

FAIRBANKS FLETCHER

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June 27, 2020

State of New York Court of Appeals
John P. Asiello, Chief Clerk and Legal Counsel to the Court
Clerk's Office
20 Eagle Street
Albany, NY 12207-1095

Re: *U.S. Bank National v. Creative Encounters, LLC et al*

Dear Sir:

This office represents Creative Encounters, LLC and Paula Jo Tufano (hereafter "Creative Encounters"). I received your correspondence dated July 18, 2020, and in reply, please accept this letter as our "Jurisdictional Response."

The New York Constitution mandates that only final orders are appealable to the Court of Appeals. This "finality requirement" is a prerequisite to establishing the jurisdiction of the Court of Appeals. *See* N.Y. Const. art. VI, § 3.b.(1), (2), (6), (7). "Finality" is not specifically defined. However, CPLR §5611 clearly defines an appellant division order as final when it completely disposes of all issues of the litigation. CPLR §5611.

This court's rulings also highlight the necessity of the finality requirement. In Burke v. Crosson, for example, this court held that a final order or judgment is "one that disposes of all of the causes of action between the parties in the action or proceeding and leaves nothing for further judicial action apart from mere ministerial matters." Burke v. Crosson, 85 N.Y.2d 10, 15, 623 N.Y.S.2d 524, 527, 647 N.E.2d 736, 739 (1995). Burke further examined the "implied severance" doctrine as an exception to the finality requirement. *Id.* at 16, 528, 740. In an implied severance instance, an appellate order disposes of some, but not all the causes of action asserted in litigation between the parties. It is only when that resultant order resolves claims that "do not arise out of the same transaction or continuum of facts or out of the same legal relationship as the unresolved causes of action" that such order would be considered final and appealable to this court. *Id.*

Likewise, in Sontag v. Sontag, this court held that an order of the appellate court that "decides some issues of relief but leaves pending between the same parties other such issues would, in effect, divide a single cause of action and is, therefore, nonfinal. Sontag v Sontag, 66 NY2d 554,

555 [1986], citing Le Mistral v Columbia Broadcasting Sys., 61 AD2d 491, appeal dismissed 46 NY2d 940.

Here, the Appellate Division reversed the decision of the trial court and granted Creative Encounters' Motion for Summary Judgment and dismissed U.S. Bank's Complaint. However, the Appellate Division did not consider Creative Encounters' counterclaims for Fraud and Slander of Title, as delineated in its Answer to the Complaint (copy herewith attached, as Exhibit "A"). Those counterclaims are part of the "same transaction or continuum of facts or out of the same legal relationship" between these parties. While the trial court's ruling in favor of U.S. Bank effectively rendered these counterclaims moot at the time of that initial ruling, once the Appellate Division reversed that decision, the counterclaims sprung back to life. As such, those counterclaims still need to be adjudicated, and my clients plan to pursue relief. In sum, U.S. Bank's appeal to this court is premature.

Based upon the foregoing, it is my clients' position that the Court of Appeals does not have jurisdiction to hear this appeal as it fails to meet the finality requirement under the New York Constitution, CPLR §5611, or case precedent as issued by this Honorable Court. Therefore, we respectfully request this court dismiss U.S. Bank's appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elizabeth Fairbanks-Fletcher", with a long horizontal line extending to the right.

Elizabeth Fairbanks-Fletcher, Esq.
elizabeth@fairbanksfletcher.com

EXHIBIT "A"

1 SUPREME COURT OF THE STATE OF NEW YORK
2 RENSSELAER COUNTY

3
4 U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS
5 INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE
6 FOR THE RMAC TRUST, SERIES 2016-CTT,

ANSWER WITH COUNTERCLAIMS

7 PLAINTIFF,

8 -AGAINST-

9 CREATIVE ENCOUNTERS, LLC,
10 PAULA JO TUFANO,
11 PEOPLE OF THE STATE OF NEW YORK,
12 JOHN DOE (THOSE UNKNOWN TENANTS,
13 OCCUPANTS, PERSONS OR CORPORATIONS OR
14 THEIR HEIRS, DISTRIBUTIES, EXECUTORS,
15 ADMINISTRATORS, TRUSTEES, GUARDIAN,
16 ASSIGNEES, CREDITORS OR SUCCESSORS CLAIMING
17 AN INTEREST IN THE MORTGAGED PREMISES.)

