


































## Selected docket entries for case 13–11585

Generated: 01/23/2015 18:06:05

Filed	Document Description	Page	Docket Text
04/15/2013			CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Neil J. Gillespie on 04/10/2013. Fee Status: Fee Not Paid. No hearings to be transcribed.
	 Civil Appeal Docketed – Notice of Appeal	3	
	 DE# 19	8	
	 DKT–2 Notice to Counsel/Parties	15	
04/15/2013	 USDC Order or Motion on IFP	17	USDC order denying IFP as to Appellant Neil J. Gillespie was filed on 03/07/2013. Docket Entry 19.
05/02/2013	 Appellant's CIP Filed	24	Appellant's Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellant Neil J. Gillespie.
05/09/2013	 Appearance of Counsel Form Filed	32	APPEARANCE of Counsel Form filed by Danielle N. Parsons for Reverse Mortgage Solutions, Inc.. (ECF: Curtis Wilson)
05/09/2013			E–filed Appearance of Counsel processed for Attorney Curtis Wilson for Appellee Reverse Mortgage Solutions, Inc. in 13–11585.
05/17/2013			USDC order denying IFP as to Appellant Neil J. Gillespie was filed on 05/09/2013. Docket Entry 28.
	 USDC Order or Motion on IFP	33	
	 DKT–6A Notice to Counsel/Parties	35	
06/12/2013			<b>ORDER: On its own motion, the court DISMISSES the appeal for lack of jurisdiction. (RB/SM/AJ).</b>
	 DIS–4 Notice to Counsel/Parties	36	
	 Court Order Filed	37	
07/02/2013	 Motions Filed	39	<i>MOTION for reconsideration of a panel order entered on 06/12/2013 filed by Appellants Neil J. Gillespie and Neil J. Gillespie. Opposition to Motion is Unknown [6911968–1]</i>
07/19/2013	 Public Communication	101	Public Communication: Letter from Pro Se Appellant to update and correct previous letter dtd 07/01/2013 – no action requested..
07/22/2013			Public Communication: Letter from Pro Se Appellant Additional documents for reconsideration of denial of recon motion – returned with SPCT–5 information.
	 Public Communication	122	
	 PRO–3 Notice to Counsel/Parties	131	
07/25/2013			<b>ORDER: Motion for reconsideration of panel order filed by Appellants Neil J. Gillespie and Neil J. Gillespie is DENIED. [6911968–2] FMH, CRW and AJ</b>
	 Court Order Filed	132	
	 MOT–2 Notice to Counsel/Parties	133	
08/07/2013	 Public Communication	134	Public Communication: Letter from Pro Se Appellant with UPS voucher to return his filed documents/records..
10/30/2013			Public Communication: Letter from Pro Se Appellant Writ of Certiorari to the Supreme Court – returned.
	 Public Communication	139	
	 SPCT–5 Notice to Counsel/Parties	140	

11/08/2013	 Certiorari Filed	141	Notice of Writ of Certiorari filed as to Appellants Neil J. Gillespie and Neil J. Gillespie. SC# 13-7280.
12/16/2013			Checked status of ceritorari 13-7280 filed as to Appellant Neil J. Gillespie – Pending.
01/13/2014			Writ of Certiorari filed as to Appellant Neil J. Gillespie is DENIED. SC# 13-7280.
	 MDT-4	142	
	 Certiorari Denied	143	
03/10/2014	 Supreme Court Rehearing Denied	144	U.S. Supreme Court rehearing DENIED as to Appellant Neil J. Gillespie. 03/10/2014. 13-7280.
01/13/2015			Public Communication: Letter from Pro Se Appellant – addressed to Judge Carnes – returned.
	 Public Communication	145	
	 PRO-3 Notice to Counsel/Parties	146	

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2013 APR 10 AM 11:30  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA, FLORIDA

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

v.

CASE NO.: 5:13-CV-58-Oc-10PRL

NEIL J. GILLESPIE, AS CO-TRUSTEES, et. al,

Defendants.

NOTICE OF APPEAL

Notice is given that Defendants Neil J. Gillespie, as co-trustees, and Neil J. Gillespie, hereby appeal to the United States Court of Appeals for the Eleventh Circuit the Judgment In A Civil Case (Doc. 20) entered March 11, 2013. Defendants also appeal the following:

1. Failure of Judge Hodgers to recuse for conflict of interest with Bank of America, N.A. (Doc. 18)
2. Failure of the Court to grant Defendants leave to proceed in forma pauperis. (Doc. 6, Doc. 8)
3. Failure of the Court to grant Defendants permission to e-file on the CM/ECF system. (Doc. 7)
4. Failure of the Court to require Plaintiff's compliance, Rule 7.1 Disclosure Statement. (Doc. 14)
5. Failure of the Court to rule on Defendants Rule 11 motion for sanctions. (Doc. 15)
6. Failure of the Court to rule on Defendants Rule 55 motion for default judgment. (Doc. 16)
7. Failure of the Court to rule on Defendants Rule 72 objection to magistrate judge's order. (Doc. 17)
8. Failure of the Court to rule on Defendants Rule 60(b)(3) motion for relief from magistrate order. (Doc. 17).
9. Failure of the Court to consider Defendants Rule 5.1 constitutional challenge to 12 U.S.C. § 1715z-20 - Insurance of home equity conversion mortgage for elderly homeowners. (Doc. 18).
10. Order Remanding Case (Doc. 19) entered March 7, 2013.

11. Failure of the Court - apparently - to docket or rule on Defendants' Rule 59(e) motion to alter or amend a judgment filed by hand delivery April 8, 2013 at 3:57 PM. Defendants' Rule 59(e) cover page showing the Clerk's date and time stamp appears at Exhibit 1 but does not currently appear on PACER.
12. Failure of the Court - apparently - to docket or rule on Defendants' Motion to Disqualify the Hon. Wm. Terrell Hodges filed by hand delivery with the Affidavit of Neil J. Gillespie - 28 U.S.C. 144 April 8, 2013 at 3:57 PM. Defendants' affidavit showing the Clerk's date and time stamp appears at Exhibit 2. As of approximately 9:30 AM this morning, Defendants do not see the Rule 59(e) motion, motion to disqualify, or the affidavit, on PACER - the Public Access to Court Electronic Records system.

Defendants appeal anything else in this case appealable and not specifically mentioned.

RESPECTFULLY SUBMITTED April 10, 2013.



NEIL J. GILLESPIE  
8092 SW 115th Loop  
Ocala, Florida 34481  
Email: neilgillespie@mfi.net  
Phone: 352-854-7807

NEIL J. GILLESPIE and NEIL J. GILLESPIE CO-TRUSTEE OF THE GILLESPIE  
FAMILY LIVING TRUST AGREEMENT DATED FEBRUARY 10, 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a true and correct copy of the foregoing to Danielle N. Parsons, Esq., McCalla Raymer LLC, 225 E. Robinson St. Suite 660, Orlando, FL 32801, MRService@mccallaraymer.com, by email today April 10, 2013, and to parties on the attached service list by email.



NEIL J. GILLESPIE



RECEIVED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2013 APR -8 PM 3: 57

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA, FLORIDA

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

v.

CASE NO.: 5:13-CV-58-Oc-10PRL

NEIL J. GILLESPIE, AS CO-TRUSTEES, et. al,

Defendants.

\_\_\_\_\_ /

**RULE 59(e) MOTION TO ALTER OR AMEND A JUDGMENT**  
**Motion to Disqualify the Hon. Wm. Terrell Hodges**

Defendants Neil J. Gillespie, as co-trustees, and Neil J. Gillespie, move pursuant to the Federal Rules of Civil Procedure, Rule 59(e) to Alter or Amend the Judgment In A Civil Case (Doc. 20) entered March 11, 2013, and state as follows:

1. The trial judge, Senior Judge Wm. Terrell Hodges, has multiple conflicts of interest in this case, with Bank of America, mortgage foreclosure, and conflicts of interest with Defendant Neil J. Gillespie. Those conflicts are set forth in a the Affidavit of Neil J. Gillespie and appendix that accompanies this motion to disqualify Judge Hodges, under the following federal statutes:

28 U.S.C. 144, Bias or prejudice of judge

28 U.S.C. 455, Disqualification of justice, judge, or magistrate judge

Recusal is required when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable," Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868, 129 S.Ct. 2252.

2. Senior federal judges like Senior Judge Wm. Terrell Hodges are unconstitutional, *see* Are Senior Judges Unconstitutional? 92 *Cornell Law Review* 453 (2007), by the Hon. David R. Stras,

EXHIBIT

1

RECEIVED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2013 APR -8 PM 3:57  
CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA, FLORIDA

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

v.

CASE NO.: 5:13-CV-58-Oc-10PRL

NEIL J. GILLESPIE, AS CO-TRUSTEES, et. al,

Defendants.

AFFIDAVIT OF NEIL J. GILLESPIE - 28 U.S.C. 144  
Bias or prejudice of judge

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This affidavit is given on personal knowledge unless otherwise expressly stated.
2. I am a Defendant in this federal court action personally, and as co-trustees of the Gillespie Family Living Trust Agreement Dated February 10, 1997.
3. The trial judge, Senior Judge Wm. Terrell Hodges, has multiple conflicts of interest in this case, with Bank of America, home mortgage foreclosure, and conflicts of interest with me. Those conflicts are set forth below. 28 U.S.C. 455 requires disqualification of a justice, judge, or magistrate judge "in any proceeding in which his impartiality might reasonably be questioned."

28 U.S.C. 455(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

I believe a reasonable person reading the facts in this affidavit would conclude Judge Hodge's impartiality might be reasonably questioned.

EXHIBIT

2

## SERVICE LIST

Danielle N. Parsons, Esq., Plaintiff's Counsel  
Reverse Mortgage Solutions, Inc., Plaintiff  
McCalla Raymer, LLC  
225 E. Robinson St. Suite 660  
Orlando, FL 32801  
Telephone: (407) 674-1850  
Primary Email: MRService@mccallaraymer.com  
Secondary Email: dnp@mccallaraymer.com

Oak Run Homeowners Association, Inc.  
Robert A. Stermer, Esq., Registered Agent  
7480 SW Highway 200  
Ocala, FL 34476  
Primary Email: svl@atlantic.net  
Secondary Email: stermer.law@aol.com

United States of America, on behalf of the Secretary of Housing and Urban Development  
Colleen Murphy Davis, Assistant United States Attorney  
U.S. Attorney's Office, Middle District of Florida  
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Secondary Email: Michalene.Rowells@hud.gov

Tiffany Caparas, Esq. (for Mark Gillespie and spouse)  
111 N. Magnolia Ave., Suite 1600  
Orlando, FL 32801  
Primary Email: TCaparas@kelattorneys.com  
Secondary Email: KELinbox@kelattorneys.com

Mark Gillespie (Co-trustee)  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123  
Primary Email: mark.gillespie@att.net

Development & Construction Corporation of America, Priya Ghumman, Registered Agent  
c/o Carol Olson, Decca Vice President of Administration, and Decca Secretary-Treasurer,  
10983 SW 89 Avenue  
Ocala, FL 34481  
Primary Email: colson@deccahomes.com

Clerk of the Fifth Judicial Circuit Court  
In and for Marion County, Florida  
110 NW 1st Ave.  
Ocala, FL 34475  
CASE NO.: 2013-115-CAT

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

-vs-

Case No. 5:13-cv-58-Oc-10PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN SETTLORS AND/OR  
/BENEFICIARIES, UNKNOWN  
TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 AND UNKNOWN  
TENANT IN POSSESSION 2,

Defendants.

\_\_\_\_\_ /

**ORDER REMANDING CASE**

On January 2, 2013, the Plaintiff, Reverse Mortgage Solutions, Inc., filed a foreclosure action in the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida against numerous defendants, both known and unknown (Doc. 2). The Complaint alleges state court causes of action only, pursuant to Fla. Stat. § 26.012.

On February 4, 2013, one of the Defendants, Neil. J. Gillespie, proceeding *pro*



se, filed a Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1331, and 5 U.S.C. § 702 (Doc. 1). The Notice of Removal states that Mr. Gillespie intends to raise various counterclaims and affirmative defenses under the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, and intends to file cross-claims against Defendant United States of America, Department of Housing and Urban Development (“HUD”) (*Id.*, pp. 2-3). Mr. Gillespie has also filed a motion for leave to proceed *in forma pauperis* (Doc. 6).

On February 13, 2013, the United States Magistrate Judge issued a Report and Recommendation (Doc. 10), which recommended, pursuant to 28 U.S.C. § 1915(e)(2), that the motion to proceed *in forma pauperis* be denied, and this case be remanded to state court for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3). Specifically, the Magistrate Judge held that remand is proper both because this Court lacks subject matter jurisdiction under the “well-pleaded complaint” rule, see Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429 (1987), and because there is a procedural defect in the notice of removal.

Mr. Gillespie has filed 58 pages of objections and exhibits challenging the Magistrate Judge’s Report and Recommendation, as well as seeking recusal of both the undersigned and the Magistrate Judge (Doc. 18). Although typically the Court would afford the Plaintiff leave to respond to the Objections, the law and the facts of this case conclusively establish that this Court is without subject matter jurisdiction, such that it would be a waste of attorney and judicial resources to wait for a response.

The Magistrate Judge noted that the decision whether a claim arises under federal law for purposes of § 1331 is generally determined by the well-pleaded complaint rule, “which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” Smith v. GTE Corp., 236 F.3d 1292, 1310 (11th Cir. 2001) (citing Caterpillar, 482 U.S. at 392). Under the well-pleaded complaint rule, “merely having a federal defense to a state law claim is insufficient to support removal.” Lontz v. Tharp, 413 F.3d 435, 439 (4th Cir. 2005). Moreover, the Supreme Court has held that a counterclaim cannot serve as the basis for “arising under” federal question jurisdiction. Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 832, 122 S. Ct. 1889, 1894 (2002). See also Mortgage Electronic Registration Systems, Inc. v. Malugen, No. 6:11-cv-2033-Orl-22, 2012 WL 1382265 at \* 8 (M.D. Fla. Apr. 3, 2012) (“Thus, the law is well settled that federal claims raised in a counterclaim may not serve as a basis for removal jurisdiction.”).

The Magistrate Judge found that the only issues of federal law in this case were raised in Mr. Gillespie’s anticipated defenses “or other such claim,” and thus, under the well-pleaded complaint rule, this Court was without subject matter jurisdiction (Doc. 10, p. 5). Mr. Gillespie’s primary objections focus on the fact that he intends to raise questions of federal law not only in his counterclaims and defenses, but also in cross-claims he intends to assert against HUD. This is a distinction without a difference. “The basic principle is that defendants may remove only on the basis of claims brought

against them and not on the basis of counterclaims, cross-claims, or defenses asserted by them.” Image 1 Studios, LLC v. Youngblood, No. 6:12-cv-1570-Orl-22DAB, 2012 WL 5415629 at \* 1 (M.D. Fla. Oct. 22, 2012) (quoting 14C Charles Alan Wright, Arthur R. Miller Edward H. Cooper & Joan E. Steinman, FEDERAL PRACTICE AND PROCEDURE § 3730 (4th ed. 2009)). See also Chevy Chase Bank, F.S.B. v. Carrington, No. 6:09-cv-2132-Orl-31GJK, 2010 WL 1854123 at \* 3 (M.D. Fla. May 10, 2010) (remanding case to state court where the only claims that arose under federal law were contained in the defendant’s cross-claims). Thus, whether Mr. Gillespie asserts a federal cause of action in his counterclaim, affirmative defense, or cross-claim, is irrelevant for purposes of determining subject matter jurisdiction. The Court is limited solely to a review of the Plaintiff’s Complaint, which in this case clearly and explicitly only raises issues of state foreclosure law.<sup>1</sup> Mr. Gillespie’s objection on this point shall be Overruled.

Mr. Gillespie also objects to the Magistrate Judge’s finding that the notice of removal was procedurally defective because it does not contain the consent and/or joinder of all other Defendants in the removal. Specifically, Mr. Gillespie contends that he is the only defendant with a real interest in this case, and that the other defendants were neither properly joined or served. This objection is based on both hearsay and

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<sup>1</sup>This Order should not be interpreted as a ruling concerning whether, or to what extent, Mr. Gillespie can sue HUD in a separate action. Rather, this Order is limited to whether the Court has subject matter jurisdiction over the specific action that has been removed to this Court.

supposition on the part of Mr. Gillespie – the fact remains that several other defendants have been served and have not consented or joined in the notice of removal. This is sufficient to warrant remand. Moreover, this objection does not change the fact that this Court lacks subject matter jurisdiction and must remand regardless of the validity of the procedures used for removal. This objection shall be Overruled.

Mr. Gillespie next objects to the Magistrate Judge's report and recommendation, on the ground that the mere inclusion of the United States as a defendant automatically gives this Court subject matter jurisdiction over the entire case. Mr. Gillespie is mistaken. Simply listing the United States as a defendant does not automatically clothe this Court with jurisdiction – rather it gives the United States the right to seek removal of the case to federal court. Unless and until the United States seeks removal, this Court is without jurisdiction. Moreover, the Court has reviewed the very narrow circumstances when it would have jurisdiction over cases where the United States is listed as a defendant, and this case does not fall within any of those circumstances. See 28 U.S.C. §§ 1346, 2409, 2409a. This objection will also be Overruled.

Mr. Gillespie's other objections are either irrelevant (objection to the date the Plaintiff's actually filed their complaint in state court), or redundant (arguing that his anticipated federal cross-claims against HUD establish jurisdiction). They warrant no further discussion, and will be Overruled. Mr. Gillespie's request to amend his Notice of Removal will also be Denied as futile because there is no set of facts or legal claims that can be raised which would give the Court jurisdiction over this case.



Lastly, Mr. Gillespie seeks to recuse the undersigned and the Magistrate Judge. Because the Court does not have subject matter jurisdiction, it would appear that this request is now moot. In any event, the Court finds that the request is also without legal merit. Mr. Gillespie seeks the undersigned's recusal on the basis that I have a financial interest in Bank of America, which Mr. Gillespie contends is the real party in interest in this case. However, Bank of America is not listed as a party, and the evidence submitted by Mr. Gillespie, which consists of correspondence between Mr. Gillespie and Bank of America in which Mr. Gillespie is requesting information about various accounts, does not appear to have anything to do with this case.

Mr. Gillespie seeks recusal of the Magistrate Judge on the grounds that the Magistrate Judge's report and recommendation contains misstatements of law and fact, and therefore calls into question the Magistrate Judge's fairness and impartiality. The Magistrate Judge has not misstated any law or facts, rather he has correctly determined that there is no subject matter jurisdiction. Besides, any such claim would relate to judicial acts rather than extra-judicial bias, and it is insufficient to work a disqualification as a matter of law. And the fact that Mr. Gillespie does not agree with the Magistrate Judge's well-founded report and recommendation does not establish any legally cognizable bias either. See 28 U.S.C. §§ 144, 455(a), and 455(b)(1).

Accordingly, upon due consideration it is hereby ORDERED as follows:

(1) The United States Magistrate Judge's Report and Recommendation (Doc. 10) is ADOPTED, CONFIRMED, AND MADE A PART HEREOF;

(2) Defendant Neil J. Gillespie's Objections (Doc. 18) are OVERRULED, and his requests for leave to amend his Notice of Removal and for recusal of the undersigned and the Magistrate Judge are all DENIED;

(3) Defendant Neil J. Gillespie's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 6) is DENIED;

(4) The Clerk is directed to remand this case to the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida; and

(5) The Clerk is further directed to enter judgment accordingly, terminate all other pending motions, and close the file.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 7th day of March, 2013.



UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record  
Hon. Philip R. Lammens  
Maurya McSheehy

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

April 22, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

On April 1, 2013, this Court began **MANDATORY electronic filing**. All counsel are required to file documents electronically in appeals pending on April 1, 2013, and in appeals docketed in this Court on or after that date, unless exempted for good cause.

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries.

Attorneys who wish to participate in this appeal must be properly admitted either to the bar of this court or for this particular proceeding pursuant to 11th Cir. R. 46-1. An attorney not yet properly admitted must file an appropriate application for admission within fourteen (14) days from this date. In addition, all attorneys (except court-appointed counsel) who wish to participate in this appeal must complete and return an appearance form within fourteen (14) days. [Application for Admission to the Bar](#) and [Appearance of Counsel Form](#) are available on the Internet at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). The clerk may not accept motions or other filings from an attorney until that attorney files an appearance form. See 11th Cir. R. 46-5.

FRAP 26.1 and the accompanying circuit rules provide that the Certificate of Interested Persons and Corporate Disclosure Statement (CIP) must be filed by every appellant [and cross-appellant] with this court within 14 days after the date the appeal is docketed in this court, or along with the filing in this court by any party of any motion, petition, or pleading, whichever occurs first. The clerk is not authorized to submit to the court any brief (except for the reply brief of an appellant or cross-appellant), petition, answer, motion or response that does not contain the certificate, but may receive the filing pending supplementation of the required certificate. You are hereby notified that failure to submit the required certificate will result in your document(s) being unfiled which may ultimately result in dismissal of your appeal.

The rules further provide that on the same day a certificate is electronically filed using the ECF system, the party filing it must also complete the court's web-based certificate at the [Web-Based](#)

CIP link of the court's website, [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov), by electronically providing the information required for that form. Only the ticker symbols for publicly traded corporations that are listed on the CIP must be entered in the web-system. If your CIP does not include any publicly traded corporations, you are required to go to the website and simply click the button indicating that there are no publicly traded corporations to report. Pro se parties are **not required or authorized** to complete the web-based certificate.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of (14) days from this date, this appeal will be dismissed by the clerk without further notice unless the default(s) noted below have been corrected:

Pay to the DISTRICT COURT clerk the \$450 docket and \$5 filing fees (total of \$455), with notice to this office, **or** request [leave to proceed in forma pauperis on appeal in the district court](#). See Fed.R. App.P. 24(a). If the district court denies such leave, appellant may file in this court a [Motion to Proceed in forma pauperis in this court](#) with a financial affidavit.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B/dro  
Phone #: (404) 335-6187

DKT-2 Appeal WITH Deficiency



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

-vs-

Case No. 5:13-cv-58-Oc-10PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN SETTLORS AND/OR  
/BENEFICIARIES, UNKNOWN  
TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 AND UNKNOWN  
TENANT IN POSSESSION 2,

Defendants.

\_\_\_\_\_ /

**ORDER REMANDING CASE**

On January 2, 2013, the Plaintiff, Reverse Mortgage Solutions, Inc., filed a foreclosure action in the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida against numerous defendants, both known and unknown (Doc. 2). The Complaint alleges state court causes of action only, pursuant to Fla. Stat. § 26.012.

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se, filed a Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1331, and 5 U.S.C. § 702 (Doc. 1). The Notice of Removal states that Mr. Gillespie intends to raise various counterclaims and affirmative defenses under the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, and intends to file cross-claims against Defendant United States of America, Department of Housing and Urban Development (“HUD”) (*Id.*, pp. 2-3). Mr. Gillespie has also filed a motion for leave to proceed *in forma pauperis* (Doc. 6).

On February 13, 2013, the United States Magistrate Judge issued a Report and Recommendation (Doc. 10), which recommended, pursuant to 28 U.S.C. § 1915(e)(2), that the motion to proceed *in forma pauperis* be denied, and this case be remanded to state court for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3). Specifically, the Magistrate Judge held that remand is proper both because this Court lacks subject matter jurisdiction under the “well-pleaded complaint” rule, see Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429 (1987), and because there is a procedural defect in the notice of removal.

Mr. Gillespie has filed 58 pages of objections and exhibits challenging the Magistrate Judge’s Report and Recommendation, as well as seeking recusal of both the undersigned and the Magistrate Judge (Doc. 18). Although typically the Court would afford the Plaintiff leave to respond to the Objections, the law and the facts of this case conclusively establish that this Court is without subject matter jurisdiction, such that it would be a waste of attorney and judicial resources to wait for a response.

The Magistrate Judge noted that the decision whether a claim arises under federal law for purposes of § 1331 is generally determined by the well-pleaded complaint rule, “which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” Smith v. GTE Corp., 236 F.3d 1292, 1310 (11th Cir. 2001) (citing Caterpillar, 482 U.S. at 392). Under the well-pleaded complaint rule, “merely having a federal defense to a state law claim is insufficient to support removal.” Lontz v. Tharp, 413 F.3d 435, 439 (4th Cir. 2005). Moreover, the Supreme Court has held that a counterclaim cannot serve as the basis for “arising under” federal question jurisdiction. Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 832, 122 S. Ct. 1889, 1894 (2002). See also Mortgage Electronic Registration Systems, Inc. v. Malugen, No. 6:11-cv-2033-Orl-22, 2012 WL 1382265 at \* 8 (M.D. Fla. Apr. 3, 2012) (“Thus, the law is well settled that federal claims raised in a counterclaim may not serve as a basis for removal jurisdiction.”).

The Magistrate Judge found that the only issues of federal law in this case were raised in Mr. Gillespie’s anticipated defenses “or other such claim,” and thus, under the well-pleaded complaint rule, this Court was without subject matter jurisdiction (Doc. 10, p. 5). Mr. Gillespie’s primary objections focus on the fact that he intends to raise questions of federal law not only in his counterclaims and defenses, but also in cross-claims he intends to assert against HUD. This is a distinction without a difference. “The basic principle is that defendants may remove only on the basis of claims brought

against them and not on the basis of counterclaims, cross-claims, or defenses asserted by them.” Image 1 Studios, LLC v. Youngblood, No. 6:12-cv-1570-Orl-22DAB, 2012 WL 5415629 at \* 1 (M.D. Fla. Oct. 22, 2012) (quoting 14C Charles Alan Wright, Arthur R. Miller Edward H. Cooper & Joan E. Steinman, FEDERAL PRACTICE AND PROCEDURE § 3730 (4th ed. 2009)). See also Chevy Chase Bank, F.S.B. v. Carrington, No. 6:09-cv-2132-Orl-31GJK, 2010 WL 1854123 at \* 3 (M.D. Fla. May 10, 2010) (remanding case to state court where the only claims that arose under federal law were contained in the defendant’s cross-claims). Thus, whether Mr. Gillespie asserts a federal cause of action in his counterclaim, affirmative defense, or cross-claim, is irrelevant for purposes of determining subject matter jurisdiction. The Court is limited solely to a review of the Plaintiff’s Complaint, which in this case clearly and explicitly only raises issues of state foreclosure law.<sup>1</sup> Mr. Gillespie’s objection on this point shall be Overruled.

