APPEALS COURT

THE COMMONWEALTH OF MASSACHUSETTS
DOCKET NO. 2019-P-0317

U.S. BANK TRUST, N.A.,
PLAINTIFFS-APPELLEE,

v.

KELLY JOHNSON, ET AL.,
DEFENDANTS-APPELLANT.

A REVIEW OF A JUDGMENT FROM THE
CENTRAL HOUSING COURT

BRIEF OF AMICUS CURIAE

IN SUPPORT OF THE DEFENDANT-APPELLANTS

VACATING THE ORDERS SETTING THE
APPEAL BOND AND DENYING THE APPELANT'S MOTION TO
WAIVE THE APPEAL BOND

GRACE C ROSS
c/o 10 OXFORD ST., #2R
WORCESTER, MASSACHUSETTS 01609
GRACE@GRACEROSS.NET
617-291-5591

JUNE 26, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES................................ iii

INTEREST OF *AMICUS CURIAE*............................. 1

ISSUE FRAMED By APPEALS COURT......................... 3

SUMMARY... 3

STANDARD OF REVIEW 7

ARGUMENT..9

DISCUSSION...13

SAMPLE SCENARIO I......................................15

EVIDENCE OF THE INTENT FOR VALID TRANSFERS 17

SAMPLE SCENARIO II.....................................26

VIOLATION OF THE BEST EVIDENCE RULE....................31

Conclusion...35

CERTIFICATE OF COMPLIANCE..............................37

CERTIFICATE OF SERVICE.................................38

TABLE OF AUTHORITIES

Cases

Abate v. Fremont Investment & Loan, 470 Mass. 821 (2015)). 7
Avery v. Steele, 414 Mass. 450, 456, 608 N.E. 2d 1014 (1993 8
Bank of America, N.A. v. Rosa, 466 Mass. 613, 624 (2013 6
Bank of N.Y. v. Bailey, 460 Mass. 327, 333 (2011 7
Barnes v. Boardman, 149 Mass. 106, 114 (1889). 19
Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 710-11 (2004 7
CMJ Management Company v. Wilkerson (March 31, 2017) 8
Commonwealth v. Levin, 7 Mass. App. Ct. 501 , 504 (1979). 8
Eaton v. Federal National Mortgage Association, 462 Mass. 569, 586 n.26, 589 n.28 (2012 .... 3, 6, 20
Farley v. Sprague, 374 Mass. 419, 425, 372 N.E.2d 11298 (1978 8
General Motors Corp., petitioner, 344 Mass. 481 , 482 (1962). 8
Home Sav. Bank of America, FSB v. Camillo, 697 N.E.2d 134, 45 Mass.App.Ct. 910 (1998) 7
HSBC Bank USA, N.A., trustee v. Matt. 464 Mass. 193 (2013 3
Keene v. Brigham & Women’s Hosp., Inc., 56 Mass. App. Ct. 10, 21 (2002), S.C., 439 Mass.223 (2003).” 8
Pires v. Commonwealth, 373 Mass. 829, 838, 370 N.E.3d 1365 (1977) 8
Rental Property Management Services v. Hatcher, 479 Mass. 542 (2018 7
Valentin v. Hospital Bella Vista, No. 00-2184., (2001 7
Veal v. American Home Mortgage Servicing, Inc., No. 09-14808 (Bankr. 9th Cir. 2011) 9

Statutes

G.L. c. 239 S5 .... 3, 8
G.L. c. 244, §35A; iii 32
MGL Chapter 106 §3 14
MGL Chapter 106 §9 15
MGL Chapter 239 §1 6

Other Authorities

“§ 9-203(b) 22
Article 3 .... passim
Article 9 .... passim

UCC 3-301(ii) 11
UCC 3-602(a)(c) 13
UCC ss 1-201(b)(35), ... 13
UCC ss 3-203(a) 11
UCC ss 3-203(b). 11
UCC ss 3-301(i)). 11
UCC ss 9-109(a)(3) 13

Rules

Mass. R. App. P. 17 1
Mass.R.Civ.P. 37(b)(2) 8

Massachusetts Constitution

Massachusetts Article X Rule of Evidence 1002 ..... 33, 34

This Brief is submitted pursuant to Mass. R. App. P. 17. Grace Ross as *pro se Amicus,* the coordinator of the Massachusetts Alliance Against Predatory Lending. Your Amicus submits this brief in support of Defendants- Appellant, given the interest of the homeowners and "former" homeowners of Massachusetts.

STATEMENT OF INTEREST OF AMICUS CURIAE

Your pro se amicus curiae hereby submits a brief in this matter in the interests of the Massachusetts Constitution's guarantee of equal justice for all. She has an interest also as a tenant whom a foreclosure affected directly, and, for the past decade, as both coordinator of the 70-organization Massachusetts Alliance Against Predatory Lending (MAAPL), and chair of the Worcester Anti-Foreclosure Team (WAFT), an association of individuals fighting the foreclosure of their homes.

Massachusetts is a title theory state. The grant of a mortgage on a home conveys legal title to it. Massachusetts has had a Statute of Frauds since England's Parliament first enacted it in 1667. In 1692, we enacted our own. The last time that Massachusetts had a foreclosure crisis this severe, it was a cause of the American Revolution. This crisis has stressed our legal system and the Rule of Law to a deeply troubling extent. It is thus of the utmost importance to the security of title to real property that our courts unambiguously vindicate what the

Statute of Frauds requires. The instant case includes a core violation of these hundreds' years old requirements for transfers of title (legal title): that one cannot sell what one does not have. Though a foreclosure gives rise to it, therefore, this eviction case has financial as well as legal implications for every Massachusetts homeowner with a mortgage.

As coordinator of MAAPL, your amicus serves as a focal point for attorneys in private practice who litigate foreclosure issues in federal and Massachusetts courts. As chair of WAFT, she supports homeowners to understand their legal rights, articulate the facts and caselaw in their cases and navigate our legal system when representing themselves in post-foreclosure Housing Court eviction cases. Challenges relevant to this case include Central Mass. Housing Court ("CMHC") judges' essentially blanket refusal to assess plaintiffs' standing, and thus whether they themselves have subject-matter jurisdiction; this is in the face of and yet despite facts clearly showing a purported foreclosure to be void.

The synergy of these roles gives your amicus an excellent sense how well legislation, regulations, and decisional law protect residents' constitutional rights to their property, i.e., their homes.

