

# Hallelujah, we have what we need

From an Opinion

IN THE  
ARIZONA COURT OF APPEALS  
DIVISION ONE

*KATRINA PERKINS STEINBERGER, as Executor of the Estate of  
Charles A. Perkins, deceased, and individually, Petitioner,*

*v.*

*THE HONORABLE MICHAEL R. MCVEY, Judge of the SUPERIOR  
COURT OF THE STATE OF ARIZONA, in and for the County of  
Maricopa, Respondent Judge,*

*INDYMAC MORTGAGE SERVICES, a division of ONEWEST BANK,  
F.S.B., a Federally Chartered Savings Bank; DEUTSCHE BANK  
NATIONAL TRUST COMPANY, as Trustee of the INDYMAC INDX  
MORTGAGE LOAN TRUST 2005-AR14; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a Delaware Corporation; QUALITY  
LOAN SERVICE CORPORATION, a California Corporation, Real  
Parties in Interest*

*No. 1 CA-SA 12-0087*

*The original promissory note and deed of trust executed by Steinberger's father were "distinct instruments that serve[d] different purposes." Hogan v. Wash. Mut. Bank, N.A., 230 Ariz. 584, 587, ¶ 10, 277 P.3d 781, 784 (2012). Described in their simplest terms, both documents are evidence showing that a borrower owes a debt, e.g., to repay a loan. Silving, 800 F. Supp. 2d at 1067-68. A promissory note "is a contract that evidences the loan and the obligor's [borrower's] duty to repay." Hogan, 230 Ariz. at 587, ¶ 10, 277 P.3d at 784. Similarly, a deed of trust is evidence that a property is held in trust to serve as collateral to secure "repayment of the money owed under the [promissory] note." Id.; A.R.S. §§ 33-801(8), -801(9), -801(11), -805 (2012).*

*Thus, "[i]f [a] lender sells or assigns the beneficial interest in the loan to another MERS member, the change is recorded only in the MERS database, not in county records, because MERS continues to*

*hold the deed [of trust] on the new lender's behalf," e.g., as the deed of trust's nominal beneficiary. Cervantes, 656 F.3d at 1039.*

*It is true that A.R.S. § 47-3604(A)(1) provides that a person who is entitled to enforce an instrument "may discharge the obligation of a party to pay the instrument . . . [b]y an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation or cancellation of the instrument, cancellation or striking out of the party's signature or the addition of words to the instrument indicating discharge." However, this section requires an "intentional voluntary act" that demonstrates that a party intended to forgive the debt or obligation represented by the instrument. *Id.* Accidental or unintentional mistakes in shredding such a document do not satisfy the "intentional voluntary" standard. See *G.E. Capital Mortg. Servs. Inc. v. Neely*, 135 N.C. App. 187, 191, 519 S.E.2d 553, 556 (N.C. Ct. App. 1999) (analyzing the same section of the Uniform Commercial Code and explaining that a note secured by deed of trust was not extinguished when, due to a clerical error, the mortgagee mistakenly cancelled both the note and the deed of trust and surrendered them to mortgagors; mortgagee lacked necessary intent to discharge).*

Here the court in this writer's opinion correctly stated intentional fact. However, missing maybe intentional inducement but such instrument destruction makes it logically and legally impossible for an Allonge to be firmly affixed to the original instrument in accordance to legal requirements of the Uniform Commercial Code Article 3 and each states adopted version. It is not that the instrument is missing; it is the fact that subsequent actions require the instrument(s) existence. Where a party knows that a so called "true and correct copy" exists still does not allow for an allonge to be attached to not the original instrument. As the Uniform Commercial Code requires the original instrument to be

negotiated any created representation of the instrument is not eligible to transfer, assign, and negotiate rights of enforcement to the instrument or any alternate right to a subsequent party. Thus by logical deduction, any subsequent creation of an instrument and presentation of any instrument claiming primary rights and alternate rights can only be deduced to be a fraudulent creation to unlawfully take property. As for the intentional fabricators to escape financial injury as to their own making by attempting to utilize the loss economic rule is misplaced.

Now I lay me down to sleep,  
For Satan is to take my soul to keep.

Why did I lie?  
Between one and the Eternal Creator!