Mr. Gillespie also objects to the Magistrate Judge’s finding that the notice of removal was procedurally defective because it does not contain the consent and/or joinder of all other Defendants in the removal. Specifically, Mr. Gillespie contends that he is the only defendant with a real interest in this case, and that the other defendants were neither properly joined or served. This objection is based on both hearsay and

---

<sup>1</sup>This Order should not be interpreted as a ruling concerning whether, or to what extent, Mr. Gillespie can sue HUD in a separate action. Rather, this Order is limited to whether the Court has subject matter jurisdiction over the specific action that has been removed to this Court.

supposition on the part of Mr. Gillespie – the fact remains that several other defendants have been served and have not consented or joined in the notice of removal. This is sufficient to warrant remand. Moreover, this objection does not change the fact that this Court lacks subject matter jurisdiction and must remand regardless of the validity of the procedures used for removal. This objection shall be Overruled.

Mr. Gillespie next objects to the Magistrate Judge's report and recommendation, on the ground that the mere inclusion of the United States as a defendant automatically gives this Court subject matter jurisdiction over the entire case. Mr. Gillespie is mistaken. Simply listing the United States as a defendant does not automatically clothe this Court with jurisdiction – rather it gives the United States the right to seek removal of the case to federal court. Unless and until the United States seeks removal, this Court is without jurisdiction. Moreover, the Court has reviewed the very narrow circumstances when it would have jurisdiction over cases where the United States is listed as a defendant, and this case does not fall within any of those circumstances. See 28 U.S.C. §§ 1346, 2409, 2409a. This objection will also be Overruled.

Mr. Gillespie's other objections are either irrelevant (objection to the date the Plaintiff's actually filed their complaint in state court), or redundant (arguing that his anticipated federal cross-claims against HUD establish jurisdiction). They warrant no further discussion, and will be Overruled. Mr. Gillespie's request to amend his Notice of Removal will also be Denied as futile because there is no set of facts or legal claims that can be raised which would give the Court jurisdiction over this case.

Lastly, Mr. Gillespie seeks to recuse the undersigned and the Magistrate Judge. Because the Court does not have subject matter jurisdiction, it would appear that this request is now moot. In any event, the Court finds that the request is also without legal merit. Mr. Gillespie seeks the undersigned's recusal on the basis that I have a financial interest in Bank of America, which Mr. Gillespie contends is the real party in interest in this case. However, Bank of America is not listed as a party, and the evidence submitted by Mr. Gillespie, which consists of correspondence between Mr. Gillespie and Bank of America in which Mr. Gillespie is requesting information about various accounts, does not appear to have anything to do with this case.

Mr. Gillespie seeks recusal of the Magistrate Judge on the grounds that the Magistrate Judge's report and recommendation contains misstatements of law and fact, and therefore calls into question the Magistrate Judge's fairness and impartiality. The Magistrate Judge has not misstated any law or facts, rather he has correctly determined that there is no subject matter jurisdiction. Besides, any such claim would relate to judicial acts rather than extra-judicial bias, and it is insufficient to work a disqualification as a matter of law. And the fact that Mr. Gillespie does not agree with the Magistrate Judge's well-founded report and recommendation does not establish any legally cognizable bias either. See 28 U.S.C. §§ 144, 455(a), and 455(b)(1).

Accordingly, upon due consideration it is hereby ORDERED as follows:

(1) The United States Magistrate Judge's Report and Recommendation (Doc. 10) is ADOPTED, CONFIRMED, AND MADE A PART HEREOF;

(2) Defendant Neil J. Gillespie's Objections (Doc. 18) are OVERRULED, and his requests for leave to amend his Notice of Removal and for recusal of the undersigned and the Magistrate Judge are all DENIED;

(3) Defendant Neil J. Gillespie's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 6) is DENIED;

(4) The Clerk is directed to remand this case to the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida; and

(5) The Clerk is further directed to enter judgment accordingly, terminate all other pending motions, and close the file.

IT IS SO ORDERED.

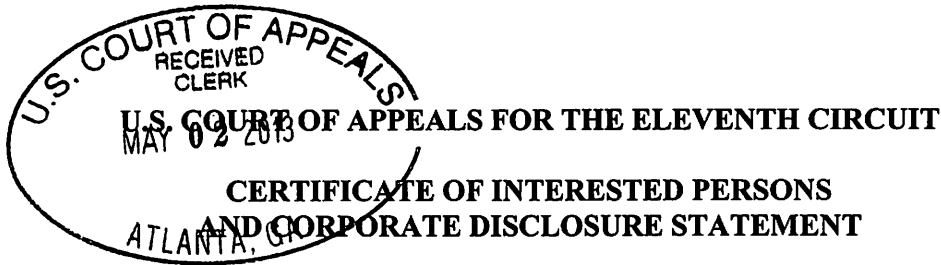
DONE and ORDERED at Ocala, Florida this 7th day of March, 2013.



UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record  
Hon. Philip R. Lammens  
Maurya McSheehy





Reverse Mortgage Solutions, Inc. vs. Neil J. Gillespie, et al.,  
Appeal Number 13-11585-B  
District Court Docket No: 5:13-cv-00058-oc-WTH-PRL

In compliance with 11th Cir. R. 26.1, pro se Appellants  
NEIL J. GILLESPIE, and NEIL J. GILLESPIE CO-TRUSTEE, certifies  
on information and belief, that the following persons and entities  
have an interest in the outcome of this case.

---

Bank of America, N.A.

Caparas, Tiffany, Esq.

Development & Construction Corporation of America

Gillespie, Neil, J., Co-Trustee of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997

Gillespie, Mark, J., Co-Trustee of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997

Gillespie, Neil, J.

Gillespie, Mark, J.

Hodges, Wm. Terrell, U.S. District Judge, Senior Status, Trial Judge

Hodges, Wm. Terrell, Shareholder, Bank of America, N.A. (Trial Judge)

Kaufman, Englett and Lynd, PLLC

Lammens, Philip, R., U.S. Magistrate Judge

McCalla Raymer LLC

Oak Run Homeowners Association

Parsons, Danielle N., Esq.

Reverse Mortgage Solutions, Inc.

Stermer, Robert, A., Esq.

United States of America, on Behalf of the Secretary  
of Housing and Urban Development

---

NOTICE: On information and belief the Plaintiff, REVERSE MORTGAGE SOLUTIONS, INC., is a nongovernmental corporate party who has not complied with Rule 7.1, Disclosure Statement in the District Court.

Appearing pro se, Defendants, NEIL J. GILLESPIE, and NEIL J. GILLESPIE CO-TRUSTEE, moved February 26, 2013 for an order to compel the Plaintiff to file a Rule 7.1 Disclosure Statement. (Doc. 14) The motion is attached hereto.

Plaintiff REVERSE MORTGAGE SOLUTIONS, INC failed to file the Rule 7.1 Disclosure Statement in the District Court. Therefore the Appellants lack the Rule 7.1 information in completing this CIP.

On information and belief, Bank of America, N.A. is the real party Plaintiff at interest in this disputed residential home foreclosure on a HECM - Home Equity Conversation Mortgage, also called a "reverse" mortgage, is codified at 12 U.S.C. § 1715z-20, et seq., Insurance of home equity conversion mortgages for elderly homeowners, administered by HUD, the United States Department of Housing and Urban Development.

U.S. Senior Judge Wm. Terrell Hodges, trial Judge, is a Shareholder in Bank of America, N.A. according to the List of Financial Interests of Judge Hodges, attached hereto.

U.S. Senior Judge Wm. Terrell Hodges refused to recuse over a conflict with Bank of America, N.A. in his Order (Doc. 19) March 7, 2013

U.S. Senior Judge Wm. Terrell Hodges refused to disqualify over a conflict with Bank of America, N.A. in his Order (Doc. 24) March 12, 2013

Appearing pro se, Defendants, NEIL J. GILLESPIE, and NEIL J. GILLESPIE COTRUSTEE, believe the Plaintiff REVERSE MORTGAGE SOLUTIONS, INC failed to join in the state court action the following indispensable parties pursuant to Rule 1.140(b)(7), Fla. R. Civ. P.

BAC Home Loans Servicing

Bank of America, N.A.

Note: On April 12, 2013, the Independent Foreclosure Review, Rust Consulting, Inc., determined eligibility, and paid \$600 as a result of an agreement between federal banking regulators and Bank of America in connection with an enforcement action related to deficient mortgage servicing and foreclosure processes.

In a letter to Neil J. Gillespie dated March 28, 2013, Jason Powell, of the Office of the CEO and President of Bank of America, N.A., informed Gillespie that "Bank of America, N.A. is required by law to inform you that this communication is from a debt collector...". In response Gillespie replied, "pursuant to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., kindly identify the debt for which Bank of America, N.A. seeks collection." Gillespie is awaiting a reply, but does not have any debts with Bank of America other than this HECM mortgage.

BofA Reverse Servicing Dept

Consumer Credit Counseling Services (CCCS/MMI)

Financial Title Company

Liberty Reverse Mortgage, Inc.

Liz Baize (Park Avenue Bank)

Money Management International (CCCS/MMI)

Susan Gray (CCCS/MMI)

The Park Avenue Bank

RESPECTFULLY SUBMITTED May 1, 2013.



NEIL J. GILLESPIE and NEIL J. GILLESPIE CO-TRUSTEE OF THE GILLESPIE  
FAMILY LIVING TRUST AGREEMENT DATED FEBRUARY 10, 1997

8092 SW 115th Loop  
Ocala, Florida 34481  
Email: neilgillespie@mfi.net  
Phone: 352-854-7807

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a true and correct copy of the foregoing CIP to Danielle N. Parsons, Esq., McCalla Raymer LLC, 225 E. Robinson St. Suite 660, Orlando, FL 32801, MRService@mccallaraymer.com, by email today May 1, 2013, and to parties on the attached service list by email.



NEIL J. GILLESPIE

SERVICE LIST

Danielle N. Parsons, Esq., Plaintiff's Counsel  
Reverse Mortgage Solutions, Inc., Plaintiff  
McCalla Raymer, LLC  
225 E. Robinson St. Suite 660  
Orlando, FL 32801  
Telephone: (407) 674-1850  
Primary Email: MRService@mccallaraymer.com  
Secondary Email: dnp@mccallaraymer.com

Oak Run Homeowners Association, Inc.  
Robert A. Stermer, Esq., Registered Agent  
7480 SW Highway 200  
Ocala, FL 34476  
Primary Email: svl@atlantic.net  
Secondary Email: stermer.law@aol.com

United States of America, on behalf of the Secretary of Housing and Urban Development  
Colleen Murphy Davis, Assistant United States Attorney  
U.S. Attorney's Office, Middle District of Florida  
400 N. Tampa St., Suite 3200  
Tampa, FL 33602  
Primary Email: USAFLM.State.Foreclosures@usdoj.gov  
Secondary Email: Michalene.Rowells@hud.gov

Tiffany Caparas, Esq. (for Mark Gillespie)  
Kaufman, Englett and Lynd, PLLC  
111 N. Magnolia Ave., Suite 1600  
Orlando, FL 32801  
Primary Email: TCaparas@kelattorneys.com  
Secondary Email: KELinbox@kelattorneys.com

Mark Gillespie (Co-trustee)  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123  
Primary Email: mark.gillespie@att.net

Development & Construction Corporation of America, Priya Ghumman, Registered Agent  
c/o Carol Olson, Decca Vice President of Administration, and Decca Secretary-Treasurer,  
10983 SW 89 Avenue  
Ocala, FL 34481  
Primary Email: colson@deccahomes.com

**FILED**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**2013 FEB 26 PM 3:27**  
CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

**REVERSE MORTGAGE SOLUTIONS,  
INC.,**

**Plaintiff,**

**v.**

**CASE NO.: 5:13-CV-58-Oc-10PRL**

**NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN  
SETTLORS/BENEFICIARIES,  
UNKNOWN TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 and UNKNOWN  
TENANT IN POSSESSION 2  
Defendants.**

**Defendants.**

**MOTION TO COMPEL PLAINTIFF'S COMPLIANCE WITH  
RULE 7.1 DISCLOSURE STATEMENT**

***The Plaintiff Did Not Respond To This Motion When Notified Pursuant to Local Rule 3.01(g)***

**Appearing pro se, Defendants, NEIL J. GILLESPIE, and NEIL J. GILLESPIE CO-  
TRUSTEE, (herein after "Gillespie") move for an order to compel the Plaintiff to comply with  
Rule 7.1, Federal Rules of Civil Procedure, ("F.R.C.P.") Disclosure Statement, and state:**

- 1. On information and belief the Plaintiff, REVERSE MORTGAGE SOLUTIONS, INC., is  
a nongovernmental corporate party who has not complied with Rule 7.1, Disclosure Statement.**

2. Gillespie moves the Court for an order compelling the Plaintiff to comply with Rule 7.1.

WHEREFORE, Gillespie respectfully moves the Court for an Order compelling Plaintiff comply with Rule 7.1, F.R.C.P. Gillespie also includes a general request that the Court grant such other and further relief as it deems just and equitable.

**Certification Pursuant to Middle District Local Rule 3.01(g)**

In compliance with Local Rule 3.01(g) Gillespie certifies that he made a good faith effort to resolve the issues raised by this motion with Plaintiff's counsel Ms. Parsons, by emailing a conformed copy of this motion yesterday at 5:31 PM, received by her today at 8:47 AM, and was advised as follows: No response.

RESPECTFULLY SUBMITTED February 26, 2013.



NEIL J. GILLESPIE  
8092 SW 115th Loop  
Ocala, Florida 34481  
Email: neilgillespie@mfi.net  
Phone: 352-854-7807

NEIL J. GILLESPIE and NEIL J. GILLESPIE CO-TRUSTEE OF THE GILLESPIE  
FAMILY LIVING TRUST AGREEMENT DATED FEBRUARY 10, 1997

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have furnished a true and correct copy of the foregoing to Danielle N. Parsons, Esq., McCalla Raymer LLC, 225 E. Robinson St. Suite 660, Orlando, FL 32801, MRService@mccallaraymer.com, by email today February 26, 2013, and to parties on the attached service list by email.



NEIL J. GILLESPIE

**SERVICE LIST**

**Danielle N. Parsons, Plaintiff's Counsel  
Reverse Mortgage Solutions, Inc.  
McCalla Raymer, LLC  
225 E. Robinson St. Suite 660  
Orlando, FL 32801  
Primary Email: MRService@mccallaraymer.com**

**Oak Run Homeowners Association, Inc.  
Robert A. Stermer, Esq., Registered Agent  
7480 SW Highway 200  
Ocala, FL 34476  
Primary Email: svl@atlantic.net  
Secondary Email: stermer.law@aol.com**

**United States of America, on behalf of the Secretary of Housing and Urban Development  
Colleen Murphy Davis, Assistant United States Attorney  
U.S. Attorney's Office, Middle District of Florida  
400 N. Tampa St., Suite 3200  
Tampa, FL 33602  
Primary Email: USAFLM.State.Foreclosures@usdoj.gov  
Secondary Email: Michalene.Rowells@hud.gov**

**Tiffany Caparas, Esq.  
111 N. Magnolia Ave., Suite 1600  
Orlando, FL 32801  
Primary Email: TCaparas@kelattorneys.com  
Secondary Email: KELinbox@kelattorneys.com**

**Development & Construction Corporation of America, Priya Ghuman, Registered Agent  
c/o Carol Olson, Decca Vice President of Administration, and Decca Secretary-Treasurer,  
10983 SW 89 Avenue  
Ocala, FL 34481  
Primary Email: colson@deccahomes.com**

**Affidavits of Diligent Search filed February 12, 2013 in state court show no address for:  
Elizabeth Bauerle  
Unknown Spouse of Elizabeth Bauerle  
Unknown Settlers/Beneficiaries of the Gillespie Family Trust**

**United States District Court  
Middle District of Florida, Ocala Division  
Golden-Collum Memorial Federal Building & US Courthouse  
207 NW Second Street, Room 337  
Ocala, Florida 34475-6666**



**Senior United States District Judge William Terrell Hodges  
List of Financial Interests**

**Bank of America**

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**  
**Appearance of Counsel Form**

Attorneys who wish to participate in an appeal must be properly admitted either to the bar of this court or for the particular proceeding pursuant to 11th Cir. R. 46-1, et seq. An attorney not yet properly admitted must file an appropriate application. In addition, all attorneys (except court-appointed counsel) who wish to participate in an appeal must file an appearance form within fourteen (14) days after notice is mailed by the clerk, or upon filing a motion or brief, whichever occurs first. Application forms and appearance forms are available on the Internet at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov).

Please Type or Print

Court of Appeals No. 13-11585-B (C.A.11)

Reverse Mortgage Solutions, Inc.

vs.

Neil J. Gillespie, et al.

The Clerk will enter my appearance for these named parties: Reverse Mortgage Solutions, Inc.

In this court these parties are: ☐ appellant(s) ☐ petitioner(s) ☐ intervenor(s)  
☒ appellee(s) ☐ respondent(s) ☐ amicus curiae

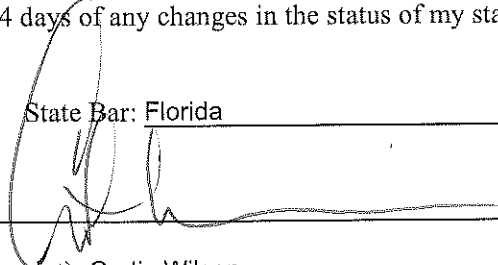
☐ The following related or similar cases are pending on the docket of this court:

☒ Check here if you are lead counsel.

I hereby certify that I am an active member in good standing of the state bar or the bar of the highest court of the state (including the District of Columbia) named below, and that my license to practice law in the named state is not currently lapsed for any reason, including but not limited to retirement, placement in inactive status, failure to pay bar membership fees or failure to complete continuing education requirements. I understand that I am required to notify the clerk of this court within 14 days of any changes in the status of my state bar memberships. See 11th Cir. R. 46-7.

State Bar: Florida

State Bar No.: 77669

Signature: 

Name (type or print): Curtis Wilson

Phone: 407-674-1850

Firm/Govt. Office: McCalla Raymer, LLC

E-mail: caw@mccallaraymer.com

Street Address: 225 E. Robinson St, Suite 660

Fax: 321-248-0420

City: Orlando

State: FL

Zip: 32801

12/07

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

-vs-

Case No. 5:13-cv-58-Oc-10PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN SETTLORS AND/OR  
/BENEFICIARIES, UNKNOWN  
TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 AND UNKNOWN  
TENANT IN POSSESSION 2,

Defendants.

\_\_\_\_\_ /

**ORDER**

This mortgage foreclosure action was filed in state court on January 9, 2013, and was removed to this Court by Defendant Neil J. Gillespie, acting *pro se*, on February 4, 2013 (Doc. 1). On March 19, 2013, the Court remanded the case to state court because this Court lacked subject matter jurisdiction (Doc. 19). The Court denied Mr. Gillespie's motion to alter or amend judgment on April 12, 2013 (Doc. 24).

Mr. Gillespie has filed a Notice of Appeal (Doc. 23), and he has now moved for leave to proceed *in forma pauperis* on appeal (Doc. 25). Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” For the reasons stated in the Court’s Orders dated March 7, 2013 and April 12, 2013 (Docs. 19, 24), it is clear that the Court lacks subject matter jurisdiction over this matter, and therefore Mr. Gillespie’s appeal of the dismissal of his case on that ground is utterly frivolous.

In addition, Mr. Gillespie seeks to raise several issues on appeal regarding the Court’s purported failure to sanction the Plaintiff under Fed. R. Civ. P. 11, failure to sustain Mr. Gillespie’s objections to the Magistrate Judge’s reports and recommendations, and failure of the Court to recuse itself (Doc. 23). The Court has also addressed these issues in its prior orders and found them to be without any legal merit. Therefore, Mr. Gillespie’s appeal of these issues is also frivolous. As such, the Court certifies that Mr. Gillespie’s appeal has not been taken in good faith, and his motion for leave to appeal *in forma pauperis* (Doc. 25) is DENIED.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 9th day of May, 2013.



UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record  
Neil J. Gillespie, *pro se*  
Maurya McSheehy

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

May 17, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

We have received a copy of the order of the district court which does not allow this appeal to proceed in forma pauperis. Rule 24(a)(5) of the Federal Rules of Appellate Procedure provides:

A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

You may within thirty (30) days from this date either pay to the DISTRICT COURT clerk the \$450 docket fee plus \$5 filing fee (total \$455) or you may move in this court for leave to proceed on appeal as a pauper (form enclosed). See 11th Cir. R. 24-2.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

Enclosure(s)

DKT-6A IFP denied by DC after docketing

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

June 12, 2013

Sheryl L. Loesch  
U.S. District Court  
207 NW 2ND ST  
OCALA, FL 34475

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 13-11585-B

---

REVERSE MORTGAGE SOLUTIONS, INC.,

Plaintiff-Appellee,

versus

NEIL J. GILLESPIE AS CO-TRUSTEES,  
of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997,  
NEIL J. GILLESPIE,

Defendants-Appellants,

MARK GILLESPIE AS CO-TRUSTEES, etc., et al.,

Defendants.

---

Appeal from the United States District Court  
for the Middle District of Florida

---

Before: BARKETT, MARCUS and JORDAN, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. We are precluded from reviewing the district court's March 7, 2013 order and March 11, 2013 judgment remanding this case to state court because the district court found that it lacked federal subject matter jurisdiction. See 28 U.S.C. 1447(c), (d); *Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1296 (11th Cir. 2009); *New v. Sports & Recreation, Inc.*, 114 F.3d 1092, 1095-96 (11th Cir. 1997).



No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir.R. 27-2 and all other applicable rules.

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff/Appellant,

v.

APPEAL NO.: 13-11585-B

District Court: 5:13-cv-58-Oc-WTH-PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
ET AL.

Defendants/Appellees.

---

MOTION TO RECONSIDER, VACATE OR MODIFY ORDER

Motion to Stay or Recall the Mandate Pending Outcome  
Motion to Stay Florida Bar UPL Investigation 20133090(5)

Reluctantly appearing pro se, Defendants-Appellants Neil J. Gillespie, as co-trustee, and Neil J. Gillespie ("Gillespie"), move to reconsider, vacate or modify (11th Cir.R. 27-2) the Order entered June 12, 2013 dismissing this appeal, sua sponte, for lack of jurisdiction, and state:

1. On June 12, 2013 this Court dismissed this appeal, sua sponte, for lack of jurisdiction.

The Order of Dismissal and Clerk's letter appear at Exhibit 1 attached hereto, and state:

ORDER: This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. We are precluded from reviewing the district court's March 7, 2013 order and March 11, 2013 judgment remanding this case to state court because the district court found that it lacked federal subject matter jurisdiction. *See* 28 U.S.C. 1447(c), (d); *Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1296 (11th Cir. 2009); *New v. Sports & Recreation, Inc.*, 114 F.3d 1092, 1095-96 (11th Cir. 1997).

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir.R. 27-2 and all other applicable rules.

Clerk's letter: The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. *See* 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

2. Gillespie (a) moves to stay or recall the mandate issued as this Court's Order of Dismissal pending the outcome of this motion and appeal, (b) moves to stay Florida Bar UPL Investigation 20133090(5), (c) and henceforth appears in the first person.

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Section I - Statement of facts and law - HECM “reverse” mortgage

3. This appeal is to save my home from foreclosure. I am one of three (3) borrowers, with my mother Penelope Gillespie, and brother Mark Gillespie. Plaintiff’s state court *in rem* action<sup>1</sup> alleges the 2009 death of Penelope Gillespie is grounds to foreclose a Home Equity Conversion Mortgage on my homestead residence, 8092 SW 115th Loop, Ocala, Marion County, Florida (“the property”) in a 55+ community, Oak Run Country Club (“Oak Run”), built and managed by Development and Construction Corporation of America (“DECCA”). The property’s market value is \$78,675. The mortgage balance is \$114,889. The property is “underwater” by \$36,214.

4. A *Home Equity Conversion Mortgage*, or HECM, is a Federal Housing Administration (FHA) “reverse” mortgage program administered by the Secretary, United States Department of Housing and Urban Development (Secretary or HUD) to enable home owners over 62 years old access the subject home's equity. 12 U.S.C. § 1715z20 et seq. and 24 C.F.R. Part 206. The record shows substantial violations of the HECM rules by the HUD-approved lender and lender parties.

5. A HECM does not require a homeowner to make mortgage payments as a conventional mortgage does. Instead, a HECM does not become due and payable until the last surviving homeowner dies or no longer lives in the home. 12 U.S.C. § 1715-z20(j) Safeguard to prevent displacement of homeowner. The HECM becomes due and payable in full “if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor....and no other mortgagor retains title to the property.” 24 C.F.R. § 206.27(c).

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<sup>1</sup> Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie, et al., Case No. 13-115-CAT Marion Co. FL Circuit Court. The Plaintiff’s complaint identifies seven (7) fictional defendants. On removal, any claims asserted by a plaintiff against fictional parties are due to be stricken, because there is no provision for fictitious party practice under federal law or rules of procedure. *Cf.* 28 U.S.C. § 1441(a). Green v. Pilgrim’s Pride Corporation, Civil Action No. 5:08-cv-0573-CLS, U.S. District Court, Northern District of Alabama, Northeastern Division, U.S. Judge Lynwood Smith held in a Memorandum Opinion entered May 8, 2008, at footnote 1.

*Disputed HECM Foreclosure: Substantial *disputed* issue of federal HECM law*  
is a necessary element of the state law foreclosure claim on a HECM

6. I am one of two surviving HECM mortgagors, and the only surviving homeowner living in the home, alone, in substantial compliance with the HECM Note, making this foreclosure of a HECM premature. My bother Mark Gillespie of Fort Worth Texas is also a surviving borrower, but he does not live in the home. The HECM becomes due and payable in full “if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor....and no other mortgagor retains title to the property.” 24 C.F.R. § 206.27(c). Mortgagor Ms. Gillespie died in 2009. But I am a surviving borrower or mortgagor living in the home as my principal residence, and retain title to the property. Therefore I dispute the Plaintiff’s allegations in its “Verified Complaint to Foreclose Home Equity Conversion Mortgage”. (Doc. 2). That means a substantial *disputed* issue of federal HECM law is a necessary element of the Plaintiff’s state law foreclosure claim that this HECM is due and payable. The district court has subject matter jurisdiction under 28 U.S.C. § 1331 and the U.S. Constitution, Article III, Section 2 for “all cases, in law and equity, arising under this Constitution, [and] the laws of the United States...”. (Doc. 18, page 2). Fed. R. Civ. Pro 13(g) permits a crossclaim by one party, me, against a coparty, HUD, “if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action.” My home is property that is the subject matter of the original action. The Plaintiff’s Complaint (Doc. 2) is an *in rem* action against my home (Doc. 1, ¶ 1, and ¶ 15) my primary residence (Doc. 5, ¶¶ 2, 6, 9, 20, 118, ) and homestead. (Doc. 9).

