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*For assistance with presenting a case for wrongful foreclosure, please call 520-405-1688, customer service, who will put you in touch with an attorney in the states of Florida, California, Ohio, and Nevada. (NOTE: Chapter 11 may be easier than you think).*

Editor’s Analysis: Reynaldo Reyes, the asset manager for Deutsch that pretends to be a trustee of non existent unfunded trusts said it best: “it’s all very counter-intuitive.” In reality he was giving a clue. It isn’t that we haven’t yet unravelled the tangled web of deceit and exotic financial instruments and absurd risk taking. It all boils down to one thing: it doesn’t make sense, it was illegal from the start and it will never make sense. The reason it is counter intuitive is that there is no explanation except lying, cheating, stealing and cover-ups.

Whether you start from the top down, the bottom up or even start in the middle and spread out to the top and bottom, there is no connection between the money trail, the promises and representations made, and the document trail which proves beyond a shadow of a doubt that theft, breach of fiduciary duty, breach of contract, fraud, theft and cover-up were at the heart of what Wall Street called a securitization plan but which in practice was not securitization of credit but rather a PONZI s scheme completely dependent upon more investors buying bogus mortgage bonds. The crash didn’t happen because of mortgage de faults. It happened because investors stopped buying the bogus mortgage bonds. That is the red flag on all Ponzi Schemes. When people stop buying and start demanding their money back, the scheme collapses.

Under normal circumstances, the perpetrators — Madoff, Dreier, Stanford et al — go to jail, a receiver is appointed and the receiver does the best job possible of clawing back all the illicit gains, profits and accounts of the perpetrators. That is what should happen with he mortgage mess but that would mean admitting that the judicial system let millions of foreclosures go through the system because of bad lawyering, bad representation by pro se litigants and bad practices by the bench which failed to see the correct chain of title and then failed to inquire why not. —-

YES that IS the way it was. When I represented banks and HOA foreclosing on their liens, if I didn’t have my paperwork in order, the Judge sent me back to do it right — even if the other side didn’t show up. Why? Because the Judge understood that bad paperwork means bad title and that dozens of others could be effectively defrauded by allowing a bad foreclosure to proceed to sale, allowing an unproven creditor to submit a credit bid, and allowing a homeowner who legally still owned the home after the foreclosure to be evicted.

Back in those days certain presumptions applied — legal or informal — that the debt was real, the note was valid, and the mortgage was perfected. it was further correctly assumed that the borrower was in default.

The problem is that the old presumptions and assumptions remain while the facts are wildly different than the old-style foreclosures. Instead of the Judge being able to peruse the documents behind the mortgage, he must either accept the proffer of the facts from the lawyers for the foreclosing entity or have an evidentiary hearing, which he certainly doesn’t want on his calendar because all his other cases would pile up in a bottle neck. Thus lying in court became an acceptable substitute for having the right verifiable paperwork.

People ask me — how do I prove this? Lawyers ask me the same question. My answer is spend the daily rate for Lexus-nexus and get cases on point in your jurisdiction. They will say that where the facts and documents are uniquely within the knowledge and custody of the the defendant, the appropriate remedy is discovery and that the respondent to discovery has a higher duty to provide clear, concise and  extensive answers. In short, the burden of persuasion changes to the the foreclosing party — whether you are in a judicial or non-judicial venue.

Any other approach would have the Judge making findings in the absence of real evidence and actual facts, which is exactly the problem in the current judicial climate, although the tide is definitely turning in many states.

A quick look at the reality of the Ponzi scheme reveals the true nature of the illegality that the regulators and law enforcement faced, understaffed and underfunded against a well staffed and over-funded banking sector.

Let’s start in this article from the top. There the investment banking firm forms what appears to be a REMIC trust and they create a selling entity to put some distance between the investment banking firm and the actual sale. The sale takes place, to wit: the investors gives the investment banking money and the investor gets either a certificate (rarely) or some acknowledgment ina statement that the investor is now the proud owner of an interest in a REMIC trust governed by the REMIC provisions of the internal Revenue Code, which allows the REMIC trust to be a tax-exempt entity meaning the flow of funds from investments by the REMIC will only be taxed once even though it is coming through another entity. If that were true, there would be no problem. The problem is that it is not true and for the most never was true and never was the intent of the banks.

So to recap thus far, the money went from the bank account of the investors to the bank account of the investment bank or to an entity wholly controlled by the investment bank. Where it did NOT go was into a trust account wherein the Trustee for the REMIC pool would collect and disburse all funds, receipts and disbursements as set forth in the investor prospectus and pooling and service agreement.

