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4 Attorney for Debtor, G8 CAPITAL FUND VII, LLC
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7 UNITED STATES BANKRUPTCY COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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11 GORDY A. SPIRES,
12
13 Debtor.

Case No. 08-13091-LT7
Adv. No. 09-90133-LT
Chapter 13

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15 GORDY A. SPIRES,
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17 Plaintiff,
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19 vs.

OPPOSITION BY G8 CAPITAL TO
MOTION TO SET ASIDE SALE OF
REAL PROPERTY; RULE 60 (B)
CONSIDERATION ON MOTION FOR
RELIEF FROM STAY AND
DECLARATION OF BRETT GILLILAND
IN SUPPORT THEREOF.

19 G8 CAPITAL FUND VII, LLC
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.
20 "MERS" and DOES 1-50, inclusive.

DATE: July 14, 2009
TIME: 10:00 a.m.
PLACE: Ctrm. 3 Rm. 129.
Honorable Laura S. Taylor

21
22 Defendants.
23

24 G8 CAPITAL VII, LLC hereby files it's Opposition to the Motion to Set Aside Sale of
25 Real Property; Rule 60 (B) and for Reconsideration of an Order Granting Motion for Relief from
26 the Automatic Stay as follows:

27 ///

28 ///

1 ARGUMENT

2 First, the Debtor appears to argue that because injunctive relief has not been granted, that
3 some how the matters raised in the State Court action are not *res judicata*. The argument is
4 specious. The Debtor has raised these same arguments in State Court. The State Court denied
5 the arguments and therefore did not grant injunctive relief. (See Exhibit 1 to the Declaration of
6 Brett Gilliland, a copy of the Notice of Ruling from the December 19, 2008 hearing on Debtor's
7 Motion in State Court for the Temporary Restraining Order and Preliminary Injunction.)

8 Second, the Debtor argues that the only reason it has litigated this matter is to negotiate a
9 reasonable loan with the lender. Again, the Debtor is admitting to bad faith. The Debtor either
10 has a good faith claim based upon the merits of the arguments raised in it's motions or the Debtor
11 desires to negotiate a different loan with the lender. The former is allowable, the later is not.
12 The Debtor has also failed to make mortgage payments to G8 Capital since conversion of the
13 case to Chapter 13, even before G8 foreclosed. The Debtor also filed his plan late.

14 Third, the Debtor argues that G8 Capital has no legal standing to foreclose because G8
15 Capital improperly recorded a Quit Claim Deed before foreclosing and that some how the chain
16 of title is "incongruous".

17 The Debtor cites no legal authority for it's position. The moving papers are devoid of
18 points and authorities. The papers are merely filled with the Debtor's rambling conclusionary
19 unsupported statements.

20 Second, the argument is simply wrong. As more fully stated in the Declaration of Brett
21 Gilliland, the Quit Claim Deed from Property Asset Management to G8 Capital was to clear the
22 confusion concerning title. The Quit Claim Deed, is not a transfer of a fee simple interest in the
23 subject real estate. There are no errors in the chain of title. There is no cloud on the property.

24 Finally, Spires Argues G8 Capital's default should be taken because it has not responded
25 to the Complaint.

26 First Spires filed an Amended Adversary Complaint on April 27, 2009. No Summons
27 was
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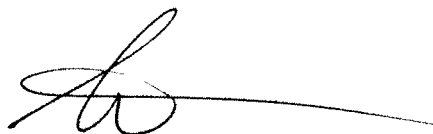
1 ever issued thereon. The Amended Complaint has not been served on G8 Capital or counsel of
2 record.

3 Second, Spires has not served his motions for reconsideration on G8 Capital, or counsel.
4 Spires is only causing the documents to be electronically filed with the court. There are no paper
5 copies of the Amended Complaint, Motion for Reconsideration, originally set for hearing on July
6 1, 2009 or the Notice of Continuance on the Motion for Reconsideration set for July 14, 2009.
7 For the reason, this Opposition has been late filed, and G8 Capital requests leave to late file the
8 Opposition.

