

IN THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
600 S. MAESTRI PLACE - NEW ORLEANS, LA 70130

14-51224

David A. McCrae
Plaintiff - Appellant

v.

PHH Mortgage; Barrett, Burke, Daffin, Frappier, Turner and Engel, LLP
Defendants, Appellees

MORTGAGE AND CONSUMER FRAUD - COMPLEX

APPENDIX

STATEMENT OF FACTS

In October of 2001, I retired from Northwestern Steel in Sterling Illinois on occasion of plant bankruptcy and closing. I purchased five acres in Burnet County, Texas and erected a manufactured home. I obtained a mortgage through United Services Automobile Association for \$72,500 on appraised property value of \$100,000. USAA delegated the mortgage to PHH, an unaffiliated recommended vendor, and Barbara and I cosigned a 15-year conventional mortgage at 6.25% fixed rate. On receipt and review of loan payoff documents filed in Burnet County in March 2014 (Paid in Full 12 years and six months after execution), we noted that the mortgage had been endorsed to Federal National Mortgage Assurance approximately 8 days after we had executed it. Since that time, I believe our mortgage document had been securitized in many investment packages, and held in part or in toto by many investors or syndicates of investors, for trading purposes. Typically these investor groups operate to acquire packages of real property from the securitization authority, hoping to profit from turnover times as short as a few

moments, while protecting themselves from any risk of asset maintenance, impairment or destruction. The syndicator surrenders all collateral rights to a black hole, and keeps a commission for his efforts in sorting and posting income payments to the various traders of record at particular strike dates. The traders naturally surrender all collateral rights to any individual properties in these monster packages, relying on the statistical general increase of value and yield, while protecting themselves from any particular disaster. The syndicator generally invests a small tithe of his earnings from the package to insure continuous flow of cash for disbursement to his group. With the economies of scale, it generally works to the benefit of all, until the wheels fall off and a major goes bankrupt. Bankruptcy events can also be profitably managed, by those who are a little less bankrupt. Like sharks in a tidal pool. But, I digress. I continued to work in Texas after leaving Northwestern, mostly as a consultant for clients still interested in building or overhauling steel mills, refineries, undersea oil production, and the like. At 62 years old, I came to the end of a project in Mississippi for the Russians and found it convenient to retire almost completely, working occasionally in the area for Home Depot and the like. I decided to pay off my house and economize on my daily/weekly/

monthly expenditures. My household computer is able to run Excel, so I can find out stuff like @PMT, PRIN, INT, @NOW, @NOW+30.25, and I knew how much money I owed. I called PHH in New Jersey to ask for a loan payoff statement. They were very confused, and unable to send me anything. A while went by, and I received a notice to contact HAMP and get another thirty year mortgage for however much I needed. We were having some difficulty communicating. I sent them a pretty clear letter stating I did not intend to take out a new mortgage, I only wanted them to send me a statement that I owed \$7,558 on my existing mortgage, so I could pay it off on 1 January, 2013. I couldn't address it to anyone, as no one signs anything in New Jersey with their name, and different people answer the phone each time I call. Later I found out that they have about 16,000 employees, and maybe one is named Lemony Snicket. I started sending registered mail to see who signed for stuff. I was able to eventually contact Nora Wocken, and found out I needed to send a Qualified Written Request. On my next letter to Nora I wrote 'Qualified Written Request,' and asked how we could resolve our issues. She appointed me a Single Point of Contact, Audrey Welsh. Audrey Welsh never answered the phone. She never returned a letter. I spent one day on the phone with

Robert, Mike, and Melanie, who consulted their computer screens and eventually told me I owed \$8,300+. They indicated I would soon receive a payoff statement. It never arrived. What did arrive was a Notice of Foreclosure, and a house inspector to see if my house did in fact exist, and to hang a notice on my doorknob that she had been there. She didn't have time to talk. She waved as she drove off.

