

1. Rene Mauricio Rodriguez
4701 N. 50th Dr.
2 Phoenix, AZ. 85031
623-849-0133

3 Pro Per

5 UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA
6 IN AND FOR MARICOPA COUNTY ARIZONA

7 **CIV '09 258 6 PHX GMS**

8 Swartz & Brough Inc.,
9 Plaintiff,
10 vs.

11 Rene Mauricio Rodriguez,
12 Defendants.

) Case No.
)
) Memorandum In Support
) and Request For
) Judicial Notice
)
) Date:
) Time:
) Dept:
)
Action Filed:

18
19 JUDICIAL NOTICE

20 Defendant Rene Mauricio Rodriguez, acting as pro per in the above caption cause asks
21 that this court take judicial notice that pro se litigants are held to less stringent
22 pleading standards; Haines v. Kerner, 404 U.S. 519-421; Platsky v. C.I.A., 953 f.2d.
23 25; Anastasoff v. United States, 223 F.3d. 898 (8th Cir. 2000). In re Haines: pro se
24 litigants are held to less stringent pleading standards than admitted or licensed bar
25 attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are
26 entitled to the opportunity to submit evidence in support of their claims. In re
27 Platsky: court errs if court dismisses pro se litigant without instruction of how
28 pleadings are deficient and how to repair pleadings. In re Anastasoff: litigants

1 constitutional (guaranteed) rights are violated when courts depart from precedent
2 where parties are similarly situated. See also Bird v. Estelle, 660 F.2d. 592 (1981).

3 I.

4 FACTS

5 Defendant, Rene Mauricio Rodriguez is the owner in fee of 4701 N. 50th Dr. Phoenix,
6 Arizona 85031 and resides at the premises.

7 Plaintiff Swartz & Brough is the entity proceeding with eviction proceeding against
8 Defendant, and the party claiming to have purchased Defendant's home in a foreclosure
9 sale on or around Nov. 5, 2009.

10 America's Servicing Company was the servicer of Defendants mortgage account and the
11 entity based in California that initiated foreclosure proceedings without Defendant's
12 knowledge as Defendant was working out a modification plan with servicer. Defendant
13 believes that the foreclosure sale was illegally conducted and must be revisited
14 before any eviction proceedings should commence, which may result in Plaintiff, Swartz
15 & Brough having a claim against the mortgage servicer. Furthermore Defendant believes
16 that the parties involved in the Trustee's sale were not authorized to conduct said
17 sale under Arizona law, as to be further explained.

18 II.

19 THERE IS A LIKLIHOOD OF SUCCESS AND THERE WILL BE

20 LITTLE OR NO HARM TO DEFENDANTS IN GRANTING

21 THE PROVISIONAL INJUNCTIVE RELIEF

22 In determining whether to grant injunctive relief, courts must evaluate the following
23 two interrelated factors: (1) the likelihood that Plaintiffs will prevail and (2) the
24 harm Plaintiffs are likely to suffer if the preliminary injunction is denied as
25 compared to the harm that Defendants are likely to suffer if the preliminary
26 injunction is issued. "Mortgagor was entitled to preliminary injunction of mortgage
27 foreclosure pending determination of merits of mortgagor's claims; balance of
28 hardships sufficiently favored mortgagor and questions raised by pleadings were

1 substantially serious, requiring litigation." Sun Village Farms v. Bowery Sav. Bank
2 735 F. Supp. 945 D. Ariz. (1990).

3 Here, given the unique nature under the law of every piece of real property, the risk
4 of irreparable harm to the current owner of the premises, which cannot be adequately
5 compensated by damages, is a given. In fact, it is the very basis upon which the rule
6 is based that a contract for the purchase of real property can be specifically
7 enforced by a buyer. What's more, given the law of negotiable instruments and the fact
8 of securitization of negotiable instruments secured by mortgage loans over the last
9 decade, the likelihood of success in the underlying case becomes high, since, as is
10 more fully discussed below, there is no apparent connection of the "Beneficiary" to
11 the note, as a holder in possession, or a non-holder in possession entitled to enforce
12 payment under the note.

