreclosure mills across the state of Florida and across this land. This scheme is utilized to obtain the court’s jurisdiction in facilitating the grand theft of defendant’s homestead properties. A clear pattern of criminal enterprise is revealed that should, can and will undoubtedly be proven with legal specificity before the courts.
31. Such fraudulent behavior of filing foreclosure lawsuits without proper standing to do so is an increasing nationwide problem, and numerous state, federal district and bankruptcy courts have caused actions such as the present one to be dismissed for failure to state a claim.
32. As held in *In Re Foreclosure Actions*, "A Foreclosure plaintiff, especially one who is not identified on the note and/or mortgage at issue, must attach to its complaint documentation demonstrating that it is the owner and holder of the note and mortgage upon which suit is filed, In other words, a foreclosure plaintiff must provide that it is the owner and holder of the note and mortgage as of the date the foreclosure action is filed. Appropriate "documentation" includes, but is not limited to, trust and/or assignment documents executed before the action was commenced, or both as circumstances may require." 2007 WL 4034554 at \*1 (N.D. Ohio 2007).
33. In a very recent case titled *U.S. Bank v Ernest Harpster*, Hon. Judge Lynn Tepper of Pasco County, FL dismissed the case with prejudice after she found that an “assignment of mortgage” filed in the case, which was meant to show how U.S. Bank



obtained ownership of the mortgage, was false. The document was dated 2007 but the judge found it was created in 2008. The Law Offices of David J. Stern, which represented the bank, prepared the document. The document was “fraudulently backdated, in a purposeful, intentional effort to mislead,” Judge Tepper ruled. (See Exhibit “E”)

34. In another recent foreclosure case, also filed by the foreclosure mill of David J Stern, hon. Judge Anthony Rondolino, FL Sixth Circuit in and for Pinellas County, in the case of GMAC v. Debbie Visicaro et al, April 07, 2010; Judge Rondolino said: “law-firm employees are filing sworn affidavits that wrongly claim their client owns the mortgage”. He suggested the law-firm employees **“should be deposed to see whether they ought to be charged with perjury.”** The full transcript is in the defendants possession and available at the court request.
35. In Deutsche Bank Nat. Trust Co. v. Steele, 2008 WL 111227 (S.D. Ohio), the Court refused to allow Deutsche Bank Nat'l Trust to proceed with foreclosure proceedings until they could show, by a preponderance of the evidence, that it owned the note and mortgage when the complaint was filed.
36. Most recently, in a case identical to the instant case, BAC Funding Consortium Inc. v. US Bank, N.A. as Trustee (FL 2<sup>nd</sup> DCA case 2D08-3553 Opinion February 12, 2010) The 2<sup>nd</sup> District overturned the trial courts final summary judgment of foreclosure in favor of US Bank, N.A. The Court ruled that the lower courts decision was entered prematurely as US Bank had failed to establish its status as legal owner and holder of the note and mortgage. In its ruling the 2<sup>nd</sup> DCA stated:

“Second, regardless of whether BAC answered the Complaint, U.S. Bank was required to establish, through admissible evidence, that it held the note and mortgage and so had standing to foreclose the mortgage before it would be entitled to summary judgment in its favor. Whether U.S. Bank did so through evidence of a valid assignment, proof of purchase of the debt, or evidence of an effective transfer, it was nevertheless required to prove that it validly held the note and mortgage it sought to foreclose. See Booker v. Sarasota, Inc., 707 So. 2d 886, 889 (Fla. 1<sup>st</sup> DCA 1998) (holding that the trial court, when

considering a motion for summary judgment in an action on a promissory note, was not permitted to simply assume that the plaintiff was the holder of the note in the absence of record evidence of such). The incomplete, unsigned, and unauthenticated assignment attached as an exhibit to US Bank's response to BAC's motion to dismiss did not constitute admissible evidence establishing U.S. Bank's standing to foreclose the note and the mortgage, and US Bank submitted no other evidence to establish that it was the proper holder of the note and/or mortgage."

