SUPERIOR COURT

CHESHIRE, SS 213-2010-CV-00181

JOHN J. POWERS AND ROSE M. POWERS

v.

AURORA LOAN SERVICES

ORDER

This case arises out of a defaulted mortgage. The plaintiffs, John and Rose Powers ("the Powers" or "Plaintiffs"), are suing Aurora Loan Services LLC ("Aurora" or "Defendant") for violation of the New Hampshire Consumer Protection Act, RSA 358-A; unfair, deceptive, or unreasonable debt collection, RSA 358-C; fraud; and negligence. Together with the writ, Plaintiffs filed an ex-parte petition for injunctive relief to enjoin a foreclosure sale scheduled for November 22, 2010. On November 19, 2010, this Court (Vaughan, J.) stayed foreclosure for 30 days. On December 9, 2010, the Court held a preliminary hearing and by Order of December 13, 2010 further stayed the foreclosure and ordered Aurora to provide the loan documentation requested by the Powers. On January 26, 2010, the parties appeared for a further hearing. For the

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following reasons, the Powers' petition for injunctive relief is DENIED and the stay on foreclosure is lifted.

Factual Background

On December 30, 2005, the Powers executed a note secured by a mortgage ("Mortgage") with GreenPoint Mortgage Funding, Inc. ("GreenPoint") in the amount of $451,200. The Mortgage states, in relevant part:

> (C) "MERS" is the Mortgage Electronic Registration System, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this security Instrument**. . . .
> TRANSFER OF RIGHTS IN THE PROPERTY
> This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS with mortgage covenants, and with power of sale, the following described property . . . .
> Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose or sell the property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

(Def. Obj. Plf. Req. Injunction Exh. [Mortgage]; emphasis in original). On July 1, 2006, Aurora became the servicer on the loan. (Writ ¶ 9). "This means that Aurora has both the authority and the obligation to collect and disburse payments on the loan and to enforce the loan's terms in the event of default, as is the case here." (Def. Obj. Plf. Req.

Injunction Exh. [Letter from Luke Sosnicki, Akerman Senterfitt, to Alex S. Yiokarinis, Esq. (Aug. 25, 2010)]). On April 20, 2010, Aurora assigned the Powers' Mortgage to MERS as nominee for GreenPoint. (Def. Obj. Plf. Req. Injunction ¶ 2; Pet. Injunctive Relief ¶ 8). "This [assignment] was recently recorded on April 26, 2010 in the Cheshire County Registry of Deeds in Book 2632, Page 430." (Pet. Injunctive Relief ¶ 8).

In February 2008, the Powers defaulted on their loan with Aurora. In May, Aurora offered them a repayment agreement, having determined that the Powers' income was insufficient to qualify them for loan modification. (Def. Obj. Plf. Req. Injunction Exh. [Letter from Luke Sosnicki, Akerman Senterfitt, to Alex S. Yiokarinis, Esq. (Aug. 25, 2010)]). In August 2008, Aurora offered the Powers a forbearance agreement ("first forbearance agreement") after they failed to make the payments under the repayment agreement. The first forbearance agreement would have allowed the Powers to make payments on their loan while Aurora considered their eligibility for loan modification based on updated financial information. Id. When the Powers failed to make an initial payment[1] on the first forbearance agreement, the loan was referred for foreclosure. By August 2008, the Powers had missed four mortgage payments. Id.

In September 2008, the Powers entered into a second forbearance agreement, on which they made two payments. Aurora subsequently offered the Powers a permanent

[1] When the Powers inquired in May 2010 why the payments under the first forbearance agreement were higher than their loan payments, Aurora responded that the forbearance agreement took into account the arrearage on their loan.

loan modification for having successfully maintained the second forbearance agreement. When the Powers failed to make a subsequent payment under the second forbearance agreement, they were informed that the second forbearance plan was terminated and that they had 14 days to avoid a foreclosure sale. Id.

"As of December 30, 2008, more than a month after they were informed they would need to make an immediate payment to maintain the forbearance agreement, no third forbearance-plan payment had yet been received, and they had not arranged any other repayment options with Aurora. Accordingly, a notice of mortgage foreclosure sale was issued and mailed to them." Id. A foreclosure sale was scheduled for January 27, 2009[2], but Aurora placed the foreclosure on hold pending another loan modification review. In May 2009, Aurora determined that based on the Powers' financial records, they did not qualify for loan modification. Id.