13 III.

14 A DEED OF TRUST OR MORTGAGE WITHOUT
15 AN ENFORCEABLE RIGHT IS LEGAL NULLITY.

16 Arizona law is well established that a deed of trust or mortgage by itself is
17 ineffective to allow foreclosure. 9th Cir. BAP (Ariz.) 1991 states, "Under Arizona law,
18 creditor was required to take possession of note and deed of trust in favor of debtor
19 in order to perfect security interest in such documents, which were offered as
20 collateral by debtor. A.R.S. § 47-9304, subd. A In re Allen, 134 B.R. 373." Likewise,
21 transfers of the note and mortgage fundamentally flow back to the note. "Mortgage is
22 meaningless without an underlying indebtedness." Pioneer Annuity Life Ins. Co. by
23 Childers v. National Equity Life Ins. Co., 765 P.2d 550, 159 Ariz. 148 (1988).
24 "Mortgage is not a "debt," but merely security for payment of debt." Maine v. Clack,
25 33 P.2d 283, 43 Ariz. 492 (1934). "Subsisting obligation is essence of mortgage."
26 Merryweather v. Pendleton, 367 P.2d 251, 90 Ariz. 219 (1962). "While assignment of note
27 carries the mortgage with it, assignment of mortgage alone does not convey any
28 interest in the note or its proceeds." U.S. v. Hoffman, 170 Ariz. 477, 826 P.2d 340
(Ct. App. Div. 2 1992) (overruled by, Rodney v. Arizona Bank, 172 Ariz. 221, 836 P.2d

1 434 (Ct. App. Div. 2 1992)). "If underlying indebtedness is invalid or void, security
2 therefore must necessarily fail as well." In re Janis, 125 B.R. 274.
3 Law Rev. 1960. Interim financing on housing projects. Edward C. LeBeau. 2 Ariz. Law
4 Rev. 212.

5 IV.

6 PARTIES DO NOT NOR DID THEY APPEAR TO HAVE ANY ENFORCEABLE

7 RIGHT UNDER THE NOTE, PAYMENT OF WHICH IS SECURED

8 BY THE SECURITY INSTRUMENT

9 As previously discussed, some Parties are nowhere mentioned or referenced as the
10 payees in the underlying note. Certainly if the original note was never executed,
11 Parties would have no rights whatsoever arising solely from the deed of trust, even if
12 and whether or not the deed of trust had been properly assigned and the assignment
13 properly recorded. Accordingly, the genesis of enforceable rights can only be created
14 by the underlying note.

15 Arizona law of negotiable instruments is well settled. Under Arizona law, the
16 enforceability of a negotiable instrument only arises from various attributes of
17 **possession** of the underlying instrument.

18 Where an instrument has been transferred, enforceability is still determined based
19 upon **possession**. See Rodney v. Arizona Bank, 836 P.2d 434, 172 Ariz. 221 (1992), which
20 states, "Assignee of promissory note was not holder in due course, and therefore did
21 not take note free of security interest, where assignee never had possession of note.
22 A.R.S. § 4703302, subd. A."

23 There are only three (3) instances, **all arising from possession**, which allow a person
24 to enforce a negotiable instrument. Arizona Revised Statutes § 47-3301 limits
25 enforcement to the following:

26 "Person entitled to enforce" an instrument means (A) the **holder** of the instrument, (b)
27 a **nonholder in possession** of the instrument who has the rights of a holder, or (c) a
28 **person not in possession** of the instrument who is entitled to enforce the instrument
pursuant to A.R.S. § 47-3309 or subdivision (d) of A.R.S. § 47-3418. A Person may be a

1 person entitled to enforce the instrument even though the person is not the owner of
2 the instrument or is in wrongful possession of the instrument. (Emphasis added)

3 Without any apparent right to declare a default and to foreclose on the deed of trust,
4 whether by Trustee's sale or by judicial action, Parties must produce satisfactory
5 evidence of their respective rights as payee(s) under the note, from which would
6 emanate parties consequent right to direct Trustee to act under any power of sale in
7 the Deed of Trust. A.R.S. § 47-3301 delineates each possible basis of a right to
8 demand payment under the note and therefore foreclose on the note as a result of
9 default. Parties must trace a right to proceed, if at all, under A.R.S. § 47-3301.