Your amicus is not an attorney. Yet her decades as a housing policy analyst, as a lobbyist for housing-related

organizations, in crafting legislation to address the ongoing home foreclosure crisis, and in detailed negotiations with legislators over the precise meanings of proposed wording, make her particularly well qualified to construe it. Your amicus also provided expert testimony to joint committees of the Legislature, including Ways and Means, as to 47 foreclosure-related bills.

The Massachusetts Supreme Judicial court has accepted four of her amicus briefs including a point of law. See *HSBC Bank USA, N.A., trustee v. Matt*. 464 Mass. 193 (2013). The Appeals Court and CMHC have each accepted one of her amicus briefs. Her briefs to the United Nations have been cited in debate in the General Assembly, garnering coverage by 56 international news outlets.

ISSUE FRAMED BY APPEALS COURT: QUESTION 2

Amicus responds to Question 3 (3/5/19 Amicus Announcement), framed by the Court as follows:

2. Where a defendant in a post-foreclosure summary process action has raised as a defense, the failure of the foreclosing entity to demonstrate that it (or the party on whose behalf the entity is authorized to act) holds the original note, has the defendant demonstrated a "not frivolous" appellate issue warranting the waiver of the requirement to post an appeal bond if the defendant is indigent**?** See G. L. c. 239, § 5; Eaton v. Federal National Mortgage Association, 462 Mass. 569, 586 n.26, 589 n.28 (2012). See also Mitchell vs. U.S. Bank Nat'l Ass'n, Appeals Court, No. 17-P-1445, slip op. at 3 (Mar. 4, 2019).

SUMMARY

Homeowners, such as the Johnson-O'Dell family, and even occupants facing eviction who similarly have the right post-foreclosure to challenge the Plaintiff's title as an attempted foreclosing party, are often confronted by the statement, "Well, the Mortgagor executed a promissory Note when getting the Mortgage."

This argument is then presented by judges, for instance, as a reason why the homeowner has no need to view the original wet ink Note that the homeowner had signed at the closing.

Amicus mentions only as an aside, that there are the many reasons why not every contact can be presumed legal, especially such contracts of adhesion as the modern mortgage Note and mortgage. Where an entire industry is proven to have adopted unconscionable practices in relation to mortgage origination, the presumptions are simply baseless: 1) that the Note evidencing the debt is still in negotiable form, and 2) that any party getting its hand on a Note, and taking the steps to create the appearance of the right to foreclose, has acted completely legally.

Anyone who has ever received checks – the customary personal check is a UCC-3 instrument, just like a mortgage Note – has at some point unfortunately left one in clothing that went through the wash, so that it came out as little wisps of paper,

or has otherwise unintentionally destroyed the piece of paper that constitutes a check.

Anyone who has experienced this knows that the right to the money is then gone, unless the maker of the check is kind and decent and issues a replacement.

The frequent presumption, in legal proceedings these days, that any lost or destroyed Note can be replaced, is invalid. It is true that the UCC allows a court to replace lost or destroyed Notes. But the requirements for using that section of the UCC frequently cannot be met.[1]

Another presumption is that every transfer of every mortgage Note has been done legally, and that every transferor of every Note has taken all necessary steps to ensure the preservation of all of the Note's assets, including preservation of its relationship to the mortgage contract.

This flies in the face of pervasive violations, across the U.S. financial services industry, of numerous requirements for collecting on mortgages or to foreclose. Witness the historic, largest settlement at the time, the Servicer Settlement in 2012;

---

[1] This includes, for instance, that, in Massachusetts, a court replacing a lost or destroyed Note can require that the Note's value be escrowed until the Note is discharged. This is in order to protect the Note's maker from potential, unjustified, duplicative liability on the Note to two parties, each claiming to be entitled to be paid. It would fly in the face of the purpose of the UCC, if a second party could also be entitled to payment on the same destroyed or lost Note.

the Attorney Generals' Settlement with the Five Mega-Banks also in 2012; and the widespread robo-signing scandal, which no one in the industry appears to have avoided.

The fact that a Note was executed, at some point, in no way precludes the right and the necessity to prove the existence of a still-negotiable Note, and to prove the right of the party attempting to enforce that Note by taking a home via the Mortgage contract.

> "See generally Restatement (Third) of Property (Mortgages) § 1.1 comment (1997) ("The function of a mortgage is to employ an interest in real estate as security for the performance of some obligation. . . . Unless it secures an obligation, a mortgage is a nullity")." Eaton, at 585.

Without the proper legal relationship between the Note Owner and the Mortgagee, a Mortgage cannot be foreclosed. See *Eaton.*

Given that Plaintiff claims standing to evict only based upon legal compliance with one of the threshold tests in MGL Chapter 239 §1, ("of which there are at least six, including postforeclosure summary process actions" *Bank of America, N.A. v. Rosa, 466 Mass. 613, 624 (2013)*), it must establish a valid foreclosure to have ownership, which in turn it must have to bring its eviction case.

Johnson and O'Dell, each have the right to"

"the long-recognized defense, acknowledged by the banks, that a postforeclosure summary process action can be defeated if

a plaintiff is unable to show that it did not acquire title strictly according to the power of sale provided in the defendant's mortgage, see Bank of N.Y. v. Bailey, 460 Mass. 327, 333 (2011)." See *Rosa* again.

Without the Note, there was no mortgage to "strictly" comply with and no foreclosure could even be commenced. Plaintiff has the burden of proof once factually challenged by Johnson and O'Dell (See *Abate v. Fremont Investment & Loan*, 470 Mass. 821 (2015)). It had to produce primary evidence (See *Callahan v. First Congregational Church of Haverhill*, 441 Mass. 699, 710-11 (2004), *Valentin v. Hospital Bella Vista, No. 00-2184., (2001)* and progeny) to address that challenge to prove up ownership and standing (See *Rental Property Management Services v. Hatcher*, 479 Mass. 542 (2018)). Without that the Court had no subject matter jurisdiction.

A challenge unmet by the Plaintiff, not even attempted to be met, that implicates the jurisdiction of the court, Amicus respectfully believes the Court cannot hold as frivolous.

The Standard of Review for Nonfrivolous Appeals

As intentionally set by Massachusetts jurisprudence, the threshold standard for pursuing an appeal is an incredibly easy standard to meet[2]. Therefore, the taking away of the right to

[2] See Home Sav. Bank of America, FSB v. Camillo, 697 N.E.2d 134, 45 Mass.App.Ct. 910 (1998): "The determination that a defense is frivolous requires more than the judge's conclusion that the defense is not a winner and that the party claiming it is wrong as matter of law, **Frivolousness imports futility – not "a prayer**

appeal – when submitted for recognized purposes – functions as a sanction and arguably as severe a sanction as to the taking away of a jury trial[3]. A meritorious appeal (nonfrivolous) is "one that is worthy of presentation to a court, not one which is sure of success." See General Motors Corp., petitioner, 344 Mass. 481 , 482 (1962). Commonwealth v. Levin, 7 Mass. App. Ct. 501 , 504 (1979).