In June 2009, Aurora offered the Powers a third forbearance agreement pursuant to the Home Affordable Modification (HAMP) program, which had recently come into existence. By that time, the Powers were over $34,000 behind on their loan, not including fees and costs. Id. The agreed-upon HAMP payment under the third forbearance agreement was lower than the Powers' previous monthly loan payments. The HAMP plan, i.e. the third forbearance agreement, was terminated in October 2009,

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[2] "On January 6, 2009, Defendant, through counsel scheduled a foreclosure sale of Plaintiffs' property scheduled for January 27, 2009 and stated MERS to be the nominee for mortgage holder GreenPoint." (Writ ¶ 32).

after the Powers failed to make the initial payment. By January 2010, the deficiency on the loan was over $70,000. Id.

A foreclosure sale was scheduled for February 16, 2010. The notice "stat[ed] MERS to be the nominee for GreenPoint and Defendant as the holder of the mortgage." (Writ ¶ 43). "Upon Plaintiffs' objections to Defendant, the foreclosure sale was cancelled." Id. ¶ 44. On February 3, 2010, Aurora sent a letter to the Powers "stating they wanted to help Plaintiffs save their home and requested the submission of more documentation for a possible loan modification." Id. ¶ 46. In May 2010, Plaintiffs wrote to Aurora, asserting that Aurora made it impossible for them to recover from default. (Def. Obj. Plf. Req. Injunction Exh. [Letter from Luke Sosnicki, Akerman Senterfitt, to Alex S. Yiokarinis, Esq. (Aug. 25, 2010)]). Another foreclosure sale was scheduled for June 7, 2010; "[t]he notice indicated that the mortgages [sic] is from MERS and Defendant is the holder of the mortgage." (Writ ¶ 47). The June foreclosure sale was rescheduled to November 22, 2010, leading the Plaintiffs to file the present action and ex-parte petition for injunctive relief.

Discussion

At the hearing on the petition for injunctive relief, the Powers directed their argument solely to challenging Aurora's standing. They asserted that MERS as nominee lacked the authority to assign the mortgage to Aurora. When asked on what basis they

are entitled to relief, notwithstanding Aurora's standing, Plaintiffs did not offer any other substantive arguments. The Court therefore addresses Aurora's standing.

A nominee is "[a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others." BLACK'S LAW DICTIONARY 1149 (9th ed. 2009). MERS frequently appears as the nominee in mortgages containing language identical to that which the Powers signed.

> The MERS system purportedly operates as follows: When a home is purchased, the lender obtains from the borrower a promissory note and a mortgage instrument naming MERS as the mortgagee (as nominee for the lender and its successors and assigns). In the mortgage, the borrower assigns his right, title, and interest in the property to MERS, and the mortgage instrument is then recorded in the local land records with MERS as the named mortgagee. When the promissory note is sold (and possibly re-sold) in the secondary mortgage market, the MERS database tracks that transfer. As long as the parties involved in the sale are MERS members, MERS remains the mortgagee of record (thereby avoiding recording and other transfer fees that are otherwise associated with the sale) and continues to act as an agent for the new owner of the promissory note.

In re Mortgage Elec. Registration Sys. Litig., 659 F. Supp. 2d 1368, 1370 n. 6 (J.P.M.L. 2009). MERS, as nominee, has limited powers of representation that fall short of ownership. Home Savings & Loan Ass'n, 265 F.2d 643, 647 (9th Cir.1958); Countrywide Home Loans Servicing LP v. Rohlf, Nos. 2009AP2330, 2010AP19, 2010 WL 4630328 (Wis. App. Nov. 17, 2010). "The use of a nominee in real estate transactions, and as mortgagee in a recorded mortgage, has long been sanctioned as a legitimate practice. The use of a nominee is likewise legitimate under the Uniform Commercial Code." In re Cushman Bakery, 526 F.2d 23, 30 (1st Cir. Me. 1975), citing Eastern Milling Co. v. Flanagan, 152

Me. 380 (1957); Amherst Factors v. Kochenburger, 4 N.Y.2d 203 (1958); Richardson v. Stewart, 216 Iowa 683 (1933); First National Bank of Bridgeport v. National Grain Corp., 103 Conn. 657 (1925); Newton Savings Bank v. Howerton, 163 Iowa 677 (1914); Industrial Packaging Products Co. v. Fort Pitt Packaging International, Inc., 399 Pa. 643 (1960).