10 First, under A.R.S. § 47-3301(a), Parties can demonstrate, if they can, that they are
11 holders of the instrument as that term is defined by A.R.S. § 47-1201. "Holder": (A)
12 means the person in possession of a negotiable instrument that is payable either to
13 bearer or, to an identified person that is the person in possession; or (B) the person
14 in possession of a document of title if the goods are deliverable either to bearer or
15 to the person in possession. To do so, they must submit adequate evidence that they
16 possess or were in possession of the note identified in the security instrument, in a
17 form either made payable to bearer of it. Defendant believes that on the face of the
18 Deed of Trust, it would seem that neither is the case here and that Parties cannot
19 prove the right under A.R.S. § 47-3301 subd. (a).

20 Absent such a showing, it has no enforceable rights under that subdivision.

21 Failing qualification under subdivision (a), Defendants must demonstrate that they are
22 entitled to proceed under either subdivision (b) or (c). Subdivision (b) applies to a
23 "nonholder" in possession of the instrument that has the rights of a holder (A.R.S. §
24 47-3301 subd. (b)). The first hurdle to qualifying under subdivision (b) is to show
25 that one of the named or unnamed DOE Defendants is in possession of the note. The
26 second hurdle is to show that one of the named or unnamed Parties has the rights of a
27 holder, by valid assignment or otherwise. If the Parties are not in possession of the
28 instrument, which Defendant believes to be the case here, Parties must justify their
attempt to foreclose under subdivision (c). To proceed under that subdivision, Parties

1 must show that they are nevertheless entitled to enforce the note under either A.R.S.
2 § 47-3309. "Enforcement by person not in possession of instrument: (a) A person not in
3 possession of an instrument is entitled to enforce the instrument if (1) the person
4 was in possession of the instrument and entitled to enforce it when loss of possession
5 occurred, (2) the loss of possession was not the result of transfer by the person or a
6 lawful seizure, and (3) the person cannot reasonably obtain possession of the
7 instrument because the instrument was destroyed, its whereabouts cannot be determined,
8 or it is in the wrongful possession of an unknown person or a person that cannot be
9 found or is not amenable to service of process." or subdivision (d) of A.R.S. § 47-
10 3418 "Notwithstanding A.R.S. § 47-4212, if an instrument is paid or accepted by
11 mistake and the payor or acceptor recovers payment or revokes acceptance under
12 subdivision (a) or (b), the instrument is deemed not to have been paid or accepted and
13 is treated as dishonored, and the person from whom payment is recovered has rights as
14 a person entitled to enforce the dishonored instrument." A.R.S. § 47-3418(d)".
15 (A.R.S. § 47-3301 subd. (c)).

16 Under A.R.S. § 47-3309, enforcement by Parties depends upon proof of three (3)
17 conditions. First, Parties must offer proof that they were in possession of the note
18 and entitled to enforce the note when loss of possession occurred. Again, Defendant
19 does not believe that any of the Parties named and unnamed were ever in possession of
20 the note, and therefore are unable to qualify under A.R.S. § 47-3309. But even if
21 proof exist that Parties were in possession of the note and entitled to enforce it
22 when the loss occurred, then they must additionally show that loss of possession was
23 not, either the result of transfer by Parties, or of any lawful seizure. Finally, to
24 benefit from the rule of A.R.S. § 47-3309, a person not in possession of the
25 instrument must satisfy at last condition, too, i.e. that "the person (Parties) cannot
26 reasonably obtain possession of the instrument, because the instrument was destroyed,
27 its whereabouts cannot be determined, or it is in the wrongful possession of an
28 unknown person or a person that cannot be found or is amenable to service of process.

1 Absent satisfactory proof of these three (3) conditions, it has no right to enforce
2 the instrument under A.R.S. §§ 47-3301 (c) and 3309.

3 In theory, Parties could proceed under A.R.S. § 47-3301 (c) if they were entitled to
4 proceed against the note under A.R.S. § 47-3418 (d). That provision deals with the
5 situation when instrument is paid or accepted by mistake, not the case here of a
6 foreclosure alleged to be justified by default of payment under the terms of the note.
7 Defendant cannot see how that provision would come into play here, but of course, the
8 Parties are entitled to submit proof to the contrary.

