

CASE NO. _____

CONRELL HADLEY,)	IN THE DISTRICT COURT
)	
Plaintiff,)	
vs.)	
)	
)	
THE BANK OF NEW YORK MELLON)	
F.K.A. THE BANK OF NEW YORK, AS)	_____ JUDICIAL DISTRICT
TRUSTEE FOR REGISTERED HOLDERS)	
OF CWABS, INC. ASSET-BACKED)	
CERTIFICATES, SERIES 2004-12; AND)	
CARRINGTON MORTGAGE SERVICES,)	
LLC)	
)	
Defendants.)	OF HARRIS COUNTY, TEXAS
)	

PLAINTIFF'S ORIGINAL PETITION

COMES NOW the Plaintiff, Conrell Hadley ("Plaintiff"), complaining of the Defendants as named above, and each of them, as follows:

I. THE PARTIES

1. Plaintiff is a resident of Texas and is the current owner of the property the subject of this petition commonly known as 6908 Fox Mesa Lane, Humble, TX 77338 (the "Property"), legally described as:

LOT 53, IN BLOCK 1 OF FOXWOOD, SECTION FOUR (4), A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 288, PAGE 42 OF THE MAP RECORDS OF BARRIS COUNTY, TEXAS

2. Defendant, The Bank of New York Mellon f.k.a. the Bank of New York, as Trustee for Registered Holders of CWABS, Inc. Asset-Backed Certificates, Series 2004-12 (hereafter "BONY"). Plaintiff is informed and believes, and thereon alleges, that BONY is a New York State

bank doing business in the County of Harris, State of TEXAS, and is the current purported “mortgagee” of the mortgage loan that is the subject of this Petition. BONY may be served by serving their Texas Registered Agent: C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136 USA.

3. Defendant, Carrington Mortgage Services, LLC (hereafter “Carrington”). Plaintiff is informed and believes, and thereon alleges, that Carrington is a Texas Corporation doing business in the County of Harris, State of TEXAS, and is the current purported mortgage servicer for the mortgage loan that is the subject of this Petition. Carrington may be served by serving their Texas Registered Agent: Martin W Cohen, 1600 PACIFIC AVE., STE. 1900, Dallas, TX 75201 USA.

II. JURISDICTION

4. The transactions and events which are the subject matter of this Petition primarily occurred within the County of Harris, State of TEXAS and affected the property the subject of this Petition which is located within the County of Harris, State of TEXAS at 6908 Fox Mesa Lane, Humble, TX 77338. Venue is proper in Harris County, Texas pursuant to Section 15.002(a)(1) of the Texas Civil Practice & Remedies Code.

5. So long as venue is proper against any one Defendant, the Court has venue against either Defendant because Plaintiff’s claims arise out of the same transaction, occurrence, or series of transactions. *See* Tex. Civ. Prac. & Rem. Code §15.005.

6. The amount in controversy is within the jurisdictional limits of this Court.

7. This Court has personal jurisdiction over all parties.

III. SUMMARY OF CAUSES OF ACTION

8. Plaintiff brings the following causes of action against the defendants:

- i. Declaratory Judgment on Expiration of the Statute of Limitations to Foreclose; and
- ii. Quiet Title.

IV. DISCOVERY PLAN & STATEMENT OF DAMAGES SOUGHT

9. Under Tex. R. Civ. P. 190.1, Plaintiff pleads that the Discovery Control Plan Level 2 applies.
10. Plaintiff seeks relief monetary relief of less than \$200,000.
11. Plaintiff also seeks non-monetary relief.

V. FACTUAL ALLEGATIONS

A. THE BORROWERS' ORIGINAL MORTGAGE LOAN

12. On or about October 21, 2004, Plaintiff entered into a home equity mortgage transaction with the original lender (America's Wholesale Lender) to obtain a \$72,000 loan. *See Exhibit 1 – 2004 Deed of Trust*, attached and incorporated by reference. Altogether, the mortgage note and Deed of Trust are the "Loan." At the time Plaintiff obtained the Loan, he was the owner of the Property from a deed he received in 1989. *Exhibit 2 – 1989 Warranty Deed*, attached and incorporated by reference.

B. LENDER FORECLOSURE ACTIVITY ON THE LOAN

13. Defendants first sent accelerated the Loan on July 15, 2010. *Exhibit 3 – 2010 Notice of Acceleration*, attached and incorporated by reference.
14. Defendants have not brought a suit for judicial foreclosure or conducted a non-judicial foreclosure of the Property, including any applicable tolling, within four years of July 15, 2010.