7. The terms “homeowner”, “borrower” and “mortgagor” are not used consistently in HUD’s HECM reverse mortgage program, and thus are void for vagueness. For example:



- a. The HECM Note: "Borrower" means each person signing at the end of this Note.
- b. "Homeowners" are safeguarded from displacement by 12 U.S.C. § 1715-z20(j).
- c. "Mortgagors" are safeguarded from displacement by 24 C.F.R. § 206.27(c).

The terms "homeowner", "borrower" and "mortgagor" are ordinary words, well-established in the vocabulary of elderly folks. It is unreasonable to expect the elderly to learn and understand new and nuanced meanings for those words in the context of a very complex HECM transaction.

8. The loan originator, lender and affiliated parties for the subject HECM include:

HECM originator:  
Liz Baize, The Park Avenue Bank  
8375 SW Highway 200  
Ocala, Florida

HECM consumer counseling:  
Susan Gray/CCCS/MMI  
5825 Phelan Blvd., Ste. #102  
Beaumont, TX 77706

HECM title company:  
Financial Title Company  
81 Blue Ravine Road, #220  
Folsom, CA, 95630

HECM assignee:  
Bank of America, N.A.  
100 North Tryon Street  
Charlotte, NC 28155

HECM lender:  
Liberty Reverse Mortgage, Inc.  
10951 White Rock Road, Suite 200  
Rancho Cordova, CA 95670

HECM servicer:  
BofA Reverse Servicing Dept  
BAC Home Loans Servicing

9. The Secretary has administrative authority, 12 U.S.C. § 1715-z20(h) and "may (1) enter into such contracts and agreements with Federal, State, and local agencies, public and private entities, and such other persons as the Secretary determines to be necessary or desirable to carry out the purposes of this section;". The Secretary approved under 12 U.S.C. § 1715z-20(n), mortgage originators, and (2) all parties that participate in the origination of a mortgage to be insured under this section. Therefore the Secretary knew or should have known:

- a. The Park Avenue Bank (PAB), Valdosta GA, was unsound, at risk of failure, entered a consent decree with the FDIC and State of Georgia on July 14, 2009, and failed April 29, 2011. PAB was the loan originator who broke HECM rules in a hopeless survival quest for big fees.

b. Financial Title Company closed July 30, 2008, two months after it mishandled the subject HECM, and with PAB, disregarded HECM regulations to earn fees. (Docs. 5-3, 5-4, 5-5).

c. Bank of America knowingly made loans insured by the FHA to unqualified home buyers. HUD reported February 9, 2012 "\$1 Billion To Be Paid By The Bank of America To The United States Largest False Claims Act Settlement Relating To Mortgage Fraud". (Doc. 5-5)

d. Bank of America was a major contributor to Money Management International (MMI) a HUD approved counselor. MMI did not provide me or mom adequate counseling by a third party, 12 U.S.C. 1715z-20(d)(2)(B), or comply with 1715z-20(f) Counseling services and information for mortgagors, when Bank of America was affiliated with the subject HECM.

e. Liberty Reverse Mortgage sold for \$50 million to Genworth Financial, Inc., a process began in 2007 and ended after our loan closed. Liberty cut corners to earn fees, sold our HECM Note and HECM Mortgage to Bank of America a week before I signed the HECM documents.

10. I became one of three HECM borrowers June 5, 2008 along with Penelope Gillespie, my mother, and Mark Gillespie, when we signed a first and second HECM Note, and a first and second HECM Mortgage, and other loan documents, as co-trustees for the Gillespie Family Living Trust. Penelope Gillespie also signed the first and second HECM Mortgages personally, although the body of the mortgage document(s) shows only three "Co-Trustees" as borrowers.

11. In 2012 I found the HECM mortgages filed with the Marion County Clerk of Court were altered by interlineation after execution to include Penelope Gillespie personally, but the changes were not initialed, and were made sometime after the loan closed. Florida case law holds a material alteration voids the instrument and destroys the identity of the contract rendering it unenforceable. Bland v. Fidelity Trust Co., 71 Fla. 499, 71 So. 630 (1916). Since a HECM

reverse mortgage is a non-recourse loan, the void contract is unenforceable, and the lender, its successors and assigns, have no further means to collect the debt. (Doc. 5, 5-1, 5-2, 5-3, 5-4, 5-5)

12. On June 3, 2008 - two days before the loan closed - Liberty Reverse Mortgage somehow sold a nonexistent HECM Note and HECM Mortgage to Bank of America. Liberty's Jessica Yee also made a "Direct Endorsement Allonge" - without recourse - May 29, 2008 that predates execution of the Note by a week. The Direct Endorsement Allonge was made "*Pay To The Order Of: Bank of America, N.A., a National Banking Association*". The Allonge became "a permanent part of said Note on May 29, 2008": (See Docs. 5, 5-1, 5-2, 5-3, 5-4, 5-5)

For purposes of further endorsement of the following described Note, this Allonge is affixed and becomes a permanent part of said Note on May 29, 2008.

On May 29, 2008 a Note did not exist. The Allonge has a fatal defect that vitiates the Note, making it unenforceable. The Allonge was made "Without Recourse" to Bank of America, N.A., and thus without recourse against the property. This defective chain of custody is fatal and vitiates the Assignment of Mortgage executed by BofA to the Plaintiff March 27, 2012.

13. Penelope Gillespie had Alzheimer's disease and died September 16, 2009 of dementia. The Plaintiff's Complaint alleges "Pursuant to Paragraph 9(a) of the subject mortgage, lender may require immediate payment in full if borrower dies and the property is not the principal residence of at least one surviving borrower." But I am a surviving borrower.

The HECM Note defines the parties in paragraph 1, DEFINITIONS:

- "Borrower" means each person signing at the end of this Note.
- "Lender" means Liberty Reverse Mortgage, Inc., and its successors and assigns.
- "Secretary" means the Secretary of Housing and Urban Development or his or her authorized representatives.

Three persons signed at the end of the Note making them borrowers:

- Penelope M. Gillespie, individually and trustee of the Trust
- Neil J. Gillespie, trustee of the Trust
- Mark Gillespie, trustee of the Trust

Borrower Lacked Capacity to Make a HECM

14. Borrower Penelope Gillespie had Alzheimer's disease and dementia and lacked capacity at the time of the HECM counseling session April 22, 2008. Ms. Gillespie lacked capacity at the time of the HECM loan closing June 5, 2008. Elizabeth "Liz" Baize of the Ocala office of The Park Avenue Bank was the HECM loan originator. I told Ms. Baize that Penelope Gillespie had Alzheimer's disease early in the origination process. Ms. Baize's only concern was whether a guardianship was in place for Ms. Gillespie. There was no guardianship. In February 2005 I moved into the property to care full-time for my mother, an unremarried widow. By then Ms. Gillespie could no longer drive a car, could no longer balance her checkbook, and was being treated by a neurologist for Alzheimer's. In 2006 I was power of attorney for Ms. Gillespie, healthcare surrogate, living will proxy, and designated a personal representative in the will.

15. Liz Baize did not require anyone to act as power of attorney for Ms. Gillespie. Instead, the bank had me and Mark Gillespie added to the quit-claim deed along with Ms. Gillespie, and required us all to sign the HECM Notes and HECM Mortgages making us borrowers. When the HECM closed June 5, 2008, Penelope Gillespie age 77 was the only borrower age 62 or older qualified for a HECM. I was age 52. Mark Gillespie was age 49. (Doc. 5 through Doc. 5-5).

16. The Plaintiff responded May 24, 2012 to my Qualified Written Request for Bank of America's transfer of servicing account/loan no. 68011002615899 pursuant to RESPA, the Real Estate Settlement Procedures Act (12 U.S.C. 2605). Plaintiff's response is attached as Exhibit 2. Plaintiff's letter states, "The total loan balance became Due and Payable on December 16, 2009." Bennett noted a HECM foreclosure must commence within 6 months. 24 C.F.R. § 206.125(d)(1). Bank of America gave notice October 5, 2009 the mortgage was due and payable. The Plaintiff did not foreclose until January 9, 2013. The Plaintiff's May 24, 2012 letter also states in part:

The borrower listed on the loan is Penelope M. Gillespie. The trustees are listed on the deed as trustee, and not on the loan as borrowers. Please understand, the trustees do have rights to the property, however, this is a *reverse mortgage loan and the loan must be satisfied*. As Bank of America communicated to you previously, you are not a borrower and were not a beneficiary of the trust at the time of the loan origination. You were a trustee and now a successor beneficiary. What being trustee of the property means is that you do not have to go to court to have the estate probated. Therefore, if you as beneficiary trustee would like to retain the property the loan balance must be paid in full.

However the attached Assignment of Mortgage contradicted the statement about borrowers:

Original Borrower(s): PENELOPE M. GILLESPIE, INDIVIDUALLY AND AS TRUSTEE NEIL J. GILLESPIE AND MARK GILLESPIE, AS CO-TRUSTEES OF THE GILLESPIE FAMILY LIVING TRUST AGREEMENT DATED FEBRUARY 10, 1997

17. The Court rejected a definition of borrower to include only natural persons acting in their individual capacities. Isabel Santos, individually and as trustee and beneficiary of the Yolanda Maria Santos Trust, et al. v. Reverse Mortgage Solutions, et al, 12-3296-SC, USDC, N.D. Cal.<sup>2</sup>

“Defendants argue that the Santos Trust cannot be the borrower under the HECM Deed or the notes because the notes limit the definition of “borrower” to “each person signing at the end of this Note.”

“Defendants’ argument is unavailing. First, Defendants do not account for the fact that, while the notes indeed define “borrower” in this way, the HECM Deed lists the borrower as Yolanda Maria Santos in her capacity as trustee for the Santos Trust. Second, Defendants apparently interpret the notes’ definition of borrower to include only natural persons acting in their individual capacities. The Court is unconvinced that this narrow reading is the correct one. On the contrary, the HECM Deed specifically contemplates transfer of a borrower’s interest in the property to or from a separate trust, HECM Deed ¶ 9(e), which suggests that trusts can hold the rights of borrowers under the HECM Deed, as well as their obligations under the notes. Defendants cite no contrary authority”

18. A Notice of Default and Intent to Foreclose dated June 8, 2012 from the Plaintiff appears at Exhibit 3. The notice informs Penelope Gillespie that the mortgage “ is in default because of the death of the primary mortgagor and the loan must be paid in full.” The notice demands \$108,056.19 to “cure default”. The notice arrived by certified mail to the property, addressed

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<sup>2</sup> Page 11, Order, October 12, 2012 (Doc. 25) Denying Defendants’ Motion (1) For Judgment on the Pleadings and (2) To Dissolve or Modify Preliminary Injunction. See Doc. 5-2 for the case.

only on the envelope to me and Mark Gillespie individually. The Plaintiff did not send Mark Gillespie a notice of default where he lives in Texas, as required by the note. The Plaintiff did not send notice to the trust, or notice to the co-trustees. However I did respond to this:

IF YOU ARE UNABLE TO PAY YOUR ACCOUNT IN FULL, RMS offers consumer assistance programs designed to help resolve delinquencies and avoid FORECLOSURE. These services are provided without cost to our customers. You may be eligible for a loan workout plan or other similar alternatives. If you would like to learn more about these programs, you may contact the Loss Mitigation Department at (866) 503-5559, between the hours of 8:30 AM and 5:00 PM CST. WE ARE VERY INTERESTED IN ASSISTING YOU.

I called June 19, 2012 to RMS and eventually spoke with Valerie Castro and others. I disputed the claim, I asked about a loan workout and other such, all to no avail. Unfortunately a reverse mortgage cannot be refinanced, and there are no assistance programs or workouts, nothing.

19. On August 9, 2012 I made a written complaint to HUD and the Plaintiff, pursuant to the complaint procedure set forth in the HUD Reverse Mortgage Handbook 7610.01, Section 4-19. My complaint was 227 pages, with a CD recording of the 2008 HECM telephone counseling:

- HUD Complaint August 9, 2012 by Neil J. Gillespie, twenty-five (25) pages  
Exhibit A, a two page Notice of Default and Intend to Foreclose  
Exhibit B, CD audio recording of the April 22, 2008 HECM telephone counseling  
Separate Volume Appendix 1, Exhibits 1-21 (108 pages)  
Separate Volume Appendix 2, Exhibits 22-42 (92 pages)

In turn HUD provided the 25 page complaint, Exhibit A, but not the appendices, to the CFPB.

20. The Consumer Financial Protection Bureau (CFPB) is the federal agency that holds primary responsibility for regulating consumer protection with regard to financial products and services in the United States. Authority for CFPB is found in Dodd-Frank, 12 U.S.C. Chapter 53, Subchapter V - Bureau of Consumer Financial Protection. The CFPB opened an investigation January 4, 2013 on my complaint submitted August 9, 2012 to HUD and the Plaintiff. The CFPB closed the complaint March 19, 2013 because Bank of America claimed it could not discuss the

loan with me due to privacy laws. But that issue was later resolved. Jason Powell of Bank of America notified me March 28, 2013 that he had the necessary documentation to respond. The letter is attached as Exhibit 4. I notified the CFPB by letter, but it did not reopen my complaint.

21. A HECM is a highly complicated financial product. It has taken me years to learn about the subject reverse mortgage and its many parts and defects. The subject HECM is a disaster for me as a homeowner, a predatory loan that charged high fees, stripped me of home equity, and threatens to leave me homeless. On March 4, 2013 I notified the district court of a Rule 5.1 Constitutional Challenge in my Objections to the Report and Recommendation (Doc. 18), page 2:

Notice is also given under Rule 5.1, Federal Rules of Civil Procedure ("Fed. R. Civ. P."), of a Constitutional Challenge to 12 U.S.C. § 1715z-20 - Insurance of home equity conversion mortgage for elderly homeowners, set out in a separate Rule 5.1 pleading.

However the district court remanded the case sua sponte one day after getting my objections, without Plaintiff's response, and before I could file the Rule 5.1 pleading, which states at ¶ 1:

1. Gillespie initiates under Fed. R. Civ. P. 5.1 a constitutional challenge to a statute affecting the public interest, 12 U.S.C. § 1715z-20, Insurance of home equity conversion mortgages [HECM] for elderly homeowners. In addition to and in the alternative to the Rule 5.1 relief sought, Gillespie seeks a Declaratory Judgment under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, Creation of remedy, including relief under the U.C.C., Article 3, Negotiable Instruments, § 3-305, Defenses and Claims in Recoupment. [Codified under Florida law as F.S. § 673.3051].

My challenge shows the HECM program is an unconstitutional financial burden on the public, harms elderly homeowners, age discrimination, and primarily benefits banks and lender parties:

- The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101-6107
- Fifth and Fourteenth Amendments, Due Process - U.S. Constitution
- The Void for Vagueness Doctrine. Terms "homeowner", "borrower" and "mortgagor" are void for vagueness. Also, see Plaintiff's responses (Doc. 5-3) to the HUD complaint Oct-15-2012; and the letter Jan-14-2009 of Karen Yantis, Bank of America, re negative growth, Doc. 5-5, Exhibit 37. (best read by a J.D. with a C.P.A.)
- Property Rights - Kingsford v. Salt Lake City Sch. Dist., U.S. Constitutional question
- First Amendment, Petition for Redress of Grievances - U.S. Constitution



- HECM program is burden on taxpayers, The Wall Street Journal, December 14, 2012 "Mortgages in Reverse, Taxpayers get hit by another federal housing money loser."
- See the CFPB Report to Congress on Reverse Mortgages, June, 2012. Copy enclosed.
- When banks and lawyers [foreclosure mills] operate unfettered, people lose rights.

Judge Voids Reverse Mortgage, Says Counseling Fails to Prove Competency  
Matter of Doar (Brunson) 2009 NY Slip Op 29549 [28 Misc 3d 759] December 18, 2009

22. Charles J. Thomas, a New York Supreme Court Judge, voided a reverse mortgage and its subsequent refinancing on the grounds that the borrower's mental illness made her unable to understand the reverse mortgage. The Order appears at Exhibit 5, and a news story at Exhibit 6.

Matter of Doar (Brunson) 2009 NY Slip Op 29549 [28 Misc 3d 759] December 18, 2009  
Thomas, J. Supreme Court, Queens County Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. As corrected through Thursday, October 7, 2010

Appellate Division continued to require that a mortgagee have knowledge of the mortgagor's incapacity before the contract which is otherwise voidable could be voided. In order to void a contract which is voidable because of incapacity, the mortgagor must establish that the mortgagee had knowledge of the "incapacity and were . . . not bona fide mortgagees for value." (See *Weisberg v DeMeo*, 254 AD2d 351, 351 [1998].)

Under these circumstances, the court finds that Hermina Brunson was incapable of understanding the agreements that she signed on April 21, 2003 and that Financial Freedom is charged with the responsibility to determine, and was in a position to know of her incapacity. Therefore, the court finds the mortgages on June 20, 2003 void.

23. A voice recording<sup>3</sup> of the April 22, 2008 HECM telephonic counseling session was made, attended by me, Ms. Gillespie, and Susan Gray of Consumer Credit Counseling Services, Money Management International Incorporated (CCCS/MMI), a HUD approved HECM counselor. The counseling session did not comply with HECM rules. Ms. Gillespie was not able to answer questions showing she understood a reverse mortgage. 12 U.S.C. 1715z-20(d)(2)(B), and

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<sup>3</sup> All calls on home office telephone extension (352) 854-7807 are recorded for quality assurance purposes per the use exemption of Fla. Stat. ch. 934, § 934.02(4)(a)(1) and the holding of Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co., 924 F.2d 215 (11th Cir. 1991). This is, in part, a disability accommodation for me.

1715z–20(f). A transcript of the call was provided to the CFPB April 22, 2013. The HECM handbook 7610.1 states, Sec. 4-18 F. Issuing the Certificate of Counseling.

A counseling agency must withhold a certificate from a client who cannot successfully answer five of the ten review questions that are provided in Attachment B.10 of the Protocol. The client will be given adequate opportunities to correctly respond to the review questions in accordance with the requirements in Attachment B.10. The certificate cannot be withheld based on lack of payment.

The recorded HECM telephonic counseling session shows Penelope Gillespie did not actively participate in the call or the counseling. Ms. Gray did not ask Ms. Gillespie to “successfully answer five of the ten review questions” or make other effort to determine if she understood basic information about reverse mortgages, which was impossible due to Alzheimer’s disease, but required under 12 USC § 1715z–20(f) Counseling services and information for mortgagors. Therefore Ms. Gray should not have issued the certificate to Ms. Gillespie. The subject HECM did not comply with 12 USC § 1715z–20(d) Eligibility requirements:

(2)(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in— (i) originating or servicing the mortgage; (ii) funding the loan underlying the mortgage; or (iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;

CCCS/MMI was the HUD-approved housing counseling agency for this loan. According to Wikipedia, in its 2007 Annual Report, MMI identified Bank of America as a major contributor. Therefore the counseling was not adequate counseling by a third party because this HECM was compromised from the beginning by Bank of America.

24. The subject HECM charged high fees and stripped me of home equity. The HECM counseling session was a sham, and did not serve its intended purpose. The HECM reverse mortgage financial projections were beyond optimistic, they were fraudulent. The FHA's Monthly Adjustable HECM Loan Estimated Amortization Schedule for Penelope Gillespie and

Neil Gillespie shows at year four (4) an ending loan balance of \$118,550, a home value of \$163,780, and equity of \$45,230. The value of the home is now \$78,675; the loan balance is \$114,889; the current deficit is -(\$36,214); the gross equity deficit is -(\$81,444). The foregoing is contrary to 12 USC § 1715z-20(f) Counseling services and information for mortgagors, and 12 USC § 1715z-20(e)(4) did not disclose "depreciation rates" - or my \$81,144 deficit! The borrowers did not receive full disclosure, as prescribed by the Secretary, of all costs charged to the mortgagor...than was not possible without disclosure of "depreciation rates".

Statutory relief from HUD - Bennett v. Donovan 11-5288 D.C. Cir.  
 12 USC § 1715z-20(i) Protection of homeowner and lender  
Exhibit 7 - National Consumer Law Center story on Bennett

Exhibit 8 - Bennett v. Donovan, 11-5288, 2013 WL 45879 (D.C. Cir. Jan. 4, 2013)

25. Bennett, cited statutory means for protection of homeowner and lender, pages 9-10:

"It does appear to us, however, that HUD has additional statutory means to provide complete relief to both appellants and their lenders, and at least one such avenue of relief would remove speculation as to independent third-party actions. That statutory provision is 12 U.S.C. § 1715z-20(i). This subsection is titled "Protection of homeowner and lender" and states in relevant part: (1) "[I]n order to further the purposes of the program authorized in this section, the Secretary shall take any action necessary — (A) to provide any mortgagor under this section with funds to which the mortgagor is entitled under the insured mortgage or ancillary contracts but that the mortgagor has not received because of the default of the party responsible for payment; (B) to obtain repayment of disbursements provided under subparagraph (A) from any source; and (C) to provide any mortgagee under this section with funds . . . to which the mortgagee is entitled under the terms of the insured mortgage or ancillary contracts authorized in this section. (2) Actions under paragraph (1) may include — (A) *disbursing funds to the mortgagor* or mortgagee from the Mutual Mortgage Insurance Fund; [and] (B) *accepting an assignment of the insured mortgage* notwithstanding that the mortgagor is not in default under its terms, and calculating the amount and making the payment of the insurance claim on such assigned mortgage . . . ."

26. The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the

Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. [http://www.law.cornell.edu/wex/due\\_process](http://www.law.cornell.edu/wex/due_process)

27. A property right can be created only by state law. Once a property right is established, the determination of what process is due before that right can be deprived is a question answered by the federal Constitution. Kingsford v. Salt Lake City Sch. Dist., 247 F.3d 1123 (10th Cir. 2001).

28. U.S. Judge Thomas W. Thrash, Jr. in Thompson-El v. Bank of America, 1:12-CV-840-TWT, District Court, N.D. GA held in an Order entered December 12, 2012:

Federal question cases are those "arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331 A case "arises under" federal law "if federal law creates the cause of action, or if a substantial disputed issue of federal law is a necessary element of a state law claim." Pacheco de Perez v. AT&T Co., 139 F.3d 1368, 1373 (11th Cir. 1998) (citing Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13 (1983)).

The Order of Judge Thrash appears in the district court record (Doc. 26, Exhibit 9).

29. Here, my case "arises under" the federal law because a "substantial disputed issue of federal law is a necessary element" of a state law foreclosure.

30. Tellingly the Court in the Order Remanding Case (Doc. 19) held, on page 4 at footnote 1: [fn1]This Order should not be interpreted as a ruling concerning whether, or to what extent, Mr. Gillespie can sue HUD in a separate action. Rather, this Order is limited to whether the Court has subject matter jurisdiction over the specific action that has been removed to this Court.

#### Section II - Motion for Non-Criminal Justice Act Counsel Appointment.

31. The Florida Bar notified me May 14, 2013 of the Unlicensed Practice of Law (UPL) Investigation of Neil J. Gillespie, Case No. 20133090(5), for representing my interest pro se in this action. I filed notice thereof in the district court. (Doc. 29). I am indigent and financially unable to obtain adequate representation. I move for a counsel appointment in a separate motion, which is supported by a separate motion for disability accommodation.

Section II - Procedural history of the case

32. Plaintiff filed Verified Complaint To Foreclose Home Equity Conversion Mortgage (Doc. 2) January 9, 2013 at 12:45 PM. Case No. 13-115-CAT Marion Co. FL Circuit Court

33. February 4, 2013 12:47 PM, I filed by hand, motion to dismiss in Case No. 13-115-CAT, Marion County Circuit Court, a response consisting of 559 pages of documents:

02-04-2013, Notice of Agreement to Extend Time (9 pages)  
02-04-2013, Defendants Motion to Dismiss (47 pages)  
02-04-2013, Defendants Motion to Dismiss, Exhibits (107 pages)  
02-04-2013, Defendants Composite A (85 pages)  
02-04-2013, Defendants Composite B (240 pages)  
02-04-2013, Notice of Filing Notice of Removal (3 pages)  
02-04-2013, Notice of Removal USDC Feb-04-2013 (67 pages)  
02-04-2013, Rule 2.516 notice NJG (1 page)

34. February 4, 2013 1:07 PM, I immediately removed the case to US District Court, Middle District, Florida, Ocala Division, 5:13-cv-58-oc-WTH-PRL, and filed by hand delivery:

02-04-2013, Notice of Removal (Doc. 1)  
02-03-2013, Verified Complaint HECM Foreclosure (Doc. 2)  
02-04-2013, Motion Quash Service for Mark Gillespie, et al; Tiffany Caparas, Esq. (Doc. 3)  
02-04-2013, Notice of Filing Agreement Extend Time (Doc. 4)  
02-04-2013, Motion to Dismiss Verified Complaint (Doc. 5)  
02-04-2013, Exhibits to Motion to Dismiss (Doc. 5-1)  
02-04-2013, Defendants Composite A (Doc. 5-2)  
02-04-2013, Defendants Composite B (Doc. 5-3)  
02-04-2013, Appendix 1 to HUD complaint (Doc. 5-4)  
02-04-2013, Appendix 2 to HUD Complaint (Doc. 5-5)

Fed. R. Civ. Pro. 81(c) Removed Actions.(2) After removal, repleading is unnecessary....