Contrary to Plaintiffs' assertions at the hearing, the use of MERS as nominee is in and of itself neither fraudulent nor wrong. MERS' status as nominee allows it to perform its core function of facilitating the tracking of mortgages. For an explanation of MERS's role in the mortgage market, see Kiah v. Aurora Loan Services, LLC, No. 10-40161-FDS, 2010 WL 4781849, at *1 n. 1 (D.Mass. Nov. 16, 2010). It is true, however, that a system involving a nominee and multiple mortgages obscuring the identity of the interest holders may be problematic.

> [T]he MERS system introduces its own problems and complications. One such problem is that having a single front man, or nominee, for various financial institutions makes it difficult for mortgagors and other institutions to determine the identity of the current note holder. '[I]t is not uncommon for notes and mortgages to be assigned, often more than once. When the role of a servicing agent acting on behalf of a mortgagee is thrown into the mix, it is no wonder that it is often difficult for unsophisticated borrowers to be certain of the identity of their lenders and mortgagees.' In re Schwartz, 366 B.R. 265, 266 (Bankr.D.Mass.2007).
> '[T]he practices of the various MERS members, including both [the original lender] and [the mortgage purchaser], in obscuring from the public the actual ownership of a mortgage, thereby creating the opportunity for substantial abuses and prejudice to mortgagors ..., should not be permitted to insulate [the mortgage purchaser] from the consequences of its actions in accepting a mortgage from [the original lender] that was already the subject of litigation in which [the original

> lender] erroneously represented that it had authority to act as mortgagee.' Johnson v. Melnikoff, 20 Misc.3d 1142, 873 N.Y.S.2d 234, 2008 WL 4182397, at *4 (Sup.1008).

Landmark Nat. Bank v. Kesler, 289 Kan. 528, 543 (2009). It should be noted that Landmark received questionable treatment in subsequent decisions. See, e.g. McGinnis v. GMAC Mortgage Corporation, No. 2:10-cv-00301-TC, 2010 WL 3418204, at *3 (D.Utah Aug. 27, 2010) ("McGinnis cites [Landmark], to support his argument that MERS lacks authority to appoint a trustee. But [Landmark] does not concern MERS' standing to foreclose, but rather whether MERS was an indispensable party who should have been allowed to intervene in a foreclosure action initiated by another lender. (Citation omitted). Further, the [Landmark] case fails to recognize the agency relationship between MERS and the lender that is created by the language in the Deed of Trust designating it as beneficiary. See Blau v. Am.'s Serv. Co., No. cv-08-773, 2009 U.S. Dist LEXIS 90632, * 21-22 (D.Ariz. Sept. 29, 2009) (distinguishing [Landmark] and holding that MERS had authority to transfer ownership of the Deed of Trust).").

More importantly, the dangers against which the Supreme Court of Kansas admonished in Landmark are not present here. The Powers knew who their mortgagee was; they communicated with the mortgagee and entered into a number of repayment and forbearance agreements. Although they claim that the identity of the current mortgagee has been obfuscated by the complex nature of the mortgage's ownership (Writ ¶¶ 10-22), the Court finds no support for this assertion. The mortgage document,

which Plaintiffs signed, identifies MERS as nominee for the lender, GreenPoint. (Def. Obj. Plf. Req. Injunction Exh. [Mortgage]; emphasis in original). A recorded assignment identifies Aurora as the assignee of MERS. (Pet. Injunctive Relief ¶ 8). The foreclosure notices issued to Plaintiffs identify MERS as the nominee for GreenPoint and Aurora as the mortgage holder. (Writ ¶¶ 32, 43, 47).

