

SIGNED.



Dated: September 16, 2010

*Randolph J. Haines*

RANDOLPH J. HAINES  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re	)	Chapter 7
COURTNEY LAWSON,	)	CASE NO. 2:10-bk-06563-RJH
	)	
Debtor.	)	
_____	)	
COURTNEY LAWSON,	)	ADVERSARY NO. 2: 10-ap-01387-RJH
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM DECISION
	)	ON MOTION TO DISMISS
COUNTRYWIDE BANK, N.A., BANK	)	
OF AMERICA, RECONTRUST	)	
COMPANY,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff, Chapter 7 Debtor Courtney Lawson, filed a three count complaint commencing this adversary proceeding against Defendants Countrywide Bank and Bank of America. BAC Home Loans Servicing, fka Countrywide Home Loans Servicing, filed a motion to dismiss pursuant to Bankruptcy Rule 7012, incorporating Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff filed an untimely response.

Both parties have submitted matters outside the pleadings. Although Rule 12(d) permits the Court to consider such matters outside the pleadings if it treats the motion as one for summary judgment and provides the parties a reasonable opportunity to present all materials pertinent to such motion, the Court elects not to do so and therefore does not consider the matters outside the pleadings. Nonetheless, the Court may take judicial notice of the Court's own records. In that regard, the Court judicially notices that the Plaintiff is a debtor in

1 a Chapter 7 case in which a trustee has been appointed, and this complaint was not filed by that  
2 trustee. The Court also notes that the Chapter 7 Trustee has determined the bankruptcy case to  
3 be a “no asset” case in which there are no assets available to be liquidated for the benefit of  
4 creditors. The Court also notes that BAC obtained relief from the automatic stay by Order  
5 entered on July 27, 2010. In that Order, the Court indicated that it did not see any “standing”  
6 problem for Bank of America to proceed, but that any such issue in that regard could be  
7 litigated in state court. Finally, the Court judicially notices that the Debtor received her  
8 discharge on September 14.

9 The motion to dismiss seeks dismissal of the complaint because none of the  
10 three counts states a claim on which this Court may grant any relief.

11 Count I of the complaint makes only two allegations: that Plaintiff believes  
12 Defendant cannot produce the original promissory note or show evidence of its transfer; and  
13 that Plaintiff believes Defendant does not have a valid lien on the property. Neither of those  
14 allegations, nor both of them combined, states a claim for relief. Simply put, there is no cause  
15 of action for “show me the note.”

16 The third count of the complaint basically makes only one allegation: that  
17 Defendant lacks standing to foreclose on the property due to lack of a valid transfer of either  
18 the promissory note or the security interest. This count also fails to state a claim on which  
19 relief can be granted. Simply put, there is no cause of action for “lack of standing.” Moreover,  
20 standing is an issue that is properly addressed by a court in which a plaintiff initiates an action.  
21 Therefore if there is any standing issue, it must be addressed by the court in which the  
22 Defendant initiates some action. Because the Defendant has not initiated foreclosure  
23 proceedings in this Court, standing is not an issue for this Court to address.

24 Count II seeks to enjoin a trustee’s sale of the property by the Defendant. But as  
25 already noted, nothing in the complaint establishes any legal right of the Plaintiff that is about  
26 to be violated by the Defendant. Although the Court is not here determining that Defendants  
27 have any legal right to conduct a trustee’s sale, similarly nothing in the complaint establishes  
28 that Plaintiff has any legal right to enjoin any trustee’s sale. Consequently Count II also fails to

1 state a claim on which relief may be granted.

2 By her objection, Plaintiff seeks time to conduct discovery and an opportunity to  
3 amend the complaint. But because there are no set of facts that can turn either “show me the  
4 note” or “lack of standing” into a cause of action upon which relief could be granted, such  
5 discovery or amended pleading would be futile. Consequently the complaint shall be dismissed  
6 without leave to appeal and without additional time to conduct discovery.

7 For the foregoing reasons, Defendant’s motion to dismiss will be granted.

8 DATED AND SIGNED ABOVE

9 Copies of the foregoing e-mailed/mailed  
10 this 16th day of September, 2010, to:

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19 /s/ Pat Denk  
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