02-13-2013, Magistrate Judge Report and Recommendation (Doc. 10)  
02-21-2013, RMS agreed Motion for Extension of Time (Doc. 11)  
02-22-13, Magistrate Judge Order on motion to extend time (Doc. 12)  
02-26-13, Rule 11 sanction motion, Ms. Parsons, McCalla Raymer (Doc. 15)  
02-26-13, Gillespie default motion, Rule 55 (Doc. 16)  
03-05-13, Gillespie Verified Objection to Magistrate Order Doc. 12 (Doc. 17)  
03-04-13, Gillespie Objections to Report and Recommendation (Doc. 18)  
03-07-13, U.S. Judge, Order Remanding Case (Doc. 19)  
03-11-13, Judgment in a Civil Case (Doc. 20)  
04-08-13, Rule 59(e) motion to alter-amend judgment (Doc. 21)  
04-08-13, Gillespie Affidavit 28 U.S.C. § 144 bias or prejudice of judge (Doc. 22)  
04-10-13, Gillespie Notice of Appeal (Doc. 23)  
04-12-13, U.S. Judge Order, Denied Rule 59(e) motion; Denied 28 U.S.C. § 144 (Doc. 24)  
05-06-13, Gillespie Motion for IFP on Appeal (17 pages) (Doc. 25)  
05-06-13, Gillespie APPENDIX for IFP on Appeal (32 pages) (Doc. 26)  
05-01-13, Gillespie Affidavit of IFP (5 page form) (Doc. 27)  
05-09-13, U.S. Judge Order, Denied Gillespie IFP on appeal (Doc. 28)  
06-06-13, Notice of Filing Florida Bar UPL investigation of Gillespie (Doc. 29)  
06-12-13, C.A.11 Order of Dismissal, lack of federal jurisdiction (Doc. 30)

Section IV - Amendment of pleadings in forma pauperis  
Troville v. Venz, 303 F.3d 1256, 1260, n. 5 (11th Circ. 2002)

35. On February 13, 2013 the U.S. Magistrate Judge issued a Report and Recommendation (Report) (Doc. 10), which recommended, pursuant to 28 U.S.C. § 1915(e)(2), that the motion to proceed *in forma pauperis* be denied, and this case be remanded to state court for lack of jurisdiction and a procedural defect in removal. (Doc. 19). I filed 58 pages of objections and exhibits (Doc. 18) to the Report, which the Court denied in its Order Remanding Case (Doc. 19).

36. The Report (Doc. 10) wrongly alleges on page 5, part B. "Procedural Defect in the Removal", and wrongly states this "civil action is removed solely under section 1441(a).

My notice of removal (Doc. 1) cites 5 grounds for removal and/or jurisdiction:

28 U.S.C. § 1441(a), on page 1  
28 U.S.C. § 1331 - Federal question, paragraph 7  
5 U.S.C. § 702, Right of review, paragraph 7  
5 U.S.C. § 551 et seq., Administrative Procedures Act, paragraph 8  
Bennett v. Donovan 11-5288 D.C. Cir., paragraphs 5, 6, 10, with a copy of the decision in Bennett attached to the notice of removal.

On an amended notice of removal I would cite all 5 grounds together, and perhaps others.

37. The Plaintiff, Reverse Mortgage Solutions, Inc. (RMS), did not file any responsive pleadings. The Plaintiff did not file a motion to remand. 28 USC § 1446(b)(2)(B).

38. The Order Remanding Case (Doc. 19) states, page 2, last sentence, "Although typically the Court would afford the Plaintiff leave to respond to the Objections, the law and the facts of this case conclusively establish that this Court is without subject matter jurisdiction, such that it would be a waste of attorney and judicial resources to wait for a response."

39. The Order Remanding Case (Doc. 19) states, page 5, last sentence, "Mr. Gillespie's request to amend his Notice of Removal will also be Denied as futile because there is no set of facts or legal claims that can be raised which would give the Court jurisdiction over this case."



40. The Eleventh Circuit held courts should permit a pro se litigant who is seeking *in forma pauperis* status the opportunity to amend a deficient complaint, which I construe to include a deficient notice of removal, before dismissal pursuant to 28 U.S.C. § 1915 et seq. for failure to state a claim. Troville v. Venz, 303 F.3d 1256, 1260, n. 5 (11th Cir. 2002). Troville was upheld by the Eleventh Circuit March 18, 2013 in Edwards v. Fernandez-Rundell, et al., Appeal No. 12-12938 (D.C. Docket No. 1:12-cv-20799-UU; Southern District, FL).

We review *de novo* a dismissal of a complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). Troville v. Venz, 303 F.3d 1256, 1259 (11th Cir. 2002). We liberally construe *pro se* pleadings. Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008). [p.2]

We have held that even when the plaintiff did not seek leave to amend until after final judgment, where a more carefully drafted pleading might state a claim, a plaintiff must be given at least one chance to amend the complaint prior to dismissal. Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991). [p.3]

[P]ro se litigants are held to a less stringent standard, *see Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998)..." [p.3]

41. Under 28 U.S.C. § 1915(a), the Court may permit me to proceed IFP if I show by affidavit that I am unable to bear the fees and costs. Sec. 1915(e)(2)(B)(ii) does not allow the court to dismiss an *in forma pauperis* complaint without leave to amend under Fed.R.Civ.P. 15.

Rule 15(a)(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

The Plaintiff did not file a response to my motion to dismiss (Docs. 5, 5-1, 5-2, 5-3, 5-4, 5-5). Also,

- Motion<sup>4</sup> for leave to proceed on appeal *in forma pauperis* (Doc. 25) (17 pages)
- Appendix, motion for leave to proceed on appeal, IFP (Doc. 26) (31 pages)
- Affidavit of indigency (Doc. 27) (5 pages)

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<sup>4</sup> On May 17, 2013 this Court notified me by letter that the district court does not allow this appeal *in forma pauperis*. I called Ms. Gaddis and determined the 30 day time period to file a motion to proceed IFP began May 17, 2013, the date on the letter. The 30 day time period ended Sunday June 16, 2013, extended to Monday June 17, 2013. (Rule 26(a)(1)(c). Before I timely filed my IFP motion, this Court entered the Order of Dismissal sua sponte June 12, 2013.



Section V - Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.  
561 F.3d 1294, 1296 (11th Cir. 2009)

42. The Order Remanding Case was entered *sua sponte* without hearing from the Plaintiff: “Although typically the Court would afford the Plaintiff leave to respond to the Objections, the law and the facts of this case conclusively establish that this Court is without subject matter jurisdiction, such that it would be a waste of attorney and judicial resources to wait for a response.” (U.S. Judge Hodges, Order Remanding Case, Doc. 19; page 2, last sentence).

43. The Court dismissed *sua sponte* for subject matter. 28 U.S.C. § 1915(e)(2). The Plaintiff did not file a motion to remand [28 USC § 1446(b)(2)(B)] or file other responsive pleading(s).

Tellingly the Court in the Order Remanding Case (Doc. 19) held, on page 4 at footnote 1:

[fn1] This Order should not be interpreted as a ruling concerning whether, or to what extent, Mr. Gillespie can sue HUD in a separate action. Rather, this Order is limited to whether the Court has subject matter jurisdiction over the specific action that has been removed to this Court.

The Court’s ruling suggests I may sue HUD in a separate action under 28 U.S.C. § 1331. I may do so in a separate action, sue HUD, Bank of America, the Plaintiff, etc., if this appeal is denied.

44. Corporate Mgmt. Advisors, Inc. held the failure to allege facts sufficient to establish subject matter jurisdiction in a notice of removal is a defect in the removal procedure, and consequently, the district court cannot *sua sponte* remand a case to state court on that ground.

Section VI - A writ of mandamus is the proper means by which a party may challenge a remand order. *Thermtron Products, Inc. v. Hermansdorfer*

45. A writ of mandamus is the proper means by which a party may challenge a remand order.

Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 352-53, 96 S.Ct. 584, 593-94, 46 L.Ed.2d 542 (1976). A remand order based on subject matter jurisdiction is not reviewable by appeal. 28 U.S.C. § 1447(d). But such remand order entered *sua sponte* is a defect in the removal process within the meaning of § 1447(c), and may be challenged by writ of mandamus. New v. Sports & Recreation, Inc., 114 F.3d 1092, 1095-96 (11th Cir. 1997).

WHEREFORE, I respectfully move this Honorable Court to reconsider, vacate or modify this Court's Order of Dismissal; move for leave to submit a petition for writ of mandamus; move to stay or recall the mandate; move to void the mortgage for incapacity; move for leave to proceed *in forma pauperis*; move for a Non-Criminal Justice Act Counsel Appointment; and move for disability accommodation. I also make a general request to the Court to grant such other and further relief as it deems just and equitable, including a stay pending dismissal of Florida Bar No. 20133090(5), Unlicensed Practice of Law (UPL) Investigation of Neil J. Gillespie, for me appearing pro se for my own interests in this matter.

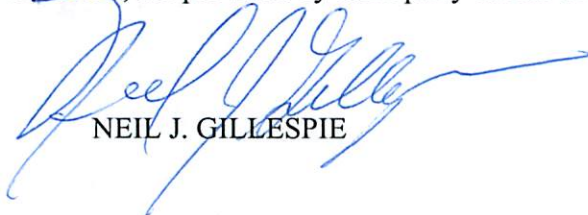
RESPECTFULLY SUBMITTED July 1, 2013.



8092 SW 115th Loop  
Ocala, Florida 34481  
Email: neilgillespie@mfi.net  
Phone: 352-854-7807

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a true and correct copy of this pleading to Curtis Wilson, caw@mccallaraymer.com, and Danielle N. Parsons, dnp@mccallaraymer.com, McCalla Raymer LLC, 225 E. Robinson St. Suite 660, Orlando, FL 32801, MRService@mccallaraymer.com, by email today July 1, 2013, and to parties on the service list by email unless otherwise noted. A paper copy of this pleading, and supporting documents on CD-ROM, are provided by third-party carrier to parties on the service list.



NEIL J. GILLESPIE

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff/Appellant,

v.

APPEAL NO.: 13-11585-B

District Court: 5:13-cv-58-Oc-WTH-PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
ET AL.

Defendants/Appellees.

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APPENDIX OF EXHIBITS

MOTION TO RECONSIDER, VACATE OR MODIFY ORDER

- Exhibit 1. Order of Dismissal, June 12, 2013, U.S. Eleventh Circuit Court of Appeals
- Exhibit 2. Plaintiff Reverse Mortgage Solutions, Inc.'s response to RESPA May 24, 2012
- Exhibit 3. Plaintiff Reverse Mortgage Solutions, Inc., Notice of Default and Intent to Foreclose
- Exhibit 4. Bank of America, letter of Jason Powell March 28, 2013 to Gillespie
- Exhibit 5. Matter of Doar (Brunson) 2009 NY Slip Op 29549 [28 Misc 3d 759]
- Exhibit 6. Judge Voids Reverse Mortgage, Reverse Mortgage Daily, January 14, 2010
- Exhibit 7. National Consumer Law Center, Bennett v Donovan, NCLC eReports Jan. 2013 #12
- Exhibit 8. Bennett v. Donovan, 11-5288, 2013 WL 45879 (D.C. Cir. Jan. 4, 2013)

Case: 13-11585 Date Filed: 06/12/2013 Page: 1 of 2

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 13-11585-B  
5:13-CV-58-OC-10PRL

REVERSE MORTGAGE SOLUTIONS, INC.,

Plaintiff-Appellee,

versus

NEIL J. GILLESPIE AS CO-TRUSTEES,  
of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997,  
NEIL J. GILLESPIE,

Defendants-Appellants,

MARK GILLESPIE AS CO-TRUSTEES, etc., et al.,

Defendants.

Appeal from the United States District Court  
for the Middle District of Florida

Before: BARKETT, MARCUS and JORDAN, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. We are precluded from reviewing the district court's March 7, 2013 order and March 11, 2013 judgment remanding this case to state court because the district court found that it lacked federal subject matter jurisdiction. See 28 U.S.C. 1447(c), (d); *Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1296 (11th Cir. 2009); *New v. Sports & Recreation, Inc.*, 114 F.3d 1092, 1095-96 (11th Cir. 1997).

EXHIBIT

1

**No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir.R. 27-2 and all other applicable rules.**

Case: 13-11585 Date Filed: 06/12/2013 Page: 1 of 1

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.call.uscourts.gov](http://www.call.uscourts.gov)

June 12, 2013

Sheryl L. Loesch  
U.S. District Court  
207 NW 2ND ST  
OCALA, FL 34475

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

Enclosure(s)

DIS-4 Multi-purpose dismissal letter



May 24, 2012

The Estate of Penelope M. Gillespie  
C/O Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

Re: Loan No./Skey: 68011002615899/69977  
FHA Case Number: 091-4405741  
Borrower: Penelope M. Gillespie  
Property: 8092 SW 115<sup>th</sup> Loop, Ocala, FL 34481

Dear Mr. Gillespie:

This will acknowledge receipt of your letter May 14, 2012 regarding the Estate of Penelope M. Gillespie, which was received in our office on May 17, 2012.

The total loan balance became Due and Payable on December 16, 2009. The loan is currently in a status of default-death until the Bank of America file has been reviewed.

The borrower listed on the loan is Penelope M. Gillespie. The trustees are listed on the deed as trustee, and not on the loan as borrowers. Please understand, the trustees do have rights to the property, however, this is a *reverse mortgage loan and the loan must be satisfied*. As Bank of America communicated to you previously, you are not a borrower and were not a beneficiary of the trust at the time of the loan origination. You were a trustee and now a successor beneficiary. What being trustee of the property means is that you do not have to go to court to have the estate probated. Therefore, if you as beneficiary trustee would like to retain the property the loan balance must be paid in full.

We are returning your documents to you along with the requested Assignment of Mortgage. Also enclosed is the Reverse Mortgage Repayment Procedures and Timeline.

We trust that this information provided will meet your needs. If however, you still have questions or you require further information, please feel free to contact our Default Service Group toll free at 1-866-503-5559.

Sincerely,

Barbara Moore

**Reverse Mortgage Solutions, Inc.**

Customer Service

Office / 1-866-503-5559

Fax / 1-866-790-3451

customerservice@myrmloan.com

2727 Spring Creek Drive, Spring, TX 77373  
Phone (866) 503-5559 ~ Fax (866) 790-3451 ~ TTY/TDD (866) 827-6697







### **REVERSE MORTGAGE REPAYMENT PROCEDURES AND TIMELINE**

- The reverse mortgage is due and payable when all borrowers have passed away or moved out of the property on a permanent basis. The mortgage can also be called due and payable upon approval from the Secretary of Housing and Urban Development (HUD) for Tax and/or Insurance Defaults and non-completion of required repairs.
- As long as the borrower (or estate) is actively working to satisfy the debt, HUD's preliminary repayment timeline is 6 months after the borrower's Due and Payable date (or date of death). If the case warrants, Reverse Mortgage Solutions, Inc. has the right to begin foreclosure as early as 30 days from the date of this repayment demand letter.
- After 6 months, HUD requires written requests for extensions every 90 days. These requests should be sent to Reverse Mortgage Solutions, Inc. 30 days before the expiration date. They should include the reason the extension is needed, the action the estate is taking to repay the loan, and any documentation supporting your claim. With the extensions, the maximum timeline for repayment is one year from the borrower's Due and Payable date (or date of death).
- Reverse Mortgage Solutions, Inc. is required to begin foreclosure on Due and Payable reverse mortgages no later than one year after the date of death or default. A reverse mortgage in foreclosure can be paid off, however all expenses related to foreclosure will be added to the payoff figure. There may be a point during the foreclosure process in which a pre-foreclosure sale payoff deadline is set. Please call Reverse Mortgage Solutions, Inc. to find out if such a deadline applies.
- To obtain a payoff figure, please submit a written request to our office.

By mail: Reverse Mortgage Solutions, Inc.  
Attn: Reverse Mortgage Payoff Dept.  
2727 Spring Creek Drive  
Spring, TX 77373

By fax: (866) 790-3451

Recording Requested By:  
**Bank of America**  
 Prepared By: **Diana De Avila**  
**888-603-9011**  
 When recorded mail to:  
**Reverse Mortgage Solutions, Inc.**  
**2727 Spring Creek Drive**  
**Spring, TX 77373**



DocID# 1266801100261589920032  
 Property Address:  
**8092 SW 115TH LOOP**  
**OCALA, FL 34481**  
 FLO-AM 18001254 3/27/2012

This space for Recorder's use

**ASSIGNMENT OF MORTGAGE**

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is **190 QUEEN ANNE, NORTH SUITE 100 SEATTLE, WA 98109** does hereby grant, sell, assign, transfer and convey unto **REVERSE MORTGAGE SOLUTIONS, INC.**, whose address is **2727 SPRING CREEK DRIVE, SPRING, TX 77373** all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.


Original Lender: **LIBERTY REVERSE MORTGAGE, INC.**  
 Original Borrower(s): **PENELOPE M. GILLESPIE, INDIVIDUALLY AND AS TRUSTEE NEIL J. GILLESPIE AND MARK GILLESPIE, AS CO-TRUSTEES OF THE GILLESPIE FAMILY LIVING TRUST AGREEMENT DATED FEBRUARY 10, 1997**


Date of Mortgage: **6/5/2008**  
 Original Loan Amount: **\$198,000.00**


Recorded in **Marion County, FL** on: **6/25/2008**, book **OR 05057**, page **1670** and instrument number **2008065289**


IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on

**MAR 27 2012****BANK OF AMERICA, N.A.**

By:   
**Jane Martorana**  
**Assistant Vice President**

By:   
**Dominique Johnson**  
**Assistant Vice President**

Witness:   
**Chester Levings**

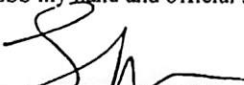
Witness:   
**Edward Gallegos**

State of **California**  
 County of **Ventura**

On **MAR 27 2012** before me, **Lillian J. Ellison**, Notary Public, personally appeared **Jane Martorana** and **Dominique Johnson**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public:   
**Lillian J. Ellison**  
 My Commission Expires: **March 13, 2015**





June 8, 2012

Sent Via Certified Mail

Penelope Gillespie

Loan Number: 69977

Property Address: 8092 SW 115TH LOOP  
OCALA, FL 34481

**NOTICE OF DEFAULT AND INTENT TO FORECLOSE**

Dear Penelope Gillespie:

Reverse Mortgage Solutions, Inc., (herein as "RMS") is currently servicing your mortgage loan that is secured by the above referenced property. You are hereby formally notified that the mortgage loan associated with the referenced Deed of Trust/Mortgage is in default because of the death of the primary mortgagor and the loan must be paid in full.

To cure this default, you must forward funds in the amount of \$108,056.19 consisting of the principal due, plus all interest and fees through July 8, 2012.

**It is possible that after payment of the amounts detailed above there may be other fees still due and owing, including but not limited to other fees, escrow advances or corporate advances that RMS paid on your behalf or advanced to your account.**

This letter is a formal demand to pay \$108,056.19. If the default is not paid in full by July 8, 2012, RMS will take steps to terminate your ownership in the property by a foreclosure proceeding or other action to seize the property.

**IF YOU ARE UNABLE TO PAY YOUR ACCOUNT IN FULL, RMS offers consumer assistance programs designed to help resolve delinquencies and avoid FORECLOSURE. These services are provided without cost to our customers. You may be eligible for a loan workout plan or other similar alternatives. If you would like to learn more about these programs, you may contact the Loss Mitigation Department at (866) 503-5559, between the hours of 8:30 AM and 5:00 PM CST. WE ARE VERY INTERESTED IN ASSISTING YOU.**

The default above can be cured by payment of the total payoff amount plus any additional fees that become due by July 8, 2012. Note that additional charges, costs and fees may become due during the period between today's date and the date the aforementioned payments are received. Please contact our Collection Department at (866) 503-5559 to obtain updated payoff information.

Please include your loan number and property address with your payment and send to:

Reverse Mortgage Solutions, Inc.  
2727 Spring Creek Drive  
Spring, TX 77373

562439



12-02121-1  
Page 1 of 2

**EXHIBIT**

**3**

If you wish to dispute the delinquency, or if you dispute the calculation of amount of the delinquency and reinstatement amount, you may contact us by calling (866) 503-5559.

You have the right to bring a court action to assert the non-existence of a default or any other defense to acceleration or foreclosure sale. Failure to respond to this letter may result in the loss of your property. To the extent your obligation has been discharged or is subject to the automatic stay in a bankruptcy case, this notice is for informational purposes only and does not constitute a demand for payment or an attempt to collect a debt as your personal obligation. If you are represented by an attorney, please provide us with the attorney's name, address and telephone number.

**Attention Service members and dependents:** The Federal Service Members' Civil Relief Act ("SCRA") and certain state laws provide important protections for you, including prohibiting foreclosure under most circumstances. If you are currently in the military service, or have been within the last nine (9) months, AND joined after signing the Note and Security Instrument now in default, please notify RMS immediately. When contacting RMS as to your military service, you must provide positive proof as to your military status. If you do not provide this information, it will be assumed that you are not entitled to protection under the above-mentioned Act.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. You may contact HUD Government Counseling which provides free or low-cost housing counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. For your benefit and assistance, there are government approved homeownership counseling agencies designed to help homeowners avoid losing their homes. To obtain a list of approved counseling agencies, please call (800) 569-4287 or visit <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

**NO PERSON IN THIS OFFICE WILL GIVE YOU ANY LEGAL ADVICE.** If, at any time, you make a written request to us not to be contacted by phone at your place of employment, we will not do so. If, at any time, you make a written request to us not to contact you, we will not do so, except to send statutorily and/or contractually required legal notice.

You may be eligible for assistance from the Homeownership Preservation Foundation or other foreclosure counseling a. You may call the following toll-free number to request assistance from the Homeownership Preservation Foundation: (888) 995-HOPE (4637). If you wish, you may also contact us directly at (866) 503-5559 and ask to discuss possible options.

This matter is very important. Please give it your immediate attention.

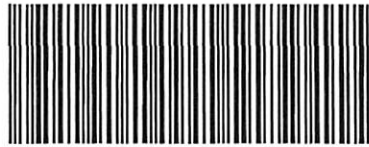
Sincerely,

Reverse Mortgage Solutions, Inc.  
(866) 503-5559

**FEDERAL LAW REQUIRES US TO ADVISE YOU THAT REVERSE MORTGAGE SOLUTIONS, INC. IS A DEBT COLLECTOR AND THAT THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT PURPOSE. TO THE EXTENT YOUR OBLIGATION HAS BEEN DISCHARGED OR IS SUBJECT TO THE AUTOMATIC STAY IN A BANKRUPTCY PROCEEDING, THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE A DEMAND FOR PAYMENT OR AN ATTEMPT TO COLLECT AN INDEBTEDNESS AS YOUR PERSONAL OBLIGATION. IF YOU ARE REPRESENTED BY AN ATTORNEY, PLEASE PROVIDE US WITH THE ATTORNEY'S NAME, ADDRESS AND TELEPHONE NUMBER.**



Reverse Mortgage Solutions, Inc.  
2727 Spring Creek Dr.  
Spring, TX 77377



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CERTIFIED MAIL





Executive Customer Relations  
Office of the CEO and President

March 28, 2013

Mr. Neil J. Gillespie  
8092 Southwest 115<sup>th</sup> Loop  
Ocala, FL 34481

**Bank of America account ending: 5899**  
**Escalated Service Request Number: 1-405452162**  
**Date Issue was received: March 14, 2013**

Dear Mr. Gillespie:

Bank of America's Office of the CEO and President acknowledges receipt of your inquiry received March 14, 2013, addressed to Bank of America's Office of the CEO and President. As a customer advocate, I welcome this opportunity to respond to the inquiry.

According to the inquiry, you requested foreclosure action to be stopped on the reverse mortgage account. You noted concern over whether you were authorized to obtain account information on the reverse mortgage. You indicated concern over changes to the reverse mortgage account. You also expressed concern over fraudulent acts, which may have occurred at the time of origination and with the servicing of the account. I hope I have accurately captured your concerns.

Laws that govern customer privacy prevent us from providing you with details about any relationship we may have with any customer without first obtaining the written consent of such customer. Thank you for submitting necessary documentation to allow Bank of America to respond to concerns noted in your inquiry.

My research indicates that the mortgage loan account servicing was transferred to Reverse Mortgage Solutions Inc. effective April 1, 2012. I have enclosed a copy of the Notice of Assignment, Sale or Transfer of Servicing Rights letter sent by Bank of America for review purposes.

The Notice of Assignment, Sale or Transfer of Servicing Rights letter, sent by Bank of America, states the assignment, sale, or transfer of the servicing of the reverse mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan. The business address to submit any correspondence or requests for Reverse Mortgage Solutions, Inc. is: 2727 Spring Creek Drive, Spring, TX 77373. Please contact Reverse Mortgage Solutions, Inc. at 1.866.503.5559, Monday through Friday, 8 a.m. to 5 p.m. nationwide, for assistance with any concerns related to foreclosure activity, changes to the account or any possible fraudulent activity with the origination or servicing of the reverse mortgage account.

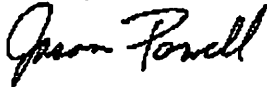




March 28, 2013  
Mr. Neil J. Gillespie  
Page Two

Mr. Gillespie, thank you for bringing your concerns to our attention. If you have any additional questions regarding this correspondence, please feel free to contact me at 1.855.834.5400 extension 063275. I am available Monday through Friday, 7:00 a.m. to 4:00 p.m. Central.



Sincerely,



Jason Powell  
Customer Advocate  
Office of the CEO and President

Enclosure

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. If you are currently in a bankruptcy proceeding, or have previously obtained a discharge of this debt under applicable bankruptcy law, this notice is for information only and is not an attempt to collect the debt, a demand for payment, or an attempt to impose personal liability for that debt. You are not obligated to discuss your home loan with us or enter into a loan modification or other loan-assistance program. You should consult with your bankruptcy attorney or other advisor about your legal rights and options.

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PENELOPE M. GILLESPIE  
8092 SW 115TH LOOP  
OCALA, FL 34481

**NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS**

You are hereby notified that the servicing of your reverse mortgage loan, that is, the right and the obligation to make loan payments to you, is being assigned, sold or transferred from Bank of America, N.A., to Reverse Mortgage Solutions, Inc. effective April 1, 2012.

The assignment, sale, or transfer of the servicing of the reverse mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. In this case, all necessary information is combined in this one notice.

Your present servicer is Bank of America, N.A. If you have any questions relating to the transfer of servicing from your present servicer, please call the Reverse Mortgage Customer Service Department at 1.866.863.5224 between 5 a.m. and 5 p.m. Pacific, Monday through Friday. This is a toll free number.

Your new servicer will be Reverse Mortgage Solutions, Inc. The business address for Reverse Mortgage Solutions, Inc. is: 2727 Spring Creek Drive, Spring, TX 77373.