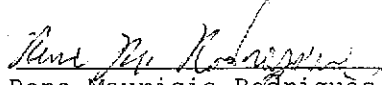
9 Defendant challenges Parties right to foreclose on subject property on grounds that
10 the Parties lack standing to commence foreclosure sale of subject property. We all
11 should by now be pretty familiar with the smoke and mirror tricks of these mortgage
12 lenders that deal in sub-prime mortgages given the many horror stories disclosed in
13 the various media outlets, but as a refresher we will take a short walk in the
14 footsteps of the typical sub-prime mortgage note, which is essential when a party is
15 attempting to foreclose on a debtor/trustor. First the mortgage loan is closed in the
16 name of a small correspondent mortgage lender pursuant a written agreement by an
17 additional correspondent unknown to the borrower, which agrees to purchase the loan
18 immediately after closing. The unknown correspondent is the party really funding the
19 loan. By failing to disclose the true nature of the loan and the additional parties
20 involved, the federal truth-in-lending act (TILA) is violated on its face. The
21 borrower-mortgager executes the promissory note and mortgage or deed of trust security
22 instrument, all of which are recorded in the county records. The promissory note is
23 then endorsed over to the correspondent lender with an endorsement by the closing
24 lender and usually undated. The closing lender will also usually execute a mortgage
25 assignment together with the mortgage or deed of trust. Under the UCC negotiation of a
26 promissory note is by endorsement and delivery. Now the originating lender has washed
27 its hands of all of its dirty dealings, which generally occurs to make the loan. Now
28 when a small originator is not used in the making of loans as in the case of the
plaintiff the mortgage servicer will make the loan in this way. First the borrower is

1 the maker of the promissory note and the grantor of a mortgage or deed of trust in
2 favor of the originating servicer. The corresponding lender will fund these types of
3 loans using a revolving "warehousing line of credit" with a commercial bank, by giving
4 the warehousing bank a security interest in the loan it is funding, and the bank will
5 hold the promissory note as collateral for this warehousing loan.

6 The corresponding lender endorses the promissory note in blank and then forwards the
7 note to either the warehousing bank or to an institutional custodian. The
8 corresponding lender will remain the owner of the note until the promissory note is
9 sold to a mortgage investor and the warehousing bank is the holder of the promissory
10 note, which serves as collateral for its loan to the corresponding lender, and once
11 again this all occurs to the dismay of the borrower, and in violation of (TILA),
12 further more the contract entered by the borrower is void ultra vires. After this the
13 notes journey gets even more complicated, but for the sake of space and precious time
14 plaintiff will forego explaining the explicit details. But as the note is transferred
15 under the statute of frauds a written assignment is required.

16 When a mortgage goes into default the servicer will orchestrate the foreclosure by
17 using a national "foreclosure specialist", under a disguised identity such as a
18 Trustee, but truthfully this masquerading Trustee is nothing more than a debt
19 collector. The nature of the Trustee's function is to represent the interest of both
20 the Trustor and the beneficiary equally. Any dereliction of duty by said Trustee would
21 leave them open to a claim of breach of fiduciary duty by Defendant in the case at
22 bar. These foreclosure specialist, which are not really Trustees, will immediately
23 begin to fabricate documents in support of foreclosure actions, such as false and
24 perjured affidavits as evidence in their premature foreclosures, and never bother to
25 obtain the promissory note, prior to commencing foreclosure actions, because borrowers
26 are uninformed about how to defend against foreclosures. Federal standing rules
27 require that a claimant have a pecuniary interest in the subject matter of the suit.
28 If the claimant is the original lender, the claimant can meet its burden by
introducing evidence as to the original loan. If the claimant acquired the note and

1 mortgage from the original lender or from another party who acquired it from the
2 original lender, the claimant can meet its burden of evidence that traces the loan
3 from the original lender to the claimant. A claimant who is servicer must in addition
4 to establishing the rights of holder, identify itself as an authorized agent for the
5 holder, otherwise home owners face the very real risk of the true holder in due course
6 asserting claims against them after the fact. This can be a very likely possibility in
7 participation transactions regarding the sale or transfer of a security interest
8 involving a dishonest lead lender who retains some interest in transactions, retains
9 possession of the note and retains power to enforce against the mortgagor. The
10 dishonest lead lender can make additional assignments of the note, receive the
11 proceeds without transmitting the proceeds to other participants and wrongfully
12 release the mortgage. After a Trustee's sale as in the case at bar if a bona fide
13 purchaser successfully bids on property it is almost impossible for homeowner to have
14 a wrongful foreclosure sale set aside, which may very well be the case in this
15 instance. This is why it is of material importance to revisit all that occurred in
16 order to serve the cause of justice for all Parties involved in this case.