9 CONCLUSION

10 The Debtor's Motions should be denied.

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14 Dated: 7/7/2009


15 STEPHEN L. BURTON, ATTORNEY FOR
16 G8 CAPITAL FUND VII, LLC.
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DECLARATION OF BRETT GILLILAND

I, BRETT GILLILAND declare as follows:

1. I am the Vice President of Asset Management for G8 Capital VII, LLC., and as such, I have personal knowledge, and could and would be able to competently testify as follows:

2. I make this declaration in support of G8 Capital's Opposition to the Motion to Set Aside Real Property Sale and Motion for Reconsideration on the Motion for Relief from Stay.

3. The Debtor previously raised the issue concerning the Deed from Property Asset Management to G8 Capital in December 2008 in State Court Proceedings. Judge Jacqueline Stern ruled against the Debtor. A true and correct copy of the Notice of Ruling is attached hereto as Exhibit 1 and incorporated by this reference

4. Since converting his case to Chapter 13, the Debtor has not made a mortgage payment to G8 Capital, this includes the period before G8 Capital foreclosed on the property.

5. The Debtor filed his Chapter 13 Plan late.

6. G8 Capital acquired the Spires mortgage from GE Money Bank. Litton Loan Servicing serviced the loan for GE Money Bank. When a loan service by Litton falls into default, the file is transferred to an entity called Property Asset Management. Property Asset Management is wholly owned by Litton and is responsible for managing all of the default action and communication for Litton's defaulted loan file, including pre and post foreclosure activity.

7. Prior to acquiring the Spires' mortgage, the loan had been identified by Litton as a nonperforming asset, and Notice of Default was filed and the actual file was transferred to Property Asset Management.

8. G8 Capital acquired the Spires loan at the end of July 2008. GE Money Bank assigned the Spires Note and Deed of Trust to G8 Capital.

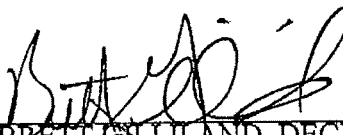
9. In October of 2008, approximately 3 months after G8 Capital had acquired the loan from Litton, G8 Capital was informed that Property Asset Management's name continued to appear on County Title records as having an interest in the First Mortgage. Even though Property Asset Management had no ownership claims or rights to the First Mortgage, it remained

1 in the chain of title and could have resulted in a "confusion or clouding" as the holder of the
2 beneficial right or interest concerning title to the property.

3 10. To remedy this confusion, Property Asset Management Quit Claimed all of it's right
4 title and interest to G8 Capital. This was not a transfer in Fee Simple. This was a transfer by
5 way of Quit Claim. Nothing more.

6 I declare under penalty of perjury pursuant to the laws of the United States that the
7 foregoing is true and correct.

8 Executed this 8th day of July, 2009 at Ladera Ranch, California.

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12 BRETT GILLILAND, DECLARANT
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EXHIBIT 1

FILE COPY

08/05/08 01:21:33

CLERK OF COURT
COUNTY OF SAN DIEGO

1 Sean A. O'Brien, Bar No. 133154
2 PAYNE & FEARS LLP
3 Attorneys at Law
4 4 Park Plaza, Suite 1100
5 Irvine, CA 92614
6 Telephone: (949) 851-1100
7 Facsimile: (949) 851-1212
8 E-Mail: sao@paynefears.com

9 Attorneys for Defendant G8 CAPITAL FUND VII, LLC
10 (erroneously sued as "G8 CAPITAL")

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

13 FAXED

14 GORDY SPIRES,

15 Plaintiff,

16 v.

17 GE MONEY BANK; FIRST CAPITAL
18 FINANCIAL RESOURCE; G8 CAPITAL;
19 PAPPERTREE FINANCIAL, INC.; AND
20 DOES 1-25,

21 Defendant.

22 CASE NO. 37-2008-00060507-CU-OR-NC

23 Case assigned to: Judge Jacqueline M. Stern
24 Department N-27

25 NOTICE OF RULING ON PLAINTIFF'S
26 MOTION FOR TEMPORARY
27 RESTRAINING ORDER AND ORDER
28 TO SHOW CAUSE RE PRELIMINARY
INJUNCTION

Hearing Date: December 19, 2008
Time: 1:30 p.m.
Courtroom: N-27

PLEASE TAKE NOTICE that on December 19, 2008, at 1:30 p.m., the OSC on Plaintiff Gordy Spires' motion for preliminary injunction came on for hearing. Counsel for Plaintiff and Defendant G8 Capital Fund VII, LLC appeared in person, and counsel for Defendant GE Money Bank appeared telephonically. After hearing oral argument, and considering the papers previously submitted by the parties, the Court DENIED the Preliminary Injunction and dissolved the current temporary restraining order in accordance with the previously issued tentative ruling, a copy of which is attached hereto as Exhibit "A."