---

of a chance." Pires v. Commonwealth, 373 Mass. 829, 838, 370 N.E.3d 1365 (1977), Tamber v. Desrochers, 45 Mass.App.Ct. 234, 696 N.E.2d 969 (1998)….Once again, Camillo may turn out not to be right in the end, but **her position is not at all futile.** As Camillo has a defense to the correctness of the foreclosure that is not frivolous, she is entitled to waiver of an appeal bond under G.L. c. 239 S5" [emphasis added]. Nor did Johnson and O'Dell fail under any of the other tests for frivolousness; again, *Tamber:* "Among possible grounds for a conclusion of frivolousness are that the defenses are unsupported by any evidence, Farley v. Sprague, 374 Mass. 419, 425, 372 N.E.2d 11298 (1978); that the defenses are incurably blemished by misrepresentation, distortion or improper argument, see Avery v. Steele, 414 Mass. 450, 456, 608 N.E. 2d 1014 (1993); or that the defenses are so lacking in substance as to suggest an intent to harass, see Hahn v. Planning Bd. Of Stoughton, 403 Mass. 332, 336-337, 529 N.E.2d 1334 (1988)."

[3] For instance, The Appeals Court in *CMJ Management Company v. Wilkerson* (March 31, 2017), said taking of the due process right to a jury trial away in an eviction case could only be as a severe sanction and cautioned against it: "A judge's decision to impose sanctions, however, must be examined under the principles of due process. See, e.g., Mass.R.Civ.P. 37(b)(2), as amended, 390 Mass. 1208 (1984)... Relevant factors in a due process examination include "the degree of culpability of the . . . party [to be sanctioned]; the degree of actual prejudice to the other party; whether less drastic sanctions could be imposed; . . . and the deterrent effect of the sanction." Keene v. Brigham & Women's Hosp., Inc., 56 Mass. App. Ct. 10, 21 (2002), S.C., 439 Mass.223 (2003)."

Thus, when assessing the question of whether an appeal is frivolous a Court must ask itself the whether the appeal is futile. The Court is not to consider the potential success of the appeal; whether the issue brought for appeal is a successful one or not is irrelevant.

In the instant case the Appellant has brought forward an appeal on several issues however, one of the main issues is that the foreclosing party is not the noteowner of a negotiable note (or its agent) under Article 3 and 9 of the UCC. Amicus submits that not being the person entitled to enforce ("PETE") the note under UCC Article 3 and 9 is fatal to the plaintiff's underlying claim.

Thus, Amicus submits that the issue of being the noteowner of a negotiable note or its agent in an attempted foreclosure is non-frivolous and thus qualifies under the standard to be submitted as an appeal.

ARGUMENT

The Amicus here submits that the promissory note ("the Note") is a negotiable instrument and therefore is subject to UCC Articles 3 and 9. The overall applicability of UCC Articles 3 and 9 to negotiable instruments was dealt with in *Veal v. American Home Mortgage Servicing, Inc.,* No. 09-14808 (Bankr. 9th Cir. 2011) by the Honorable Justice Haines. The following

discourse on the applicability of the UCC to negotiable instruments is an excerpt from his analysis (one of the clearest Amicus has seen[4]).

i. Article 3

Article 3 provides rules governing the payment of the obligation represented by and reified in the Note. It primarily addresses payment obligations surrounding a negotiable instrument, and the identification of the proper party to be paid in order to satisfy and discharge the obligations represented by that negotiable instrument. It does not however equate the proper person to be paid with the person who owns the negotiable instrument. Nor does it purport to govern completely the manner in which those ownership interests are transferred.

Contrary to popular opinion these rules do not ***absolutely to*** *enforce its terms. Rather, Article 3 states that the ability to enforce a particular note is held by the "PETE" the note.*

It is therefore important to assess the concept of "a PETE the note" to determine relative rights and obligations of the various parties to a mortgage transaction. In particular, the person obligated on the note- a "maker" within the meaning of Article 3- must pay the obligation represented by the note to the "PETE it"(UCC ss3-412). Further if the said payment is made accordingly it follows that the maker is discharged from his/her obligation.

If, however, the maker pays someone other than a PETE even if that person physically possesses the note the maker signed, the payment generally has no effect on the obligations under the note. The maker still owes the money

---

[4] The ultimate recognize authority and it published the seminal piece on the UCC in relation to mortgages and foreclosures is: *Report Of The Permanent Editorial Board For The Uniform Commercial Code Application Of The Uniform Commercial Code To Selected Issues Relating To Mortgage Notes*, November 14, 2011 ("PEB Report Mortgage Notes"). But that is in some places an almost impossible read; Veal is clear if incomplete

to the PETE[5]. The maker therefore at best has only an action in restitution to recover the mistaken payment.

There appears to be two ways which a person can acquire PETE status. The first of these is that the person must be the holder of the note (UCC ss 3-301(i)). "Holder" is defined by UCCss 1-201(b)(21)(A), which provides that a person is a holder if the person possesses the note and either (i) the note has been made payable to the person who has it in his possession or (ii) the note is payable to the bearer of the note. Thus, to make a determination of who is the holder of the note one must make a physical examination not only of the face of the note but also of any indorsements[6].

However, UCC 3-301(ii) allows for a third way which a someone can be categorized as a PETE the note. The involves the person attaining the status of a "nonholder in possession of the note who has the rights of a holder". Non- UCC law can bestow this type of status; such law may, for example, recognize various classes of successors in interest such as subrogates or administrators of decedent's estates. Most commonly however, a person becomes a non holder in possession if the physical delivery of the note to that person constitutes a transfer but not a negotiation.