I went to the courthouse to see my house posted for sale on the rocket docket on 5 March. BBDFTE would not talk to me on the phone, only in writing. I went to see Ann Little, a local lawyer. She advised me to just pay them whatever they want, it was cheaper. We talked some more, and I decided to hire her for \$1,000 to intervene with BBDFTE and get our financial differences resolved. BBDFTE would not talk to Ann without my written authorization. I authorized Ann in writing to communicate with BBDFTE (there were two B's then). BBDFTE told Ann it was their policy to communicate only with their client, and never with an adverse party. Ann told me I could file a lawsuit, but with little probability of success, for \$2,500. I considered it. I decided to go to the courthouse and see if I could talk to a judge and stop the sale. I paid \$350 and filed my motion. I thought that was more reasonable than \$2,500, and it

seemed fairly simple. The clerk told me to call Miss Cindy for scheduling. A couple days went by before I could get in touch with Miss Cindy, who told me the Judge couldn't look at my motion due to lack of a white space page for him to sign. Sure enough, I hadn't thought to put in a white space page. Now I know.

I had to go down Option Path 2 and seek bankruptcy advice. By this time my e-mail and mailbox was full of letters from the bankruptcy attorneys offering to help me out. I picked Ray Fisher. I got quickly trained on credit on the internet, protected all my personal inventory, disclosed all my debts, and we filed our petition and notified BPDFTE that the house was unavailable for sale. I paid Ray a retainer of \$1500 for a flat fee of \$2500 and dismissed Ann. Later Ann paid me back \$400 in unused retainer funds. I paid Ray another \$1000 to cover his whole fee. His fee had gone up to \$3500 due to the rate change. I paid the rest of my US Income Tax refund to the trustee and started on my \$1200 payments, in accord with plan. No one had yet submitted their proof of claim, though we were expecting it. The trustee continued making payments to everyone, plus PHH in anticipation. Mississippi eventually sent me a tax refund of \$183, which I gave to the trustee. She was expecting more, since I

had filed for \$3200 and I was never a resident of Mississippi, just working there occasionally, staying in a hotel and paying my transient tax nightly. I'd also worked that year in Illinois, Ohio, and Michigan, but those were flat rate states and I was not required to file, having paid my obligations as they occurred. Like paying the Federal tax on fuel, every time I purchase a gallon of fuel, wherever I buy it, I pay the tax. So the trustee wanted more money, after the \$183. I told Ray that I had agreed to pay all the money, which I had done. Mississippi had not explained their reasoning to me, but I had paid the trustee all the money they had sent. Ray said he would make some calls. The trustee made some calls. Sure enough, Mississippi sent me another \$1,630. I gave it to the trustee. Ray told the trustee he had done some extra work, and asked for \$450. The trustee gave Ray \$450, and added it to my bill. I had to fire Ray before he did any more extra work, and I had to pay another \$450. I fired Ray, and told the trustee and the judge Ray was no longer working for me and I would handle all further inquiries. I asked the trustee for a proof of claim from PHH and sure enough they had by now submitted one, for \$9,465, which was their \$7,558 plus a bunch of fees for selling my house. The fees were created from thin air, as BPDFTE had a computer program that specialized in creating

fees and submitting them to anyone who had an account. A person logs into the computer system periodically and clicks a permissive, and the fee is generated. They used to do this by hand, but sometimes they forgot, so they devised a computerized document processing system and patented it. It was a great improvement, and there were no more people involved. They had not sold my house. We never had an auction. They never earned any fees. But this is how they make their living, creating and processing documents, and creating and processing fees. They are apparently tremendously successful. I paid the entire proof of claim. and all of Ray's fees, and told the trustee the plan was all paid and to discharge me. She wanted another \$23, which she paid to PHH. PHH returned \$18 that was overpaid. The trustee could not give the money to me, so she gave it to a charitable cause.

PHH had been holding \$1,280 in escrow for insurance and taxes, and they wanted more. I canceled the PHH insurance and bought my own insurance from Standard Guaranty for \$481. We corresponded for a while, and PHH issued a refund credit of \$600 for the pro rata insurance premium cancellation. They could not give me the money, so they credited it to escrow. I told them I had already paid the taxes directly so send the remaining escrow money to

me, along with the Release of Lien documentation for filing. At the time I had completed the fraudulent Proof of Claim payments so I stopped paying anything. I had no more creditors. All my lawyers were paid. Eventually my bankruptcy was dismissed. Burnet County received the Paid In Full lien release and recorded the paperwork. We now owned our house, two years and eight months before scheduled contractual mortgage end date of 31 October 2016. My payment records showed an additional \$1900 in fraudulent fees, \$2400 in missing escrow funds, \$600 in fees for an ineffective lawyer, and \$4950 for an incompetent lawyer.