DEFENDANT.

INDEX No. 256173

18 The Defendants, Paula Jo Tufano (by Barbara Johnston P.O.A.) and Creative Encounters
19 LLC, by and through their attorney Christian P. Morris, Esq., as and for an Answer with
20 Counterclaims, alleges as follows:
21

22 As and For an Answer to the Complaint

- 23 1. As and for a response to Paragraph "1" Defendants deny knowledge or information
24 sufficient to form a belief as to whether Plaintiff is a national association organized and
25 existing under the laws of the united States of America and deny the remainder of the
26 averments in the Paragraph.
27 2. As and for a response to Paragraph "2" and "3" Defendants deny the averments set forth
28 therein.
29 3. As and for a response to Paragraph "4" Defendants admit that portion of the Paragraph
30 describing the subject premises as 24 Eva Drive, East Greenbush, New York 12061 (Tax
31 Map Section 169, Block 2, Lot 38) and deny the remainder of the averments set forth
32 therein inasmuch as the Plaintiff is "seeking" foreclosure.

EXHIBIT "A"

- 1 4. As and for a response to Paragraph "5" Defendants deny the averment set forth regarding
2 the purported mortgage and admit the averments regarding the transfer of the title to the
3 subject property.
- 4 5. As and for a response to Paragraph "6" Defendants deny the averments set forth therein
5 and affirmatively state that the failure to make payments under *any* note and mortgage *if*
6 occurred, did so on October 1, 2009.
- 7 6. As and for a response to Paragraph "7" Defendants deny the averments set forth therein.
- 8 7. As and for a response to Paragraph "8" Defendants deny knowledge or information
9 sufficient to for a belief as to the veracity of the averments set forth therein.
- 10 8. As and for a response to Paragraph "9" Defendants deny the averments set forth therein.
- 11 9. As and for a response to Paragraph "10" and "11" Defendants deny knowledge or
12 information sufficient to for a belief as to the veracity of the averments set forth therein.
- 13 10. As and for a response to Paragraph "12" Defendants deny the averments set forth therein
14 and affirmatively state that two prior actions were brought by two separate Plaintiffs on
15 the purported notes and mortgage and were both voluntarily discontinued and which is
16 more fully set forth *supra*.

As and For Affirmative Defenses

- 19 11. Plaintiff's Complaint is barred by the statute of limitations.
- 20 12. Plaintiff's Complaint is barred by the doctrine of unclean hands.
- 21 13. Plaintiff's Complaint is barred by the doctrine of estoppel.
- 22 14. Plaintiff's Complaint is barred by the Statute of Frauds.
- 23 15. Plaintiff's Complaint is barred where the Plaintiff has and is committing fraud.
- 24 16. Plaintiff's Complaint is barred by the doctrine of laches.
- 25 17. That the Plaintiff has not served all necessary parties to bring this action and therefore
26 lacks standing and has failed to state a cause of action. See CPLR 3211(10).
- 27 18. Plaintiff Complaint is barred where they are not the holder in due course of the
28 underlying subject Note.
- 29 19. Plaintiff has not complied with the Truth in Lending Act, Fair Credit Billing Act, or Fair
30 Debt Collection Practices Act.
- 31
- 32

EXHIBIT "A"

1 20. Plaintiff has failed to follow the procedures as set forth in the New York State Real
2 Property and Proceedings Law.

3 21. Plaintiff has violated the Pooling and Servicing Agreement governing the subject Note.