Under the UCC a transfer of a negotiable instrument ***"vests in the transferee any right of the transferor to enforce the instrument" UCC ss 3-203(b)****. As a result, if a holder transfers the note to another person by a process not involving Article 3 negotiation. UCC ss 3-203(a) states that a note is transferred "when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument". As a consequence, while the failure to obtain the indorsement of the payee or other holder does not*

---

[5] Miller & Harrell p.6.03 [6][b][ii]

[6] This would include checking to see if any purported allonge was sufficiently affixed as required by UCC ss 3-204(a) See In re Weisband, 427 B.R. 13, 19-20 (Bankr. D. Ariz. 2010).

prevent a person in possession of the note from being the person "entitled to enforce" the note, it does raise the stakes. Thus, without "holder" status and the attendant presumption of a right to enforce, the possessor of the note must demonstrate both the fact of the delivery and the purpose of the delivery of the note to the transferee in order to qualify as the "PETE".

ii. Article 9

For the rules governing those types of property rights, Article 9 provides the substantive law. It provides rules governing the effect of the transfer of a note on any security given for that note such as a mortgage or a deed of trust. As a consequence, Article 9 must be consulted to answer many questions as to who owns or has other property interest in a promissory note[7]*. From this it follows that the determination of who holds these property interests will inform the inquiry as to who is a real party in interest in any action involving that promissory note.*

Unlike Article 3, Article 9 is a relatively recent innovation which attempts, among other things, to regularize nonpossessory financing.

The "transfer" concept is not only bound in the enforcement of the maker's obligation to pay the debt evidence by the note, but also in the ownership of those rights. Put another way, one can be the owner of the note without being a "PETE". This distinction may not be an easy one to draw, but it is one the UCC clearly embraces. While in many cases the owner of a note and the PETE it are one and the same, this is not always the case, and those cases

---

[7] Amicus has struggled for clear language, but believes it is clearer to refer to what UCC9 rules attempt to define to preserve in relation to the Note as "assets" as opposed to "property interests" which has other meaning in this context. UCC9 was written to treat both the Assets within the Note such as the Powers of the Party Entitled to Enforce or the Powers of the Noteowner interchangeably as to applicable terms with an asset outside the Note but which securitizes it – such as a mortgage contract,

are precisely the cases in which Civil Rule 17 would require joinder of the real party in interest.

This distinction further recognizes that the rules that determine who is entitled to enforce a note are concerned primarily with the maker of the note. They are designed to provide for the maker a relatively simple way of determining to whom the obligation is owed and, thus, whom the maker must pay in order to avoid defaulting on the obligation. UCC 3-602(a)(c). By contrast, the rules concerning transfer of ownership and other interests in a note identify who, among competing claimants, is entitled to the note's economic value (that is, the value of the maker's promise to pay). Under established rules, the maker should be indifferent as to who owns or has an interest in the note so long as it does not affect the maker's ability to make payments on the note.

Thus, initially, a note which is owned by a payee to whom it was issued. If that payee seeks either to use the note as collateral or sell the note outright to a third party in a manner not within Article 3, Article 9 of the UCC governs that sale or loan transaction and determines whether the purchaser of the note or creditor of the payee obtains a property interest in the note UCC ss 9-109(a)(3).

With very few exceptions, the same rules that apply to transactions in which a payment right serves as a collateral for an obligation also apply to transactions in which a payment right is sold outright. Rather than contain two parallel sets of rules Article 9 uses nomenclature conventions to apply one set of rules to both types of transactions. This is accomplished primarily by defining the term "security interest" found in UCC ss 1-201(b)(35), to include not only an interest in property that secures an obligation, but also the right of a purchaser of a payment right such as a promissory note.

DISCUSSION

The note, like some other legal conceptual constructs, can be thought of as a bundle of sticks. The first transfer from the maker of the note to the payee no stick in the bundle can be lost this is due to the intended functioning of the uniform commercial code ("UCC"); these transactions are easily recognizable and are generally covered under UCC3, codified at MGL Chapter 106 §3.

However, after that initial transfer, the various relationships of the stipulated powers and obligations within the note, can change. The result is that each stick in the bundle can get separated off and some can in fact become lost, void or nullified.

Similarly, notes can be secured or unsecured. If a note is initially secured, for instance, with a mortgage, the securitized asset would necessarily remained connected to the note in the initial transfer to the payee.

However, because of the complexities of the legal requirements of preservation under the law and the various relationships that can manifest to the note and the asset itself, these assets could be broken apart even though initially contained within the note itself. Considering this together with the complexities of preserving the relationship to a securitized asset outside of the Note, the writers of the UCC attempted to codify those complexities in Article 9, codified at MGL Chapter

106 §9. In an attempt to codify and regularize the legal requirements and powers of PETE, the powers of the owner of the note and securitized mortgage powers with the note, the authors of the UCC sought legislation to enforce uniform understandings and practices.

However, within the confines and meaning of Article 3, the holder of the note (which actually has a lower threshold of requirements to meet than a more powerful subset of the PETE) is not sufficiently specified and narrow to allow the grabbing of a securitized asset as opposed to simply cashing out. A securitized asset such as a home is not fungible. So where a note holder with bearer paper if mistakenly paid can be targeted for larceny or some other means of enforcing restitution for monies that should not have been paid and the maker can be monetarily compensated; the party that mistakenly pays out to the wrong party money, can easily repay the maker. If the mistake involves a non-fungible asset such as a home, a party that mistakenly allows a foreclosure by the wrong party, cannot turn to the homeowner and say "oops, we'll just give you a different home down the street while we prosecute the note holder who illegally cashed out by taking your home."

<u>Sample Scenario I: Amicus' Cousin Scenario</u>

The Amicus appreciates that sometimes a concrete example is the most helpful thing. Each of these three pertinent assets of the note must be preserved pursuant to

UCC-9 requirements for a note to be used to foreclose. Once they have moved beyond the initial payee, the difference in the preservation of each of them gets a little murky.

Say, I have a cousin who lives across the ocean in England. Her father, with his own money, purchases a set of chairs for me. I have taken a check that was written to me. I want to send it over to pay for the chairs. If I sign the check, but do not "specially endorse" it, that is identify a particular person for it to be paid to, but I give it to my friend who is crossing the ocean, because I trust him, even though it is merely signed in blank and technically becomes bearer paper.

As they have got the check in question, they could go cash it out, and none of the rest of world would be the wiser for it.

However, my goal was to get it to my cousin, who does all of the financial paperwork for her dad, who has gotten older and is no longer competent to do all of the financial paperwork in his life. However, he is the one who put out the money for the chairs. So, my intent is to get it to her, as the person entitled to enforce, that is, to cash the check, with the intent that he will get the money as the note owner, who has provided the value for which I am sending the check. I have separate intents for each of them, so that her ability to cash the check, as the person entitled to enforce is preserved. His right to the money, in other words, the power of the note owner, is preserved and transferred on to him.