The toll-free telephone number of Reverse Mortgage Solutions, Inc is 1.866.503.5559. If you have any questions relating to the transfer of servicing to your new servicer, please call Reverse Mortgage Solutions Customer Service toll-free at 1.866.503.5559 between 8 a.m. and 5 p.m. Nationwide, Monday through Friday.

The date that your present servicer will stop making payments to or accepting payments from you is March 31, 2012. The date that your new servicer will begin making payments to or accepting payments from you is April 1, 2012. Send all requests for payments due to you on or after that date to Reverse Mortgage Solutions, Inc.

Sincerely,  
Bank of America, N.A.

Sincerely,  
Reverse Mortgage Solutions, Inc.

**PLEASE SEE IMPORTANT ADDITIONAL INFORMATION ON THE OTHER SIDE**

**ADDITIONAL RIGHTS UNDER THE REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)**

We want to make you aware of certain rights you have under RESPA. A summary is provided below.

**ABOUT YOUR RIGHTS UNDER RESPA**

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgement within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

Reverse Mortgage Solutions  
2727 Spring Creek Drive  
Spring, TX 77373

No later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business-Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.



Bank of America, Office of the CEO and President  
100 North Tryon St, Charlotte, NC 28255-0001

Mr. Neil J. Gillespie  
8092 Southwest 115<sup>th</sup> Loop  
Ocala, FL 34481



010 B1F-A3B 34481



Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CHARLES J. THOMAS IAS TERM, PART 20B  
Justice

-----X  
In the Matter of the Application of  
ROBERT DOAR, as the Commissioner of  
Social Services of the City of New York,

Petitioner, INDEX NO.: 31393/07

For the Appointment of a Guardian of the  
Personal Needs and Property Management  
of

**HERMINA BRUNSON**

A Person Alleged to be Incapacitated  
-----X

The following papers numbered 1 to read on this motion by

PAPERS  
NUMBERED

Order to Show Cause.....	1-8
Answering Affidavits-Exhibits.....	9
Memorandum .....	10-13

In March 2008 the New York City Commissioner of Social Services submitted a Petition pursuant to Article 81 for the appointment of a Guardian for Hermina Brunson. Dimas Salaberios was appointed Temporary Guardian for Ms. Brunson.

At the time of the hearing which was commenced on February 28, 2008, continued on various dates until May 8, 2009, Ms. Brunson's home had been in foreclosure. The foreclosure action has been stayed pending the conclusion of the guardianship proceeding.

As part of the guardianship proceeding Petitioner seeks to establish that Ms. Brunson was incapacitated from the year 2000

EXHIBIT

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forward and that she lacked the capacity (1) to execute the deed transferring the property to her brother Joseph and (2) to enter into mortgage agreements with Financial Freedom signed in December 2001 and June 2003. The Temporary Guardian seeks to vacate the mortgages because of Ms. Brunson's incapacity and claims that the proceeds were used solely for the benefit of Ms. Brunson's brother, Joseph Brunson. He also alleged that Ms. Brunson signed the mortgage agreement under physical and emotional duress from her brother.

Financial Freedom Senior Funding Corp. (hereinafter "Financial Freedom"), which has appeared in this action with regard to the issues involving the mortgage, claims that Ms. Brunson had sufficient capacity to enter into the mortgage agreements on December 28, 2001 and June 30, 2003 and that even if she did not, the proceeds of the mortgage were used for her benefit. That being the case, Financial Freedom claims it is entitled to repayment of the monies expended from the mortgage proceeds.

It is agreed between the parties that Ms. Brunson purchased a one family home in 1974 and held the property individually in fee simple until October 12, 2001. At that time Ms. Brunson signed a deed transferring her property to herself and her brother Joseph Brunson as joint tenants with the right of survivorship. It is also agreed that two reverse mortgages were executed by both Ms. Brunson and her brother Joseph Brunson—the first on December 30, 2001 for \$300,000.00; the second on June 20, 2003 for \$375,000.00. The second mortgage paid off and satisfied the first leaving only the June 20, 2003 mortgage

outstanding.

At the hearing Dr. Arthur Pierre Lewis testified that he treated Ms. Brunson from December 2000 when she was transferred from Elmhurst Hospital to Creedmore Psychiatric Hospital until 2006. As her treating physician Dr. Pierre Lewis diagnosed Ms. Brunson's condition as chronic schizophrenia paranoid type. Dr. Pierre Lewis testified that he saw Ms. Brunson on a monthly basis and that Ms. Brunson was also treated by Dr. Penny, a psychologist on a bi-weekly basis.

At the end of 2001 Ms. Brunson began suffering from a cognitive impairment that included a loss of memory and inability to function. She complained of hearing voices and suffered from delusions including the delusion that her neighbor, who had recently been released from prison, was trying to take her home away from her. She also claimed that she no longer had the deed to the house.

At approximately the same time Ms. Brunson also expressed anxiety and great fear of her brother, Joseph. Ms. Brunson claimed among other things that her brother was not feeding her. On several occasions Dr. Pierre Lewis witnessed the interaction between Ms. Brunson and her brother Joseph Brunson. Dr. Pierre Lewis felt that based on his expertise as a psychiatrist and on the interaction between the two siblings on these occasions, Joseph Brunson was mistreating Ms. Brunson. His findings resulted in his referring the matter to Adult Protective Services which, after reviewing the complaint, took no further action and closed the case.

Based upon the testimony of Dolly Cook, Ms. Brunson's



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SA and Dr. Pierre Lewis, the Court finds that Ms. Brunson suffered from a mental illness which, from the time of her hospitalization in the year 2000, rendered her incapable of handling her financial affairs and from understanding the nature of reverse mortgages entered into in 2001 and 2003 and their long-term complications. Her psychosis and delusions, which seem to center around the loss of her home, made it unlikely that she could have distinguished that which was real from that which was delusional.

Prior to the enactment of Mental Hygiene Law of Article 81 the rights of the parties to a contractual agreement where one of the parties is incapacitated was set forth by the Court of Appeals, in Ortelere v. Teachers' Retirement Bd. 25 NY2d 196.

The avoidance of duties under an agreement entered into by those who have done so by reason of mental illness, but who have understanding, depends on balancing competing policy considerations. There must be stability in contractual relations and protection of the expectations of parties who bargain in good faith. On the other hand, it is also desirable to protect persons who may understand the nature of the transaction but who, due to mental illness can not control their conduct. Hence, there should be relief only if the other party knew or was put on notice as to the contractor's mental illness(205).

In 1992 when the legislature enacted Article 81 of the Mental Hygiene Law, the requirement of knowledge of one party's incapacity by the other was not included in the statute.

Section 81.29(d) of the Mental Hygiene Law provides as follows:

(d) If the Court determines that the person is incapacitated and appoints a Guardian, the Court may modify, amend or revoke any previously executed...contract, conveyance, or disposition during lifetime or to take effect upon death, made by the incapacitated person prior to the appointment of the Guardian if the Court finds that the previously executed... contract, conveyance, or disposition..., was made while the person was incapacitated...

Nevertheless, the Appellate Division continued to require that a mortgagee have knowledge of the mortgagor's incapacity before the contract which is otherwise voidable could be voided. In order to void a contract which is voidable because of incapacity, the mortgagor must establish that the mortgagee had knowledge of the "incapacity and were not bonafide mortgagees for value". (See Weisberg, et al v. DeMeo, et al, 254 AD2d 351, 678 NYS2d 661).

In 1996 Congress authorized the National Housing Act which created reverse mortgages aimed at providing the elderly access to the equity in their home. When it did so, the Department of Housing and Urban Development stressed its concern about the intricacies of a reverse mortgage and the need to insure that elderly individuals not risk their hard earned equity by entering into a reverse mortgage unless they fully understood the terms and significance of the mortgages to which they are agreeing. The very nature of the intended recipients of these mortgages render such transactions suspect and thus a greater obligation is appropriately placed on the mortgagee than in an otherwise arms length transaction. Hence, the burden of knowledge which had been placed on the proponent seeking to void the contract due the lack of capacity of a party by the Ortelere Court must be shifted to the mortgagee when dealing with a reverse mortgage. In such cases it is sufficient if the mortgagee knew or could have known by the reasonable fulfilment of its statutory obligations. To rule otherwise would render the

protections meaningless.

Congress' concern is reiterated and codified in 26 CFR Section 206.41, the regulations that accompany the National Housing Act. To that end the statute requires both counseling of the prospective mortgagors as well as the execution and submission of a certificate attesting that the counseling requirement had been either satisfied or waived. The statute requires that an attorney or certified counselor discuss and advise the prospective mortgagor of their rights and responsibilities under a Housing and Urban Development guaranteed reverse mortgage. This certification was not meant to be perfunctory or a mere rubber stamp for the banking and mortgage industry. It was intended to secure that the rights of elderly homeowners were protected. The mortgagee is entrusted with the responsibility of conducting an inquiry of the applicant's understanding of the mortgage agreement.

The purpose of the counseling is two-fold. First, to insure that no one enters into a mortgage contract without a full understanding of his or her rights under the mortgage. Second, that a reviewing court can ascertain that the intent of the legislation has been accomplished and that the statutory requirements have been fulfilled. Here the Court is not satisfied as to either.

Freedom Fidelity, who was unable to produce the individual who filled out the Certificate of Counseling was unable to substantiate the details of what Ms. Brunson had been told. While the certificate indicating that a Rosa Colarte certified

that the homeowners had received counseling was submitted into evidence (Respondent's Evidence 14), there was no evidence as to the qualifications of Ms Colarte or the counseling itself. The certificate states that the counseling was not face to face but over the phone and that the total time was 45 minutes. The information on the certificate does not inform the Court whether Ms. Colarte actually spoke to Ms. Brunson and if so what portion of the conversation was with Ms. Brunson as opposed to Joseph Brunson who clearly dominated his sister's actions. The Court can not ascertain what information Ms. Brunson was given by Ms. Colarte and whether she had or asked questions and, if so, what they were and whether her questions were answered.

There is no evidence that Ms. Brunson understood the terms of the mortgage or the Counseling Certificate that she signed on June 20, 2003. Under the circumstances of this case any responsible counselor would have unearthed Ms. Brunson's mental illness and her delusions regarding her house and determined that Hermina Brunson lacked the capacity to enter into the mortgage, or, at the very least, that further counseling was needed. While the Certificate of Counseling is an indication that information was given to the homeowners it is not dispositive of the issue of the mortgagor's knowledge and understanding of the implications of a reverse mortgage or that the requirements under the National Housing Act have been satisfied. That determination rests ultimately with the court.

Under these circumstances the court finds that Hermina Brunson was incapable of understanding the agreements that she signed on April 21, 2003 and that Financial Freedom is charged

with the responsibility to determine, and were in a position to know of her incapacity. Therefore, the Court finds the mortgages on June 20, 2003 void.

The Court, however, recognizes that Ms. Brunson used a portion of the funds to benefit and protect her ownership rights in the property and to such extent Financial Freedom should be compensated.

Accordingly, the Guardian is directed to reimburse Financial Freedom for monies paid out at the closing including taxes, water charges and the New York City Department of Social Services liens.

DATED: December 18, 2009

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CHARLES J. THOMAS, J.S.C.



- Reverse Mortgage Daily - <http://reversemortgagedaily.com> -

## Judge Voids Reverse Mortgage, Says Counseling Fails to Prove Competency

Posted By [Reva](#) On January 14, 2010 @ 9:50 am In [Counseling](#), [Legislation](#), [News](#), [Reverse Mortgage](#) | [105 Comments](#)

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In a ruling last month, Charles J. Thomas, a New York Supreme Court Judge voided a reverse mortgage and its subsequent refinancing on the grounds that the borrower's mental illness made her unable to understand the reverse mortgage.

In the case, *Matter of Doar*, 31393/07<sup>[1]</sup>, the borrower, Ms. Hermina Brunson, took out a reverse mortgage with Financial Freedom on her home in Queens for \$300,000 in December of 2001, refinancing for \$375,000 in June of 2003.

However, at the time, Ms. Brunson was being treated for chronic paranoid schizophrenia. By the end of 2001, her psychiatrist testified that Ms. Brunson was hearing voices, believed her neighbor was trying to take her home away from her, and claimed that she no longer had the deed to the home.

Despite the counseling session lasting 45 minutes over the phone, the judge wrote that it was "not meant to be perfunctory or a mere rubber stamp of the banking or mortgage industry. It was intended to secure that the rights of elderly homeowners were protected. The mortgagee is entrusted with the responsibility of conducting an inquiry of the applicant's understanding of the mortgage agreement."

Judge Thomas continued, "There is no evidence that Ms. Brunson understood the terms of the mortgage or the Counseling Certificate that she signed on June 20, 2003." He faulted the counselor for not unearthing the borrower's mental illness and her delusions regarding her home. Most significantly for the industry, Judge Thomas ruled:

*While the Certificate of Counseling is an indication that information was given to the homeowners it is not dispositive of the issue of the mortgagor's knowledge and understanding of the implications of a reverse mortgage or that the National Housing Act has been satisfied. That determination rests ultimately with the court.*

As a result, the responsibility is on the lender to prove that the borrower understood the reverse mortgage, regardless of whether or not they received a counseling certificate.

The judge further faulted the counseling process, noting that there was no evidence as to the qualifications of the counselor, whether the counselor spoke to Ms. Brunson or only to her brother, if Ms. Brunson's questions were answered, and what information the counselor provided.

While recent counseling reforms such as the qualification of the counselor addresses some of these issues, this is still a situation that could be repeated today.

In the ruling, Financial Freedom was ordered to void the mortgage, but the Guardian of the borrower is directed to reimburse Financial Freedom for monies paid out at the closing which includes taxes, water charges, and the New York City Department of Social Services liens. It is unclear whether Financial Freedom will appeal.

[Matter of Doar](#), 31393/07<sup>[1]</sup>

Write to [Reva Minkoff](#)<sup>[2]</sup>

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EXHIBIT

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- [1] Matter of Doar, 31393/07: <http://reversemortgagedaily.com/img-112161623-0001.pdf>
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## Surviving Spouses of Reverse Mortgage Borrowers Have Standing to Assert Protection from Displacement

by Jean Constantine-Davis, Senior Attorney, AARP Foundation Litigation and Craig Briskin, Partner, Mehri & Skalet, P.L.L.C.

NCLC eReports January 2013 #12

Foreclosures and Servicing; Mortgage Loans

A January 4, 2013 D.C. Circuit ruling has important implications in overturning a HUD Rule and providing protections for surviving spouses of reverse mortgage borrowers who face foreclosure after the death of their spouses. Younger spouses are often given bad advice to remove their name from ownership of the house so that the older spouse can obtain a reverse mortgage on more favorable terms. Current HUD rules though often result in the younger spouse no longer being able to live in the home after the older spouse dies.

In an important challenge to those HUD rules, *Bennett v. Donovan*<sup>[1]</sup> holds that surviving spouses have standing to enforce the "Safeguard to prevent displacement of homeowner" in the federal reverse mortgage statute, because the statute also gives HUD the power to take ownership of mortgages to serve the program's goals.<sup>[2]</sup> While the holding concerned standing, the court expressly sided with plaintiffs on the merits regarding the anti-displacement provision, stating, "we admit to being somewhat puzzled as to how HUD can justify a regulation that seems contrary to the governing statute."

Plaintiffs Robert Bennett and Leila Joseph had owned their homes with their spouses for decades when they were solicited for reverse mortgages. Although both were over 62, the minimum age under the federal Home Equity Conversion Program ("HECM"),<sup>[3]</sup> they were each younger than their spouses. In a practice that appears widespread, the mortgage brokers induced both plaintiffs to "quitclaim" their interest in their homes. Mrs. Joseph's broker misled her about the implications of removing her name from the deed to her home; Mr. Bennett's broker never told him his name would be removed from the deed. Mr. Bennett's wife died a month after they signed on their loan; Mrs. Joseph's husband died four months after they signed on theirs.

In accordance with HUD's regulations, the servicers of the two reverse mortgages called them due and payable soon after the last surviving "mortgagor" had died. The HECM statute, however, states that HUD may not insure a HECM unless it includes a provision that protects the "homeowner" from displacement until the homeowner's death, sale of the property, or other events. It further states, "for purposes of this subsection, homeowner includes the spouse of the homeowner."<sup>[4]</sup> But HUD drafted not only its regulations but the reverse mortgage documents to demand repayment upon the death of the mortgagor. As a result, plaintiffs' HECM lenders moved to foreclose on the homes after their spouses died.

In March 2011, Mr. Bennett and Mrs. Joseph filed suit in the U.S. District Court for the District of Columbia challenging HUD's regulation under the Administrative Procedure Act,<sup>[5]</sup> and seeking to be protected from foreclosure until after their deaths or sale of their homes.<sup>[6]</sup> The district court granted HUD's motion to dismiss the case on the ground that plaintiffs lacked standing to raise this claim because even if they prevailed, the private lenders were authorized by the mortgage contracts to foreclose after the death of the named borrowers.

On appeal, plaintiffs argued that the lenders' actions were not independent of HUD, which controls HECM mortgages from cradle to grave, and that the lenders' foreclosures were driven by the strict timetable laid out in HUD's regulations, which penalize lenders who do not prosecute timely foreclosure actions. Plaintiffs noted that the HECM statute, 12 U.S.C. § 1715z-20(i), gives HUD ample authority to carry out the purposes of the program, including accepting assignment of plaintiffs' mortgages and paying off the lenders after the deaths of their borrowing spouses, making HUD – not third party lenders – capable of redressing their injury.

HUD argued that, while its regulations penalize lenders who do not follow its foreclosure protocols, it cannot ultimately control foreclosure actions, which are contractually in the hands of private lenders. It also claimed that its regulation requiring HECMs to become due and payable once all "borrowers" have died is consistent with the statute and that plaintiffs' interpretation would create open-ended liability on the FHA program for younger and after-acquired spouses that was not built into the actuarial assumptions of the program.

The D.C. Circuit disagreed. It noted the difficulty of establishing redressability where "it is the private lenders, not HUD itself, that currently threaten foreclosure."<sup>[7]</sup> Nonetheless, the Court concluded that HUD's statutory authority under 12 U.S.C. § 1715z-20(i) to accept assignment of HECM mortgages and pay lenders the amounts owed them means that plaintiffs' claims are "likely" redressable.<sup>[8]</sup> If HUD accepts assignment of the mortgages, "it would be within its discretion as the holder of the contract to simply decline to foreclose."<sup>[9]</sup>

Although the merits of plaintiffs' challenge to HUD's regulation were not before the court, its view of the merits was clear.

EXHIBIT

7



[W]e admit to being somewhat puzzled as to how HUD can justify a regulation that seems contrary to the governing statute. HUD explains that it is specially concerned about the scenario in which a homeowner, after taking out a reverse mortgage, marries a spouse — particularly a young spouse — and thereby significantly increases a lender's risk. It would seem, however, that HUD could legitimately deal with that problem by issuing a regulation defining a "spouse" as only a spouse in existence at the time of the mortgage.<sup>[10]</sup>

If the district court on remand finds for plaintiffs on the merits, HUD need not follow the steps to redress laid out by the Court — i.e., assignment and payment of the mortgages — and may find another path to redressing plaintiffs' injury. However, the Court noted, if plaintiffs prevail on the merits but are "dissatisfied with HUD's remedy, they would always have the option to seek review on the ground that HUD's actions were 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"<sup>[11]</sup>

#### What Now?

Plaintiffs currently await the next steps in this litigation. HUD may choose to request a rehearing or appeal the ruling. Barring that, the case will be remanded to the district court, where plaintiffs are likely to prevail on the merits, given the expressed views of the D.C. Circuit. In the meantime, the D.C. Circuit opinion provides key support to advocates defending surviving HECM spouses from foreclosure. Even prior to the issuance of the decision, a California widower survived summary judgment on a claim for reformation of the HECM contract based, in part, on his assertion that the federal statutory protection of "homeowners" from displacement should protect him from foreclosure.<sup>[12]</sup> The *Bennett* court's support for this reading, and the fact that ultimate success by plaintiffs would result in protection from foreclosure, should strengthen the hand of surviving spouses making such claims.

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<sup>[1]</sup> 2013 WL 45879 (DC Cir. Jan. 4, 2013).

<sup>[2]</sup> 12 U.S.C. § 1715z-20(j).

<sup>[3]</sup> 24 C.F.R. § 206.33.

<sup>[4]</sup> 12 U.S.C. § 1715z-20(j).

<sup>[5]</sup> 5 U.S.C. § 706(2)(A).

<sup>[6]</sup> Plaintiffs' Complaint also asserted that HUD's issuance of Mortgagee Letter 2008-38 (requiring the first time that surviving spouses and heirs repay the full HECM balance if they want to keep the home, while allowing a sale of the property to anyone else for 95% of its current appraised value) violated the APA. Shortly after the Complaint was filed, HUD revoked ML 2008-38 by issuing ML 2011-16.

<sup>[7]</sup> *Bennett v. Donovan*, 2013 WL 45879 (DC Cir. Jan. 4, 2013).

<sup>[8]</sup> *Id.* See also *Lujan v. Defenders of Wildlife*, 504 U.S. at 561, holding that a plaintiff's claims are redressable if it is "likely as opposed to merely speculative" that the relief granted by the court will redress the injury.

<sup>[9]</sup> *Bennett v. Donovan*, 2013 WL 45879 (DC Cir. Jan. 4, 2013).

<sup>[10]</sup> *Id.*

<sup>[11]</sup> *Id.*

<sup>[12]</sup> *Kerrigan v. Bank of America*, 2011 WL 3565121 (C.D. Cal. Aug. 12, 2011) (denying bank summary judgment on claim for reformation of contract).

**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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Argued November 19, 2012

Decided January 4, 2013

No. 11-5288

ROBERT BENNETT, ET AL.,  
APPELLANTS

v.

SHAUN DONOVAN, IN HIS CAPACITY AS SECRETARY OF THE  
UNITED STATES DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT,  
APPELLEE

---

Appeal from the United States District Court  
for the District of Columbia  
(No. 1:11-cv-00498)

---

*Jean Constantine-Davis* argued the cause for appellants. With her on the briefs were *Steven A. Skalet* and *Craig L. Briskin*. *Janell M. Byrd* entered an appearance.

*Benjamin M. Shultz*, Attorney, U.S. Department of Justice, argued the cause for appellee. With him on the brief were *Stuart F. Delery*, Acting Assistant Attorney General, *Ronald C. Machen Jr.*, U.S. Attorney, *Michael S. Raab* and *Mary L. Smith*, Attorneys.

Before: BROWN, *Circuit Judge*, and EDWARDS and SILBERMAN, *Senior Circuit Judges*.

Opinion for the Court filed by *Senior Circuit Judge SILBERMAN*.

SILBERMAN, *Senior Circuit Judge*: Two widowed spouses of homeowners with reverse-mortgage contracts faced foreclosure by mortgage lenders after their spouses died. They brought suit against the Secretary of the Department of Housing and Urban Development, alleging that HUD’s regulation defining the conditions under which it would insure a reverse-mortgage agreement was inconsistent with the applicable statute. The district court dismissed for lack of standing, but we reverse. The district court correctly reasoned that if relief for appellants’ injuries depended on the independent actions of the lenders — deciding whether to foreclose or not — then appellants would lack standing. But after, perhaps, a more thorough presentation before us, we think that, assuming the regulation is unlawful, HUD itself has the capability to provide complete relief to the lenders and mortgagors alike, which eliminates the uncertainty of third-party action that would otherwise block standing.

I.

A “reverse mortgage” is a form of equity release in which a mortgage lender (typically, a bank) makes payments to a borrower based on the borrower’s accumulated equity in his or her home. Unlike a traditional mortgage, in which the borrower receives a lump sum and steadily repays the balance over time, the borrower in a reverse mortgage receives periodic payments (or a lump sum) and need not repay the outstanding loan balance until certain triggering events occur (like the death of the borrower or the sale of the home). Because repayment can usually be deferred until death, reverse mortgages function as a means for elderly homeowners to receive funds based on their home equity.

Reverse mortgages are generally non-recourse loans, meaning that if a borrower fails to repay the loan when due, and if the sale of the home is insufficient to cover the balance, then the lender has no recourse to any of the borrower's other assets. This feature is, of course, favorable to borrowers but introduces significant risk for lenders — if regular disbursements are chosen, they can continue until the death of the borrower (like a life annuity), and the loan balance will increase over time, making it less and less likely that the borrower will be able to cover the full amount. If a borrower lives substantially longer than expected, lenders could face a major loss.

Congress, concerned that this risk was deterring lenders from offering reverse mortgages, authorized HUD to administer a mortgage-insurance program, which would provide assurance to lenders that, if certain conditions were met, HUD would provide compensation for any outstanding balance not repaid by the borrower or covered by the sale of the home. The Housing and Community Development Act of 1987 set out those conditions. The particular provision at issue in this case states:

The Secretary may not insure a home equity conversion mortgage under this section unless such mortgage provides that the homeowner's obligation to satisfy the loan obligation is deferred until the homeowner's death, the sale of the home, or the occurrence of other events specified in regulations of the Secretary. *For purposes of this subsection, the term "homeowner" includes the spouse of a homeowner.*

12 U.S.C. § 1715z-20(j) (emphasis added). HUD promulgated regulations to implement the Act, which include the following provision establishing when insured loans become due and payable:

The mortgage shall state that the mortgage balance will be due and payable in full if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor, or a mortgagor conveys all of his or her title in the property and no other mortgagor retains title to the property.

24 C.F.R. § 206.27(c)(1).

Robert Bennett and Leila Joseph are the surviving spouses of reverse-mortgage borrowers whose mortgage contracts were executed pursuant to HUD's insurance program. Only their spouses, not the appellants themselves, were legal borrowers under the mortgage contract. Appellants allege that they were assured by their brokers that they would be protected from displacement after their spouses died, and that in reliance on this protection, they quitclaimed interest in the homes they had owned jointly with their spouses when their mortgages were originated.<sup>1</sup>

Yet when appellants' spouses died, the respective lenders both asserted their right to immediate repayment of the loan. Their claim was based on language in the mortgage contracts stating that the balance became due and payable if "[a] Borrower dies and the Property is not the principal residence of at least

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<sup>1</sup> Both Bennett and Joseph were younger than their respective spouses, and because loan limits depend on the age of the *youngest* borrower, quitclaiming interest in their homes likely allowed the banks to provide appellants more favorable loan terms than if they had been parties to the contract as well. Pricing of reverse mortgages is like the inverse of life-insurance policies — older borrowers are expected to live for a shorter period of time, and thus draw fewer payments over the life of the mortgage, so the magnitude of those payments can be greater for a given amount of equity.



one surviving Borrower.” Neither Bennett nor Joseph were “borrowers” under the mortgage contracts. When appellants failed to repay the loans, the lenders initiated foreclosure proceedings.