VI. **FIRST CAUSE OF ACTION: Declaratory Relief: Violation of the Statute of Limitations to Foreclose**

15. Plaintiff incorporates by reference each preceding and succeeding paragraph of this Complaint as though fully set forth herein.

16. Defendants presently claim the power of sale under the Deed of Trust and Texas law. However, any foreclosure sale would be void as time-barred. As such, the Deed of Trust must be stripped from the title record and title quieted in Plaintiff's name.

17. Tex. Civ. Prac. & Rem. Code §16.035 states that a non-judicial foreclosure sale or suit for judicial foreclosure must take place within four-years of accrual. Under Texas case law interpreting §16.035, the four-year limitations period to conduct a non-judicial foreclosure or bring suit for judicial foreclosure accrues when the lender has accelerated a loan under a security instrument containing an optional acceleration clause.

18. The Deed of Trust in this case contains an optional acceleration clause.

19. Defendants accelerated the Loan on July 15, 2010. **Exhibit 3**.

20. The foreclosure action under the Loan accrued on July 15, 2010.

21. No non-judicial foreclosure sale or suit for judicial foreclosure, including any applicable tolling, occurred within four years of July 15, 2010.

22. The July 15, 2010 acceleration was never effectively waived or abandoned.

23. Plaintiff requests a declaration that any foreclosure sale under the 2004 Deed of Trust would be void as time-barred and that the 2004 Deed of Trust is void and is removed from the title record for the Property.

VII.
SECOND CAUSE OF ACTION: Quiet Title

24. Plaintiff incorporates by reference each preceding and succeeding paragraph of this Complaint as though fully set forth herein.

25. The Plaintiff has an ownership interest in the Property by virtue of his warranty deed (**Exhibit 2**).

26. Defendants claim a secured monetary interest and estate in the Property represented by the

recorded Deed of Trust and the subsequent recorded assignments thereof.

27. Defendants' secured monetary interest and estate in the Property appears valid on its face, however such interest is invalid and void due to the expiration of the statute of limitations to foreclose.

28. Plaintiff's interest in the Property is superior to defendants' interest because, even though defendants' interest in the Property is valid on its face, defendants' interest is in fact invalid and void due to the expiration of the statute of limitations to foreclose.

29. Plaintiff requests a declaration that any foreclosure sale under the Deed of Trust would be void as time-barred, that the Deed of Trust is void and is removed from the title record for the Property, and that title is quieted in Plaintiff's name.

VIII. **ATTORNEY'S FEES**

30. The Plaintiff hereby adopts by reference each and every paragraph above as if fully and completely set forth herein.

31. As a result of the acts and omissions of defendants, as specifically set forth herein, it was necessary for the Plaintiff to secure counsel to present and prosecute this matter on their behalf.

32. Plaintiff has retained the services of the undersigned counsel of record, and accordingly, Plaintiff sues for the recovery of reasonable attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code § 37.009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks for the following, in addition to what may be requested above, for each Cause of Action to be awarded:

- Judgment in favor of Plaintiff on all Counts;
- Pre-judgment and post judgment interest on such monetary relief;

- An award of Plaintiff's reasonable attorney's fees and costs under Tex. Civ. Prac. and Remedies Code §§ 37.009;
- For Declaratory Relief, including but not limited to the following Decrees of this Court that:
 - a. Plaintiff is the prevailing party;
 - b. The 2004 Deed of Trust is null and void and of no effect;
 - c. No defendant has an enforceable lien interest against the Property;
 - d. No defendant has an enforceable unsecured interest in the Note;
 - e. Determines all adverse claims to the real property in this proceeding;
 - f. Plaintiff is entitled to the exclusive fee simple ownership of the Property;
 - g. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real Property or any part of the Property.
- After trial or hearing on the merits, Plaintiff requests a **permanent injunction** forever preventing interference with Plaintiff's status as owner under the Deed of Trust;
- Such other and further relief as the nature of the case may require and for which Plaintiff deems himself entitled.

TRIAL BY JURY: Plaintiff requests a trial by jury and will tender the fee for such, if any, as required by the Court.

Respectfully submitted,

Jeffrey Jackson & Associates, PLLC

/s/ Jeffrey C. Jackson

JEFFREY C. JACKSON

Attorney in Charge

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ATTORNEY FOR PLAINTIFF