Once they receive the check, of course, they can sit on it for however long, assuming that it does not get stale. My separation of the powers in the note, itself, so that some of them went to her and some of them went to him, is all properly covered under the Uniform Commercial Code. He would have the right to transfer on the note ownership role in relationship to the note. She would have the right to transfer on the person entitled to enforce powers in the note. She could not take away from him his right to get the money, and thereby be in the role of the noteowner. He

would have to get her consent to take the powers of the party entitled to enforce and transfer those on. Therefore, as correct, the party that has the powers is the party that can transfer those powers on to the next transferee in line.

Now, in the midst of this, if my courier, who nobody in the world knows is not my intended party goes and cashes the check, I would have the right as the maker, and the party whose intent was now violated, to charge him with larceny and have the bank that cashed out the check for him go after him for the money that he was not supposed to be cashing out of the check, and return the money to me, which is what is usually done.

I suspect that this, however, would not be the likely practice for a check worth $250,000 or $300,000. They would be much less likely to even cash it, without knowing for sure that he was the intended party for the check. That amount of money is in practice not so "fungible".

The simpler thing would be for me to have endorsed the check directly to my cousin and to have written in the memo, "This is to pay your dad back for the chairs."

Evidence of the Intent for Valid Transfers: Mortgage Note

Perhaps, the Johnson/O'Dell note has the equivalent written on it or in an associated document, be neither the Defendants nor the Courts know as the relevant and requested evidence has been refused to be produced.

In fact, the standard mortgage note explicitly states that it uses the term noteholder to mean the PETE[8]. To preserve an

[8] The Johnson/O'Dell Note states: "The Lender or anyone who take the Note by transfer and who is entitled to receive payments is called the "Note holder"". Because this merges the term "Note holder" with PETE which has somewhat different meanings under the UCC, your Amicus uses the UCC nomenclature.

associated securitized asset such as a mortgage, the party being paid must be the PETE which requires the heightened standard.

This of course makes sense since these notes were written as mortgage notes to incorporate some of the language from the mortgage and to be completely dependent upon the mortgage's existence; the mortgage is completely dependent upon the powers within the note reaching the heightened level specificity of a PETE.

As stated under UCC Article 3 the PETE is the party who if a maker or their successor is obligated to pay and so pays, that that is sufficient to meet the obligation to pay on the note. The preservation of the securitized asset relationship as to the mortgage is also obviously necessary if a note is going to be used to foreclose. Therefore, the requirements to preserve that asset relationship to the note must also obviously be respected in each transfer.

What may be less obvious is the necessity of the preservation of the note owner powers – and that that preservation is something the maker-mortgagor has a right to know about. The noteowner is the party in relationship to the note who must ultimately receive any payment made relative to the note. This is usually not a status in relationship to the note that the maker (or their successor) needs to worry about.

However, in this case of a mortgage Note that relationship must also still exist.

Its existence is also a necessity for a maker in this situation to ensure the note still is in force in relationship to the mortgage and any attempt to foreclose it. This is because it is a payment reaching the note owner that ensures whether the note itself is getting paid off and thus guarantees that a mortgage cannot be activated and used to take the home.

It is the relationship between the note owner and the mortgagee that meets the Eaton standard to foreclose for the identity of the note owner and the mortgagee or that the note owner must be the principal to the mortgagee as agent if the mortgage and note are still separated. See Ibanez:

> "the assignment of the note does not carry with it the assignment of the mortgage. Barnes v. Boardman, 149 Mass. 106, 114 (1889). Rather, the holder of the mortgage holds the mortgage in trust for the purchaser of the note, who has an equitable right to obtain an assignment of the mortgage,…"

The failure of the preservation of any three of these asset relationships to the note, that is: the internal asset of the powers of the PETE and the external asset of the securitized asset of the mortgage and the internal asset powers of the note owner, will result in a foreclosure which is illegal. All of these relationships must exist to allow for a legal foreclosure. If any of those fail, if there is no relationship between the

mortgagee and the note owner then clearly, under Eaton, a foreclosure cannot occur.

If the note owner is not getting the money that is being paid to the party entitled to enforce, then the foreclosure may occur when payments are actually being made by the maker or their successor to the party they know, which they will presume is PETE.

However, instances where the payments are being made but they are not getting to the party that is supposed to get the payments to pay off the note, the foreclosure could illegally occur because that relationship is rent asunder.

Then the homeowner may still be paying, but a foreclosure will occur anyway.

If the party entitled to enforce powers have been stripped and only the noteholder powers were transferred properly to preserve them under Article 9, then the very definition of what it requires to be a noteholder in these circumstances (the heightened level of PETE) have left the note non-negotiable as to the mortgage[9] and therefore a foreclosure would not be legal, the power to foreclose has become void.

---

[9] Just because an associated securitized asset has been stripped by a legally non-compliant transfer, normally a Note would then only be negotiable as to a direct cash pay off. However, since the definition of the noteholder in mortgage Notes like the Johnson/O'Dell Note is explicit that it incorporates the PETE it may strip the Not eof any type of negotiability.

In regard to the foregoing, it is important to note that Article 9 makes it clear that there is a distinction between the powers of PETE and the powers of the actual owner of the note. This is so because article 9 contemplates instances where payments due on the note do not reach the note owner and thus they have the power to order the use of the power of sale in the mortgage for recoupment.

Once transfers are attempted beyond the payee, any assets in a note must be compliantly transferred to be preserved (UCC9). There are instances wherein the PETE, and the owner of the mortgage Note are two different people. In such an instance it is important that the correct owner of the note be identified; without knowing the claimant noteowner, it will be particularly difficult to determine if there was a transfer of the note that preserved the ownership interest.

This is akin, Amicus submits, to Massachusetts requirement that the powers stipulated in the Mortgage depend on an unbroken chain of assignments of those powers up until and through any foreclosure. The UCC is equally clear that powers of the PETE and the note owner must have been transferred from each transferor to each transferee according to law to preserve the assets or bundle of powers in the Note for future enforcement by the last transferee in line. Otherwise, the transfer of those powers may be the lost or become void as to future enforcement.

Amicus does not contest that mere physical possession of the (solely) original "wet ink" promissory note by Plaintiff may entitle Plaintiff to *some* evidentiary presumption of ownership of the note and possible right to enforce it under certain circumstances. However, the evidentiary presumption of note "ownership" is not sufficient to give the Article 3 "note holder" the presumption that it is the "note owner" (and *PETE)* as a matter of law. The Article 3 "holder" is still subject to all defenses the maker (or any successor interest) may assert, one of those defenses being that "Plaintiff is not the lawful "owner" of the note."

As the PEB Report Mortgage Notes 2011 (PEB) clarifies on p.6: "the person in possession of the note must also demonstrate the purpose of the delivery of the note to it in order to qualify as the PETE."