Because the Powers do not argue that MERS lacks the authority to foreclose, the Court focuses on their argument that as nominee, MERS lacks the authority to assign its interest in the mortgage, thereby invalidating the assignment to Aurora and Aurora's ability to foreclose or collect on the mortgage. Perhaps because the system in which MERS functions is so susceptible to abuse, courts nationwide disagree about MERS's powers as a nominee.

> The legal status of a nominee, then, depends on the context of the relationship of the nominee to its principal. Various courts have interpreted the relationship of MERS and the lender as an agency relationship. See In re Sheridan, 2009 WL 631355, at *4 (Bankr.D.Idaho March 12, 2009) (MERS "acts not on its own account. Its capacity is representative."); Mortgage Elec. Registration System, Inc. v. Southwest, 2009 WL 723182 (March 19, 2009) ("MERS, by the terms of the deed of trust, and its own stated purposes, was the lender's agent"); LaSalle Bank Nat. Ass'n v. Lamy, 12 Misc.3d 11912006 WL 2251721, at *2 (Sup.2006) (unpublished opinion) ("A nominee of the owner of a note and mortgage may not effectively assign the note and mortgage to another for want of an ownership interest in said note and mortgage by the nominee.")

Landmark, 289 Kan. at 539.

Even though there is no New Hampshire case law on point, many states have held that a nominee (and in many cases, MERS specifically) has the right to assign its

interest under a mortgage. Several Massachusetts decisions implicitly recognize MERS' authority as nominee to assign its interest. See In re Moreno, No. 08-17715-FJB, 2010 WL 2106208, at *4 (Bkrtcy.D.Mass. May 24, 2010) ("To show that it presently holds the mortgage, PAM must show a valid assignment of the mortgage from MERS to itself. PAM contends that it holds the mortgage by assignment from MERS. Accordingly, PAM must show that the assignment, which was executed for MERS by Denise Bailey, was within the scope of Bailey's limited authority to act for MERS."); Novastar Mortg., Inc. v. Saffran, 2010 Mass. App. Div. 117, at *2 (Mass. App. Div. 2010) ("[I]n the instant case, the notice of sale that was recorded did identify Novastar and described it as 'the present holder by assignment' of the mortgage given by Saffran to MERS dated July 27, 2007. It is true that Novastar did not record an assignment from MERS, but [the statute governing foreclosure under power of sale] does not require that assignments of mortgages be recorded. . . . Saffran, once again, introduced nothing to rebut, or contradict, the recorded documents stating that Novastar was the holder of the mortgage by assignment[.]") It should be noted that RSA 479:1 et seq. does not require that an assignment of mortgage be recorded, and given that the Powers failed to provide any evidence rebutting or contradicting the recorded assignment from MERS to Aurora, the assignment must be held valid. See also In re Schwartz, 366 B.R. 265, 268-269 (Bankr. D. Mass. 2007), recognizing the power of MERS as nominee to assign the

mortgage, but invalidating the assignment because it was signed after the foreclosure sale.

Ohio also recognizes a nominee's authority to assign its beneficial interest. "In Ohio, it is well settled that MERS, acting as mortgagee and nominee for the lender, may transfer the lender's interest in the mortgage." Long v. Mortgage Elec. Registration Systems, Inc., No. 1:10CV28542011, WL 304826, at *2 (N.D.Ohio Jan. 28, 2011). "Further, beyond equitable assignment, several other courts have recognized MERS' authority to assign a mortgage when designated as both a nominee and mortgagee. See BAC Home Loans Servicing, L.P. v. Hall, 12th Dist. No. CA2009-10-135, 2010-Ohio-3472, at ¶ 5-25 (concluding that BAC was entitled to judgment as the real party in interest where MERS, as a nominee, assigned the mortgage at issue to BAC); Countrywide Home Loans Servicing, L.P. v. Shifflet, 3d Dist. No. 9-09-31, 2010-Ohio-1266, at ¶ 9-17 (concluding that Countrywide was entitled to judgment as the real party in interest where MERS, as a nominee, assigned the mortgage to Countrywide); Deutsche Bank Natl. Trust Co. v. Ingle, 8th Dist. No. 92487, 2009-Ohio-3886, at ¶ 4-18 (concluding Deutsche was entitled to judgment as the real party in interest where MERS, as a nominee, assigned a mortgage deed to Deutsche)."; Deutsche Bank Natl. Trust Co. v. Traxler, No. 09CA009739, 2010 WL 3294292, at *6 (Ohio App. 9 Dist. Aug. 23, 2010).