Bennett and Joseph responded by filing suit against the Secretary of HUD in the District Court for the District of Columbia. They asserted that HUD’s promulgation of 24 C.F.R. § 206.27(c) was unlawful because insuring loans payable on the death of the last surviving *borrower* was inconsistent with 12 U.S.C. § 1715-z20(j), which protects “homeowners” from displacement and defines “homeowner” to include “spouse of the homeowner.” On appellants’ view, whether or not a spouse is also a borrower is irrelevant.

The district court dismissed the complaint for lack of standing. Bennett and Joseph could not show that a favorable outcome — that is, a declaratory judgment that HUD’s regulation violated the statute — would redress this harm. Even if HUD should never have insured these mortgages, the lenders now had a lawful right to foreclose under the mortgage contracts themselves, and that right did not depend on the legality of HUD’s regulation. The district court therefore concluded that this set of facts did not fall under any of the limited circumstances whereby redressability of a plaintiff’s injury can be based on the actions of a regulated third party.

## II.

The issue on appeal is limited to appellants’ standing. But we admit to being somewhat puzzled as to how HUD can justify a regulation that seems contrary to the governing statute. HUD explains that it is specially concerned about the scenario in which a homeowner, after taking out a reverse mortgage, marries a spouse — particularly a young spouse — and thereby

significantly increases a lender's risk. It would seem, however, that HUD could legitimately deal with that problem by issuing a regulation defining a "spouse" as only a spouse in existence at the time of the mortgage. Be that as it may, we turn to the standing question.

To further limit our focus, it is only the redressability component of Article III standing that is in dispute. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (plaintiffs must show that it is likely, and not merely speculative, that a decision in their favor will redress their injury). There is no dispute that the risk of displacement upon foreclosure constitutes an injury in fact, and although the district court did not specifically determine causation, we see little reason to doubt that a causal connection exists between HUD's actions and appellants' harm. Had HUD not issued its allegedly unlawful regulation — which insures mortgages that protect from displacement only surviving *borrowers* instead of surviving *spouses* — it is reasonable to assume that the lenders would not have executed contracts under these terms.

But redressability is a closer question because it is the private lenders, not HUD itself, that currently threaten foreclosure. Bennett and Joseph point out that the lenders are heavily regulated by HUD and would decline to foreclose if HUD so suggested — HUD is the "900-pound gorilla" — and thus a declaratory judgment that HUD's regulation is unlawful would likely redress their injuries. HUD argues that the lenders are independent decision-makers with respect to foreclosure, that they will have a legal right to foreclose (and economic incentive to do so) regardless of the outcome of this litigation, and therefore that any redress would be merely speculative.

Our seminal case discussing standing in the context of a regulated third party is *National Wrestling Coaches Ass'n v.*

*Department of Education*, 366 F.3d 930, 938 (D.C. Cir. 2004) (“When a plaintiff’s asserted injury arises from the Government’s regulation of a third party that is not before the court, it becomes ‘substantially more difficult’ to establish standing.” (quoting *Lujan*, 504 U.S. at 562)). We held that men’s wrestling organizations lacked standing to challenge interpretations of Title IX regulations that caused schools to eliminate or reduce the size of their men’s wrestling teams. *Id.* at 933. That was because, assuming the interpretations were unlawful, schools could still make their own decisions about whether to forego elimination of a wrestling team or to reinstate a disbanded program. Educational institutions were, in this respect, “truly independent of government policy.” *Id.* at 941. Bennett and Joseph’s case appears close to the facts of *National Wrestling*. Both cases involve third parties who took actions because of allegedly unlawful agency decisions, but who would have no compelling reason to reverse those actions were the decisions held unlawful by a court.

In that regard, the lenders have no pecuniary interest in withholding foreclosure, even if appellants prevailed on the merits. *Cf. Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach*, 469 F.3d 129, 135-36 (D.C. Cir. 2006) (public interest group had standing to seek to enjoin the FDA from enforcing a policy barring the sale of drugs to their members because drug companies would have clear financial incentives to sell their products). Bennett and Joseph claim that the lenders would not want to lose their HUD insurance and that foreclosing after a court finds the regulation unlawful would somehow effect this result. But appellants overlook 12 U.S.C. § 1709(e), which states that an insurance contract executed with HUD “shall be conclusive evidence of the eligibility of the loan or mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved financial institution . . . , except for fraud or

misrepresentation.” The lenders thus have a statutory guaranty that their contracts will remain eligible for insurance, and no ruling on the validity of HUD’s regulation will threaten this protection.

Indeed, HUD’s own regulations actually *require* lenders to “commence foreclosure of the mortgage within six months of giving notice to the mortgagor that the mortgage is due and payable,” 24 C.F.R. § 206.125(d)(1), or else HUD may withhold interest disbursements accordingly, *id.* § 206.129(d)(2)(iii). *See also id.* § 206.125(d)(3) (lenders “must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion”). So not only would prompt foreclosure fail to forfeit the lenders’ insurance, but maintaining that insurance actually requires it. To be sure, if the regulation was found unlawful, HUD could decline to enforce these requirements, which would give the lenders the option to withhold foreclosure without forfeiting their insurance. But that course would still leave the lender with an independent decision (and with no economic incentive *not* to foreclose).

Bennett and Joseph nevertheless insist that there is “substantial evidence of a causal relationship,” *Nat’l Wrestling*, 366 F.3d at 941, between HUD and the lenders that participate in its reverse-mortgage program. Appellants explain how HUD has substantial control over most of the program’s features, which in appellants’ view, amounts to the conclusion that the lenders are not “truly independent of government policy.” *Id.*

But the phrase “truly independent,” as we used it in *National Wrestling*, does not refer to the general relationship between a third party and a government agency. The relevant question is whether a third party is independent of government policy *with respect to the action at issue in a particular case*. Here, that action is foreclosure according to the terms of a

lawfully executed mortgage contract, and in that respect, the lenders *are* independent of HUD's control. Insofar as the lenders maintain the right to foreclose, Bennett and Joseph would lack standing to bring suit against HUD.

\* \* \*

It does appear to us, however, that HUD has additional statutory means to provide complete relief to both appellants and their lenders, and at least one such avenue of relief would remove speculation as to independent third-party actions. That statutory provision is 12 U.S.C. § 1715z-20(i). This subsection is titled "Protection of homeowner and lender" and states in relevant part:

(1) "[I]n order to further the purposes of the program authorized in this section, the Secretary shall take any action necessary —

(A) to provide any mortgagor under this section with funds to which the mortgagor is entitled under the insured mortgage or ancillary contracts but that the mortgagor has not received because of the default of the party responsible for payment;

(B) to obtain repayment of disbursements provided under subparagraph (A) from any source; and

(C) to provide any mortgagee under this section with funds . . . to which the mortgagee is entitled under the terms of the insured mortgage or ancillary contracts authorized in this section.

(2) Actions under paragraph (1) may include —

(A) *disbursing funds to the mortgagor* or mortgagee from the Mutual Mortgage Insurance Fund; [and]

(B) *accepting an assignment of the insured mortgage* notwithstanding that the mortgagor is not in default under its terms, and calculating the amount and making the payment of the insurance claim on such assigned mortgage . . . .

(emphasis added). Neither party's briefs explicitly discuss the precise text of this provision. Bennett and Joseph describe the statute as compelling HUD to "take any action necessary" to "further the purposes of the [reverse mortgage] program" — a reading that misleadingly characterizes HUD as having authority to take *any* action to further *any* purpose of the program, as opposed to authority to take *certain* actions to effect the *particular* goals listed in paragraph (1). HUD, unfortunately, ignores the provision almost entirely.

But notwithstanding appellants' limited presentation of the issue, they do suggest a means of relief that appears to fall within this subsection and also resolves their standing problem — HUD could accept assignment of the mortgage, pay off the balance of the loans to the lenders, and then decline to foreclose against Bennett and Joseph. Accepting assignment and disbursing funds are both actions specifically authorized by paragraph (2), and such actions could be used to satisfy the "trigger" condition in subparagraph (1)(C) — to provide lenders with funds to which they are entitled under their insured mortgages.

It might seem odd for the borrowers to benefit from a provision intended to protect the lenders,<sup>2</sup> but there is no doubt here that the lenders were entitled to further funds under their mortgage contracts. And, of course, if HUD were to accept assignment, it would be within its discretion as the holder of the contract to simply decline to foreclose. That this remedy would *also* benefit the borrowers is hardly a problem — and indeed, doing justice to § 1715z-20(j)'s intended protection for spouses would seem to “further the purposes of the program authorized in this section.” *Id.* § 1715z-20(i)(1).

In sum, this remedy eliminates the uncertainty of third-party action, which likewise eliminates the redressability problem — if HUD took this series of steps, then HUD, and not the lenders, would be in the position of deciding whether to foreclose against Bennett and Joseph. To be sure, the statute does not make clear whether “accepting an assignment of the insured mortgage” requires the lender’s consent. Yet, even assuming the lenders’ agreement would be needed, it would clearly be in the lenders’ “pecuniary interest,” *Abigail Alliance*, 469 F.3d at 135, to receive the full balance of the loan immediately, rather than face the uncertainty and transaction costs of foreclosure. So even though this potential remedy might involve third-party conduct, there is no serious doubt as to how the lenders would respond.

We do not hold, of course, that HUD is *required* to take this precise series of steps, nor do we suggest that the district court should issue an injunction to that effect. Appellants brought a complaint under the Administrative Procedure Act to set aside an unlawful agency action, and in such circumstances, it is the

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<sup>2</sup> Subparagraphs (A) and (B) — which give HUD authority to ensure that *mortgagors* receive funds due under their contracts — are irrelevant, because Bennett and Joseph were not actually entitled to any further funds under their contracts.



prerogative of the agency to decide in the first instance how best to provide relief. See *N. Air. Cargo v. U.S. Postal Serv.*, 674 F.3d 852, 861 (D.C. Cir. 2012) (“When a district court reverses agency action and determines that the agency acted unlawfully, ordinarily the appropriate course is simply to identify a legal error and then remand to the agency, because the role of the district court in such situations is to act as an appellate tribunal.”).<sup>3</sup>

Perhaps HUD would provide the precise relief we have outlined, perhaps it would find another alternative, or perhaps it would decide no such relief was appropriate. We recognize that, even if the district court issues a declaratory judgment, appellants still have no *guaranty* of relief. Though of course, if Bennett and Joseph prevailed on the merits in the district court but were dissatisfied with HUD’s remedy, they would always have the option to seek review on the ground that HUD’s actions were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

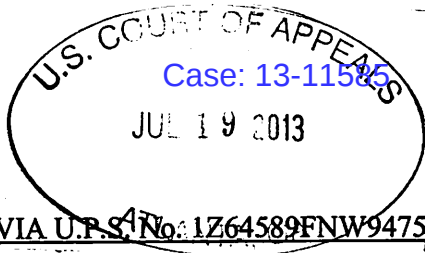
The relevant question for standing, however, is not whether relief is *certain*, but only whether it is *likely*, as opposed to merely speculative. *Lujan*, 504 U.S. at 561. There would indeed be a problem of merely speculative relief were the lenders the only party with discretion not to foreclose, but § 1715z-20(i) gives HUD the tools to remove this uncertainty. HUD is the government actor alleged to have caused appellants’ injury, and HUD is the actor that can provide relief — that arrangement is sufficient to establish that relief is likely.

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<sup>3</sup> *Northern Air Cargo* was not technically an APA case because the Postal Service is exempt from APA review, 674 F.3d at 858, but the same principle applies regardless.

Because we decide that appellants have standing, we need not consider their alternative argument that the district court abused its discretion in denying them leave to amend their complaint. The judgment of the district court is reversed, and we remand for proceedings consistent with this opinion.

*So ordered.*



VIA U.P.S. No. 1Z64589FNW94753057

July 18, 2013

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Appeal Number 13-11585-B  
Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie as co-trustee, et al.  
District Court Docket No: 5:13-cv-00058-oc-WTH-PRL

Dear Clerk Ley:

This letter is to update and correct my letter to the Clerk dated July 1, 2013 (copy enclosed) and to advise the Court on matters related to this appeal.

1. My letter July 1, 2013 to the Clerk stated, "Tomorrow July 2, 2013 I plan to submit Petition for Writ of Mandamus". I have not done so, and cannot explain why I thought that was even possible, since I had not written it yet. On June 26, 2013 I had a vision issue, and am being treated for TIA - Transient Ischemic Attack or mini stroke, which may explain my confusion.

An ophthalmologist did a fundoscopic exam and did not find a problem with my eyes. So my primary care doctor is treating me for TIA - Transient Ischemic Attack or mini stroke.

2. I am/was a client of Community Legal Services of Mid-Fla. (CLSMF). Enclosed is my letter to William H. Abbuehl, Executive Director, and attorney Craig H. Benson with whom I consulted by telephone January 24, 2013. I provided Messrs. Abbuehl and Benson a PDF copy of my Eleventh Circuit motion to reconsider, vacate, or modify order. As stated in my letter,

"A lot has happened since then, and frankly I forgot that I spoke with Mr. Benson until making a list of counsel I contacted jogged my memory. (I am disabled with mental impairments, etc.). Also I do not know or understand my current client status with Community Legal Services of Mid-Fla."

Kimberly Sanchez, Esq. called me July 8, 2013 at the request of Mr. Abbuehl. Ms. Sanchez is the Housing Managing Attorney for CLSMF. Ms. Sanchez said CLSMF only gives legal advice, but not full representation, due to lack of resources. Ms. Sanchez said my case with CLSMF was closed after the telephone consult with Mr. Benson January 24, 2013. So I am not a client now.

I asked Ms. Sanchez about procedure in Appeal No. 13-11585, my motion for reconsideration, if that was correct procedure, and when to file a petition for writ of mandamus. Ms. Sanchez said this appeal is outside her knowledge, and that CLSMF does not do appeals typically. I asked about filing a new federal lawsuit against HUD to resolve the foreclosure. Ms. Sanchez and I agreed to continue our discussion of this foreclosure by email. As of today I am still awaiting a substantive response from Ms. Sanchez to the foregoing, and matters in state court.

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit

July 18, 2013  
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3. My motion to reconsider, vacate or modify order is missing the service list due to my inadvertent mistake. However the same service list, copy enclosed, was attached to my motion to stay or recall the mandate, submitted July 1, 2013, with the motion to reconsider.

4. Since then I learned the following parties no longer require service, as shown below:

a. Secretary, U.S. Department of Housing (HUD), Legal Assistant Amber L. Watson of the U.S. Attorney's Office, Middle District of Florida, emailed Tuesday, July 09, 2013, 7:35 AM:

After further researching this case, please be advise that as it relates to FORECLOSURE Case No. 13-115-CAT, that United States on behalf of HUD HAS NO INTEREST. Please find the attached Disclaimer of Interest filed on 2/17/13...If this case involves something other than foreclosure, you will need to direct your emails to the assigned attorneys involving the matter. Ms. Murphy will let you know if this is a matter that she is handling that doesn't involve a foreclosure matter.

Copies of Ms. Watson's email, the HUD Disclaimer of Interest 2/17/13 filed in state court only, and my letter (only) to Colleen Murphy Davis, Assistant United States Attorney, are enclosed.

b. Michalene Rowells, Paralegal Specialist for HUD, emailed me the following message Tuesday, July 09, 2013, 7:53 AM:

Good morning, Mr. Gillespie

After reading your requests/responds no additional information is needed or required. Enclosed, a copy of the **Certificate of Indebtedness (COI) with a ZERO balance**. I don't know what more you are seeking, but at this time the U.S. Department of Housing and Urban Development has **NO INTEREST**. We have **no continuation** in this matter, unless we hear from the Department of Justice office (DOJ).

Until further notice, at this time please remove me from your contact list.

Copies of Ms. Rowells' email (part of the email chain with Ms. Watson) and the COI is enclosed.

c. *Notice of Defendants' Consent to Judgment*, filed July 8, 2013 by counsel in state court only for Mark Gillespie, Joetta Gillespie a.k.a. unknown spouse of Mark Gillespie, and Elizabeth Bauerle n.k.a. Elizabeth Bidgood, copy enclosed.

d. The state court docket shows entry of default judgment against defendants:

Oak Run Homeowners Association, Inc., June 19, 2013  
Development & Construction Company of America, June 19, 2013

e. The state court docket shows Notice of Dropping Party, Unknown Spouse of Neil J. Gillespie by Plaintiff Reverse Mortgage Solutions, Inc., June 19, 2013.

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit

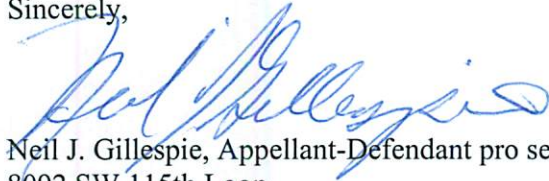
July 18, 2013  
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5. My motion to reconsider, vacate, or modify order stated on page 15 "I am indigent and financially unable to obtain adequate representation. I move for a counsel appointment in a separate motion, which is supported by a separate motion for disability accommodation."

I did not submit motions counsel appointment, or disability accommodation, and inadvertently neglected to update that part of my motion to reconsider, vacate, or modify order. Unfortunately I ran out of time, but can submit those motions on leave of Court with a petition for mandamus.

Thank you for your assistance with this appeal.

Sincerely,



Neil J. Gillespie, Appellant-Defendant pro se  
8092 SW 115th Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
E-mail: neilgillespie@mfi.net

Enclosures

Cc: Counsel of record, persons and entities on the updated service list.

SERVICE LIST

Hon. Wm. Terrell Hodges, United States District Court Judge  
Middle District of Florida, Ocala Division  
Golden-Collum Memorial Federal Building & US Courthouse  
207 NW Second Street, Ocala, Florida 34475-6666  
(not served by email, served by third party carrier only)

John F. Harkness, Executive Director, [jharkness@flabar.org](mailto:jharkness@flabar.org)  
The Florida Bar, 651 East Jefferson Street  
Tallahassee, FL 32399-2300

Curtis Wilson, Esq. and Danielle N. Parsons, Esq.  
McCalla Raymer, LLC (for Reverse Mortgage Solutions, Inc., Plaintiff)  
225 E. Robinson St. Suite 660, Orlando, FL 32801  
Designated email, service of documents: [MRService@mccallaraymer.com](mailto:MRService@mccallaraymer.com)

Tiffany Caparas, Esq. (for Mark Gillespie as co-trustee)  
111 N. Magnolia Ave., Suite 1600, Orlando, FL 32801  
Primary Email: [TCaparas@kelattorneys.com](mailto:TCaparas@kelattorneys.com)  
Secondary Email: [KELinbox@kelattorneys.com](mailto:KELinbox@kelattorneys.com)

Mark Gillespie (Co-trustee), [mark.gillespie@att.net](mailto:mark.gillespie@att.net)  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123

Affidavits of Diligent Search filed February 12, 2013 in state court show no information found as to: 1) Defendant Elizabeth Bauerle; 2) Defendant Unknown Spouse\* of Elizabeth Bauerle; and 3) Defendant Unknown Settlers/Beneficiaries\* of the Gillespie Family Trust.

Note: \*Fictitious party practice is not permitted in federal court and thus failure to name the parties requires that the court strike the parties. See New v. Sports & Recreation, Inc., 114 F.3d 1092, 1095-96 (11th Cir. 1997), page 2, footnote 1.

**Neil Gillespie**

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**From:** "Rowells, Michalene Y" <Michalene.Y.Rowells@hud.gov>  
**To:** "Watson, Amber (USAFLM)" <Amber.Watson@usdoj.gov>; "Neil Gillespie" <neilgillespie@mfi.net>  
**Cc:** "Murphy, Colleen (USAFLM)" <Colleen.Murphy@usdoj.gov>  
**Sent:** Tuesday, July 09, 2013 7:53 AM  
**Attach:** img-709073631-0001.pdf  
**Subject:** RE: U.S. Court of Appeals for the Eleventh Circuit, 13-11585-B

Good morning, Mr. Gillespie

After reading your requests/responds no additional information is needed or required. Enclosed, a copy of the Certificate of Indebtedness (COI) with a ZERO balance. I don't know what more you are seeking, but at this time the U.S. Department of Housing and Urban Development has NO INTEREST. We have no continuation in this matter, unless we hear from the Department of Justice office (DOJ).

Until further notice, at this time please remove me from your contact list.

Thanks,  
Michalene Rowells, Paralegal Specialist  
305-520-5104  
Fax: 305-536-5129

U.S. Department of HUD  
909 SE 1st Ave., Suite 500  
Miami, FL 33131

IMPORTANT NOTICE: This e-mail message is intended for the exclusive use of the recipient(s) named above. It may contain information that is protected, privileged, or confidential, and it should not be disseminated, distributed, or copied to persons not authorized to receive such information. If you are not the intended recipient, any dissemination, distribution, disclosure, copying, or use of the information contained herein is strictly prohibited. If you received this e-mail message in error, please notify the sender immediately.

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**From:** Watson, Amber (USAFLM) [mailto:Amber.Watson@usdoj.gov]  
**Sent:** Tuesday, July 09, 2013 7:35 AM  
**To:** Neil Gillespie  
**Cc:** Murphy, Colleen (USAFLM); Rowells, Michalene Y  
**Subject:** RE: U.S. Court of Appeals for the Eleventh Circuit, 13-11585-B

Dear Mr. Gillespie:

After further researching this case, please be advise that as it relates to FORECLOSURE Case No. 13-115-CAT, that United States on behalf of HUD HAS NO INTEREST. Please find the attached Disclaimer of Interest filed on 2/17/13.

Therefore, it is not necessary to forward me any additional information to the designated email address or to my email address [Amber.Watson@usdoj.gov](mailto:Amber.Watson@usdoj.gov). I am only responsible for the State

7/18/2013



Foreclosure Case No. 13-115-CAT that is located in Marion County Circuit Court.

Ms. Rowells with HUD will notify you if any additional information is needed, but based on our conversation on yesterday, HUD does not have an interest in this matter, and no additional information is needed or required. Please remove us from your Certificate of Service list regarding your appeal process or any other matter.

If this case involves something other than foreclosure, you will need to direct your emails to the assigned attorneys involving the matter. Ms. Murphy will let you know if this is a matter that she is handling that doesn't involve a foreclosure matter.

**DESIGNATION OF E-MAIL ADDRESSES PURSUANT TO RULE 2.516**

-

The United States Attorney's Office for the Middle District of Florida hereby designates the following as its primary e-mail address for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: USAFLM.State.Foreclosures@usdoj.gov

Thank you,

Amber L. Watson

# Amber L. Watson

U.S. Attorney's Office  
Middle District of Florida  
Legal Assistant - State Foreclosure Unit  
For: Colleen Murphy Davis, AUSA  
400 N. Tampa Street, Suite 3200  
Tampa, Florida 33602  
Phone: (813) 274-6077  
Fax: (813) 274-6198

---

**From:** Neil Gillespie [mailto:neilgillespie@mfi.net]

**Sent:** Monday, July 08, 2013 11:07 PM

**To:** Watson, Amber (USAFLM); Murphy, Colleen (USAFLM); John F Harkness; McCalla Raymer E-service; Robert Stermer1; Robert Stermer2; USAFLM-State Foreclosures; Michalene Rowells; Tiffany Caparas1; Tiffany Caparas2; Ryan Ghantous; Mark Gillespie; DECCA; Jane Bond; Robyn Katz; Neil Gillespie

**Subject:** Re: U.S. Count of Appeals for the Eleventh Circuit, 13-11585-B

Ms. Watson,

Thank you. Unfortunately I do not understand the designated email for federal cases. Attached is my letter to Asst. U.S. Attorney Davis, which should arrive in your office July 9, 2013. I will address the other matters concerning McCalla Raymer LLC in a separate letter to the U.S. Attorney shortly, as soon as time permits. Thank you again for your assistance.

Ps. I just noticed that my letter is addressed to "Colleen Murphy Davis, Assistant United States Attorney" which differs from the name Colleen Murphy in the email address on your email. This is an inadvertent error and regret any misunderstanding or inconvenience. Please accept my apology. I will update my records upon receipt of the desired name designation for Colleen Murphy, Assistant United States Attorney. Thank you.

Sincerely,

Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481  
Telephone: (352) 854-7807  
Email: [neilgillespie@mfi.net](mailto:neilgillespie@mfi.net)

----- Original Message -----

**From:** Watson, Amber (USAFLM)

**To:** Neil Gillespie

**Cc:** Murphy, Colleen (USAFLM)

**Sent:** Monday, July 08, 2013 12:01 PM

7/18/2013

**Subject:** RE: U.S. Court of Appeals for the Eleventh Circuit, 13-11585-B

Mr. Gillespie:

The only designated email address that I have is for this office as it pertains for foreclosure matters. You would need to contact someone with District Court to obtain the email address.

**DESIGNATION OF E-MAIL ADDRESSES PURSUANT TO RULE 2.516**

7/18/2013

The United States Attorney's Office for the Middle District of Florida hereby designates the following as its primary e-mail address for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: [USAFLM.State.Foreclosures@usdoj.gov](mailto:USAFLM.State.Foreclosures@usdoj.gov)

Thank you,  
Amber L. Watson

## Amber L. Watson

U.S. Attorney's Office  
Middle District of Florida  
Legal Assistant - State Foreclosure Unit  
For: Colleen Murphy Davis, AUSA  
400 N. Tampa Street, Suite 3200  
Tampa, Florida 33602  
Phone: (813) 274-6077  
Fax: (813) 274-6198

---

**From:** Neil Gillespie [<mailto:neilgillespie@mfi.net>]

**Sent:** Monday, July 08, 2013 11:53 AM

**To:** Watson, Amber (USAFLM); John F Harkness; McCalla Raymer E-service; Jane Bond; Robyn Katz; Robert Stermer1; Robert Stermer2; Tiffany Caparas1; Tiffany Caparas2; Mark Gillespie; DECCA; William Abbuehl; Craig Benson; Ryan Ghantous; Murphy, Colleen (USAFLM); Michalene Rowells; Neil Gillespie

**Cc:** Michalene.Y.Rowells@hud.gov; Murphy, Colleen (USAFLM)

**Subject:** Re: U.S. Court of Appeals for the Eleventh Circuit, 13-11585-B

Ms. Watson,

Thank you. The "Designation Of E-Mail Addresses Pursuant to Rule 2.515" cited in your email pertains to Rule 2.516, Florida Rules of Civil Procedure. What is the designated email for use in U.S. District Court and U.S. Court of Appeals cases, which are not governed by Florida Rules of Civil Procedure?