For this reason, UCC 9 provides a 3-pronged test. The PEB continues:

> "§ 9-203(b) of the Uniform Commercial Code provides that three criteria must be fulfilled in order for the owner of a mortgage note effectively to create a "security interest" The first two criteria are straightforward –
> • "value" must be given and
> • the debtor/seller must have rights in the note or the power to transfer rights in the note to a third party.
> • The third criterion may be fulfilled in either one of two ways. Either the debtor/seller must "authenticate" a "security agreement" that describes the note or the secured party must take possession of the note pursuant to the debtor's security agreement.

To meet the UCC 3 and UCC 9 criteria above to enforce the mortgage, a foreclosing entity would need evidence that every transfer was done with (1) intent, (2) value, (3) existing preserved status of the powers through each prior transferor and, of course, documentation of physical transfer or a relationship to the Note demonstrating continued existence of the original 'wet ink' note in negotiable form.

This means each transfer of each asset must meet these criteria. From the payee as transferor – they must have had intent to transfer to someone their PETE powers, intent to transfer to someone their noteowner powers, and intent to trans to someone the relationship to the securitized asset, the mortgage. Each transfer if to each party would have to be for value. And so for each transferor which had a particular asset transferring it forward.

Simple proof that the Note still exists and that is in an entity's possession creates merely a rebuttable presumption of status of party entitled to enforce – the highest status of being a "holder" and the status required to "cash out" a securitized asset to fulfill the obligation under the Note. Once, challenged, it is the responsibility of the party who claims the powers of PETE or its successor to meet the burden of proof. Same for the party claiming to be noteowner or to have maintained the legal relationship to the mortgage.

Where the original note reveals allonges, for negotiability and enforceability to continue, it must demonstrate that the allonges are affixed otherwise the transfers are no longer certain and violate one of the fundamental requirements of the UCC –the necessity that there can never be more than one legitimate claimant on the debt. A separate possible additional endorsement, means separated there is one final transferee; connected there is a different final transferee. A separated but claimed allonge means the Note is no longer negotiable. But Defendants-Appellant have a copy with no allonge but without the original how do they know?

The foreclosing entity provides no affidavits to attest to the transfers of the Note. It provides no evidence of intent or transfer for value. If the Note was specially endorsed for each transfer which only the present condition of the wet ink Note can accomplish, then Plaintiff could perhaps answer by production of such. This is plaintiff's burden but Plaintiff leaves on Defendants and then thwarts their efforts,

The foreclosing entity needs evidence that every transfer of the note preserved the noteowner powers and transferred those powers to it so it could have been the noteowner on the scheduled date to foreclose on the Johnson/O'Dell home.

To preserve PETE or noteowner powers, every transfer must be: (i) with intent; (2) for Value; (3) from a Transferor who held PETE or noteowner status themselves

Intent is only presumed with a special endorsement.

If not specially endorsed, intent instead may be shown by affidavit(s). Each hand off of a blank-endorsed note will require intent. Blank endorsements thus create a higher standard of proof of preservation of PETE or noteownership once challenged than a special endorsement.

Suggestive evidence may be memorandum or inclusion in an assignment (this may also show intent to transfer to a different party and so may serve to defeat a different showing of intent).

Intent cannot be presumed if the endorsement is not an actual signature or the endorsee attempts to be evidenced by a stamp. Each such signer must also have been authorized to sign.

Value requires proof of funds (or some other goods) transfer. That element may be implied if the assignment of mortgage includes the Note and was for value.

For the previous Transferor to be the PETE or noteowner, each transfer up to their "holding" of the Note must meet the above criteria.

For the physical note to still be negotiable, it must still exist without defect. And anything that refutes the above chain of transfers may qualify as a defect.

- It must be the wet ink version (not a print off or a scan-in)
- Any allonge must be permanently affixed
- No cross outs or "void" printed without authorization.

Proper proof of physical transfer is an affidavit from each entity's "mailroom" employee to signed receipt from the next entity's "mailroom" employee.

Properly, one should be able to have a document authenticator look at the paper of any and all copies and the purported original to check "artifacts" and check the authenticity of each signature and the authority of each signatory.

Sample Scenario II: Knowing Note-Owner is Material for Mortgagor

For a second specific scenario, this one related to mortgages, say that you're S-Bank.

At the same closing, S-Bank originates two mortgage loans on the same home: one Mortgage for 80% of the home's supposed value, and one for 20%. Let's say that these two Mortgages were originated at the height of the bubble, so that the value of the home was misrepresented as higher than it was. Let's also say that, to the homeowner's knowledge, the Mortgage Originator remains the payee, the PETE, over the life of these two mortgage loans.

In fact, however, secretly, the Mortgage Originator sells the second, 20% Note to a new Note Owner. The Originator remains the Party Entitled to Enforce (PETE) continuing to accept the Mortgagor's payments.

In this case, the purchaser of the second, 20% Note, which is associated with the second, 20% Mortgage, believed that it was also acquiring the right to order the Originator, if necessary, as its agent/mortgagee to

foreclose the 20% Mortgage that secures the 20% Note’s repayment.

This preserves the relationship between the second Note Owner, who tracks whether the second Note is being paid off as due, with the securitized asset, that is, the second Mortgage. However, the Originator remained, technically, the Mortgagee.

Nonetheless, the second, 20% Note Owner understands that the second, 20% Mortgage is still out there and enforceable. This is part of the reason that it paid the value that it did for the second Note.

The Owner of the second Note then moves to foreclose. Assuming that it forecloses without fraudulent intent, it does so because it is no longer receiving mortgage payments from the Originator, that is, the PETE.

The lack of receipt of payments by the 2nd Note Owner could be because the homeowner stopped making payments on the second Mortgage. In that case, S-Bank, the Originator, has no payments to pass on to the second Note Owner. Therefore, the second Note Owner forecloses on the second Mortgage.

Another possibility, however, is that the homeowner has indeed making payments on the second Mortgage, but that the PETE has failed to pass these payments on to the second Note Owner.

Now, under the UCC, if the maker of a Note – here, the homeowner – is in fact paying the PETE, the maker supposedly has no need to know who the Note Owner is. This is so, whether the Note Owner and the PETE are one and the same, or whether they are two different parties. This is because the maker’s obligation is simply to pay the correct PETE.