The U.S. District Court for the District of Arizona rejected an argument similar to the one advanced by the Powers. "Contrary to Plaintiffs' allegations, the Court fails to

see how the MERS system lacks authority as a nominee of lenders to assign deeds of trust, and how, in assigning deeds of trust, commits fraud or records forged or false documents, as Plaintiffs allege." Kane v. Bosco, No. 10-CV-01787-PHX-JAT, 2010 WL 4879177, at *11 (D.Ariz. Nov. 23, 2010). Other states which recognize MERS' authority as nominee to assign its interest include Florida, Utah, Wisconsin, Kentucky, and California. Taylor v. Deutsche Bank Nat'l Trust Co., 44 So. 3d 618, 623 (Fla. Dist. Ct. App. 5th Dist. 2010) ("We conclude, accordingly, that the written assignment of the note and mortgage from MERS to Deutsche Bank properly transferred the note and mortgage to Deutsche Bank. The transfer, moreover, was not defective by reason of the fact that MERS lacked a beneficial ownership interest in the note at the time of the assignment, because MERS was lawfully acting in the place of the holder and was given explicit and agreed upon authority to make just such an assignment. . . . Our sister court in the second district came to a congruent conclusion after considering very similar documents."); King v. American Mortg. Network, Inc., No. 1:09CV162 DAK, 2010 WL 3516475, at *1 (D.Utah Sep. 2, 2010). ("By virtue of being named a nominal beneficiary, MERS is enabled to transfer rights under the trust deed to whoever owns the note at the time of enforcement."); Countrywide Home Loans Servicing LP v. Rohlf, Nos. 2009AP2330, 2010AP19, 2010 WL 4630328, at ¶ 7, (Wis. App. Nov. 17, 2010). ("[The homeowner defendants] argue that assignment of the mortgage from the Mortgage Electronic Registration System (MERS), which served only as a 'nominee' of American

Sterling Bank, was ineffectual and that Countrywide never acquired the same rights of enforcement that American Sterling Bank has. . . . [They] have failed to establish that MERS designation as nominee for American Sterling Bank did not include authority to assign the note."); In re Jessup, No. 09-50922, 2010 WL 2926050, at *3 (Bkrtcy.E.D.Ky. July 22, 2010); Castaneda v. Saxon Mortg. Servs., 687 F. Supp. 2d 1191, 1198 (E.D. Cal. 2009) "As the listed nominee and beneficiary under the Deed of Trust, MERS had authority to assign its beneficial interest to another party."; Pok v. American Home Mortg. Servicing, Inc., No. CIV 2:09-2385 WBS EFB, 2010 WL 476674, at *3 (E.D.Cal. Feb. 03, 2010).

By contrast, several New York cases have held that the right to assign exceeds the scope of authority given to MERS as nominee. "A nominee of the owner of a note and mortgage may not effectively assign the note and mortgage to another for want of an ownership interest in said note and mortgage by the nominee." LaSalle Bank Nat. Ass'n v. Lamy, No. 030049/2005, 2006 WL 2251721, at *2 (N.Y.Sup. Aug. 07, 2006). LaSalle subsequently received negative treatment. "The notable trial court decision issued in [LaSalle v. Lamy] is also not controlling. Therein, the trial court found, among other things, that a MERS assignment was ineffective by reason of a lack of an ownership interest in the note on the part of MERS at the time of the assignment. However, this court respectfully disagrees with the conclusion reached by the court in Lamy on this issue and thus declines to adopt it." US Bank, N.A. v. Flynn, 897 N.Y.S.2d 855, 858-859,

(N.Y. Sup. Mar. 12, 2010); see also Crum v. LaSalle Bank, N.A., No. 2080110, 2009 WL 2986655, at *4 (Ala. Civ. App. Sep. 18, 2009) ("Although the borrower attempted in the trial court to rebut the proposition that the assignee had lawfully acquired title by adducing evidence that MERS, the party from whom the assignee had acquired its rights in the property, did not have the authority to exercise the power of sale afforded in the mortgage, there is no genuine issue of material fact that MERS assigned to the assignee all the rights formerly held by it and by the lender. . . . Those facts also render the unreported New York trial-court opinion in [LaSalle], inapposite.")

