

CAUSE NO. _____

DEBORAH JAYNE LARSON,
Plaintiff

§ IN THE DISTRICT COURT OF

§

§

vs.

§

HARRIS COUNTY, TEXAS

§

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR MORGAN
PASS-THROUGH CERTIFICATES,
SERIES 2005-HE1 AND PHH MORTGAGE
CORPORATION,
Defendants

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_____ JUDICIAL DISTRICT

ORIGINAL PETITION TO QUIET TITLE AND FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Deborah Jayne Larson (“Plaintiff” or “Jayne Larson”) files this Original
Petition to Quiet Title, and respectfully shows the Court the following:

**I.
DISCOVERY CONTROL PLAN**

1. Discovery in this action is intended to be conducted under Level 2, in
accordance with TEX. R. CIV. P. 190.

**II.
PARTIES**

2. Plaintiff, Deborah Jayne Larson (“Plaintiff” or “Jayne Larson”) is a daughter of
Sydney Shirley Larson, deceased, and owner of the below described real property. Plaintiff
Jayne Larson is a resident of the State of Texas residing in Travis County.

3. Defendant, Deutsche Bank National Trust Company, as Trustee for Morgan
Stanley ABS Capital I Inc. Trust 2005-HE1, Mortgage Pass-Through Certificates, Series 2005-
HE1 (“Deutsche Bank”) is the lien holder of below described real property. Deutsche Bank
appears to be a national banking association and Plaintiff has attempted to diligently locate the

registered agent via Texas Secretary of State, and a president or branch manager of Deutsche Bank in this state via state and federal records. Despite Plaintiff's diligent efforts, Deutsche Bank appears to have neither a registered agent, nor an office in this state even though Deutsche Bank is a non-resident (a) who is required to designate an agent to prosecute suits in this suit, and (b) who engages in a business in this state and such business is the subject of this suit. Therefore, Deutsche Bank may be served with process **c/o Texas Secretary of State, PO Box 12079, Austin, Texas 78711, to be served on Deutsche Bank's place of business, 1999 Avenue of the Stars, Suite 1000, Los Angeles, California 90067.**

4. Defendant, PHH Mortgage Corporation ("PHH") is mortgage servicer for Deutsche Bank concerning the lien on the below described real property. PHH may be served with process **c/o Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever else such registered agent might be found.**

5. Deutsche Bank and PHH filed an expedited action for foreclosure which remains pending in Cause 469157-401 before Probate Court No. One (1) of Harris County, Texas. Pursuant to Tex. R. Civ. P. 736 further notice is being provided to Deutsche Bank's and PHH's attorney of record in the expedited foreclosure action: Suzanne Suarez, Bonial & Associates, P.C., 14841 Dallas Parkway, Suite 425, Dallas, Texas 75254.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction and venue of this matter because Plaintiff seeks to quiet title and a declaratory judgment. Additionally, the real property which is the subject of the suit is located in Harris County, Texas.

7. Plaintiff seeks non-monetary relief as described herein.

IV.
SUBJECT PROPERTY

8. The real property that is the subject of this litigation is commonly known as 3105 Dow Circle, Deer Park, Texas 77536 (the "Property"). The legal description of the Property is:

LOT SIX (6) OF HARRISON VILLAS, AN ADDITION IN HARRIS COUNTY TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 284, PAGE 124 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.

V.
BACKGROUND

9. On September 4, 2004, Sydney Shirley Larson ("Borrower") executed a Texas Home Equity Deed of Trust (the "Deed of Trust") in favor of lender New Century Mortgage Corporation for purposes of securing a promissory note of even date in the original principal amount of \$88,000.00 (the "Note"). The Deed of Trust was subsequently assigned by Defendant Deutsche Bank.

10. On November 6, 2008, Borrower, through her power of attorney, signed a Special Warranty Gift Deed in favor of James Louis Larson, Jr. and Plaintiff.

11. On June 6, 2009, Borrower passed away.

12. Since Borrower's passing, there have been several foreclosure proceedings between Defendants and James Larson.

13. However, Plaintiff was not a party to any proceeding resulting in a final judgment, despite her having a recorded interest in the Property since 2008.

VI.
SUIT TO QUIET TITLE AND FOR DECLARATORY JUDGMENT

14. All preceding paragraphs are hereby incorporated by reference.

15. Defendants have accelerated the mortgage loan.

16. Tex. Civ. Prac. & Rem. Code § 16.035 requires that a mortgage lien holder within four years of acceleration either file suit for foreclosure or conduct a foreclosure under a power of sale.

17. Defendants have not timely moved to enforce the Deed of Trust lien and the period for seeking enforcement of the lien has expired.

18. Therefore, the Deed of Trust lien is void. Tex. Civ. Prac. & Rem. Code § 16.035(d).

19. Plaintiff requests that the Court declare the Deed of Trust null and void.

20. Plaintiff further asks that the Court declare the Note null and void.

21. Borrower passed away at least four years ago. When Plaintiff recently sought to open an administration for Borrower, Defendants in fact opposed opening such administration of Borrower's estate on grounds that four years had elapsed since the date of Borrower's death. *See* Tex. Estates Code 301.001(a). In the absence of an estate being created for Borrower, Defendants never presented a claim for money regarding a debt evidenced by the Note.

22. Defendants are barred by statute of limitations from seeking enforcement of the Note against any entity or party. Simply stated, there is no party obligated to pay the Note due to the passage of time.

23. The Note, as well as the Deed of Trust, is barred by statute of limitations because Defendants accelerated the debt and failed to open an Estate against whom to file a claim.

VII.
ATTORNEY'S FEES

24. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, Plaintiff asks that the Court award Plaintiff reasonable and necessary costs and attorney's fees related to bringing this declaratory judgment action.

VIII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Jayne Larson requests that the Defendants be cited to appear and answer, and that on final trial, the Plaintiff be awarded:

- a. a declaration that the Deed of Trust is null and void;
- b. a declaration that the Note is null and void;
- c. attorney's fees according to Tex. Civ. Prac. & Rem. Code § 37.009;
- d. Costs of suit;
- e. Pre-judgment interest and post-judgment interest; and
- f. All such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

CRAIN, CATON & JAMES
A Professional Corporation

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