"Essentially, U.S. Bank's argument in favor of affirmance rests on two assumptions: a) that a valid assignment or transfer of the note and mortgage exists, and b) that a valid defense to this action does not. However, summary judgment is appropriate only upon record proof—not assumptions. Given the vastly increased number of foreclosure filings in Florida's courts over the past two years, which volume has taxed both litigants and the judicial system and increased the risk of paperwork errors, it is especially important that trial courts abide by the proper standards and apply the proper burdens of proof when considering a summary judgment motion in a foreclosure proceeding".

37. Rule 1.210(a) of the Florida Rules of Civil Procedure provides, in pertinent part Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought...The Plaintiff, US Bank, N.A., meets none of these standing and pleading criteria and seems to be acting ultra vires here..
38. No Florida case holds that a separate entity can maintain suit on a note payable to another entity unless the requirements of Rule 1.210(a) of the Florida Rules of Civil Procedure and applicable Florida law are met. *Corcoran v. Brody*, 347 So.2d 689 (Fl. 4th DCA 1977).

39. Fla. R. Civ. P. Rule 1.310(b) provides that all exhibits attached to a pleading shall be considered a part of the pleading for all purposes. It appears on the face of the Plaintiffs Complaint and the documents attached thereto that the Plaintiff is not the proper party to bring this action and is simply acting ultra vires.
40. When exhibits are inconsistent with the Plaintiff's allegations of material fact as to who the real party in interest is, such allegations cancel each other out. *Fladell v. Palm Beach County Canvassing Board*, 772 So.2d 1240 (Fla. 2000); *Greenwald v. Triple D Properties, Inc.*, 424 So.2d 185, 187 (Fla. 4th DCA 1983); *Costa Bella Development Corp. v. Costa Development Corp.*, 441 So.2d 1114 (Fla. 3rd DCA 1983).
41. "The determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party." *Rogers & Ford Const. Corp. v. Carlandia Corp.* 626 So.2d 1350, 1352 (Fla.1993).
42. In the instant case, the Plaintiff, US Bank, N.A., knew and was fully aware that it was asserting a right to foreclose as if it was the owner and holder of subject mortgage and promissory note when the Plaintiff knew that such right did not exist. Furthermore they committed open fraud in attempting to fabricate standing to file this foreclosure case.
43. "A plea is considered a 'sham' when it is palpably or inherently false, and from the plain or conceded facts in this case, must have been known to the party interposing it to be untrue." *Rhea v. Halkney*, 157 So. 190, 193 (Fla. 1943); *O'Berry v. Pearson*, 186 So. 430 (1939); *Furst v. Blackman*, 744 So.2d 122(Fla. 4th DCA 1999), *Re/f Development, In. v. Wachovia Mortz Co.*, 340 So.2d 1267 (Fla.4th DCA1976).
44. The integrity of the civil litigation process depends on the truthful disclosure of facts. *Metropolitan Dade County v. Martinson*, 736 So.2d 794 (Fla. 3rd DCA 1999), *Andrews v. Palmas De Majorca Condo*, 898 So.2d 1066 (Fla. 5th DCA 2005).
45. A trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a Plaintiff has perpetrated a fraud on the court. *Arzuman v. Saud* 843 So.2d 950 (Fla. 4th DCA 2003), *Piunno v. R.F. Concrete Constr., Inc.*, 904 So.2d 658 (Fla. 4th DCA 2005).

