

IN THE CIRCUIT COURT FOR GARRETT COUNTY, MARYLAND

**CARRIE M. WARD, et al.,
PLAINTIFFS**

vs.

Case Number: 11-C-17-015056

**SCOTT E. AUSTIN,
DEFENDANT**

OPINION and ORDER of COURT

Following a hearing before Judge Strubin on the Defendant's Motion to Alter or Amend the Court's Order denying Defendant's Motion to Stay and/or Dismiss the Foreclosure Action, the Court reserved on the matter for 30 days. The Court also allowed the opportunity for counsel to file supplemental memoranda, which counsel for both the Defendant/Petitioner and Plaintiff/Respondent did file.

After further consideration of the well-argued positions of both the Defendant/Petitioner and Plaintiff/Respondent and in reviewing the evidence regarding the note and Allonges, the Defendant/Petitioner's Motion to Dismiss the Foreclosure Action is **GRANTED** and the action is hereby **DISMISSED**.

Under the Maryland Commercial Code, "in an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings." Md. Code, Comm. Law § 3-308. Once a signature or the validity of an instrument has been put in issue by specific denial, the burden of establishing validity is on the person claiming validity. *Id.* In comment 1 to § 3-308, "presumed" is explained to mean that "until some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is not required to prove that it is valid." It goes on to state



that this presumption requires the defendant to “make some sufficient showing of the grounds for the denial before the plaintiff is required to introduce evidence” and the “defendant’s evidence need not be sufficient to require a directed verdict, but it must be enough to support the denial by permitting a finding in the defendant’s favor.” Md. Code, Comm. Law § 3-308, cmt. 1. In addition, under Md. Comm. Code § 1-206, when the Code “creates a ‘presumption’ with respect to a fact or provides that a fact is ‘presumed’ the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.” In other words, the signature is presumed valid until the defendant can provide some evidence that calls its validity into question to rebut that presumption.

In this Court’s opinion, the Defendant/Petitioner made a sufficient showing of the grounds for the denial of the validity of the instrument and that the Plaintiff/Respondent did not meet its burden and satisfy the Court of the instrument’s validity. The entire history of this case raises concerns for the Court.

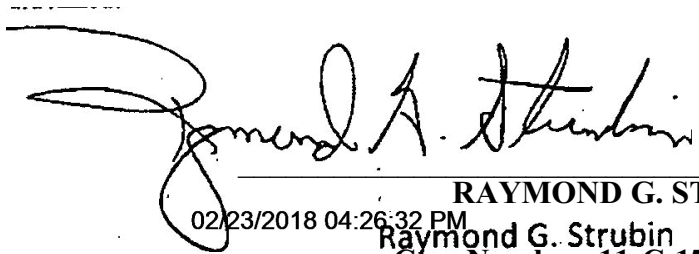
The instrument was executed on April 18, 2006 by the Defendant/Petitioner and JP Morgan Chase Bank, NA. A foreclosure action was filed against the property in September of 2013. In that action, JP Morgan Chase is claimed as the owner of the Note and no Allonges are attached to the note. A Chase “Lost Note Affidavit” was provided to the Defendant, dated September 5, 2012, and the note attached to the affidavit also contained no Allonges. The note was lost for a period of nine years although it was never physically transferred out of the custody of Chase. The prior foreclosure action was dismissed by this Court after the Court concluded the Plaintiff/Respondent did not have a right to foreclosure. Five years later, this foreclosure action is filed and two alleged Allonges are now attached to the note, dated October 13, 2006, with the electronic signatures of “A. Young.” The note and purported Allonges are visually unusual, the

note itself is two-hole punched at the top but the Allonges are not hole punched. While this is a minor discrepancy, coupled with the rest of the facts, it causes concern for the Court. Lastly, the alleged signer of the Allonges, A. Young, was not present to testify. The testimony of the agent was that he did not personally know A. Young and could not attest to the fact that the Allonges were in fact the originals. Additionally, the agent testified and an “Incumbency Certificate” indicated that the signer’s legal name was Judith Alisha Young.

Considering all these facts together, the Defendant/Petitioner has rebutted the presumption of validity of the instrument. There are too many discrepancies for the Court to ignore and the Plaintiff/Respondent has not satisfied its burden.

With the advancement of technology, these types of issues are going to be more common in the future. It seems that these issues could be easily fixed if mortgage companies would take simple measures to make an original more easily identified. An electronic signature on its own is difficult to authenticate. Copies and originals are indistinguishable. If the companies could use a specially watermarked paper, if the signer hand initialed and dated in ink on the page, or if the page was marked with an embossed seal, it would be easier to identify an original document. Any number of things could potentially prevent issues such as these in the future.

For the foregoing reasons, the foreclosure action is hereby **DISMISSED**.


RAYMOND G. STRUBIN
02/23/2018 04:26:32 PM
Raymond G. Strubin JUDGE
Case Number: 11-C-17-015056