For some reason, Ms. Parsons of McCalla Raymer provided me on her initial service lists bad email addresses for both the U.S. Attorney's Office, Middle District of Florida, and Michalene Rowells of HUD. Ms. Parsons is an experienced attorney shown by her profile on McCalla Raymer's website:

"Ms. Parsons is a Senior Associate of the Florida Litigation and Trial Practice team. She is originally from Buffalo, NY, joined McCalla Raymer in 2010 as an associate in their Residential Litigation Department in Florida. She was barred in Florida in 2006 after receiving her Juris Doctorate from the University of New York at Buffalo and her Bachelors of Science from the University of Central Florida. Ms. Parsons has 4 years of residential litigation experience, where she has handled Federal cases, appeals and complex title issues. She enjoys speaking in her areas of expertise to Clients and in the community including the Florida Association of Realtors. Ms. Parsons lives in Orlando, FL and is active in her community and church."

<http://www.mccallaraymer.com/index.php/litigation-and-trial-practice/florida/251-parsons-danielle>

Has Ms. Parsons previously appeared in foreclosure cases where HUD was a party represented by the U.S. Attorney's Office, Middle District of Florida, to your knowledge? If so, approximately how many times?

I am concurred about foreclosure mill attorney misconduct, as described in a letter February 25, 2011

7/18/2013

by U.S. Representative Elijah E. Cummings, sent as the ranking minority member of the Committee on Oversight and Government Reform, to Inspector General Steve Linick of Federal Housing Finance Agency (FHFA), asking he initiate an investigation into widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the "Retained Attorney Network" established by Fannie Mae." The letter is attached, and Rep. Cummings complained about McCalla Raymer, LLC by name:

"Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and hired ten former Stern law firm employees.[fn9] The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac.[fn10]

McCalla Raymer, L.L.C. now operates in Florida under its own name. A quick search shows McCalla Raymer is being sued by a number of foreclosure-related parties, in these cases in Florida and Georgia:

Muradas et al v. M&T Bank, RMS, 0.13-cv-60178-RSR, U.S. District Court, Southern District of Florida

Caceres v. McCalla Raymer, LLC, 1.13-cv-20035, U.S. District Court, Southern District of Florida

Jenkins et al v. McCalla Raymer, LLC et al, 1:10-cv-03732-CAP, U.S. District Court, N.D. Georgia, Atlanta Division

Marcia Moore v McCalla Raymer, LLC, 1:12-CV-1714-TWT, U.S. District Court, N.D. Georgia, Atlanta Division

Thompson-El v. Bank of America, et al, case no. 1:12-CV-840-TWT, U.S. District Court, N.D. Georgia, Atlanta Division

This list is not exhaustive, and I do not know the current status of these lawsuits. However in my removed case to US District Court, Middle District, Florida, Ocala Division, 5:13-cv-58-oc-WTH-PRL, I alleged wrongdoing by Ms. Parsons and paralegal Yolanda Martinez, see:

Rule 11 sanction motion, Ms. Parsons, McCalla Raymer (Doc. 15)

Gillespie default motion, Rule 55 (Doc. 16)

Gillespie Verified Objection to Magistrate Order Doc. 12 (Doc. 17)

In the state court action I alleged wrongdoing by Ms. Parsons (Doc. 5, ¶¶ 17-20) and perjury by Debbie Sims, RMS vice president in her verification, see motion to dismiss (Doc. 5, ¶¶ 157-158).

Because of the above, I am providing a copy of this email to Jane Bond, Managing Partner - Litigation & Trial Practice, McCalla Raymer, Florida. [jane.bond@mccallaraymer.com](mailto:jane.bond@mccallaraymer.com), and Robyn Katz, Managing Partner - Florida Foreclosure, McCalla Raymer, [rrk@mccallaraymer.com](mailto:rrk@mccallaraymer.com).

Last, I am a client of Community Legal Services of Mid-Fla. Attached is my letter sent by email yesterday to William H. Abbuehl, Executive Director, and attorney Craig H. Benson with whom I

consulted by telephone January 24, 2013. As stated in the letter, "A lot has happened since then, and frankly I forgot that I spoke with Mr. Benson until making a list of counsel I contacted jogged my memory. (I am disabled with mental impairments, etc.). Also I do not know or understand my current client status with Community Legal Services of Mid-Fla."

As of now neither Mr. Abbuehl nor Mr. Benson has responded, so I am providing those gentlemen a copy of this email too. Thank you.

Sincerely,

Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481  
Telephone: (352) 854-7807  
Email: [neilgillespie@mfi.net](mailto:neilgillespie@mfi.net)

----- Original Message -----

**From:** Watson, Amber (USAFLM)

**To:** Neil Gillespie

**Cc:** Rowells, Michalene Y (Michalene.Y.Rowells@hud.gov) ; Murphy, Colleen (USAFLM)

**Sent:** Monday, July 08, 2013 10:29 AM

**Subject:** RE: U.S. Count of Appeals for the Eleventh Circuit, 13-11585-B

Mr. Gillespie,

Sending the information by email to Ms. Rowells is sufficient. If she needs any additional information, she will let you know.

**DESIGNATION OF E-MAIL ADDRESSES PURSUANT TO RULE 2.516**

The United States Attorney's Office for the Middle District of Florida hereby designates the following as its primary e-mail address for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: [USAFLM.State.Foreclosures@usdoj.gov](mailto:USAFLM.State.Foreclosures@usdoj.gov)

Thank you.

Amber L. Watson

# Amber L. Watson

U.S. Attorney's Office  
Middle District of Florida  
Legal Assistant - State Foreclosure Unit  
400 N. Tampa Street, Suite 3200  
Tampa, Florida 33602  
Phone: (813) 274-6077  
Fax: (813) 274-6198

---

**From:** Neil Gillespie [<mailto:neilgillespie@mfi.net>]

**Sent:** Friday, July 05, 2013 5:10 PM

**To:** Watson, Amber (USAFLM); [Michalene.Y.Rowells@hud.gov](mailto:Michalene.Y.Rowells@hud.gov); John F Harkness; McCalla Raymer, E-service; Robert Stermer1; Robert Stermer2; USAFLM-State Foreclosures; Tiffany Caparas1; Tiffany Caparas2; Mark Gillespie; DECCA

**Cc:** Murphy, Colleen (USAFLM)

**Subject:** Re: U.S. Count of Appeals for the Eleventh Circuit, 13-11585-B

Amber Watson, U.S. Attorney's Office

Middle District of Florida

400 N. Tampa St., Suite 3200

Tampa, FL 33602 (by email only)

Dear Ms. Watson,

Thank you for providing the correct email address for Michalene Rowells. I updated my records, and notified Mr. Curtis and Ms. Parsons at McCalla Raymer LLC. Ms. Parsons' service list shows an incorrect email address for Michalene Rowells, which is where I may have obtained the email address. Below are the dates, times, and subject matter of 4 emails to Michalene Rowells that were returned, most recent to last. There may have been others deleted in my spam filter. I regret not bringing this to your attention (Tampa U.S. Attorney) sooner.

Subject: SERVICE OF COURT DOCUMENT, 13-11585-B

Date: Mon, 1 Jul 2013 20:56:07 -0400

Subject: SERVICE OF COURT DOCUMENT 5:13-cv-58-oc-WTH-PRL

Date: Thu, 6 Jun 2013 18:53:48 -0400

Subject: SERVICE OF COURT DOCUMENT 5:13-cv-58-oc-WTH-PRL

Date: Mon, 6 May 2013 16:21:33 -0400

Subject: SERVICE OF COURT DOCUMENT, 13-11585-B

Date: Wed, 1 May 2013 10:19:13 -0400

I will forward the four emails again to Michalene Rowells. I can also send by third-party carrier the paper document and CD-ROM sent Mon, 1 Jul 2013, which has the complete district court file in PDF. I will await further instruction before doing so.

7/18/2013



My letter July 1, 2013 to Eleventh Circuit Clerk of Court John Ley stated, "Tomorrow July 2, 2013 I plan to submit Petition for Writ of Mandamus". Unfortunately I have not done so, and cannot explain why I thought that was even possible, since I have not written it yet. I am now working on the Petition for Writ of Mandamus.

On June 26, 2013 I had a vision issue, saw red flashing lines and floating particles. I saw my primary care doctor, who recommended I see an ophthalmologist for a funduscopy. There is some chance it was a TIA - Transient Ischemic Attack or mini stroke, which may explain my confusion.

I am providing this email to all on the service list to advise about the delay in my Petition for Writ of Mandamus. (with paper copy by mail to Judge Hodges). Thank you again for your assistance with this matter.

Sincerely,

Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481  
Telephone: (352) 854-7807  
Email: [neilgillespie@mfi.net](mailto:neilgillespie@mfi.net)

----- Original Message -----

**From:** [Watson, Amber \(USAFLM\)](#)  
**To:** [Rowells, Michalene Y \(Michalene.Y.Rowells@hud.gov\)](#)  
**Cc:** [Neil Gillespie](#) ; [Murphy, Colleen \(USAFLM\)](#)  
**Sent:** Wednesday, July 03, 2013 7:38 AM  
**Subject:** RE: U.S. Count of Appeals for the Eleventh Circuit, 13-11585-B  
FYI -

---

**From:** Neil Gillespie [<mailto:neilgillespie@mfi.net>]  
**Sent:** Tuesday, July 02, 2013 3:25 AM  
**To:** USAFLM-State Foreclosures; Neil Gillespie  
**Subject:** U.S. Count of Appeals for the Eleventh Circuit, 13-11585-B  
Colleen Murphy Davis  
Assistant United States Attorney  
U.S. Attorney's Office  
Middle District of Florida  
400 N. Tampa St., Suite 3200  
Tampa, FL 33602  
U.S. Count of Appeals for the Eleventh Circuit, 13-11585-B  
U.S. District Court, Middle District, Florida 5:13-cv-58-oc-10PRL, Ocala Division

Dear Ms. Davis:

Good morning. For some time email sent to [Michalene.Rowells@hud.gov](mailto:Michalene.Rowells@hud.gov) has bounced back.

Would you like to provide an alternative email, or shall I drop that e-address? Thank you.

Sincerely,

Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

7/18/2013

Telephone: (352) 854-7807  
Email: [neilgillespie@mfi.net](mailto:neilgillespie@mfi.net)

7/18/2013

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR MARION COUNTY, FLORIDA

REVERSE MORTGAGE SOLUTIONS, INC.,

Plaintiff,

vs.

CASE NO.: 13-115-CAT

NEIL J. GILLESPIE, AND  
MARK GILLESPIE, et al.,

Defendants,

DISCLAIMER OF THE UNITED STATES OF AMERICA

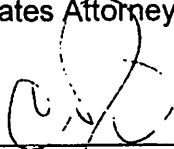
COMES NOW, the Defendant, the United States of America, by and through the undersigned Assistant United States Attorney on behalf of the U.S. Department of Housing and Urban Development hereby disclaims any interest in the real property that is the subject of this litigation arising out of a Mortgage, recorded in the Official Records Book 5057, Page 1683 in the public records of Marion County, Florida, and no other interest.

DESIGNATION OF E-MAIL ADDRESSES PURSUANT TO RULE 2.516

The United States Attorney's Office for the Middle District of Florida hereby designates the following as its primary e-mail address for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: USAFLM.State.Foreclosures@usdoj.gov  
Secondary Email: Michalene.Rowells@hud.gov

ROBERT E. O'NEILL  
United States Attorney

By:

  
COLLEEN MURPHY DAVIS  
Assistant United States Attorney  
USAO No. 68  
Amber L. Watson, Legal Assistant  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6000  
Facsimile: (813) 274-6198

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been furnished by

Email this 7<sup>th</sup> day of February, 2013 to the following:

Danielle N. Parsons, Esquire  
McCalla Raymer, LLC  
225 E. Robinson ST., Suite 660  
Orlando, Florida 32801  
Email: MRService@mccallaraymer.com

Ms. Gail Ash Dotson, Associate Regional Counsel  
U.S. Department of Housing and Urban Development  
Office of General Counsel, Florida Southern State Office  
Attn: Michalene Rowells, Paralegal Specialist  
909 SE First Avenue, Room 500  
Miami, Florida 33131-3042  
Email: Michalene.Rowells@hud.gov



---

**COLLEEN MURPHY DAVIS**  
Assistant United States Attorney

**U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT  
CERTIFICATE OF INDEBTEDNESS  
(Home Equity Conversion Mortgage)**

**Memorandum to:** MICHAELNE ROWELLS

**Debtor's Name:** PENELOPE M GILLESPIE

**FHA Case No.:** 091-4405741

**Amount of Loan:** \$0.00

This indebtedness arose in connection with a Federal Housing Administration insurance on what is commonly referred to as a Reverse Equity Mortgage that is, one designed to enable elderly homeowners to convert the equity in their homes to monthly streams of income and/or lines of credit. This program was established by the Housing and Community Development Act of 1987 (P.L 100-242) as Section 255 of the national Housing Act. (See also HUD handbook 4235.1. Rev1).

The mortgage proceeds are secured by a first mortgage payable to the lender and a second mortgage payable to HUD. If the lender is unable to make payments to the borrower at any time, HUD will assume responsibility for making payments until the lender is able to resume. The second mortgage ensures that HUD will be able to recover any losses up to the value of the property in the event any payments are made by HUD.

HUD has made no payments pursuant to its mortgager in this case, so the current balance is zero ( \$0.00)

  
Barb Kemry, Manager

DEVAL LLC as Attorney-in-Fact for Shaun Donovan,  
Secretary of U.S. Department of Housing and Urban  
Development.

STATE OF TEXAS )

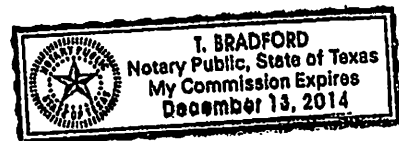
) SS.

COUNTY OF DALLAS )

Acknowledged before me this 30th day of January, 2013, Barb Kemry, Manager of DEVAL LLC the Attorney in-Fact for Shaun Donovan, Secretary of the Housing and Urban Development under authority and by virtue of a limited power of attorney.

My Commission Expires: 12/13/14

  
Notary Public



VIA U.P.S. No. 1Z64589FP298265025

July 8, 2013

Colleen Murphy Davis, Assistant United States Attorney  
U.S. Attorney's Office, Middle District of Florida  
400 N. Tampa St., Suite 3200  
Tampa, FL 33602

Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie as co-trustee, et al.  
Appeal Number 13-11585-B, U.S. Eleventh Circuit Court of Appeals  
District Court Docket No: 5:13-cv-00058-oc-WTH-PRL  
Marion County Circuit Court, Case No. 13-115-CAT, Fifth Judicial Circuit, Florida

Dear Assistant United States Attorney Davis:

Recently I asked Amber Watson, ““Designation Of E-Mail Addresses Pursuant to Rule 2.515” cited in your email pertains to Rule 2.516, Florida Rules of Civil Procedure. What is the designated email for use in U.S. District Court and U.S. Court of Appeals cases, which are not governed by Florida Rules of Civil Procedure?”

I do not understand this response of Ms. Watson: (copy enclosed)

“Mr. Gillespie:  
The only designated email address that I have is for this office as it pertains for foreclosure matters. You would need to contact someone with District Court to obtain the email address.

DESIGNATION OF E-MAIL ADDRESSES PURSUANT TO RULE 2.516

The United States Attorney’s Office for the Middle District of Florida hereby designates the following as its primary e-mail address for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding:  
USAFLM.State.Foreclosures@usdoj.gov”

Therefore Ms. Davis, I ask you the question. What is the primary e-mail address for the purpose of serving documents required under federal rules, either the *Federal Rules of Civil Procedure*, or the *Federal Rules of Appellate Procedure*? Asked another way, is service of documents required or permitted under the federal rules of court, and if so, what is the designated e-mail address for federal document service to your office? I do not know who to ask other than the U.S. Attorney's Office, Middle District of Florida. I do not understand Ms. Watson’s referral to “contact someone with District Court to obtain the email address”. Certainly your office knows its own designated email address for service in federal foreclosure cases. Appeal No. 13-11585-B is a federal appeal. District Court Docket No: 5:13-cv-00058-oc-WTH-PRL is a federal case. Rule 2.516 is a Florida Rule of Civil Procedure and only pertains to Florida cases.

Asked yet another way, what is the primary e-mail address for the purpose of the U.S. Attorney's Office, Middle District of Florida, for receiving documents in federal foreclosure court actions?

Colleen Murphy Davis, Assistant United States Attorney  
U.S. Attorney's Office, Middle District of Florida

July 8, 2013  
Page -2

Rule 2.516 is a Florida Rule of Civil Procedure and does not apply to federal court proceedings or the service of documents in federal foreclosure litigation. Rule 2.516 pertains to Florida cases.

If service by email of federal court foreclosure documents is not permitted to the U.S. Attorney's Office, Middle District of Florida, please advise. If service by email of federal court foreclosure documents is permitted to your office, please advise and provide the email address. If it is the same email address as used in Florida state court foreclosures, under Rule 2.516 , please advise.

I do not want to learn later that service to USAFLM.State.Foreclosures@usdoj.gov was incorrect for the service of documents in federal court foreclosure litigation.

I do not know how else to express this question. If you still do not understand, I will need the assistance of a guardian ad litem, or a Non-Criminal Justice Act Counsel Appointment, to assist me further in communicating with your office. Thank you.

Sincerely,



Neil J. Gillespie, Appellant-Defendant pro se  
8092 SW 115th Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
E-mail: neilgillespie@mfi.net

Enclosure, email of Amber Watson

Cc: Counsel of record, persons and entities on the service list via email only.



IN THE CIRCUIT COURT OF THE  
FIFTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND MARION COUNTY  
GENERAL JURISDICTION DIVISION

REVERSE MORTGAGE SOLUTIONS, INC., Case No.: 2013-CA-000115

Plaintiff,  
v.

MARK GILLESPIE , et al.,

Defendants.

**NOTICE OF DEFENDANTS' CONSENT TO JUDGMENT**

Defendants, MARK GILLESPIE and JOETTA GILLESPIE AKA UNKNOWN SPOUSE OF MARK GILLESPIE and ELIZABETH BAUERLE NKA ELIZABETH BIDGOOD (hereinafter, the "Defendants"), file this Notice of Defendant's Consent to Judgment:

1. The Defendants, MARK GILLESPIE and JOETTA GILLESPIE AKA UNKNOWN SPOUSE OF MARK GILLESPIE and ELIZABETH BAUERLE NKA ELIZABETH BIDGOOD, have been named as Defendants in this action.

2. Plaintiff is seeking to recover the property located at 8092 SW 115th Loop, Ocala, FL 34481 based on an "event of default" under the terms of the Adjustable Rate Note (Home Equity Conversion) a/k/a "reverse mortgage".

3. Because this is a reverse mortgage, the Defendants have no financial liability under the terms of the subject loan. See paragraph 7(a) of the Note and 9(a) of the Mortgage.

4. Defendants do not wish to contest entry of final judgment against Defendants.

5. The Defendants desire swift resolution to this action so they hereby give consent to having Judgment entered in favor of the Plaintiff in this action.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that I have electronically filed via the Florida Courts eFiling Portal and furnished a true and correct copy of the foregoing to Angela M. Brenwald, Esquire, of McCalla Raymer LLC, 225 E. Robinson St., Orlando, FL 32801, mrservice@mccallaraymer.com; via [x] Email Delivery, today July 5, 2013.

**KAUFMAN, ENGLETT & LYND, PLLC**

**/s/ Anthony J. Solomon**

**Anthony J. Solomon , Esq.**

**Florida Bar No. 93057**

**111 N. Magnolia Avenue, Suite 1600**

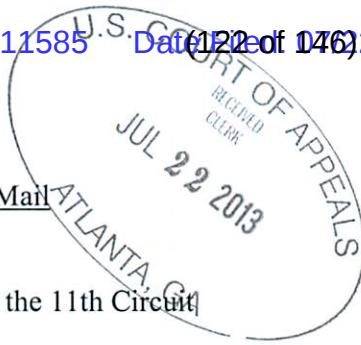
**Orlando, FL 32801**

**Telephone No.: (407) 513-1900**

**Primary Email: asolomon@kelattorneys.com**

**Secondary Email: KELinbox@kelattorneys.com**

**Attorney for Defendants: MARK GILLESPIE and  
JOETTA GILLESPIE AKA UNKNOWN SPOUSE OF  
MARK GILLESPIE**



VIA U.S.P.S. First Class Mail

July 18, 2013

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Appeal Number 13-11585-B  
Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie as co-trustee, et al.  
District Court Docket No: 5:13-cv-00058-oc-WTH-PRL

Dear Clerk Ley:

This is an addendum to my letter sent earlier today July 18, 2013, necessary because I forgot to provide the following document copies with the earlier letter:

- My letter to the Clerk dated July 1, 2013.
- My letter July 7, 2013 to William H. Abbuehl, Executive Director, and attorney Craig H. Benson, Community Legal Services of Mid-Fla.
- Service list submitted July 1, 2013, with my motion to reconsider, vacate or modify order.
- Notice of Dropping Party Defendant, Unknown Spouse of Neil J. Gillespie by Plaintiff Reverse Mortgage Solutions, Inc., June 19, 2013.

I regret any inconvenience this may have caused. Thank you for your assistance with this appeal.

Sincerely,

Neil J. Gillespie, Appellant-Defendant pro se  
8092 SW 115th Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
E-mail: neilgillespie@mfi.net

Enclosures

Cc: Counsel of record, persons and entities on the updated service list by email or U.S.P.S.

SERVICE LIST

Hon. Wm. Terrell Hodges, United States District Court Judge  
Middle District of Florida, Ocala Division  
Golden-Collum Memorial Federal Building & US Courthouse  
207 NW Second Street, Ocala, Florida 34475-6666  
(not served by email, served by third party carrier only)

John F. Harkness, Executive Director, [jharkness@flabar.org](mailto:jharkness@flabar.org)  
The Florida Bar, 651 East Jefferson Street  
Tallahassee, FL 32399-2300

Curtis Wilson, Esq. and Danielle N. Parsons, Esq.  
McCalla Raymer, LLC (for Reverse Mortgage Solutions, Inc., Plaintiff)  
225 E. Robinson St. Suite 660, Orlando, FL 32801  
Designated email, service of documents: [MRService@mccallaraymer.com](mailto:MRService@mccallaraymer.com)

Tiffany Caparas, Esq. (for Mark Gillespie as co-trustee)  
111 N. Magnolia Ave., Suite 1600, Orlando, FL 32801  
Primary Email: [TCaparas@kelattorneys.com](mailto:TCaparas@kelattorneys.com)  
Secondary Email: [KELinbox@kelattorneys.com](mailto:KELinbox@kelattorneys.com)

Mark Gillespie (Co-trustee), [mark.gillespie@att.net](mailto:mark.gillespie@att.net)  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123

Affidavits of Diligent Search filed February 12, 2013 in state court show no information found as to: 1) Defendant Elizabeth Bauerle; 2) Defendant Unknown Spouse\* of Elizabeth Bauerle; and 3) Defendant Unknown Settlers/Beneficiaries\* of the Gillespie Family Trust.

Note: \*Fictitious party practice is not permitted in federal court and thus failure to name the parties requires that the court strike the parties. See New v. Sports & Recreation, Inc., 114 F.3d 1092, 1095-96 (11th Cir. 1997), page 2, footnote 1.

VIA U.P.S. No. 1Z64589FNW95480939

July 1, 2013

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Appeal Number 13-11585-B  
Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie as co-trustee, et al.  
District Court Docket No: 5:13-cv-00058-oc-WTH-PRL

Dear Clerk Ley:

Please find enclosed for filing and docketing for the Appellant-Defendant appearing pro se in the above captioned Appeal No. 13-11585-B:

1. Motion to Reconsider, Vacate or Modify Order; original and three copies.  
The 21 day time period to file ends July 3, 2013

Note: Tomorrow July 2, 2013 I plan to submit Petition for Writ of Mandamus, per the case law shown in the Order of Dismissal June 12, 2013. Today I called the Clerk and was not able to learn if I should file a petition unilaterally, or wait for a response to my Motion to Reconsider. (You may call me anytime, 352-854-7807) Writ of mandamus is the proper means by which a party may challenge a remand order. Thermtron Products, Inc. v. Hermansdorfer; New v. Sports & Recreation, Inc., 114 F.3d 1092, 1095-96 (11th Cir. 1997).

2. Motion to Stay or Recall Mandate; original and three copies
3. Motion for Permission to Appeal In Forma Pauperis
4. Certificate of Interested Persons
5. Civil Appeal Statement, with attached Appendix 11th Cir. R. 33-1(b) Portions of Record. Note: The Appendix contains the district court record on CD-ROM, all documents in PDF (Doc. 1 through Doc. 30); and a second CD-ROM copy.
6. Transcript of the HECM counseling session, April 22, 2008
7. CFPB Report To Congress on Reverse Mortgages, June 2012
8. Enclosed paper portions of the district court record, 5:13-cv-00058-oc-WTH-PRL

Doc. 1 Notice of Removal  
Doc. 2 Verified Complaint Foreclosure HECM

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit

July 1, 2013  
Page -2

Doc. 5. Motion to Dismiss Verified Complaint  
Doc. 5-1. Exhibits to Motion to Dismiss  
Doc. 5-2. Defendants Composite A  
Doc. 5-3. Defendants Composite B  
Doc. 5-4. Appendix 1 to HUD complaint  
Doc. 5-5. Appendix 2 to HUD Complaint  
Doc. 7. Motion for permission to e-file, ECF/CM (disability accommodation)  
  
Doc. 11. RMS agreed motion for extension of time  
Doc. 14. Rule 7.1, motion to compel compliance  
Doc. 15. Rule 11 sanction motion against Ms. Parsons, McCalla Raymer LLC.  
Doc. 16. Rule 55 motion for default judgment by Defendant Gillespie.  
Doc. 17. Rule 72/Rule 60(b)(3) Verified Objection to Magistrate Order by Gillespie  
Doc. 18. Objections to the Report and Recommendation.  
  