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20 Rene Mauricio Rodríguez,
21 Plaintiff
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WILLIAMS & ZINMAN P.C.
ATTORNEYS AT LAW
7701 E. Indian School Rd, Ste. J
Scottsdale, Arizona 85251
Phone (480) 994-4732
Fax (480) 946-1211
SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
4622 W. INDIAN SCHOOL ROAD, STE. D10
PHOENIX AZ, 85031
MARICOPA COUNTY, ARIZONA
623 245 0432

CASE NO. CC 2009 670502 FD

JUDGMENT - EVICTION ACTION

PLAINTIFF SWARTZ & BROUGH INC.	DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031
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JUDGMENT PROCEEDINGS

THIS MATTER WAS HEARD by the Court on this date: 11/25/09 2:00:00 PM

Plaintiff appeared by counsel.

_____ Defendant was served the Summons and Complaint at least two (2) days prior to this hearing and did not appear.

Defendant appeared in person and entered a plea of _____ guilty of special/forcible detainer.
 Defendant appeared _____ by counsel and entered a plea of _____ not guilty

Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.

_____ Defendant Stipulates to the entry of this Judgment
Defendant hereby waives any rights to reconsideration or appeal _____

WARNING: After service of the Writ of Restitution, if you remain on, or return unlawfully to, the property, you will have committed criminal trespass in the third degree and could be prosecuted.

The Court adjudges and finds Defendants guilty of forcible detainer.

JUDGMENT ORDER

IT IS ORDERED granting judgment to the Plaintiff for:

1. Immediate possession of premises: 4701 N. 50TH DRIVE, PHOENIX, AZ 85031;
2. A Writ of Restitution to issue: After five calendar days from this date; Writ to issue on 12/01/2009;
3. Interest at the legal rate (10 percent) until judgment is paid;
4. Rent of \$850.00;
5. Court costs of (\$45.00 Filing Fee + \$37.25 Process Server Fee) \$82.25;
6. Attorneys' fees of \$221.00;
7. For a total of \$1,153.25, plus after accruing costs.

Copy to Defendant: 11/25/09

_____ Mailed _____ Hand Delivered

Copy to Plaintiff:

:email :Fax :Mail



10823

JUSTICE OF THE PEACE

DATED: 11/25/09

CC2009670502 MV

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<input type="checkbox"/> RECEIVED	<input checked="" type="checkbox"/> COPY
DEC 10 2009	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	Z DEPUTY

1 Rene Mauricio Rodriguez
 4701 N. 50th Dr.
 2 Phoenix, AZ. 85031
 623-204-8270

2009 DEC 11 AM 8:55

3 Pro Per

MARYVALE JUSTICE COURT

5 UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA

6 IN AND FOR MARICOPA COUNTY ARIZONA

7 CIV '09 258 6 PHX GMS

8 Rene Mauricio Rodriguez.,) Case No.
)
9 Petitioner,) Notice Of Removal of
) Action
10 vs.)
) Date:
11 Swatz & Brough, Inc. and America's) Time:
) Dept:
12 Servicing Company et. Al.)
) Action Filed:
13 Respondents.	

18

19 To the Clerk of the United States District Court for the District of Arizona:

20 Please take notice that Defendant Rene Mauricio Rodriguez hereby removes to this Court

21 the state court action described below.