4 22. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

5 23. Plaintiff has failed to comply with the provisions of the Uniform Commercial Code.

6 24. Plaintiff does not have a properly endorsed Note pursuant to the U.C.C. and lacks
7 standing therefor.

8 25. That the Plaintiff lacks standing in this action.

9 a. That Paragraph "1" is plead in an alternative hypothetical, confirming the lack of
10 standing.

11 b. A pleading in the alternative alleging opposing facts cannot be construed in the
12 favor of the pleader.

13 c. That the Assignment of Mortgages attached to the Plaintiff's Complaint purport to
14 assign *an* alleged mortgage to Plaintiff is a fraudulent document.
15

16 As and for a Counterclaim against the Plaintiff for Fraud

17
18
19 26. Upon information and belief Jody Tufano and Paulajo Tufano executed a Note with
20 Homesteading Funding Corporation, d.b.a. First Niagara Mortgage, on May 12, 2005 for
21 \$155,700.00 relative to the purchase of 24 Eva Road, East Greenbush, New York.

22 27. Simultaneous therewith, Jody Tufano and Paulajo Tufano executed a Mortgage to secure
23 said note for the real property 24 Eva Road, East Greenbush, New York (hereinafter "the
24 subject premises").

25 28. Said Mortgage was recorded in the Rensselaer County Clerk's Office on or about May
26 16, 2005.

27 29. Thereafter, upon information and belief, Paulajo Tufano sought to refinance the May 12,
28 2005 Note and Mortgage in her name only.

29 30. On June 25, 2008 Paulajo Tufano executed a Note and Mortgage for \$182,000.00 with
30 Countrywide Bank, FSB for the subject property.
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EXHIBIT "A"

- 1 31. As part of the execution of the \$182,000.00 Note, Countywide Bank, FSB provided
2 Paulajo Tufano with \$32,256.008 in funds and it was anticipated that the remaining
3 balance on the 155,700.00 Note, namely \$149,743.92, would be discharged as paid.
- 4 32. Inexplicably, Countrywide Bank, FSB also required Paulajo Tufano to execute a Note and
5 Mortgage for the \$32,356.08 even-date therewith, June 25, 2008 and recorded the
6 Mortgage in the Rensselaer County Clerk's Office on August 12, 2008.
- 7 33. Additionally thereto and even-date therewith, Countrywide Bank, FSB also required
8 Paulajo Tufano to execute a "Consolidated Mortgage Agreement" purporting to
9 consolidate the \$32,256.08 Note (issued by Countrywide Bank, FDSB) with the
10 \$155,700.00 Note (issued by Homestead Funding Corporation d/b/a First Niagara
11 Mortgage) and recorded same in the Rensselaer County Clerk's Office on August 12,
12 2008.
- 13 34. The Consolidated Mortgage Agreement, dated June 25, 2008, indicated that Homestead
14 Funding Corporation d/b/a First Niagara Mortgage has executed an Assignment of
15 Mortgage for the \$155,700.00 Note and Mortgage issued by Homestead Funding
16 Corporation d/b/a First Niagara Mortgage on June 25, 2008.
- 17 35. However, the recorded Assignment of Mortgage purporting to assign the \$155,700.00
18 Mortgage from Homestead Funding Corporation d/b/a First Niagara Mortgage to
19 Countywide Bank, FSB was not executed until June 30, 2008.
- 20 36. The June 30, 2008 Assignment of Mortgage was executed by Homestead Funding
21 Corporation (nor as d/b/a First Niagara Mortgage) to Countrywide Bank, FSB and
22 recorded in the Rensselaer County Clerk's Office on August 12, 2008.
- 23 37. Further, although the Consolidated Mortgage Agreement claimed that the Notes and
24 Mortgages of the \$32,256.08 and \$155,700.00 were attached, the only attachment to the
25 Consolidated Mortgage Agreement was the Mortgage relative to the \$182,000.00. (See
26 Exhibit 4)
- 27 38. The \$182,000.00 Mortgage was not filed as its own Mortgage but only as an exhibit to
28 the Consolidated Mortgage Agreement.
- 29 39. Accordingly, the \$182,000.00 was never properly filed pursuant to the Real Property
30 Proceedings Law.
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EXHIBIT "A"

