

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

2023 FEB -7 AM 10:09
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

UNITED STATES OF AMERICA,

CASE NO.: 2:22-cr-39-SPC-NPM

Plaintiff,

v.

DANIEL JOSEPH TISONE,

Defendant.

PETITION FOR ADJUDICATION OF VALIDITY OF INTEREST IN
PROPERTY

Mortgage Electronic Registration Systems, Inc. (“MERS”) and Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as trustee for the holders of SGRMT 2021-2 Mortgage Pass-Through Certificates (“Wilmington”) (together, “**Petitioners**”), petition the Court, pursuant to 21 U.S.C. § 853(n) and other applicable law, for an order recognizing the validity of their secured interest in certain real property, and respectfully show the Court as follows:

1. The real property subject to this Petition is described in the United States’ Motion for Order of Forfeiture and Preliminary Order of Forfeiture for Direct Assets (ECF No. 68) and Order on that Motion (ECF No. 69) as follows:

Real property located at 550 Starboard Drive, Naples, Florida 34103, including all improvements thereon and appurtenances thereto, the legal description of which is as follows:

Lot 5, Block F, THE MOORINGS, UNIT NO. 6, in accordance with and subject to the plat thereof, recorded in Plat Book 8, pages 7 and 8, of the Public Records of Collier County, Florida.

(the “**Property**”).

2. On June 2, 2021, TEC Ventures LLC, a Virginia Limited Liability Company, by and through Defendant Daniel Tisone, as member (“**Borrower**”) took out a secured purchase money mortgage loan to acquire the Property. In connection therewith, Borrower executed a promissory note in the original principal amount of \$1,999,500.00 in favor of SG Capital Partners LLC dba Clearedge Lending (“**SG Capital**”), on June 2, 2021 (the “**Note**”).

3. The Note is secured by a first-priority mortgage lien on the Property in favor of MERS, as mortgagee as nominee for SG Capital and its successors and assigns, which was also executed by Borrower on June 2, 2021 (the “**First Mortgage**”). The First Mortgage was recorded in the Public Records of Collier County, Florida on June 4, 2021, in Book 5959 at Page 998. The Warranty Deed transferring the Property to Borrower was executed on May 26, 2021, and was recorded in the Public Records of Collier County, Florida on June 4, 2021, in Book 5959 at Page 996 (the “**Deed**”). As of the filing of this Petition, MERS is still the mortgagee of record under the First Mortgage.

4. True and correct copies of the Note, the First Mortgage, and the Deed are attached hereto as **Exhibits A, B, and C**, respectively.

5. Wilmington subsequently acquired the Note and is the successor and assignee to SG Capital on the Note.

6. Select Portfolio Servicing, Inc. ("**SPS**") is the mortgage loan servicer and attorney-in-fact for Wilmington. A true and correct copy of the power of attorney evidencing SPS's authority is attached hereto as **Exhibit D**.

7. As of January 2023, Borrower's loan is currently delinquent. The current due date of the loan is July 1, 2022.

8. Petitioners MERS and Wilmington qualify as a lienholder and a lender, respectively, including because the First Mortgage lien, which was a purchase money mortgage loan: (1) was established by operation of law or contract; (2) was created as a result of an exchange of money, goods, or services; and (3) is perfected against the specific real Property, including through the First Mortgage. *See* 28 CFR § 9.2.

9. Petitioners have a valid, good faith, and legally cognizable interest in the Property as a lienholder and an innocent owner, and therefore Petitioners' interest in the property is not subject to forfeiture to the United States by reason of an act or omission of Borrower, or Defendant Daniel Tisone personally, including because: (1) Petitioners did not know of the conduct giving rise to forfeiture or any violation of the law; (2) Petitioners are a bona fide mortgagee and lender for value; (3) Petitioners did not know and were reasonably without cause to believe the Property was subject to forfeiture or involved in any violation of the law; and/or (4) Petitioners did not explicitly or implicitly consent to the acts or omissions giving rise to this action, and had no knowledge the users of the Property had any record for violating the laws of

the United States. *See* 21 U.S.C. § 853 (c), (n); 18 U.S.C. § 983 (d)(2)(A), (d)(3)(A); 28 C.F.R. § 9.5(a)(1).

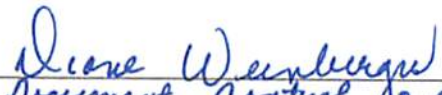
WHEREFORE, Petitioners petition the Court, if the parties are unable to stipulate or reach settlement, for a hearing to adjudicate the validity of Petitioners' secured interest as a mortgage lienholder, in the case of MERS, and as a lender, in the case of Wilmington, in the Property, for the release of any *lis pendens* filed and/or recorded against the Property, and for an order (a) recognizing the continued existence and validity of Petitioners' first lien on the Property because Petitioners are an innocent mortgage lienholder (MERS) and lender (Wilmington); (b) ordering the unpaid principal balance, escrow advances, interest, charges, and fees on the loan be paid from the proceeds of the sale of the Property after the expenses of preservation of the sale and before distribution to other claimants; and (c) for all further relief to which Petitioners may be entitled.

[Verifications on following page(s)]

VERIFICATION

My name is Diane Weinberger. I am capable of making this verification. I am a Document Control Officer of Select Portfolio Servicing, Inc., servicer and attorney-in-fact for Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as trustee for the holders of SGRMT 2021-2 Mortgage Pass-Through Certificates. I have read the foregoing Petition for Adjudication of Validity of Interest in Property. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

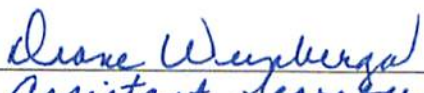
Executed on the 1st day of February, 2023.


Document Control Officer
Name: Diane Weinberger

VERIFICATION

My name is Diane Weinberger. I am capable of making this verification. I am an Assistant Secretary of Mortgage Electronic Registration Systems, Inc. I have read the foregoing Petition for Adjudication of Validity of Interest in Property. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 1st day of February, 2023.


Assistant Secretary
Name: Diane Weinberger

Respectfully submitted,

QUARLES & BRADY LLP

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Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/Joseph T. Kohn
Joseph T. Kohn