In our second scenario, where the maker/homeowner is paying S-Bank, that is, the PETE, s/he thinks that this is protection from foreclosure. Yet, if the PETE and the second Note Owner are two different parties, and the PETE is not transmitting these payments to that Note Owner, the Note Owner might believe that it’s the maker-homeowner’s

default, and foreclose on the Mortgage in order to get satisfaction of the Note.

In that case, it may be all very well and good to say that, after a foreclosure, the maker-homeowner can sue the PETE to recover the amounts paid. But this is locking the barn door after the horse has been stolen is enough.

The Note is also a consumer contract. So, as a consumer, the maker of a Note/Mortgagor has a right to know who the Note Owner, the Principal who is empowered to order foreclosure just the same as knowing who the Mortgagee is. The secret transfer to the 2nd Note Owner is a deceptive practice.

The consumer also has a right to know who the Note Owner is who is using the second Note to foreclose on the consumer's home. Among other things, the consumer has a right to know whether the Note Owner is, in fact, not getting paid; that the accounting is correct to be able to be declared in default; and that that Note Owner actually has a right to foreclose.

Here, a transfer of Note Ownership to another party, separated these powers off from those of the PETE showing how these powers are being preserved even as they are being separated and transferred. Where S-bank remains the PETE, if as PETE,it fails to pass these payments along to the new Note Owner, or does not account properly for them, the new Note Owner's correct cause of action to get paid under the Note is to sue the PETE for the mortgage payments that were due and paid.

But S-bank could have failed to preserve the securitized asset relationship to the mortgage. To embellish this scenario,, say, the second mortgage itself does not actually secure anything because the value of the property was so overvalued at origination that even at that point the 20% that was supposed to exist in the second mortgage never existed. The originator knew there was no value in the house to support the second mortgage when it went to sell the second mortgage Note. However, the purchaser understood that the second mortgage still existed

even though the originator was going to remain the mortgagee that S-bank was functioning as the agent of the note owner as contemplated in Eaton.

The second note purchaser, however, was misled because the second mortgage actually could not have been secured by the value in the house because the value in the house did not exist. As the originator knew this but sold the second mortgage note at a higher value because of the purchaser of the second note's misinformation the second note was still secured. This is then a fraudulent sale by the seller, S-bank; the second mortgage was a nullity and it knew this.

The correct recourse for the second note holder would not be to foreclose on the homeowner who had also been taken in in signing the second note and mortgage. The recourse would be against the originator who sold them an untrue bill of goods. That was the contractual relationship that was violated. The securitized asset relationship of the second mortgage to the second Note did not transfer because it could not have transferred fraudulently. Instead, that external asset to the Note disappeared because there was no value in the home[10].

Once these assets in the note have been attempted to be transferred under UCC 9 the steps to preserve have to meet the requirements under UCC 9. In this scenario where the second mortgage is a nullity, the aware originator could not have had an intent to pass on the securitized asset of the mortgage as part of the second Note; S-bank knew it did not exist at the time of attempted transfer. It did not transfer under UCC 9 even though the second note owner paid more for the note with the understanding that the second mortgage was still alive and enforceable; there was value paid, but there was not intent.

[10] Under the UCC , the payee supposedly is vested with all Note assets. It's not clear to your amicus if the originator still held the first and second mortgage but suspects the fraudulent origination may affect even S-bank's ability to claim as existing second mortgage

In this scenario the second note owner telling the originator who’s the mortgagee to go use its powers in the mortgage to foreclose is actually treating the purported mortgagee as their agent, but there is no such agency because the second mortgage was a nullity and never transferred. With that nullity, of course, the power of sale does not exist and there is no ability to access the statutory power of sale.

The purported relationship between the second note owner as the principal and the mortgagee as their agent not only does not exist, but is now adversarial and the correct target for the note owner’s attempted to get satisfaction of the note because the note was part of a fraudulent sales contract.

S-bank as the mortgagee in such situation is now acting to foreclose to cover up a fraudulent transaction. It is no longer acting on behalf of the Note Owner, its purported principal, it is instead acting against the interest of the Note Owner. S-bank is therefore without jurisdiction or authority to carry out the foreclosure.

Unless the homeowner-mortgagor has been informed of the transfer of the powers of the note ownership to the now second note owner and thinks s/he is dealing with the mortgagee as also the note owner and the PETE s/he are not going to know that a fraudulent sale was committed and that the mortgagee is without jurisdiction and authority to foreclose. The homeowner-mortgagor will not know that in fact S-bank is acting to cover up a previous fraudulent act and thereby could have their home taken without having any of the information necessary to protect themselves.

For this reason, in a UCC 9 scenario where the right to enforce the mortgage is based on the Note Owner’s receipt or lack of receipt of payment for the debt, it is critical that a homeowner know who the Note Owner as well as the PETE is. As a real party in interest, the mortgagor cannot protect its rights if Note Ownership is hidden from them. This scenario is a cautionary tale all too easy in the modern financial industry.

In fact, seeing the original note showing endorsements to know whether it was specially endorsed or not provides critical evidence of the intent. Thus, in one way the homeowner-mortgagor would know who if anyone still has the powers of the PETE, who if anyone still has the powers of the note owner, who if anyone still can access the mortgage contract through its securitization relationship with the note.

The condition therefore of the original wet ink note and every endorsement and whether the allonge is affixed or not must first be provided to address whether there is still a negotiable note at all. If the Plaintiff passes that test, the wet ink Note contains critical information as to how and whether the powers for the PETE, how or whether the powers for the note owner and how or whether the connection to the securitized asset of the mortgage were transferred in compliance with UCC 9 both as to value and to intent to each Asset separately. The homeowner needs this information to ensure that s/he is really the one whose home could or should be the target of a fulfillment of a still negotiable the note or whether the proper target is actually someone else.

Violation of the best evidence rule Massachusetts Article X contents of writings and records

For each possibly challenged element as to the physical existence of a still negotiable note and to each party's claim to whatever or all the relevant assets in the Note going into the purported foreclosure sale, Plaintiff had an obligation to provide best evidence.

Defendants asked for all of this evidence. If they had ever been shown the wet ink note first requested in discovery, the

surrounding questions as of right might have been far fewer[11]. While perhaps not all of the documents necessitated under UCC9

---

[11] Here, Amicus copies out of the Johnson/O'Dell Discovery form available in the public record and available for judicial Notice by this Court. Another Amicus appears to include these.

In addition to Johnson/O'Dell request in Discovery of production of (D-2), "The original Mortgage Note(s) bearing all intervening endorsements or Allonges showing a complete chain of endorsement from the originator to the last endorsee.

