

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

U.S. BANK N.A., AS TRUSTEE FOR THE §  
REGISTERED HOLDERS OF MASTR §  
ASSET BACKED SECURITIES TRUST, §  
2006-AM1, MORTGAGE PASS- §  
THROUGH CERTIFICATES, SERIES §  
2006-AM1 §

Plaintiff, §

Civil Action No. 4:22-cv-3499 §

v. §

VENISSA FORD A/K/A VENISSA §  
MOSLEY, JASON MOSLEY, QUINTEN §  
TYLER, CHERYL AHAMBA, BERNAL §  
LINDSEY, BERMOINE LINDSEY, JR., §  
DESTINY ROSS, JERMOINE LINDSEY, §  
ELAINE JACKSON A/K/A ELAINE §  
JACKSON LINDSEY, AS NEXT- §  
FRIEND OF A.L., A MINOR, ADRAIN §  
LINDSEY, MARCUS LINDSEY, AND §  
DIANA LINDSEY §

Defendants. §

**PLAINTIFF’S MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM**

COMES NOW, U.S. Bank N.A., As Trustee for the Registered Holders of MASTR Asset Backed Securities Trust, 2006-AM1, Mortgage Pass-Through Certificates, Series 2006-AM1 (“U.S. Bank” or “Plaintiff”), and files this *Motion for Appointment of Guardian Ad Litem* to represent A.L., a minor, and respectfully shows unto the Court as follows:

1. On December 7, 2022, Plaintiff filed its *First Amended Complaint* (“Complaint”) in this action against Defendants Venissa Ford a/k/a Venissa Mosley; Jason Mosley; Quentin Tyler; Cheryl Ahamba; Bernal Lindsey; Bermoine Lindsey; Jr.; Destiny Ross; Jermoine Lindsey;

Elaine Jackson a/k/a Elaine Jackson Lindsey, as next-friend of A.L., a minor; Adrain Lindsey; Marcus Lindsey; and Diana Lindsey.

2. Defendant, Elaine Jackson a/k/a Elaine Jackson Lindsey, as next-friend of A.L., a minor and the granddaughter and heir of deceased borrower, Leal Lindsey, was served with Summons, a copy of the Complaint in this action, and a copy of Judge Alfred H. Bennett's Court Procedures and Practices via personal service on January 30, 2023, at 15235 Loma Paseo Drive, Houston, Texas 77083. [ECF Docket No. 19].

3. The answer of other response of Defendant, Elaine Jackson a/k/a Elaine Jackson Lindsey, as next-friend of A.L., a minor, to the Complaint was due on February 23, 2023. FED. R. CIV. P. 12(a)(1)(A)(i).

4. Defendant, Elaine Jackson a/k/a Elaine Jackson Lindsey, as next-friend of A.L., a minor, has not answered or otherwise appeared in this action.

5. Plaintiff wishes to move the Court to enter default judgment against Defendant, Elaine Jackson a/k/a Elaine Jackson Lindsey, as next-friend of A.L., a minor. However, pursuant to Federal Rule of Civil Procedure 55(b)(2), "[a] default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared." FED. R. CIV. P. 55(b)(2).

6. No guardian, conservator or other like fiduciary has appeared in this action on behalf of A.L., a minor.

7. Federal Rule of Civil Procedure 17(c) provides that the "Court must appoint guardian ad litem – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action." FED. R. CIV. P. 17(c)(2). Federal courts have consistently recognized that they have inherent power under Rule 17(c) to appoint guardian ad litem—and are

obligated to weigh all the circumstances before appointing guardian ad litem. *See Adelman ex rel Adelman v. Graves*, 747 F.2d 986, 989 (5th Cir. 1984)<sup>1</sup>.

8. Plaintiff respectfully requests the Court to appoint guardian ad litem to represent the interest of minor child heir A.L.'s interest in the subject Property. FED. R. CIV. P. 17(c)(2).

9. Plaintiff further requests that the guardian ad litem's fees be limited to an amount deemed reasonable by this Court to be taxed as costs. *Cahill v. Lyda*, 826 S.W.2d 932, 933 (Tex. 1992); *see also Gibbs v. Gibbs*, 210 F.3d 491, 509 (5th Cir. 2000) (citing *Cahill* for the proposition that an ad litem "should be reasonably sure of receiving a fee").

10. Plaintiff further requests that this Court require the guardian ad litem to file a report within thirty (30) days of entry of the order appointing him or her; and, if appropriate, to file an answer.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully requests that this Court:

- (a) appoint guardian ad litem to represent the interests of minor child A.L.,
- (b) order that such guardian ad litem be paid a reasonable fee to be taxed as costs of court,
- (c) order that the guardian ad litem shall have thirty (30) days to file a report with the Court and an answer, if appropriate;
- (d) award Plaintiff such other relief to which it is justly entitled.

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<sup>1</sup> "If the court feels that the infant's interests are otherwise adequately represented and protected, guardian ad litem need not be appointed... But the rule does not mean that a trial judge may ignore or overlook such a fundamental requirement for the protection of infants. We spell out the rule to mean: (1) as a matter of proper procedure, the court should usually appoint a guardian ad litem; (2) but the Court may, after weighing all the circumstances, issue such order as will protect the minor [or incompetent person] in lieu of appointment of a guardian ad litem; (3) and may even decide that such appointment is unnecessary, though only after the Court has considered the matter and made a judicial determination that the infant [or incompetent person] is protected without a guardian." *Adelman*, 747 F.2d at 989.

Respectfully submitted,

By: /s/ Sarah Sibley Cox  
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