- 1 40. Moreover, a discharge of mortgage was not recorded on the 155,700.00 Mortgage after
2 the execution of the \$182,000.00 Note and Mortgage intended to satisfy the 155,700.00
3 Note and Mortgage.
- 4 41. Thus, it remains unclear whether Countywide Bank, FSB either (1) executed a
5 182,000.00 Note and Mortgage satisfying the 155,700.00 Note and tending \$32,256.08 or
6 (2) advancing \$32,256.08 by a Note and Mortgage and consolidating same with the
7 previous 155,700 Note and Mortgage assigned to Countywide Bank, FSB, albeit five
8 days after the consolidation.
- 9 42. Given the actual events of the transaction on June 25, 2008, one or both Mortgages
10 executed on June 25, 2008 is a legal nullity.
- 11 43. Thereafter on July 12, 2010 two different Assignments of Mortgage were executed
12 purporting to assign certain Mortgage above-described.
- 13 a. **First**, an Assignment of Mortgage was executed by Mortgage Electronic
14 Registration Systems, Inc. (hereinafter "MERS") as nominee for Homestead
15 Funding Corporation d/b/a First Niagara Mortgage on July 12, 2010 assigning the
16 \$155,700.00 Mortgage to Homestead Funding Corporation and was recorded in
17 the Rensselaer County Clerk's Office on August 12, 2010.
- 18 b. This Assignment of Mortgage was titled "Gap Assignment of Mortgage" and
19 purported to being "recorded to correct the gap in the chain of title".
- 20 c. No dates were recited relative to the "gap in the chain of title"; it is assumed that
21 the perceived gap stemmed from the June 30, 3008 Assignment of Mortgage
22 whereby Homestead Funding Corporation assigned the 155,700.00 Mortgage as
23 itself and not as "d/b/a First Niagara Mortgage".
- 24 d. However, this Assignment of Mortgage also claimed that "said mortgage has not
25 been otherwise assigned of record".
- 26 e. Therefore, on its face this Assignment of Mortgage was a legal nullity.
- 27 f. **Second**, an Assignment of Mortgage was executed by MERS as nominee for
28 Countrywide Bank, FSB assigning the 155,700.00 Mortgage and the 32,256.08
29 Mortgage to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans
30 Servicing, L.P. (hereinafter "BAC") and was recorded in the Rensselaer County
31 Clerk's Office on August 12, 2008.
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EXHIBIT "A"

- 1 g. This Assignment of Mortgage references that a consolidated mortgage agreement
2 was executed but does not purport to assign that consolidated mortgage
3 agreement.
- 4 h. Additionally, Countrywide Bank, FSB's July 12, 2010 Assignment of Mortgage to
5 BAC attempts to recite a chain of title in the following manner:
- 6 i. First, that on July 12, 2010 Homestead Funding Corporation d/b/a First
7 Niagara Mortgage assigned the 155,700.00 Mortgage to Homestead
8 Funding Corporation;
 - 9 ii. Second, that on June 30, 2008 Homestead Funding Corporation further
10 assigned the 155,700.00 Mortgage to Countywide Bank, FSB;
 - 11 iii. Third, that on August 2, 2010 (a date 40 days into the future) Bank of
12 America successor by merger to Countrywide Bank, N.A. f/k/a
13 Countrywide Bank, FSB assigned the 155,700.00 Mortgage to
14 Countywide Bank, FSB.
- 15 i. Several glaring issues exist with the July 12, 2010 Assignment of Mortgage by
16 Countrywide Bank, FSB to BAC.
- 17 i. On its face, the June 30, 2008 Assignment of Mortgage by Homestead
18 Funding Corporation assigned the 155,700.00 Mortgage to Countrywide
19 Bank, FSB; notwithstanding the fact that Homestead Funding Corporation
20 assigned the Mortgage as itself in lieu of its d/b/a as First Niagara
21 Mortgage.
 - 22 ii. The purported "Gap Assignment of Mortgage" cited failed to properly list
23 the dates of the 'gap' and erroneously claimed that no prior assignment
24 had been recorded ignoring the June 30, 2008 Assignment of Mortgage
25 recorded on August 12, 2008 two years prior to the execution of the gap
26 assignment.
 - 27 iii. Further, the Assignment of Mortgage was executed on July 12, 2010 and
28 claimed correct chain of title by citing a future assignment that had not
29 occurred prior to the execution.
 - 30 iv. Finally, the Assignment of mortgage neither assigned the consolidated
31 mortgage agreement nor the 182,000.00 Mortgage above-described.
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EXHIBIT "A"