Defendants-Appellant also requested:"(D-3/D-4) Any documents, including but not limited to any affidavits and powers of attorney that demonstrate the foreclosing entity was acting on behalf of the Noteholder.
If the purported owner of the Mortgage loan for this property is a securitized trust: a. all delivery and acceptance receipts for original Mortgage Note into the trust(s);
b. all executed pooling and servicing agreements for trust(s) claiming to be owner and holder of Mortgage(s) and Note(s) regarding the Property; and …"

(D-6) If the Foreclosing Entity and the Noteholder at the time of the Foreclosure are distinct entities, please provide any and all documents related to the nature of the relationship between the Foreclosing Entity and the Noteholder, including but not limited to Servicing Agreements, Delegations of Authority, Powers of Attorney, and the like."

And in Interrogatories, they requested:
"I - 3. Please describe the physical custody and ownership/holding of the Note in detail including but not limited to:
a. the physical location(s) of the original Note at all times from the date of the Mortgage through the present;
b. any and all transfers in ownership of the Note (or a beneficial interest therein) from the date of the Mortgage through the present (specifying dates, any sums paid, and parties to/from whom such interest was transferred); and
c. the specific nature of the relationship between the holder of the Note and any entity undertaking foreclosure activity (if such entities are distinct), including but not limited to a description of any authority to act granted by such holder at the following times:
i. issuance of any acceleration notice(s) pursuant to the Mortgage; ii. issuance of any notices of right to cure pursuant to G.L. c. 244, §35A; iii. issuance of any notice(s) of

for proof that each transfer preserved each of the three central assets related to the Note to enable a foreclose (given at any point in the chain an endorsement in blank), the Defendants-Appellant might have been all set if the viewing of the Note showed a still negotiable Note but lacked proof of each element of necessary preservation within its four corners.

Needlesstosay, not only was the wet ink Note denied to Defendants-Appellant, so was any of the above details requested.

The Amicus submits that the Plaintiff's evidence related to the possession of the note and the contents therein contravenes Massachusetts Article X Rule of Evidence 1002, otherwise known as the best evidence rule. The rule states that an original writing, recording, or photograph is required in order to prove its contents unless these rules or federal statute provides otherwise.

The Plaintiff's entire claim rests squarely on the existence and possession of the original note. The contents of

---

foreclosure sale; and iv. sale of the Property by foreclosure deed or otherwise.

I - 6. Please describe in detail any Mortgage(s) and/or Note(s) given or acquired by You with regard to the Property, including but not limited to:
a. the date(s) of such document(s);
b. the date(s) of all assignment(s) of such Mortgage(s), and/or Note(s) including to You, and by whom the Mortgage(s) and/or Note(s) were assigned;
c. the date(s) of all endorsements of the promissory Note, including to You;"

the original note have a direct relationship to the enforceability of the note on the Defendants.

These issues require the production and examination of the original wet-ink note, which, despite having claimed possession, the Plaintiff has yet to produce the original note. The Amicus submits that the original note is the superior evidence to be used to resolve these issues, yet, the Plaintiff has only produced a copy of the note. As long, as the original note is not produced to examine its contents, the issues of the authenticity of the note and fraud will remain unexaminable.

Furthermore, the Plaintiff has consistently claimed to be in possession of the original note but has yet to produce it despite the fact that the authenticity of the note has been in issue in this instant case. It begs the question, why they have not done so, especially since the production of the original note and the contents therein would put an end to a controlling issue raised in this instant matter.

Nonetheless, the Plaintiff's copy of the note contravenes rule 1002, since the Plaintiff is relying on a copy of the note as proof of its contents as part of their burden to demonstrate as untrue the Appellant's challenge that Plaintiff did not acquire the mortgage loan. The Plaintiff has not provided the Court with reasons why they have been unable to produce the original.

Further, Amicus makes a note of Rule 1003 which states that a duplicate is admissible to the same extent as the original unless a genuine question is raised as to the original's authenticity or the circumstances make it unfair to admit the duplicate. In the instant case, the Plaintiff's copy of the note qualifies as a duplicate; however, the Appellant has put into issue the authenticity of the original and thus this section does not apply. There is no other law or statute that exempts the production of the original note.

CONCLUSION

In regard to the foregoing, it is clear that evidence of a still negotiable wet ink note is not optional nor is the issue of ownership of the note and the identity of the PETE. Evidence of preservation under UCC9 at each transfer or the three key assets in the note is not option as a proven element a a valid foreclosure.

All of these are meritorious or rather nonfrivolous and material issues – especially where, as here, these are necessary to demonstrate ownership of the Johnson/O'Dell home and therefore Plaintiff's standing and the Court's subject matter jurisdiction.

Viewing of the wet ink note (and the associated issues) is an appealable issue.

Respectfully submitted,

____

Grace C Ross, Amicus Curiae
10 Oxford St., #2R
Worcester, MA 01609
617-291-5591
grace@graceross.net

DATE: June 26, 2019

RULE 16(k) STATEMENT

I hereby certify that the foregoing Amicus Brief complies, to the best of my knowledge and belief, with the rules of Court pertaining to the filing of appellate briefs, including those specified in Mass. R. App. P 16(k).

Grace C Ross, Amicus Curiae
10 Oxford St., #2R
Worcester, MA 01609
617-291-5591
grace@graceross.net

DATE: June 26, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished on this 26th day of June, 2019 by 1st class mail to:

PLAINTIFF

℅ Jonathan Stone Rankin, Esquire
Donald W. Seeley, Esquire
Orlans PC
465 Waverly Oaks Rd, Suite 401
Waltham, MA 02452

Sogol Irene Plagany, Esquire
Orlans PC
1650 West Big Beaver Rd
Troy, MI 48084

DEFENDANTS

Kelly Johnson
Patricia O'Dell
18 Baxter Street
Worcester MA 01602

AMICI

Dawn R. Duncan, Amicus Curiae
67 Adams Street
Lynn, MA 01902

Jean Mitchell, Amicus Curiae
220 Lancaster Rd.
Berlin, MA 01503

Uri Strauss, Esquire
Paul Schack, Esquire
℅ Community Legal Aid
405 Main St.
Worcester, MA 01608

H. Esme Caramello, Esquire
℅ Harvard Legal Aid Bureau
23 Everett Street, 1st Floor
Cambridge, MA 02138

Alexa Lebach Rosenbloom, Esquir
Richard M.W. Bauer, Esquire
℅ Greater Boston Legal Services
197 Friend St
Boston, MA 02114

Grace C Ross, Amicus Curiae
10 Oxford St., #2R
Worcester, MA 01609
617-291-5591

grace@graceross.net