- 22 1. Petitioner is a Defendant in a certain civil action commenced and now pending
- 23 in the Maryvale Justice Court of the State of Arizona In and For the County of
- 24 Maricopa entitled Swartz and Brough, Inc., Plaintiffs v. Rene Mauricio
- 25 Rodriguez, Defendant Case No. CIV '09 258 6 PHX GMS; a copy of the Complaint is
- 26 attached here as Exhibit "A" and incorporated by reference
- 27 2. Defendant is facing an eviction action after a questionable Trustee's sale of
- 28 Defendant's home on Nov. 5, 2009.

1 3. This court has jurisdiction, due to the Federal Question, pursuant to 28 U.S.C.
2 § 1331 and 15 U.S.C. § 1640 federal truth in lending, 15 U.S.C. §§ 1691 through
3 1691 f of the Equal Credit Opportunity Act, the Fair Collection Practices Act,
4 under 15 U.S.C. Title 41, subchap. V §§ 1692g, the Real Estate Settlement
5 Procedures Act, under 12 U.S.C. §§ 2601-2617, the liability of assignees for
6 the predatory lending of their predecessors, under 15 U.S.C. § 1641, the Home
7 Ownership and Equity Protection Act, under 15 U.S.C. § 1637 and furthermore
8 this Court has jurisdiction pursuant to the Declaratory Judgment Act, 28 U.S.C.
9 § 2201, and also Diversity jurisdiction, which exist over matters of
10 controversy in excess of \$75,000.00 exclusive of cost and interest, in the
11 Defendants loan was for \$180,000.00, the action includes citizens of different
12 states. This case is one that may be removed to this Court by Defendant
13 pursuant to the provisions of 28 U.S.C.A. § 1441(b). This Court has authority
14 to grant declaratory relief pursuant to the Declaratory Judgment Act, 28
15 U.S.C.A. § 2201 et seq.

16 4. Petitioner certifies that this notice of Removal has been filed with the Clerk
17 of the Maryvale Justice Court of the State of Arizona In and For Maricopa
18 County, where the action being removed was commenced.

19 5. Petitioner is contemporaneously filing in this Court copies of all pleadings
20 that have been filed to date in the action hereby being removed.

21
22 Dated: 12/10/09

23 Rene M. Rodriguez
24 Rene Mauricio Rodriguez, Petitioner
25
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27
28

1 Rene Mauricio Rodriguez
4701 N. 50th Dr.
2 Phoenix, AZ. 85031
623-204-8270

3 Pro Per
4

5 UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA

6 IN AND FOR MARICOPA COUNTY ARIZONA

7 CIV '09 258 6 PHX GMS

8 Swartz & Brough Inc.,

) Case No.

9 Plaintiff,

) Notice of Removal of

) Action To Federal Court

10 vs.

)

) Date:

11 Rene Mauricio Rodriguez,

) Time:

) Dept:

12 Defendants.

)

) Action Filed:

13
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19 To Plaintiff, Swartz & Brough Inc. and its Counsel of record: Williams & Zinman P.C.
20 Please take notice that a Notice of Removal of this action was filed in the United
21 States District Court for the District of Arizona on Dec. 10, 2009, and assigned
22 Case No. CIV '09 258 6 PHX GMS.

23 A copy of this Notice of Removal is attached as Exhibit "A", and hereby served and
24 filed in the above entitled action. Under 28 U.S.C.A. § 1446(d) upon the filing of such
25 notice, the Justice Court is to proceed no further with the pending action unless and
26 until such action is remanded. You will have 20 days after service to respond to
27 Petitioner's complaint or 5 days after Petition to remove, whichever is longer, to
28 answer and/or defend.

Dated:

1 Rene M. Rodriguez
2 Rene Mauricio Rodriguez, Defendant

3
4 Copy of the foregoing was delivered via Hand delivery

5 On this 10th day of Dec., 2009.

WILLIAMS & ZINMAN P.C.
ATTORNEYS AT LAW
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Phone (480) 994-4732
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SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
4622 W. INDIAN SCHOOL ROAD, STE. D10
PHOENIX AZ, 85031
MARICOPA COUNTY, ARIZONA
623 245 0432

CASE NO. CC 2009

SUMMONS - EVICTION ACTION

PLAINTIFF SWARTZ & BROUGH INC.	DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031
--	---

2009 NOV 18 PM 4:44
MARYVALE JUSTICE COURT

SUMMONS

STATE OF ARIZONA TO THE ABOVE NAMED DEFENDANT(S):