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- v. Therefore, on its face, this Assignment of Mortgage was a legal nullity.
- 44. Next, as described above, on August 2, 2010 MERS as nominee for Bank of America successor by merger to Countrywide Bank, N.A. f/k/a Countrywide Bank, FSB purported to assign the 155,700.00 Mortgage to Countywide Bank, FSB.
- 45. Said Assignment of Mortgage was recorded in the Rensselaer County Clerk's Office on August 12, 2010.
- 46. Bank of America's Assignment of Mortgage recited the chain of title as follows:
 - a. First, that on July 12, 2010 Homestead Funding Corporation d/b/a First Niagara Mortgage assigned the 155,700.00 Mortgage to Homestead Funding Corporation;
 - b. Second, that on June 30, 2008 Homestead Funding Corporation further assigned the 155,700.00 Mortgage to Countywide Bank, FSB.
- 47. Several glaring issues exist with the August 2, 2010 Assignment of Mortgage by Bank of America to Countrywide FSB.
 - a. First, the purported "Gap Assignment of Mortgage" cited failed to properly list the dates of the 'gap' and erroneously claimed that no prior assignment had been recorded ignoring the June 30, 2008 Assignment of Mortgage recorded on August 12, 2008 two years prior to the execution of the gap assignment.
 - b. Further, on its face, the June 30, 2008 Assignment of Mortgage by Homestead Funding Corporation assigned the 155,700.00 Mortgage to Countrywide Bank, FSB; notwithstanding the fact that Homestead Funding Corporation assigned the Mortgage as itself in lieu of its d/b/a as First Niagara Mortgage.
 - c. Finally, no reason is given why Bank of America as successor by merger to Countrywide Bank, N.A. f/k/a Countrywide Bank, FSB needed to re-assign the Assignment of Mortgage to Countrywide Bank, FSB;
 - d. In this vein, it is troubling why the assignment would assign the mortgage to the former name.
 - e. Therefore, on its face, this Assignment of Mortgage was a legal nullity.
- 48. Finally, an Assignment of Mortgage was executed by Bank of America (as itself, not successor by merger to Countywide Bank, N.A. f/k/a Countrywide Bank, FSB, and, additionally, the assignment was not executed by MERS) on January 16, 2013 purporting

EXHIBIT "A"

1 to assign the 155,700.00 Mortgage and the 32,256.08 Mortgage and recorded in the
2 Rensselaer County Clerk's Office on February 22, 2013.

3 49. This Assignment of Mortgage also references that a consolidated mortgage agreement
4 was executed but does not purport to assign that consolidated mortgage agreement.

5 50. This Assignment of Mortgage cites the following chain of title for the mortgages:

6 a. The 155,700.00 Mortgage.

7 i. That on June 30, 2008 Homestead Funding Corporation assigned the
8 mortgage to Countrywide Bank, FSB.

