

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

CASE NO. 3:12-cr-198-J-2S

v.

LORRAINE BROWN

AFFIDAVIT IN SUPPORT OF  
REGISTER OF DEEDS JOHN L. O'BRIEN'S  
AFFIDAVIT AND REQUEST FOR  
RESTITUTION

AFFIDAVIT OF MARIE MCDONNELL, C.F.E.

COMMONWEALTH OF MASSACHUSETTS §  
COUNTY OF BARNSTABLE §

Before me, the undersigned notary, on this day personally appeared Marie McDonnell, C.F.E., the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

*Background and Qualifications*

1. My name is Marie McDonnell, C.F.E., I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am a *Mortgage Fraud and Forensic Analyst* and a credentialed *Certified Fraud Examiner* ("C.F.E."). I am the founder and managing member of Truth In Lending Audit & Recovery Services, LLC of Brewster, Massachusetts and have twenty-six (26) years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation.

3. I am also the President and Chief Executive Officer of McDonnell Property Analytics, Inc., a litigation support and research firm that provides mortgage-backed securities research services, foreclosure forensics, and forensic title examinations to attorneys nationwide. McDonnell Property Analytics also advises and performs services for special agents of the federal government, attorneys general, county registers of deeds, courts and other governmental agencies.

4. I am the same Marie McDonnell who provided amicus briefs to the Massachusetts Land Court (4/17/2009 & 6/29/2009) and to the Massachusetts Supreme Judicial Court (10/1/2010) in the landmark cases *U.S. Bank National Association v. Ibanez* and *Wells Fargo Bank, N.A. v. LaRice*, 458 Mass. 637 (2011) in which the courts vacated two foreclosures prosecuted by trustees of securitization trusts.<sup>1</sup> My seminal contribution was to shift the debate beyond defective assignments of mortgage to an examination of the fatal breaks in the chain of title that occurred due to the utter failure of the entities that securitized these mortgages to document the transfers between themselves.

5. In January 2011, John L. O'Brien, Register of the Essex Southern District Registry of Deeds in Salem, Massachusetts ("Register O'Brien"), commissioned McDonnell Property Analytics, Inc. ("MPA") to conduct a forensic examination to test the integrity of his registry due to his concerns that: 1) Mortgage Electronic Registration Systems, Inc. ("MERS") proclaims that its members can avoid recording assignments of mortgage if they register them electronically in the MERS® System; and 2) due to the robo-signing scandal spotlighting Linda Green – an employee of Defendant DocX, LLC – as featured in a 60 Minutes exposé on the subject which first aired on April 3, 2011.

6. I submitted my findings to Register O'Brien on June 28, 2011 which revealed widespread, systemic, patterns of practice employed by or on behalf of several of the nations' largest banks that had eroded the transparency and corrupted the chain of title to real property records maintained by the Essex Southern District Registry of Deeds.

7. I found that by failing to record assignments of mortgage necessary to maintain a complete, unbroken chain of title, combined with the recordation of assignments of mortgage that contained false statements, misrepresentations and omissions of material fact in a feigned and fraudulent attempt to close the gap, resulted in a corrupted chain of title. My report is available to the public in its entirety at: <http://salemdeeds.com/pdf/Audit.pdf>.

8. In another landmark mortgage foreclosure case brought on appeal before the Massachusetts Supreme Judicial Court in the matter of *Henrietta Eaton vs. Federal National Mortgage Association & Another*, 462 Mass. 569 (2012) ("*Eaton v. Fannie Mae*"), I filed an amicus brief and a supplemental brief in which I explained how the foreclosure of Eaton's property was grounded in a fraudulent assignment of mortgage that was typical of what I observed while auditing the Essex Southern District Registry of Deeds.<sup>2</sup>

9. I've also trained state and federal law enforcement and regulatory agencies regarding detection of invalid assignments, robo-signing, fraud and misrepresentation in

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<sup>1</sup> McDonnell's *Amicus Brief* in the appeal of *U.S. Bank National Association v. Ibanez* and *Wells Fargo Bank, N.A. v. LaRice* is available on the Massachusetts Supreme Judicial Court's website at: [http://www.ma-appellatecourts.org/search\\_number.php?dno=SJC-10694&get=Search](http://www.ma-appellatecourts.org/search_number.php?dno=SJC-10694&get=Search).

<sup>2</sup> McDonnell's *Amicus Brief* filed on September 30, 2011 and her *Supplemental Brief* docketed on January 30, 2012 in the appeal of *Henrietta Eaton vs. Federal National Mortgage Association & Another*, SJC-11041 are available on the Massachusetts Supreme Judicial Court's website at: [http://www.ma-appellatecourts.org/display\\_docket.php?dno=SJC-11041](http://www.ma-appellatecourts.org/display_docket.php?dno=SJC-11041).

mortgage and foreclosure instruments. For example, in March of 2012, I conducted a one-day workshop for New York Attorney General Eric Schneiderman's staff, United States Attorneys, and investigators. In February 2013 I will be conducting a three-day training in Washington, D.C. for special agents of the federal government at the request of the Office of the Inspector General for the Federal Housing Finance Agency.