In another New York case, Onewest Bank, F.S.B. v. Drayton, the state trial court found that the foreclosing bank failed to submit "proof of the grant of authority from the original mortgagee[], to its nominee, [MERS], to assign the subject mortgage and note to Indymac Federal Bank, FSB," which subsequently assigned the mortgage to the plaintiff bank. 2010 NY Slip Op 20429, 16 (N.Y. Sup. Ct. 2010). Onewest, however, is distinguishable from the present case. First, the New York Supreme Court for Kings County dismissed the petition to foreclose without prejudice and ordered the plaintiff to submit the required proof. Second, it being a foreclosure action, the foreclosing party had the burden to present proof of how it acquired the authority to foreclose. Third, the Court acknowledged that it was drafting the decision "in the midst of the present national media attention about 'robo-signers'[.]" Id. at 1. See also Bank of New York v. Mulligan, No. 29399/0728, 2010 WL 3339452, at *7-8 (N.Y.Sup. Aug. 25, 2010).

Similarly, the Missouri Court of Appeals held that "MERS could not transfer the promissory note; therefore the language in the assignment of the deed of trust purporting to transfer the promissory note is ineffective. . . . MERS never held the promissory note, thus its assignment of the deed of trust to Ocwen separate from the note had no force." Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619, 624 (Mo. Ct. App. 2009). Here, however, the Plaintiffs do not argue that MERS lacked the power to assign the note but had the power to assign the mortgage. Furthermore, the U.S. Bankruptcy Court subsequently limited Bellistri and implicitly recognized the authority of MERS as nominee to assign its beneficial interest. In re Tucker, No. 10-61004, 2010 WL 3733916, at *7 (Bkrtcy.W.D.Mo. Sep. 20, 2010). ("Assuming that the note-holder is a member of MERS, thereby creating an agency relationship, the fact that MERS is identified as the beneficiary under a deed of trust for the benefit of the note-holder does not create a split between the note and deed of trust. And, again, since the deed of trust follows the note, this is true for subsequent parties to whom the note is properly assigned, so long as the assignees are also members of MERS.")

In view of the above-quoted case law, the Court rejects the Powers' argument that by virtue of being a nominee, MERS lacked the authority to transfer the mortgage to Aurora. The Court also draws Plaintiffs' attention to certain language in the mortgage they signed, which reflects MERS' authority to assign its interest. In the section entitled "TRANSFER OF RIGHTS", the "Borrower does hereby mortgage, grant

and convey to MERS . . . and to the successors *and assigns of MERS* . . . the following described property . . . ." (Def. Obj. Plf. Req. Injunction Exh. [Mortgage]; emphasis added). "MERS . . . has the right: to exercise any or all of [the interests granted by Borrower in this Security Instrument], including, but not limited to, the right to foreclose and sell the property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument." Id.

Conclusion

The Powers challenge the foreclosure solely on the basis of Aurora's standing. The Court finds that the assignment from MERS, as nominee for GreenPoint, to Aurora is valid and that Aurora does have standing to foreclose. Plaintiffs have not argued any other basis for the Court to grant injunctive relief. See RSA 358-A:19; N.H. Dep't of Envtl. Servs. v. Mottolo, 917 A.2d 1277, 1281-1282 (N.H. 2007). The Powers have failed to carry their burden of showing the need for and appropriateness of injunctive relief. 4 G. MacDonald, Wiebusch on New Hampshire Civil Practice and Procedure § 19.16 at 19-16 (2010). Accordingly, the petition for injunctive relief is DISMISSED and the stay on foreclosure is lifted.

SO ORDERED.

February 14, 2011
Date

John P. Arnold
Presiding Justice

CLERK'S NOTICE DATED
2/14/11
cc: Yiokarinis
Shakun