9 b. The 32,256.08 Mortgage.

10 i. A claim only that it was consolidated on June 25, 2008.

11 c. The Consolidated Mortgage Agreement.

12 i. That on July 12, 2010 Homestead Funding Corporation d/b/a First Niagara
13 Mortgage assigned the Consolidated Mortgage Agreement to Homestead
14 Funding Corporation.

15 ii. That thereafter on August 2, 2010 Bank of America successor by merger
16 to Countrywide Bank, N.A. f/k/a Countrywide Bank, FSB assigned the
17 Consolidated Mortgage Agreement to Countywide Bank, FSB.

18 iii. That thereafter on July 12, 2010 Countrywide Bank, FSB assigned the
19 Consolidated Mortgage Agreement to BAC.
20

21 51. Several glaring issues exist with the January 16, 2013 Assignment of Mortgage.

22 a. First, the chain of title with respect to the 155,700.00 Mortgage and 32,256.08
23 Mortgage is incomplete; assuming that it was proper to assign them in the first
24 instance given the 182,00.00 Mortgage.

25 b. Second, the chain of title with respect to the Consolidated Mortgage Agreement is
26 erroneous in that no such assignments ever occurred as is evidenced above.

27 c. Third, Bank of America as its own entity did not have any title to any of the
28 Mortgage above-described and therefore lacked legal authority to assign any
29 rights thereto.

30 d. Therefore, on its face, this Assignment of Mortgage was a legal nullity.

31 52. A search of the Rensselaer County Clerk's Office reveals that the 182,00.00 Mortgage
32 executed by Countrywide Bank, FSB was never properly recorded; it appears it appears

EXHIBIT "A"

1 in the recording as an exhibit only to the consolidated Mortgage Agreement, which
2 agreement misidentifies the exhibit as the 155,700.00 Mortgage and the 32,256.08
3 Mortgage.

4 53. Further, a search of the Rensselaer County Clerk's Office reveals that no discharge of
5 mortgage for the 155,700.00 Mortgage was recorded despite that a \$182,000.00 Note and
6 Mortgage was executed for the purpose of satisfying that mortgage for the purpose of
7 Paulajo Tufano refinancing the subject premises into her name only and no longer jointly
8 with her husband Jody Tufano.

9 54. Based on the forgoing, all Mortgages on record with the Rensselaer County Clerk's
10 Office and the unrecorded 182,000.00 Mortgage are a legal nullity and unenforceable by
11 any lending institution.

12 55. BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP
13 (hereinafter "BAC") brought an action by Summons and Complaint dated August 6, 2010
14 and filed with the Rensselaer County Clerk's Office on August 9, 2010.

15 56. Said Complaint sought a judgment of foreclosure on the subject premises based upon the
16 Consolidated Mortgage Agreement dated June 25, 2008 and filed with the Rensselaer
17 County Clerk's Office.

18 57. The Complaint alleged that the borrower, Paulajo Tufano, failed to comply with the terms
19 of the "mortgage and note" on October 1, 2009.

20 58. However, given the issues above-described, BAC thereafter brought a motion to
21 discontinue the action and cited title insurability issues.

22 59. By Decision and Order dated September 12, 2013 the Hon. Geroge B. Ceresia, Jr., J.S.C.
23 granted the discontinuance of the action.

24 60. Thereafter, Nationstar Mortgage LLC brought an action by Summons and Complaint
25 dated June 22, 2014 and filed with the Rensselaer County Clerk's Office on October 1,
26 2014.

27 61. Said Complaint sought a judgment of foreclosure on the subject premises based upon the
28 \$32,256.08 Note and Mortgage dated June 25, 2008 and filed with Rensselaer County
29 Clerk's Office.

30 62. The Complaint alleged that the borrower, Paulajo Tufano, failed to comply with the terms
31 of the "mortgage and note" on September 1, 2009.
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EXHIBIT "A"

1 63. However, given the issues above-described, Nationstar Mortgage LLC thereafter brought
2 a motion to discontinue the action and cited title insurability issues.