If you look at the Taylor Bean and Whitaker setup, you’ll see, as Dan Edstrom has pointed out, that the money was instead put into a vast commingled account which they called a custodial account, but they never state for whom they are the custodian. And that is because they were skimming the money in a tier 2 yield spread premium and other “proprietary trading” also known as three pocket Monty — you take the money out of one pocket to transfer it to another pocket but on the way a few dollars drops into a secret third pocket. This vast Superfund was used as a TBW piggy bank as well as the source of funding for mortgages.

Without getting into the farce of “proprietary trading” being the cover for outright theft of investors money, let’s look at what happened next with the money.

People with the right connections were told to create mortgage origination companies. These companies would act as the payee on the note and the secured party on the mortgage or deed of trust, but they would never ever be allowed to touch the actual funding of the mortgage nor would they have the right to make a loan that would fall under the provisions of the assignment and assumption agreement signed with the aggregator (Countrywide, for example). SO XYZ company is created and they have a bank account and all that but the funding of the mortgage never touches the bank account of XYZ or any person associated with XYZ. The simple reason is that Wall Street being composed largely of thieves, understood that when the balances became high enough in the originators accounts, many if them would abscond with the money. So the wire transfer was made directly from the Superfund account (euphemistically referred to as a warehouse credit facility set up solely at the discretion of the aggregation (e.g. Countrywide.).

It was the coincidence of timing that convinced the closing agent and the borrower that the money had come from the “lender” identified on the disclosure paperwork and in the note and mortgage, when in fact, the originator was a mere nominee working for a fee. The originator could not under generally accepted accounting rules, book the transaction as a loan receivable because there was no offsetting entry debiting a cash account or other account over which the originator had control. The originator had control over nothing — the underwriting, funding, approval of the loan was left to the undisclosed aggregator using a computer system designed explicitly for this purpose. Without approval from Countrywide, the originator was not permitted to communicate approval of the loan.

The real lender were the investors whose money had been diverted from the REMIC trust into the Superfund. This created a common law partnership instead of a REMIC trust. This partnership with no name was the lender but the banks made sure that the true lender in an obviously illegal table-funded transaction was never disclosed. As far as the closing agent and borrower were concerned the coincidence of having the money there at the same time as the closing with the originator was proof of enough about what was going on. After all, who would send money for a mortgage transaction unless they thought they were getting a valid enforceable note and a mortgage or deed of trust securing the provisions of that note, which was valid evidence of the debt.

Unfortunately for the investors, the banks had other ideas than using the money the way they promised in the prospectus and pooling and servicing agreement, and they had other plans than protecting the investors enforceable rights under a valid promissory note, and they had a different idea about securing a note payable to the investors with the investors having a perfected mortgage lien against the property.

Bottom Line: The wire transfer receipt shows a loan emanating from the Superfund and that the money from the Superfund was advanced by the investors, but other than the wire transfer receipts there was not a shred of documentary evidence showing that the investors were going to be repaid under the terms of the mortgage-backed bonds in the REMIC because the mortgage bonds never made into the REMIC and their money never  made it into the largely or completely unfunded REMIC trust.

On the contrary, the documents produced by the originator under direction of the aggregator who was functioning under the thumb of the investment banks, all tell a wildly different story. According to the documents, the originator made the loan and assigned or sold it to the aggregator who sold it to the REMIC, which presumably protected the investors in a round about way even if it was a lie. The main problem with the bank’s version of the story is that XYZ never got paid for the loan or mortgage in a transfer or assignment transaction. And the aggregator never got paid by the REMIC trust for the loans either. The lack of consideration is not merely a technicality but rather part of a larger plot to steal from investors and homeowners.

The trust reposed in the banks by investors and homeowners alike basically was like putting red meat in front of a lion. The reason for the subterfuge was that the banks wanted to and did in fact get away with borrowing the loss of the investors by pretending to be the owner of the loans for a temporary period of time. By doing that they had what appeared to be ownership, proof of loss, albeit without any proof of payment. Now the insurers and credit default swap parties are hip to this trick and suing the investment banks.

The net result is that the actual financial transaction is largely undocumented, unsecured, and unenforceable in terms of method of repayment. The debt to investors (not the REMIC trusts) exists — less the insurance, CDS and bailouts received by the agents of the investors — but it is not documented. Conversely, the documented transaction lacks consideration of any kind, thus describing a financial transaction that never actually occurred. Any assignment therefore was pure lies and hype, since the reference was to originating documents that were procured by misrepresentation or fraud, without consideration, and obviously no perfected lien, which is not subject to nullification of instrument.

The banks and regulators and law enforcement don’t like my explanation because it would require them to do their work, and the people in charge of the banks to go to jail, costing a could of hundred millioin dollars to prove the case against the right people. Whether they like it or not, the regulators and law enforcement needs to do their job or face recriminations from the public once the true nature of this scheme is fully revealed. And make no mistake about it. I am not the only one who knows. The truth is coming out and that is why Judges are turning.