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Attorney for Debtors  
Richard Souza Caporale  
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United States Bankruptcy Court

Northern District of California

In re: ) Case No.: 07-54109  
)  
RICHARD SOUZA CAPORALE ) Adv. No 09-05050  
ISABEL ANN CAPORALE )  
)  
)  
)  
Debtors. )

RICHARD CAPORALE AND ISABEL  
CAPORALE  
Plaintiffs,

vs.

SAXON MORTGAGE SERVICES INC.,  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR MORGAN  
STANLEY, MSAC 2007-NC3 AND DOES 1-  
10

Defendants.

**APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER**

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Wherefore, the plaintiff prays the Court grant his application and order defendants to establish that they perfected their security interest or declare the defendants debt discharged.

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- 1 Deutsche Bank National Trust Company, as Trustee for Morgan Stanley, MASC 2007-NC3.
- 2 8. On August 20, 2007, SAXON caused a Notice of Default to be recorded in the Office of the
- 3 Santa Clara County Recorder.
- 4 9. On October 11, 2007, the assignment from MERS as nominee for New Century Mortgage
- 5 Corporation assigning the underlying Deed to Saxon Mortgage Services, Inc. dated August
- 6 11, 2007 was recorded in the office of the Santa Clara County Recorder.
- 7 10. On December 10, 2007, CAPORALE filed a bankruptcy under chapter 13 of the United
- 8 States Bankruptcy Code.
- 9 11. On April 28, 2008, Saxon transferred its interest in the Deed to Deutsche Bank Trust
- 10 Company Americas formerly known as Banker's Trust Company, as Trustee and Custodian
- 11 for Morgan Stanley, MASC 2007-NC3: BY Saxon Mortgage Services, Inc. F/K/A/ Meritech
- 12 Mortgage Services, Inc. as its attorney-in-fact.
- 13 12. On August 26, 2008, the assignment from Saxon Mortgage Services, Inc. to Deutsche Bank
- 14 National Trust Company, as Trustee for Morgan Stanley, MSAC 2007-NC3 dated August
- 15 17, 2007, was recorded in the office of the Santa Clara County Recorder.
- 16 13. On or about October 27, 2008 defendants conducted a non-judicial foreclosure sale without
- 17 first obtaining relief from the automatic stay.
- 18 14. On December 17, 2008, plaintiffs received their discharge.
- 19 15. On January 26, 2009, plaintiffs submitted in writing a request to defendants that defendants
- 20 produce the Note. Defendant's produced a copy of the Note but have not produced or
- 21 confirmed that they have possession of the original Note.
- 22 16. On or about February 13, 2009, defendants cause a Notice of Trustee Sale to be published.
- 23 17. The foreclosure sale is scheduled to take place on March 2, 2009.
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1 18. Defendants have failed to comply with Civil Code Section 2923.5.

2 **CONCLUSION**

3 Before two senior citizens become homeless, defendants should demonstrate they have  
4 the right to enforce the underlying promissory note. There is nothing in the public record  
5 evidencing defendant's right to foreclose and they have not provided any evidence that they  
6 have perfected their security interest.

7 As such, plaintiff pray their application be granted until such time defendants can  
8 establish they have the right to enforce the underlying promissory note.

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11 Dated: 2/24/2009

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14 /s/ Marc Voisenat

15 Marc Voisenat, Attorney for  
16 Plaintiffs Richard and Isabel  
Caporale