3 64. By Decision and Order dated March 1, 2016 the Hon. Patrick J. McGrath, Jr., J.S.C.
4 granted the discontinuance of the action.

5 65. That the Plaintiff has knowledge of the rules of the U.C.C. governing the subject
6 instruments, namely a Note and Mortgage.

7 66. That Plaintiff ignored said rules and law governing the transfer of the said instruments.

8 67. Plaintiff has demanded of Defendants monies due falsely representing that it is a holder
9 in due course despite having knowledge that it cannot establish holder in due course
10 status because Plaintiff has never properly received such status.

11 68. Moreover, Plaintiff has caused the filing of a false Assignment of Mortgage (hereinafter
12 "AOM") purporting to transfer rights of "a" subject Note which no longer has any legal
13 status as a negotiable instrument pursuant to the U.C.C..

14 69. That Plaintiff has knowledge that an AOM does not transfer any rights or obligations
15 pursuant to the Note.

16 70. That Paragraph "1" of the Complaint sets forth a hypothetical averment acknowledging
17 that they are not the holder in due course of "a" subject note; it must be noted that the
18 Note referred to in that Paragraph is not the proper Note upon which a foreclosure action
19 can be brought for the subject property.
20

21 a. To this end it must also be pointed out that BAC Home Loan Servicing, LP fka
22 Countrywide Home Loans Servicing LP previously brought an action (Index no.:
23 234021/10) on the same Note that Plaintiff is attempting to bring this action upon;

24 b. In that case, the Plaintiff, "BAC Home Loan Servicing, LP fka Countrywide
25 Home Loans Servicing LP" moved to discontinue the action citing "title
26 insurability issues" and said motion was granted by the Court by Decision dated
27 September 12, 2013 and said action was discontinued.

28 71. That by virtue of the above the Plaintiff had been made aware of the existence of these
29 issues prior to bringing this action.

30 72. That Plaintiff willfully and maliciously has instituted the instant action without regard to
31 the laws and has done so representing the above falsities as truth both to the Defendants
32 and now to the Court.

EXHIBIT "A"

1 73. Defendants have suffered both damages and special damages to their credit in an amount
2 exceeding all lower court jurisdictions and which are of an ongoing nature.

3
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5 As and for a Cause of Action for Slander of Title

6 74. Defendant repeats and re-alleges all of the above admitted-to factual averments as if fully
7 set fourth hereunder.

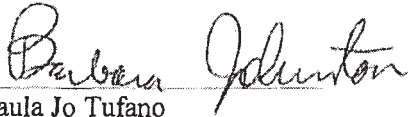
8 75. Plaintiff has made a communication falsely casting doubt on the validity of the
9 Defendants' title of the subject property by filing a forged Assignment of Mortgage and
10 instituting an action by Summons and Complaint based upon the forgery and
11 misrepresentations of the legal status of an alleged Note.

12 76. Plaintiff's action is reasonably calculated to cause harm where it is seeking foreclosure
13 by demanding principal, interest, fees and attorney's fees when it is not entitled to do so
14 and by such will force the Defendants to be homeless and suffer loss to their credit and
15 financial statuses.

16 77. Defendants in addition to damages have suffered special damages to his credit and
17 reputation in an amount exceeding all lower court jurisdictions and which are of an
18 ongoing nature.
19

20
21
22 Wherefore the Defendant respectfully request that the Complaint be dismissed in its
23 entirety and that liability be award to Defendants upon their causes of action and damages to
24 be awarded upon an hearing along with attorney fees and punitive damages and for such
25 other and further relief that this Court may deem just and proper.
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27 Dated: June 15, 2017
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31 Paula Jo Tufano

32 Power of Attorney Barbara Johnston


Creative Encounter, LLC


President Barbara Johnston

EXHIBIT "A"