COPY

PAYNE & FEARS LLP
ATTORNEYS AT LAW
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DATED: December 19, 2008

PAYNE & FEARS LLP

By: 
SEAN A. O'BRIEN

Attorneys for Defendant
G8 CAPITAL FUND VII, LLC (erroneously sued as
"G8 CAPITAL")

4842-6315-0851.1

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EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
SOUTH BUILDING
TENTATIVE RULINGS - December 18,2008**

EVENT DATE: 12/19/2008 EVENT TIME: 01:30:00 PM DEPT.: N-27

JUDICIAL OFFICER: Jacqueline M. Stern

CASE NO.: 37-2008-00060507-CU-OR-NC

CASE TITLE: SPIRES VS. GE MONEY BANK

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other Real Property

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT

/DATE FILED:

The Court declines to consider Defendant's Cross-Motion to Expunge Lis Pendens. This motion was not scheduled with the Court and is thus not on the Court's calendar for Dec. 19, 2008. Defendant also did not pay the filing fee for this motion.

The Court also declines to consider new evidence submitted with Plaintiff's reply. That evidence could and should have been presented in Plaintiff's moving papers. Defendant has no opportunity to respond to new evidence presented for the first time in a reply brief.

The Court rules on Defendant's evidentiary objections as follows:

To Plaintiff's original declaration:

Objection no. 2 is sustained. The balance of Defendant's evidentiary objections to Plaintiff's original declaration is overruled.

To Plaintiff's reply declaration:

The Court declines to rule on objections 1-12. As indicated above, the underlying evidence is not being considered as it constitutes new evidence which could and should have been presented in the moving papers.

Objection no. 13 is sustained.

To the Landers reply declaration:

Objection no. 3 is sustained.

Objection no. 1 is sustained, as to the violation of the secondary evidence rule.

The conclusory objection in objection nos. 2 and 4 are sustained.

Plaintiff's Request for Judicial Notice is granted as to exhibits 1, 3, and 4 to Plaintiff's declaration and granted as to exhibits 1, 2, 3, and 5 to the reply brief.

Plaintiff's Application for Preliminary Injunction is denied. Pursuant to CCP Section 526, to prevail on an application for

CASE TITLE: SPIRES VS: GE MONEY BANK

CASE NUMBER: 37-2008-00060507-CU-OR-NC

preliminary injunction, Plaintiff must demonstrate, among other things, that there is a reasonable probability of prevailing on the merits. Here, Plaintiff has not met that burden.

In his complaint, Plaintiff alleges Defendants lack standing to foreclose as they are not the current holder of the note, Defendants knew or had reason to know Plaintiff could not and would not be able to sustain the property and pay the monthly mortgage and would ultimately be in jeopardy of losing the home to foreclosure; failed to provide material disclosures to Plaintiff as required by Calif. and federal statutes; Defendants fraudulently induced Plaintiff to enter into a loan contract that create an unconscionable balloon payment that Plaintiff would never be able to pay off and never be able to refinance in the future; and Defendants violated the Fair Debt Collection practices law.

In his supporting declaration, Plaintiff presented no evidence that Defendants lack standing. Instead, he says he requested information from Defendants showing who actually holds the note, which Defendants have not provided. That is not evidence that Ds lacked standing. It is evidence that Defendants refused to provide Plaintiff with documentation showing standing.

As to the allegation that the lender put Plaintiff in a loan that it knew he would not be able to repay, Plaintiff states that that he informed GE Money that his monthly income was only \$19,000 and gave it bank statements to support this amount. However, pursuant to the Gilliland declaration at para. 9, those statements actually showed Plaintiff's average monthly bank deposits were \$23,122.85. Plaintiff's reply admits that his bank statements might have shown his income at between \$19,000 to \$23,000. In addition, Plaintiff admitted to Litton Loan, the prior loan servicer, that he was able to make the payments at the outset, but that the reason he could no longer do so was due to his current financial situation. (See Defendant's exhibit K) Based on this record, Plaintiff's evidence is not sufficient to demonstrate a likelihood of prevailing on the merits of his claim that Defendants knew that Plaintiff would not be able to make the required payments.