Now I was able to communicate directly again with PHH, as they were no longer a creditor, and I asked for my money back. I also asked for my fee of one bitcoin per day for the 18 months or so of account administrations. I prefer to deal in bitcoins for my own billing, as it is a more stable currency than the dollar. Some people like renminbi, indeed most people. Renminbis are used in China, and there are more of them than there are of us. I prefer bitcoins, as they go right into my phone, and I can buy whatever I need, wherever I'm at. I don't think PHH took my complaints seriously. I know their lawyer thought I was acting frivolously. But...I was not the one who was

threatening to send the sheriff to their office in New Jersey, cleaning out their bank accounts, and evicting all their employees. I just wanted to collect my debts. Now I had them by their tail on a downhill pull.

Now that I knew the extent of my damages, I lodged a complaint with the Consumer Financial Protection Bureau. The CFPB had been set up by Congress as part of the Warren Dodd Financial Reform act of 2012 to strengthen America, and especially to address and reconcile situations just such as I had been going through for the last eighteen months. The Financial Crisis Investigation Committee, in 2008, had issued a report assigning significant responsibility for the Financial Crisis of 2006, to the largely unregulated financial speculators, who were dealing in real estate like they were playing on roulette wheels and living in comped rooms. They were winning the black bets among themselves, and the government was paying the red bets. The situation was intolerable. American citizens who used to own houses were living under bridges. The Americans who still lived in houses were only paying half taxes, because the neighborhoods were full of vacant houses and shantytowns. Long Term US Government Bonds were just for suckers. People like me were working for Russian investors, French investors,

German investors, Italian investors, English and Norwegian investors, Chinese investors, and American capital was fleeing the country. Life was intolerable, and getting intolerabler.

I was hopeful that the CFPB would be able to find someone responsible, clear up the confusion and get everything straightened out. I sent in my complaint, and all my documentation. PHH responded to CFPB with about 62 pages of the confused accounts of Christopher McCrae, who was having similar problems as I, and the same lack of resolution. Christopher lived in Ludlow, Massachusetts, where I lived in second grade, but other than that we were totally unrelated. I gave CFPB some feedback that the response of PHH was totally unresponsive, and they should redouble their efforts. CFPB may or may not have proceeded further, and PHH may or may not have ever replied. After that we were all confidential.

I started assembling my material and organizing to go to court again. I decided I would go in as a class action, and I had learned that since FIRREA of 1989, when the Keating Five went to jail, all these cases needed to be brought by the Attorney General. These cases are often fairly complex, heavily interlocked, sometimes involving organized crime, requiring a lot of deal

making and structured prosecution, so they are generally best pursued by an organized, centralized authority. That was sure enough the case with Ocwen, a mirror image of PHH, who entered into a consent agreement on 19 December of 2013 after appearing in court for about 20 minutes with the CFPB and all 50 State attorneys general to resolve their claims without the need for a lot of discrete and time consuming litigation and only the payment of \$2.1 Billion in consumer relief to be refunded to damaged individuals just such as myself, and the monitoring for three years of Joseph A. Smith to verify that their activities continued in a lawful and just manner, of benefit to the community. I was greatly encouraged.

I knew I had to go through this qui tam procedure in a specific and lawful manner, so I initially invited my counterparties, PHH and BBDFTE, to an Alternative Dispute Resolution meeting at my house on 25 December 2013, so we could walk around the property, discuss our differences like civilized people, and come to a mutual agreement acceptable to all. Nobody responded. Nobody came. On 26 December 2013, I went to the FBI in Austin, the nearest Department of Justice, and reported the suspicious activity in my community and my intent to prosecute the miscreants to the fullest extent of

the law. They (the FBI) have 90 days to make sure there are no investigations in progress that I might disrupt, and are able to order me to desist if they feel that necessary. Unless ordered not to, I am then free as a citizen to represent the United States, investigate the extents of the activity and eventually report my findings to the prosecutor, or prosecute them with my own resources. These methods have been tremendously successful in the arena of drugs or organized crime, and investigators are generally extended the courtesy of anonymity if they so desire, as one contributor to personal security. For financial people, generally considered pillars of the community, I had no such concerns and have waived that privilege. I view information on my computer to be as secure as information on Post-It notes on my refrigerator.