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State of New York }
 }
County of Saratoga } ss.:

On this 15th day of June, 2017, before me personally appeared **Barbara Johnston**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
CHRISTIAN P. MORRIS, ESQ.
Notary Public, State of New York
Washington County #02MO6218269
Commission Expires Aug. 21, 20 18

**COURT OF APPEALS
STATE OF NEW YORK**

US BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS TRUSTEE
FOR THE RMAC TRUST, SERIES 2016-
CTT,

Plaintiff-Respondent-
Appellant,

-against-

CREATIVE ENCOUNTERS, LLC
and PAULA JO TUFANO,

Defendant-Appellant-
Respondent,

-and-

PEOPLE OF THE STATE OF NEW YORK
Defendants.

**SECTION 500.1(f)
DISCLOSURE
STATEMENT**

Appellate Division,
Third Department No. 529451

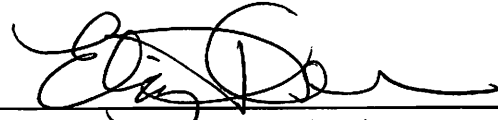
Rensselaer County Clerk
Index No. 256173

Creative Encounters, LLC hereby submits this disclosure statement, pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals, identifying its parent corporations, subsidiaries, and/or affiliates, and states as follows:

1. Creative Encounters, LLC is a domestic limited liability company.
2. Creative Encounters, LLC has no parent corporations, subsidiaries, and/or affiliates.
3. The undersigned hereby certifies that the foregoing is true and correct.

Dated: Saratoga Springs, NY
June 27, 2020

FAIRBANKS FLETCHER LAW PLLC



BY: Elizabeth Fairbanks-Fletcher, Esq.
Attorneys for Creative Encounters, LLC and
Paula Jo Tufano

FAIRBANKS FLETCHER LAW PLLC

3257 Route 9, Suite 5

Saratoga Springs, NY 12866

518-581-8600

elizabeth@fairbanksfletcher.com

**COURT OF APPEALS
STATE OF NEW YORK**

US BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS TRUSTEE
FOR THE RMAC TRUST, SERIES 2016-
CTT,

Plaintiff-Respondent-
Appellant,

-against-

CREATIVE ENCOUNTERS, LLC
and PAULA JO TUFANO,

Defendant-Appellant-
Respondent,

-and-

PEOPLE OF THE STATE OF NEW YORK
Defendants.

**AFFIRMATION OF
SERVICE**

Appellate Division,
Third Department No. 529451

Rensselaer County Clerk
Index No. 256173p

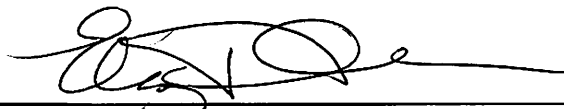
I hereby certify that on June 27, 2020, I served a Jurisdictional Response with Exhibit "A" and Section 500.1(f) Disclosure Statement on Ackerman, LLP, Eric M. Levine, Esq., Attorneys for Plaintiff-Respondent-Appellant, at 777 South Flagler Drive, Suite 1100, West Tower, West Palm Beach, FL 33401, and Letitia James, Attorney General, Attorneys for the People of the State of New York, at the Office of the Attorney General, The Capitol, Albany, NY 12224, the addresses designated for such purpose, by depositing a true copy of the aforesaid documents in a first-class postpaid, properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

I, Elizabeth Fairbanks-Fletcher, declare under penalty of perjury that I have

served the above-referenced document(s) on the above-listed individual(s) or entity/entities in the manner shown, and prepare this Affirmation of Service and that it is true and correct to the best of my knowledge, information and belief.

Dated: Saratoga Springs, NY
June 27, 2020

FAIRBANKS FLETCHER LAW PLLC



BY: Elizabeth Fairbanks-Fletcher, Esq.
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Paula Jo Tufano
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