There is no evidence in Plaintiff's moving declaration to support the allegation that Defendants violated the Fair Debt Collection Practices Act. It is not until Plaintiff's reply declaration that he presents evidence that Gilliland threatened Plaintiff with legal action that G8 was not entitled to take. This evidence could and should have been presented with the moving papers and Defendant has no opportunity to respond to it when it is presented for the first time in the reply brief.

The reply also brings up new issues concerning G8's alleged transfer of title out of Plaintiff's name and whether there was a valid substitution of trustees. As this evidence could and should have been presented in the moving papers, it cannot be considered in ruling on this motion. All of the documents relied on were available to Plaintiff at the time of the ex parte on Nov. 7, 2008. But even if they were not available, new evidence cannot be presented for the first time in the reply as Defendant has no opportunity to respond to it.

As to Plaintiff's claim that he had no notice of the identity of the true holder of the note, pursuant to the Gilliland declaration several notices were sent to Plaintiff identifying G8 as the note holder. Plaintiff did not complain to Mr. Gilliland during his extensive contacts with him that he was unaware of who held the note. (See Gilliland declaration, paragraphs 15-29) Thus, Plaintiff has not met his burden of showing he did not know who holds the note on his property.

Similarly, Plaintiff's declaration evidence that he was unaware at the close of escrow that this note had a balloon payment is belied by the fact the note is entitled "Balloon Note" and it was signed by Plaintiff under penalty of perjury. (See Defendant's exhibit A) Thus, Plaintiff's declaration in this regard clearly does not meet his burden of showing a likelihood of prevailing on his claim that he was not told of the balloon payment provision.

CASE TITLE: SPIRES VS. GE MONEY BANK

CASE NUMBER: 37-2008-00060507-CU-OR-NC

The Nov. 7, 2008 Temporary Restraining Order is hereby dissolved.

PROOF OF SERVICE

Gordy Spires v. GE Money Bank, et al.

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On December 19, 2008, I served the following document(s) described as **NOTICE OF RULING ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

Roy L. Landers, Esq.	Attorneys For Plaintiff GORDY
Law Offices of Roy L. Landers	SPIRES
7840 Mission Center Court, Suite 101	
San Diego, California 92108	
TEL: (619) 296-7898	
FAX: (619) 296-5611	

- (By U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
- (By Personal Service)** I caused to be delivered by hand, via First Legal Support Services, whose business address is 301 Civic Center Drive West, Santa Ana, California 92701, telephone (714) 541-1110, on the interested parties in this action by placing the above mentioned document(s) in an envelope addressed to the office of the addressee(s) listed above.
- (By Facsimile)** I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 19, 2008, at Irvine, California.


REBECCA L. ESPINOSA

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(949) 851-1100

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DECLARATION OF SERVICE BY MAIL

(U.S. BANKRUPTCY COURT, SOUTHERN DISTRICT, LOCAL RULE 4001-5

Stephen L. Burton, the undersigned, hereby declares:

Declarant is a citizen of the United States and is employed by the Law Offices of Stephen L. Burton, 15260 Ventura Boulevard, Suite 640, Sherman Oaks, California 91403. Declarant is over the age of 18 and not a party to the within action.

On July 8, 2009 I served the within **OPPOSITION BY G8 CAPITAL TO MOTION TO SET ASIDE SALE OF REAL PROPERTY; RULE (B) CONSIDERATION ON MOTION FOR RELIEF FROM STAY AND DECLARATION OF BRETT GILLILIAND IN SUPPORT THEREOF** upon the parties interested in said action by mailing, with postage thereon fully prepaid, a true copy thereof to said party at his or their known address, to wit;

See attached list.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this July 8, 2009 at Sherman Oaks, California.



Liliana Fisher

SERVICE LIST

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Debtor

Gordy A. Spires
4743 Crater Rim Rd.
Carlsbad, CA 92010

Attorney for the Debtor

Joseph J. Rego
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Chapter 13 Trustee

Thomas H. Billingslea
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San Diego, CA 91403

U.S. Bankruptcy Court Judge

Laura S. Taylor
United States Bankruptcy Court
325 West F. Street
San Diego, CA 92101