10. My experience in working with state and federal law enforcement dates back to the early to mid-1990's when I uncovered a mortgage fraud scheme, orchestrated by The Dime Savings Bank of New York, that led to Attorney General investigations in Massachusetts, New Hampshire and Connecticut and, ultimately, to multi-million dollar settlement awards and relief programs for consumers.

### *Forensic Examination of the Essex Southern District Registry*

11. John O'Brien was the first Register of Deeds in the country to commission a forensic examination of a Registry of Deeds. He did so because he was troubled by the fact that he could no longer look his constituents in the eye and tell them truthfully who owned their property. Despite this awareness, Register O'Brien was not prepared for the results of my audit and when he read my report he declared publically: "*My registry is a crime scene.*"

12. The result of my investigation revealed widespread, systemic, methodical patterns of practice whereby the public land recording system has been used by the nation's largest banks to transfer title to real property that the banks do not own. This is especially true where a foreclosure is involved.

13. This charade is being carried out by the filing of a defective, often fraudulent conveyancing document, such as an assignment of mortgage, which becomes the "breeder document" that enables the alleged assignee to obtain all other documents necessary to extinguish the property owner's rights and transfer full legal and equitable title as well as possession to the fraudster.

14. Once these documents appear in a registry of deeds, they are presumed to be valid and are relied upon by the public, the courts, title examiners, title insurance companies, and other stakeholders as the underlying real property is bought, sold, financed, and on occasion, foreclosed upon.

15. Because it has a direct bearing on the restitution Register O'Brien is seeking from this Court as it considers the sentencing of Lorraine Brown, I briefly summarize the scope of the audit and results that emerged as we completed our review of 565 assignments of mortgage which required that we examine some 3,317 title documents.<sup>3</sup>

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<sup>3</sup> A true and correct copy of my Report entitled *Forensic Examination Of Assignments Of Mortgage Recorded During 2010 In The Essex Southern District Registry Of Deeds*, which I released on June 28, 2011, is available on Register O'Brien's website at: <http://saalemdeeds.com/pdf/Audit.pdf>.

16. I accepted this assignment on a pro bono basis because of its high and urgent value to the public trust, and to educate the 50 Attorneys General who were, at that time, brokering a settlement with five of the nation's largest banks in an attempt to resolve fraudulent foreclosure practices. I also wanted to prove the concept that registries of deeds across all counties and jurisdictions in the United States are similarly impacted and need to have their registries audited as well. Finally, I wanted to give consumers, attorneys, registers of deeds, title examiners, and law enforcement agencies some guidelines as to how they can research the public records to detect invalid documents and gaps in the chain of title that need to be addressed.

17. I defined the scope of the examination by selecting all assignments of mortgage that were recorded during the year 2010 to and from three of the nation's largest banks: JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., and Bank of America, N.A. The sample was not random or arbitrary; we included every assignment that appeared in the Grantor / Grantee index using the registry's online search engine. The study included 147 assignments involving JPMorgan Chase; 278 assignments involving Wells Fargo Bank; and 140 assignments involving Bank of America. A total of 565 assignments were examined.

18. The results, conclusions and findings of the audit my staff and I performed for John O'Brien, Register of the Essex Southern District Registry of Deeds include the following:

- a. We were able to trace ownership to only 287 of 473 mortgages which translates to a transparency rating of only sixty percent (60%).
- b. 46% and 47% of mortgages were either MERS registered or owned by the Government Sponsored Enterprises (i.e., Fannie Mae, Freddie Mac, Ginnie Mae), respectively. Typically ownership of these mortgages is highly obscure.
- c. 37% of mortgages were securitized into public trusts (as opposed to private trusts), which are typically more discoverable through use of forensic tools and high cost, subscription-based databases.
- d. Only 16% of all assignments examined are valid.
- e. 75% of all assignments examined are invalid and an additional 8.7% are questionable (require more data.)
- f. 27% of the invalid assignments are fraudulent, 35% are "robo-signed" and 10% violate the Massachusetts Mortgage Fraud Statute.
- g. 683 assignments are missing, translating to approximately \$180,000 in lost recording fees per 1,000 mortgages whose current ownership can be traced.

**Lorraine Brown, DocX, LLC & LPS**

19. I am profoundly familiar with the style, content and propensity for defects and misinformation contained in various assignments and discharges of mortgage that were prepared, executed and recorded in the public records throughout the country by and under the direction of Lorraine Brown at DocX, LLC, Lender Processing Services (“LPS”) and its predecessor, Fidelity National Information Services.

20. Because of the depth and breadth of my specialized knowledge in this regard, Register John O’Brien has requested that I estimate the cost of auditing some 5,963 documents generated by DocX, LLC that were recorded in the Essex Southern District Registry of Deeds, or registered in the Essex Southern District Land Court Registry from January 1, 2005 through October 31, 2009.

21. Register O’Brien informed me that during this time period a total of 5,688 discharges of mortgage and 275 assignments for a total of 5,963 documents were recorded/registered by DocX, LLC in the Essex Southern District Registry of Deeds and Land Court Registry.