46. A party guilty of fraud or misconduct in the prosecution of a civil proceeding should not be permitted to continue to employ the judiciary to achieve its ends. *Andrews v. Palms Dc Majorca Condominium*, 898 So. 2d 1066 (Fla. 5th DCA 2005).
47. It is appropriate for the trial court to dismiss an action based on fraud, where there is blatant showing of fraud, pretense, collusion, or other similar wrongdoing. *Distefano v. State Farm Mutual Automobile Ins. Co.*, 846 So.2d 572, 574 (Fla. 1<sup>st</sup> DCA 2003).
48. Defendant seeks a dismissal of the Plaintiffs' complaint on the basis of fraud on the court and its lack of jurisdiction under the circumstances of this case, therefore; "a formal evidentiary hearing on this motion to dismiss, as well as permissible discovery prior to the hearing, is required." *Dynasty Express Corporation v. Weiss*, 675 So.2d 235, 239 (Fla. 4<sup>th</sup> DCA 1996).
49. Unfortunately, such factual situations like this occur all of the time, and US Bank, N.A., files thousands of foreclosure lawsuits throughout the country, while never owning the note in many suits they bring, while they make the same fraudulent claims before the court, often going unchallenged as they foreclose on people's homes.
50. Florida Rule 1540(b) also gives relief from judgment, decrees or orders if there is merit to the case, which there is in this case. In paragraph (b) on motion and upon such terms that are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:
- i. Mistake, inadvertence, surprise, or excusable neglect;
  - ii. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing;
  - iii. Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
  - iv. That the judgment or decree is void

"The rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order or proceeding or to set aside a judgment or decree for fraud upon the court".

51. The Defendants currently have an Independent Action pending before the 5<sup>th</sup> DCA as a perfected appeal awaiting assignment. The case is in appeal as counsel for US Bank, as officers of the court, with clear intent, did misrepresented the FL rules regarding intrinsic and extrinsic fraud to the court as relating to a motion under 1.540(b)(3) filed in an original foreclosure trial case, rather than as **an independent action**, pursuant to 1.540(b)(3), which the Complaint was. (FL 5<sup>th</sup> DCA Case # 5D09-3180, lower case # 2008-CA-7344 and FL 5<sup>th</sup> DCA Case # 09-1992- related to this very case 06-CA-1343- still pending rehearing . (See Exhibit “G”)
52. From the plaintiffs own pleading, it is easy to see where there have been both fraud and misrepresentation in this case. Furthermore, there is no time limitation barring a motion under 1.540(b)(4) for voided judgment. The Defendants herein claim that the judgment granting US Bank, N.A. is a voided judgment. The Plaintiffs never had standing, filed fraudulent documents with the court to create standing, and procured and obtained this court’s jurisdiction by and through fraud. The courts final judgment is a result of fundamental error, is void ab initio and is without any legal authority whatsoever.
53. The Order Granting the plaintiffs Final Summary Judgment was and is defective in that this Court did not completely determine or investigate its own jurisdiction as determined by the lawful standing of the Plaintiff to bring suit, and as a consequence, this Judgment is VOID for want of jurisdiction and denial of due process.
54. The Defendants further aver that **US Bank, N.A. is operating as an unregistered trust in the state of Florida.**
55. Pursuant to Rule 1.210(a), 1.130(a) and 1.140(b)(7) of the Florida Rules of Civil Procedure the Special Purpose Vehicle (“SPV” MASTR ASSET BACKED SECURITIES TRUST 2006-FRE1) was and is doing business in Florida as an unregistered trust in violation of Florida law.
56. The plaintiff claimed to have been acting on behalf of a mortgage trust. The mortgage trust has issued certificates to investors as public securities. It has issued certificates to investors secured by a Florida mortgage. It is not an express trust under the Florida

Trust Code. The Trust is a common law declaration of trust under Section 609 of Florida Statutes. The Trust is an association of two or more persons for the purpose of transacting business in Florida. Section 609.01 id.

609.02 "Filing a declaration of trust.--Every such organization organized for the purpose of transacting business in this state, or organized in this state for the purpose of transacting business elsewhere, which intends to sell or offer for sale any units, shares, contracts, notes, bonds, mortgages, oil or mineral leases or other security of such association shall, prior to transacting any such business, file with the Department of State a true and correct copy of the declaration of trust under which the association proposes to conduct its business, which copy shall be sworn to, as being a true and correct copy, by the chair of the board of trustees named in such declaration of trust. When such copy shall have been filed with the Department of State it shall constitute public notice as to the purposes and manner of the business to be engaged in by such association. The Department of State, prior to the issuance of the certificate by it, shall collect from the said association a filing fee of \$350, which fee shall be paid by it into the general fund of the state."