Doc. 21. Rule 59(e) motion to alter-amend judgment  
Doc. 22. Gillespie Affidavit 28 U.S.C. § 144 bias or prejudice of judge  
  
Doc. 25. Gillespie Motion for IFP on Appeal (17 pages)  
Doc. 26. Gillespie APPENDIX for IFP on Appeal (32 pages)  
Doc. 27. Gillespie Affidavit of IFP (5 page form)  
  
Doc. 29. Notice of Filing Florida Bar UPL investigation of Gillespie

Thank you for your assistance with this appeal.

Sincerely,



Neil J. Gillespie, Appellant-Defendant pro se  
8092 SW 115th Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
E-mail: neilgillespie@mfi.net

Enclosures, the items above, and CD-ROM provided to the parties

Cc: Counsel of record, persons and entities on the service list.

VIA E-Mail Only

July 7, 2013

William H. Abbuehl, Executive Director, E-Mail: [billa@clsmf.org](mailto:billa@clsmf.org)  
Craig H. Benson, Attorney, E-Mail: [craig.benson@yahoo.com](mailto:craig.benson@yahoo.com)  
Community Legal Services of Mid-Fla.  
128A Orange Avenue  
Daytona Beach, Florida 32114-4310

RE: Reverse Mortgage Solutions, Inc. vs. Neil Gillespie, et al., Appeal No. 13-11585-B, C.A.11  
District Court Docket No: 5:13-cv-00058-oc-WTH-PRL, Ocala Division, M.D. Fla.  
Case No. 13-115-CAT, Marion County Circuit Court, Fifth Judicial Circuit, Florida

Gentlemen:

I am a client of Community Legal Services of Mid-Fla. and spoke with Mr. Benson about the above foreclosure of my home on a reverse mortgage by telephone January 24, 2013. A lot has happened since then, and frankly I forgot that I spoke with Mr. Benson until making a list of counsel I contacted jogged my memory. (I am disabled with mental impairments, etc.). Also I do not know or understand my current client status with Community Legal Services of Mid-Fla.

Attached is my Motion to Reconsider, Vacate or Modify Order, etc., filed July 1, 2013 in the U.S. Eleventh Circuit Court of Appeals. The district court remanded to state court sua sponte, which I believe is a defect in the removal process, and may be challenged by writ of mandamus.

The Florida Bar notified me May 14, 2013 of the Unlicensed Practice of Law Investigation of Neil J. Gillespie, Case No. 20133090(5), for representing myself pro se in this foreclosure. This is in retaliation for my Petition No. 12-7747 for writ of certiorari to the U.S. Supreme Court. My petition was denied February 19, 2013. Rehearing was denied April 15, 2013. This is a link to the docket: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-7747.htm>

Tomorrow I plan to contact the Eleventh Circuit about procedural matters, motions I planned to file (but have not done so) for disability accommodation, and a Non-Criminal Justice Act Counsel Appointment. One issue, U.S. Judge Wm. Terrell Hodges, the district court trial judge, failed to recuse under 28 U.S.C. § 455(b)(4), for his financial interest in Bank of America.

I know Community Legal Services of Mid-Fla. does not currently represent me, but if you could advise on my current status as a client, that will help me inform the U.S. Eleventh Circuit Court of Appeals. Thank you in advance for the courtesy of a response.

Sincerely,



Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481  
Email: [neilgillespie@mfi.net](mailto:neilgillespie@mfi.net)  
Phone: 352-854-7807



SERVICE LIST

Hon. Wm. Terrell Hodges, United States District Court Judge (not served by email)  
Middle District of Florida, Ocala Division (served by third party carrier only)  
Golden-Collum Memorial Federal Building & US Courthouse  
207 NW Second Street, Ocala, Florida 34475-6666

John F. Harkness, Executive Director, [jharkness@flabar.org](mailto:jharkness@flabar.org)  
The Florida Bar, 651 East Jefferson Street  
Tallahassee, FL 32399-2300

Curtis Wilson, [caw@mccallaraymer.com](mailto:caw@mccallaraymer.com)  
Danielle N. Parsons, [dnp@mccallaraymer.com](mailto:dnp@mccallaraymer.com)  
McCalla Raymer, LLC (for Reverse Mortgage Solutions, Inc., Plaintiff)  
225 E. Robinson St. Suite 660, Orlando, FL 32801  
Primary Email: [MRService@mccallaraymer.com](mailto:MRService@mccallaraymer.com)  
Secondary Email: [caw@mccallaraymer.com](mailto:caw@mccallaraymer.com); [dnp@mccallaraymer.com](mailto:dnp@mccallaraymer.com)

Robert A. Stermer, Esq., Registered Agent, Oak Run Homeowners Association, Inc.  
7480 SW Highway 200, Ocala, FL 34476  
Primary Email: [svl@atlantic.net](mailto:svl@atlantic.net)  
Secondary Email: [stermer.law@aol.com](mailto:stermer.law@aol.com)

United States of America, on behalf of the Secretary of Housing and Urban Development  
Colleen Murphy Davis, Assistant United States Attorney  
U.S. Attorney's Office, Middle District of Florida  
400 N. Tampa St., Suite 3200, Tampa, FL 33602  
Primary Email: [USAFLM.State.Foreclosures@usdoj.gov](mailto:USAFLM.State.Foreclosures@usdoj.gov)  
Secondary Email: [Michalene.Rowells@hud.gov](mailto:Michalene.Rowells@hud.gov)

Tiffany Caparas, Esq. (for Mark Gillespie and spouse)  
111 N. Magnolia Ave., Suite 1600, Orlando, FL 32801  
Primary Email: [TCaparas@kelattorneys.com](mailto:TCaparas@kelattorneys.com)  
Secondary Email: [KELinbox@kelattorneys.com](mailto:KELinbox@kelattorneys.com)

Mark Gillespie (Co-trustee), [mark.gillespie@att.net](mailto:mark.gillespie@att.net)  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123

Development & Construction Corporation of America, Priya Ghumman, Registered Agent  
c/o Carol Olson, Decca Vice President of Administration, and Decca Secretary-Treasurer,  
10983 SW 89 Avenue, Ocala, FL 34481, Primary Email: [colson@deccahomes.com](mailto:colson@deccahomes.com)

Affidavits of Diligent Search filed February 12, 2013 in state court show no information found  
as to: 1) Defendant Elizabeth Bauerle; 2) Defendant Unknown Spouse\* of Elizabeth Bauerle;  
and 3) Defendant Unknown Settlers/Beneficiaries\* of the Gillespie Family Trust.

Note: \*Fictitious party practice is not permitted in federal court and thus failure to name the  
parties requires that the court strike the parties. See New v. Sports & Recreation, Inc., 114 F.3d  
1092, 1095-96 (11th Cir. 1997), page 2, footnote 1.

IN THE CIRCUIT COURT OF THE FIFTH  
JUDICIAL CIRCUIT OF FLORIDA IN AND  
FOR MARION COUNTY  
GENERAL JURISDICTION DIVISION  
CASE NO. 42-2013-CA-000115-XXXX-XX

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

vs.

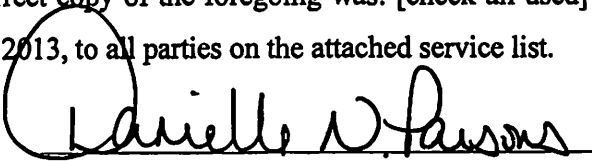
NEIL J. GILLESPIE AND MARK  
GILLESPIE AS CO-TRUSTEES OF THE  
GILLESPIE FAMILY LIVING TRUST  
AGREEMENT DATED FEBRUARY 10,  
1997, et al.,

Defendants.

**NOTICE OF DROPPING PARTY DEFENDANT**

Plaintiff, by and through its undersigned counsel and gives notice that UNKNOWN SPOUSE OF NEIL J GILLESPIE is voluntarily dropped as a defendant to this action, pursuant to the Fla.R.Civ.P. 1.250(b) and 1.420 (a)(1), without prejudice.

I HEREBY CERTIFY that a true and correct copy of the foregoing was: [check all used]  
(x) E-mailed ( x ) Mailed this 19 day of June, 2013, to all parties on the attached service list.

  
Danielle N. Parsons, Esq.  
McCalla Raymer, LLC  
Attorney for Plaintiff  
225 E. Robinson St. Suite 660  
Orlando, FL 32801  
Phone: (407) 674-1850  
Fax: (321) 248-0420  
Email: MRService@mccallarayermer.com  
Fla. Bar No.: 0029364

SERVICE LIST

Neil J. Gillespie and Mark Gillespie as Co-Trustees  
of the Gillespie Family Living Trust Agreement dated February 10, 1997  
8092 SW 115TH LOOP  
OCALA, FL 34481

Oak Run Homeowners Association, Inc.  
c/o Robert A. Stermer, Esq., Registered Agent  
7480 SW Highway 200  
Ocala, FL 34476

Colleen Murphy Davis, Assistant United States Attorney  
400 N. Tampa Street, Ste. 3200  
Tampa, FL 33602  
[usafm.state.foreclosure@usdoj.gov](mailto:usafm.state.foreclosure@usdoj.gov)  
[Michalene.Rowells@hud.gov](mailto:Michalene.Rowells@hud.gov)

Elizabeth Bauerle  
6356 SW 106th Place  
Ocala, FL 34476

Tiffany T. Caparas, Esq.  
Kaufman, Englett and Lynd, PLLC  
111 N. Magnolia Av., Suite 1600  
Orlando, FL 32801  
[TCaparas@kelattorneys.com](mailto:TCaparas@kelattorneys.com)  
[KELinbox@kelattorneys.com](mailto:KELinbox@kelattorneys.com)

Neil J. Gillespie  
8092 SW 115TH Loop  
Ocala, FL 34481

Development & Construction Corporation of America  
c/o Registered Agent: Priya Ghuman  
10983 SW 89 Avenue  
Ocala, FL 34481

Unknown spouse of Elizabeth Bauerle  
6356 SW 106th Place  
Ocala, FL 34476

Mark Gillespie  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123

Unknown Spouse of Mark Gillespie  
n/k/a Joetta Gillespie  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123

Unknown Settlers/Beneficiaries of The Gillespie Family  
Living Trust Agreement dated February 10, 1997  
8092 SW 115TH LOOP  
OCALA, FL 34481

## **RETURN OF NON-SERVICE**

State of Florida

County of Marion

Circuit Court

Case Number: 13-115-CA-T



12-02121-3

Plaintiff:

**REVERSE MORTGAGE SOLUTIONS, INC.**

vs.

Defendant:

**NEIL J. GILLESPIE AND MARK GILLESPIE AS CO-TRUSTEES OF THE  
GILLESPIE FAMILY LIVING TRUST AGREEMENT DATED FEBRUARY 10,  
1997, ET AL**

For:

**MCCALLA RAYMER (FLORIDA)  
225 E. ROBINSON STREET, STE.660  
ORLANDO, FL 32801**

Received by ROBERT W. MCGUINNESS on the 11th day of January, 2013 at 9:38 am to be served on UNKNOWN SPOUSE OF NEIL J GILLESPIE, 8092 SW 115TH LOOP, OCALA, FL 34481.

I, ROBERT W. MCGUINNESS, do hereby affirm that on the 12th day of January, 2013 at 1:55 pm, I:

**NON-SERVED the SUMMONS, A NOTICE FROM THE COURT REGARDING LAWSUITS TO FORECLOSE MORTGAGES ON HOMES, NOTICE OF LIS PENDENS, COMPLAINT AND EXHIBITS based on the comments detailed below:**

**Additional Information pertaining to this Service:**

**SUBJECT PROPERTY IS NOT A MOBILE HOME. UPON INQUIRY, NEIL J. GILLESPIE STATED THAT NO SUCH PERSON EXISTS. UPON INQUIRY, NEIL J. GILLESPIE STATED THAT THE PROPERTY IS OWNER OCCUPIED AND THERE ARE NO OTHER TENANTS/OCCUPANTS OVER THE AGE OF 18.**

I certify that I am over the age of 18, I am not a party to this action and have no interest in the process being served. I have been properly certified as a process server by ADMINISTRATIVE ORDER A2008-21. I complied with all provisions of this order and F.S. 48.031(5) at the time of service. Under penalties of perjury, I declare that I have read the foregoing Return of Service and that the facts stated in it are true to the best of my knowledge. F.S. 92.525

**ROBERT W. MCGUINNESS**  
ID # 05-07-6

Our Job Serial Number: BDI-2013000435  
Ref: 12-02121-3



**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

July 26, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

I am returning to you unfiled the papers which you have submitted.

We are in receipt of your correspondence received on 07/22/2013. It appears that this case was dismissed on 06/12/2013 and the motion for reconsideration was denied on 07/25/2013.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

PRO-3 Letter Returning Papers Unfiled

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 13-11585-B

---

REVERSE MORTGAGE SOLUTIONS, INC.,

Plaintiff-Appellee,

versus

NEIL J. GILLESPIE AS CO-TRUSTEES,  
of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997,  
NEIL J. GILLESPIE,

Defendants-Appellants,

MARK GILLESPIE AS CO-TRUSTEES, etc., et al.,

Defendants.

---

Appeal from the United States District Court  
for the Middle District of Florida

---

Before: HULL, WILSON and JORDAN, Circuit Judges.

BY THE COURT:

Appellant Neil Gillespie's July 2, 2013 motion for reconsideration of our June 12, 2013 order dismissing this appeal for lack of jurisdiction is DENIED. All other outstanding motions are DENIED as moot. Should Gillespie wish to petition for mandamus relief, he may file a separate petition for a writ of mandamus or prohibition with this Court. *See* 28 U.S.C. § 1651; Fed.R.App.P. 21.

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

July 25, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.**

The enclosed order has been ENTERED.

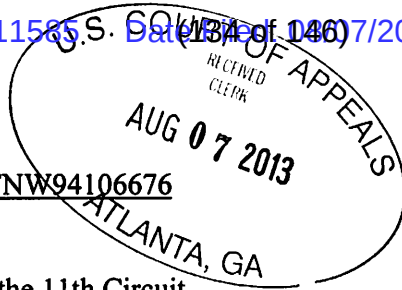
Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B/rvg  
Phone #: (404) 335-6187

MOT-2 Notice of Court Action





VIA U.P.S. No. 1Z64589FNW94106676

August 6, 2013

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Appeal Number 13-11585-B  
Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie as co-trustee, et al.  
District Court Docket No: 5:13-cv-00058-oc-WTH-PRL

Dear Clerk Ley:

Thank you for your letter dated July 25, 2013, copy enclosed. The letter states in part:

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

While I would like to file documents electronically using ECF, please note that I am not an attorney, I am not licensed to practice law, and I did not attend law school.

Instead and pursuant to 28 U.S.C. § 1654, I appear pro se because I am financially unable to obtain adequate representation. The First Amendment also provides a Constitutionally-protected right to petition the Government for redress of grievances. Should the Court find the interest of justice would be served by the presence of counsel, either independently or as a disability accommodation under the Americans with Disability Act (ADA), 42 U.S.C. 12101 et seq., or The Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., I will provide more information. I am disabled and believe a counsel appointment or guardian ad litem may serve justice.

This letter is to confirm my wish to petition for mandamus relief as provided in the Court's Order, copy enclosed. The Order entered July 25, 2013 states in relevant part:

Should Gillespie wish to petition for mandamus relief, he may file a separate petition for a writ of mandamus or prohibition with this Court. See 28 U.S.C. § 1651; Fed.R.App.P.21

The Court has a substantial portion of the record in 13-11585-B, which I provided July 1, 2013. FRAP, Rule 21(a)(2)(C) requires a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

July 31, 2013 I spoke with Ms. Gaddis about the substantial record already at the Court. She said I must send payment to have the record returned to me, or I could provide a return shipping label from my U.P.S. account, which is enclosed; in a self-adhering plastic pouch for shipping labels.

Then, upon return of the record, I would resubmit the record to the Court with my petition for mandamus relief, is that correct? Or would the Court prefer to keep the record it has, and accept my petition with citation to that record? I would supplement the record as needed.

John Ley, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit

August 6, 2013  
Page -2

Also, as I recall, Ms. Gaddis did not know of any time limitation to submit a petition, and I could not locate a time limitation in the FRAP, although I plan to submit a petition as soon as possible. I would appreciate any guidance the Court can provide.

I will submit a new motion to proceed in forma pauperis as discussed with Ms. Gaddis.

Thank you for your assistance.

Sincerely,



Neil J. Gillespie, Petitioner-Appellant-Defendant pro se  
8092 SW 115th Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
E-mail: neilgillespie@mfi.net

Enclosures

Cc: Counsel of record, persons and entities on the updated service list by email.

UPS Return Ground Shipping label enclosed, No. 1Z64589F9093845892

SERVICE LIST - August 6, 2013

Hon. Wm. Terrell Hodges, United States District Court Judge (not served by email)  
Middle District of Florida, Ocala Division (served by third party carrier only)  
Golden-Collum Memorial Federal Building & US Courthouse  
207 NW Second Street, Ocala, Florida 34475-6666  
Provided in compliance with FRAP, Rule 21(a)(1)

John F. Harkness, Executive Director, [jharkness@flabar.org](mailto:jharkness@flabar.org)  
The Florida Bar, 651 East Jefferson Street  
Tallahassee, FL 32399-2300  
For interest in my alleged UPL, Case No. 20133090(5).

Curtis Wilson, Danielle N. Parsons  
McCalla Raymer, LLC (for Reverse Mortgage Solutions, Inc., Plaintiff)  
225 E. Robinson St. Suite 660, Orlando, FL 32801  
Service of court documents: [MRService@mccallaraymer.com](mailto:MRService@mccallaraymer.com)

Tiffany Caparas, Esq. (for Mark Gillespie Co-trustee)  
111 N. Magnolia Ave., Suite 1600, Orlando, FL 32801  
Primary Email: [TCaparas@kelattorneys.com](mailto:TCaparas@kelattorneys.com)  
Secondary Email: [KELinbox@kelattorneys.com](mailto:KELinbox@kelattorneys.com)

Mark Gillespie (Co-trustee), [mark.gillespie@att.net](mailto:mark.gillespie@att.net)  
7504 Summer Meadows Drive  
Ft. Worth, TX 76123

Case: 13-11585 Date Filed: 07/25/2013 Page: 1 of 1

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 13-11585-B

---

REVERSE MORTGAGE SOLUTIONS, INC.,

Plaintiff-Appellee,

versus

NEIL J. GILLESPIE AS CO-TRUSTEES,  
of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997,  
NEIL J. GILLESPIE,

Defendants-Appellants,

MARK GILLESPIE AS CO-TRUSTEES, etc., et al.,

Defendants.

---


Appeal from the United States District Court  
for the Middle District of Florida

---

Before: HULL, WILSON and JORDAN, Circuit Judges.

BY THE COURT:

Appellant Neil Gillespie's July 2, 2013 motion for reconsideration of our June 12, 2013 order dismissing this appeal for lack of jurisdiction is DENIED. All other outstanding motions are DENIED as moot. Should Gillespie wish to petition for mandamus relief, he may file a separate petition for a writ of mandamus or prohibition with this Court. *See* 28 U.S.C. § 1651; Fed.R.App.P. 21.



**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

July 25, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.**

The enclosed order has been ENTERED.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B/rvg  
Phone #: (404) 335-6187

MOT-2 Notice of Court Action

VIA U.P.S. No. 1Z64589FNW92609458

October 23, 2013

Clerk, Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

RE: New petition for writ of certiorari to the Supreme Court of the United States  
Neil J. Gillespie v. Reverse Mortgage Solutions, Inc., et al., C.A.11 No. 13-11585-B

Dear Clerk:

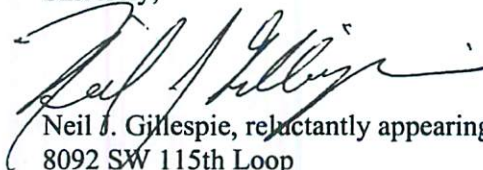
Please find enclosed and file the following on my behalf:

1. New petition for writ of certiorari, Neil J Gillespie v. Reverse Mortgage Solutions, Inc., et al.
2. Ten (10) copies of the petition for writ of certiorari
3. Rule 39 motion for leave to proceed in forma pauperis
4. Rule 29 proof of service, October 23, 2013
5. Separate volume appendices
6. This cover letter to the Clerk
7. Affidavit of Neil J. Gillespie, *I have a well-founded fear of political persecution*
8. Affidavit of Neil J. Gillespie, fraud or impairment of Petition No. 12-7747, a legitimate government activity, 18 U.S.C. § 371, deprivation of rights under color of law, 18 U.S.C. § 242, and conspiracy against rights, 18 U.S.C. § 241.

I requested President Carter for an observer due to fraud or impairment of Petition No. 12-7747, a legitimate government activity, 18 U.S.C. § 371, deprivation of rights under color of law, 18 U.S.C. § 242, and conspiracy against rights, 18 U.S.C. § 241.

I made an urgent appeal to the Special Rapporteur, Independence of Judges and Lawyers, UN High Commissioner for Human Rights, and to the Special Rapporteur on Disability, United Nations Enable, Secretariat for the Convention on the Rights of Persons with Disabilities, for an observer, and for protection from political persecution, because *I have a well-founded fear of political persecution*. Thank you.

Sincerely,



Neil J. Gillespie, reluctantly appearing pro se, *in forma pauperis*, and a non-lawyer  
8092 SW 115th Loop  
Ocala, Florida 34481  
Telephone: (352) 854-7807  
Email: neilgillespie@mfi.net  
Enclosures

cc: All parties, persons and entities shown on the Rule 29 Proof of Service, copy attached.

COPY

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

October 31, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

Enclosed is your "Notice of Appeal" to the Supreme Court of the United States, which is being returned to you. The procedure for filing a notice of appeal from a decision of a United States Court of Appeals was abolished by statute effective September 25, 1988.

Please note that a copy of this court's opinion, the judgment, and any order on rehearing should be attached as an appendix to any petition for writ of certiorari filed in the Supreme Court. See Supreme Court Rule 14.1(i).

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

SPCT-5 NOA to SC rtrnd to prose



**Supreme Court of the United States**  
**Office of the Clerk**  
**Washington, DC 20543-0001**

**Scott S. Harris**  
Clerk of the Court  
(202) 479-3011

November 8, 2013

Clerk  
United States Court of Appeals for the Eleventh  
Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Neil J. Gillespie  
v. Reverse Mortgage Solutions, Inc., et al.  
No. 13-7280  
(Your No. 13-11585)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on October 23, 2013 and placed on the docket November 8, 2013 as No. 13-7280.

Sincerely,

**Scott S. Harris, Clerk**

by

Clayton Higgins  
Case Analyst

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
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John Ley  
Clerk of Court

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January 14, 2014

Sheryl L. Loesch  
U.S. District Court  
207 NW 2ND ST  
OCALA, FL 34475

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

The Supreme Court has denied certiorari. The court's mandate having previously issued, no further action will be taken by this court.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

MDT-4 Notice of Certiorari Denial to DC

**Supreme Court of the United States**  
**Office of the Clerk**  
**Washington, DC 20543-0001**

**Scott S. Harris**  
Clerk of the Court  
(202) 479-3011

January 13, 2014

Clerk  
United States Court of Appeals for the Eleventh  
Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Neil J. Gillespie  
v. Reverse Mortgage Solutions, Inc., et al.  
No. 13-7280  
(Your No. 13-11585)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

**Scott S. Harris, Clerk**

**Supreme Court of the United States**  
**Office of the Clerk**  
**Washington, DC 20543-0001**

**Scott S. Harris**  
Clerk of the Court  
(202) 479-3011

March 10, 2014

Clerk  
United States Court of Appeals for the Eleventh  
Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Neil J. Gillespie  
v. Reverse Mortgage Solutions, Inc., et al.  
No. 13-7280  
(Your No. 13-11585)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for rehearing is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

**Scott S. Harris, Clerk**

VIA UPS No. 1Z64589FNW95346361

January 12, 2015

The Honorable Ed Carnes, Chief Judge  
U.S. Eleventh Circuit Court of Appeals  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Case 13-11585-B, Reverse Mortgage Solutions v Neil J. Gillespie et al  
Order June 25, 2013 authorizing a petition under 28 USC 1651, the all writs act  
Marion County Florida Case 42-2013-CA-000115-AXXX-XX

Dear Chief Judge Carnes,

This letter concerns an Order June 25, 2013 authorizing me to file a petition under 28 USC 1651, the all writs act, in Case 13-11585-B, Reverse Mortgage Solutions v Neil J. Gillespie et al.

1. I am indigent and require appointment of counsel. The Eleventh Circuit adopted, as provided in Addendum Five, Non-Criminal Justice Act Counsel Appointments, provisions for furnishing representation for persons financially unable to obtain adequate representation in cases and situations which do not fall within the scope of 18 U.S.C. § 3006A, as amended – but in which the court believes that the interests of justice will be served by the presence of counsel.
2. I am disabled and require accommodation under the Rehabilitation Act of 1973, and the Americans With Disabilities Act (ADA), as amended, if the Court adopts the ADA. This Court has my disability motion filed in No. 12-11213 on August 9, 2012. Also enclosed, readings from my diabetes meter last week showing evidence of disabling levels of blood glucose.
3. I request permission to e-file on the federal CM/ECF system. I have a PACER account.
4. Please provide an email address for a contact person with the Court.
5. I request a stay in the state-court proceedings until the foregoing is resolved. See enclosed Defendants Notice-Nonresident Bond-10 USC 333 Interference State Federal law.

January 6, 2015 I emailed Tara Price, law clerk to Judge Jordan, and got no response. A paper copy of the emails are enclosed. Also enclosed, Notice, A. Lee Bentley USAFLM. Thank you.

Sincerely,



Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481

Telephone: 352-854-7807  
Email: neilgillespie@mfi.net

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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John Ley  
Clerk of Court

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January 20, 2015

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

I am returning to you unfiled the papers which you have submitted.

In the absence of a pending appeal, as required by Rule 4 of the Federal Rules of Appellate Procedure, this court has no jurisdiction to grant the relief requested.

This appeal was dismissed on 6/12/2013, and reconsideration on 7/25/2013.

No further action will be taken.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

Enclosure(s)

PRO-3 Letter Returning Papers Unfiled