22. I have had the opportunity to conduct a preliminary review of a representative sampling of these documents and found that in addition to the fact that they are admitted forgeries (See Lorraine Brown’s testimony and Plea Agreement with the Department of Justice), the majority of these documents evidence gaps in the chain of title or constitute wild deeds because they fail to connect the original mortgagee with the entity who is discharging or assigning the mortgage.

23. Register O’Brien has also determined that a total of 10,567 DocX, LLC discharges and assignments were recorded by in his Registry of Deeds from 1998 through 2011. I have reviewed a sampling of these earlier documents and can attest to the fact that they bear the same infirmities as the DocX, LLC documents involved in Count One of the United States Attorney’s case now before this Court.

24. Register O’Brien is concerned that the DocX, LLC documents which have been recorded against the title to his constituents’ properties are now void as a matter of law due to the admission of Lorraine Brown that they are forgeries. Moreover, these DocX, LLC filings (*most of which do not involve properties that are or have been in foreclosure*) are defective for other reasons and further compromise the good, clear and marketable title to real property that Register O’Brien’s constituents have a right to expect.

**Restitution Calculus**

25. When considering restitution for the victims of Lorraine Brown’s actions, the Court should understand that there is no simple “fix” that will undo the damage caused by the recordation of approximately one million (1,000,000) forged documents in the nation’s brick and mortar land recording facilities.

26. The problem of replacing an otherwise valid conveyancing document that has been executed or notarized by a robo-signer or a surrogate-signer can be cured by recording a corrective document that has been duly acknowledged by a corporate officer who has personal knowledge of the facts contained therein and who is properly authorized.

27. However, my preliminary research and review of the subject documents prepared, executed and recorded by DocX, LLC indicate that there are other issues that must be addressed as well. For example:

- \* The entity purporting to discharge or assign the mortgage is not the original lender and did not establish its authority to act by way of an assignment or power of attorney. Accordingly, the DocX document reveals a break in the chain of title.
- \* A power of attorney referenced in the DocX document was not recorded; or does not cover the situation at hand.
- \* The assignment of mortgage purports to convey the note and mortgage from the lender directly into a securitized trust years after the trust closed. Such a conveyance is a legal impossibility and indicates that the assignment is a deception.

28. Based on my prior experience of having conducted McDonnell Property Analytics' *Forensic Examination Of Assignments Of Mortgage Recorded During 2010 In The Essex Southern District Registry Of Deeds*, and in view of the fact that the vast majority of the DocX, LLC documents are discharges of mortgage rather than assignments, I estimate that it would cost \$375.00 per property to identify the damage to the chain of title caused by these forged and fraudulent filings.

29. Considering the fact that there are approximately 1,000,000 DocX documents on record and that the Essex Southern District Registry of Deeds is known to contain 10,567 of these, or about 1.06%, I believe that it would be helpful to the Court and to the public at large to conduct a study on 1,000 (0.10%) of these questioned documents to identify the defects and recommend a repair process.

30. I would design an audit plan that maps out the types of document and title defects that exist in the control group; identify the DocX client who ordered the document; and recommend the steps that would need to be taken to rectify the defects.

31. I would also consult with a number of title insurance companies and several of DocX's major clients to discuss the feasibility of restoring clouded titles without having to resort to the judicial process.

32. Finally, I would consult with a variety of technology providers to determine how we might use technology to identify the DocX documents as well as gaps in the chain of title that resulted from these filings.

33. I propose, therefore, that the Court award Register O'Brien an additional sum of money to cover the cost of this sampling and the preparation of a report that would recommend a methodology for repairing the damage as follows:

Title Examination: 1,000 documents/properties @ \$375.00 =	\$375,000.00
Subscription-Based Services e.g., Bloomberg, ABSNet Loan:	\$24,000.00
Compile Data; Statistical Analysis; Write Report:	\$75,000.00
Consultants; Legal, etc.:	\$15,000.00
Printing; Mail; Travel; etc.:	\$3,015.00
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	<b>\$492,015.00</b>

Subscribed and signed voluntarily, under penalty of perjury, pursuant to the provisions of 18 U.S.C. § 1621.



MARIE MCDONNELL, C.F.E., Affiant  
*Mortgage Fraud and Forensic Analyst*  
*Certified Fraud Examiner, ACFE*

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COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF BARNSTABLE, SS

At Brewster, Massachusetts, on this 11<sup>th</sup> day of January 2013, before me, the undersigned authority, personally appeared MARIE MCDONNELL, proved to me through evidence of identity, to wit: a Massachusetts Driver's License, to be the signer(s) of the attached document, and who swore or affirmed to me, under the penalties of perjury, that the contents of said document are truthful and accurate, to the best of her knowledge and belief.

Subscribed to and sworn before me.



Notary Public

My Commission expires: \_\_\_\_\_

A True Copy Attest  
CHRISTINE M. MURPHY  
NOTARY PUBLIC

My commission expires June 17, 2017