"Upon the filing of the copy of the declaration of trust and the payment of the filing fee, in compliance with s. 609.02, the Department of State shall issue to the trustees named in the said declaration of trust a certificate showing that such declaration of trust has been duly filed in its office; whereupon, such association shall be authorized to transact business in this state; provided that all other applicable laws have been complied with".

Section 609.3 id.

57. The trust, before offering securities in the form of certificates to investors, was required to file with the Secretary of State a true and correct copy of the Declaration of Trust under which the trust proposes to conduct its business.
58. The trust has failed to file its declaration of trust, not paid the \$350.00 fee and not obtained a certificate from the Department of State and yet commenced to transact its business in Florida. Accordingly, the Trust lacks standing to have this foreclosure action enforced in the courts of Florida and the persons operating the trust in violation of Chapter 609 have committed a third degree felony under Florida law. Section 609.06

59. Arguably by registering the security with the Securities and Exchange Commission, the trust and its officials are exempted from the requirements of Section 609.05 to obtain a permit to sell securities by the preemption created by Securities and Exchange Commission authorities and other related Federal authorities. However such an exemption does not exempt the trust from the other requirements of Chapter 609 with which the trust has failed to comply.
60. Florida law requires the filing. Accordingly, plaintiff lacks standing to seek foreclosure on behalf of a trust doing business in Florida that has not complied with the registration requirements of Florida law. O'Hanlon v. Herndon, 5 So.3d 723 (Fla. App. 2 Dist. 2009).
61. The certificate holders of the trust are barred from seeking enforcement of the mortgage under the doctrine of "Unclean Hands". A mortgage, otherwise enforceable, in unclean hands is rendered unenforceable. Glanz v Computer Studies, Inc., 349 So2d 739 (3rd DCA FL 1977). **In the instant case, if this court enforces the mortgage, under Florida law, it is also enabling commission of a felony and engaging in misprision of felony.** Defendants' legal affidavit as to the search and non-registration of the Trust in FL is attached to this Motion.
62. The loan originator, Fremont Investment & Loan filed for bankruptcy protection on June 18, 2008, yet US Bank, N.A. claims to be acting as trustee for Fremont Investment & Loan which was the sole depositor into the MASTR ASSET BACKED SECURITIES TRUST 2006-FRE1; as no valid assignment was executed nor recorded prior to the trust cutoff date in violation of the trust's Pooling and Servicing Agreement and in violation of Internal Revenue Code governing REMIC status TITLE 26 § 860 A -G ; therefore, Defendant will also seek proof that this transfer was properly disclosed to, **and approved,** by the bankruptcy court.

**WHEREFORE,** the Defendant's, Catherine F. Velardo and Nelson J. Velardo, request this Court to cancel the foreclosure sale scheduled for July 1, 2010 pending a full Evidentiary Hearing and vacate the Final Judgment of Foreclosure. As a result of the

plaintiffs fraudulent actions and inactions they have **no standing** to evoke the jurisdiction of this court and that they will **never** be able to obtain the jurisdiction of this court, therefore this Honorable Court **lacks jurisdiction** to hear this case at hand and should **dismiss this case with prejudice**; award the Defendant's attorney's fees and for all other relief to which the Defendant's prove themselves entitled.

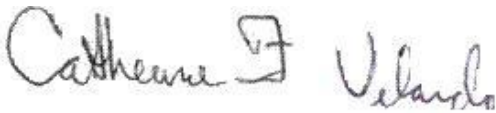
The Defendants in this case are acting Pro-se yet will be acquiring legal counsel for the hearing of this motion and any further proceedings related to this case defense and prosecution.

Respectfully submitted by:

Catherine F Velardo and Nelson J Velardo (Defendants)  
867 Paddington Terrace  
Heathrow, FL 32746  
(407)771-4467

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing Motion was forwarded by US Mail to: Michelle K Mason Law Offices of David J Stern 900 South Pine Island Road Suite 400 Plantation, FL 33324-3920 and via e-mail Mail to mmason@dstern.com on the **10th** day of **June 2010**.



Catherine F Velardo