Actually, the qui tam approach has been of tremendous assistance to the DOJ in their investigations and prosecutions, and a flurry of consent judgments have continued all through 2014, with such large financial institutions as Citibank, Chase/JP, BAC, Greentree, Ally, Wells Fargo quickly coming to fruition. These companies, with their feet held to the fire, are standing in line to come to Jesus, and seeing the benefit of converting large liabilities of unknown size into manageable disgorgements of earnings, and clear

regulatory oversight of their continuing operations. To date, at this writing, all settlements have been negotiated by the Department of Justice, and no jury has yet been empanelled for the complex duty of disentangling the web of interlocking debt and speculation. My case would appear to be unique, precedent setting, of great current social import, and of invaluable guidance to the long-term planning of both the legitimate businesses and the interested consumers. It's like a sign post on the highway - "How fast should I be able to go here? Is there a school nearby? Does this bridge get icy?" And then you can read the signs - "80 - School Zone 7:15 to 8:45, 2:30 to 4:15 - Bridge Ices Before Road." It all contributes to help make modern life simple. America is not a jungle. We are not dumb beasts.

While I was organizing myself and gathering resources, and seeking legal counsel, I received a note that my initial motion to stay my foreclosure sale had been removed to Western Texas District Court, at the request of one of the defendant appellees, PHH. I was at the time wondering what district court I should file a new cause in, and actually Western Texas here in Austin is downright convenient. I modified my complaint to update all the intervening time and activity since last visited, in accord with the rules of civil procedure

and the local court rules, and delivered my amended complaint to the court clerk. I also simultaneously served my counterparties, applied for my PACER account so we could all work electronically, and stopped by the local Austin FBI office again and delivered them a printed copy of my amended complaint so they could get caught up on events, or take over prosecution if they so desired. We had another long talk and we reviewed my amended complaint. I told them the filing was not sealed, as that is at my option, and I had no unusual concerns for my personal protection. I have nothing but good things to say about the FBI field agents, who show remarkable knowledge of and interest in current events. There was a nice picture of Barack Obama on the wall. Maybe today there is someone else.

We then started through the characteristic Complaint-Response-Reply routine characteristic of establishing the informational foundations of emerging conflict, and organizing the presentation to the jury. I thought we were getting ourselves pretty well established in our differing views, and moving toward a little better definition. The defendants consistently motioned for dismissal, on many and various grounds, which in itself is not unusual. I made sure to move for jury trial under Rule 38, to get it in the record and notify the defendants that

they should not neglect their fact-seeking responsibilities to their client. I was accused of being intransitive at one point, so I immediately entered my written offer of settlement. Two have expired, the third offer is still in effect, expiring when we seat a jury. We were all seemingly neglecting our responsibilities under Rule 26, and at one point I moved for Alternative Dispute Resolution to be ordered, as a catalytic process. Time went by. The magistrate judge, Mark Lane, eventually opined in support of the defendants for dismissal, on the basis of very little information. I replied that I'm sure we would continue to entertain motions for dismissal, right up to the point of the jury retiring to deliberations, but we could surely put that off to a point in the future where we might all have a little more information, and a little more basis for our opinion.

On 4 November 2014 the judge dismissed the case. I filed an appeal to USCA 5th to remand the case for proper jury trial, including completing all our obligations under Rule 26 to enable the jury to receive as complete a picture of the situation as possible. PHH forecloses 8-10,000 houses per quarter. Lender owned real estate is a blight on the landscape in every town in America. I believe there are 6,000 people like me who have been damaged by common predatory practices all over the country. I can look on Zillow.com and shop for

foreclosed houses nearby; in a 10 mile radius; in Lubbock, Texas; in Washington, D.C.; and be overwhelmed with offers from slumlords everywhere. The regulatory and enforcement arms of government have been ineffective. The legislative powers have created sweeping new regulatory powers. The DOJ has a Mortgage Fraud Task Force, with significant power, reach, and budgetary resources. Now I am a judicial activist. Let's put away these bad actors, one by one. For Truth, Justice, and America,

29 January 2015 /s/ David McCrae

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