You are summoned to appear and answer this action in the court named above:

TRIAL DATE: Wednesday, November 25, 2009 TIME: 02:00 PM Courtroom # _____

Be in the courtroom at least 15 minutes before the scheduled trial

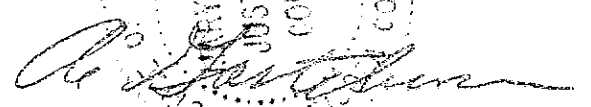
IF YOU FAIL TO APPEAR, A DEFAULT JUDGMENT WILL LIKELY BE ENTERED AGAINST YOU, GRANTING THE RELIEF SPECIFICALLY REQUESTED IN THE COMPLAINT, INCLUDING REMOVING THE TENANT AND ALL OCCUPANTS FROM THE PROPERTY. Requests for reasonable accomodation for persons with disabilities should be made to the court as soon as possible. The court expressly authorizes service by posting and certified mailing of the Summons, Complaint, and, if applicable, the Residential Eviction Procedures Information Sheet in this matter by utilizing the procedure set forth in A.R.S. §33-1377(B) or 33-1485(B).

You must appear at the date and time shown above if you wish to contest the allegations in the attached complaint. For additional information in residential actions, please see the Residential Eviction Procedures Information Sheet. If you do not agree with the allegations in the complaint, you should file a written answer admitting or denying some or all the allegations and pay the required answer fee. In cases of hardship, you may apply for a deferral or waiver of the answer fee.

A trial may be held on the date stated above or it may be continued for up to three days.

Any pleadings, including an answer to the complaint, a copy must be given to the attorney for the plaintiff. The address is provided in the upper left hand corner of the summons and complaint.

DATED: 11/18/09



JUSTICE OF THE PEACE



10823

DATE/TIME: _____ PERSON SERVED: _____ INITIALS: _____

WILLIAMS & ZINMAN P.C.
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SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
4622 W. INDIAN SCHOOL ROAD, STE. D10
PHOENIX AZ, 85031
MARICOPA COUNTY, ARIZONA
623 245 0432

CASE NO. CC 2009

COMPLAINT - EVICTION ACTION

Case Number on Summons

PLAINTIFF SWARTZ & BROUGH INC.	DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031
--	---

MARYVALE JUSTICE COURT
2009 NOV 18 PM 4:5

YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY

1. I am the attorney for the Plaintiff in this action, and this Court has jurisdiction over this action.
2. That Defendant wrongfully withholds possession of the premises from Plaintiff; Plaintiff is entitled to immediate possession of the following described premises: 4701 N. 50TH DRIVE, PHOENIX, AZ 85031
3. The premises are located within the judicial precinct of this Court or there is authority for the filing of this action outside the precinct where the premises are located.
4. If applicable, Defendants were served a proper notice to vacate which is attached hereto and incorporated herein.
5. In the event the Defendants are husband and wife, Plaintiff alleges that all actions and debt was on behalf of and for the benefit of the marital community.
6. Defendants retain possession after termination of their tenancy or demand of possession. On 11/06/2009 defendant was served notice pursuant to ARS 12-1173 and/or 12-1173.01 of a demand for possession of the premises. Plaintiff is entitled to the fair market rental value of \$850.00 per Month. Fair Market Rent is due and unpaid since 11/05/2009. On 11/06/2009 defendant was served Hand Delivered notice to vacate.
7. As of 11/17/2009 the following amounts are due and owing: Rent of \$850.00; Court costs of (\$45.00 Filing Fee + \$37.25 Process Server Fee) \$82.25; Attorneys' fees of \$221.00; For a total of \$1,153.25, plus after accruing costs.

Plaintiff asks for Judgment against Defendant for the periodic rent due as of the date of Judgment; late fees; attorneys' fees; damages; other charges and concessions, immediate possession of the premises; Plaintiff's costs of this suit; after accruing rent, costs and attorneys' fees; and for a Writ of Restitution to be issued in this matter. The undersigned attorney does hereby verify that the attorney believes the assertions in this complaint to be true on the basis of a reasonably diligent inquiry.



10823

DATED: 11/17/2009


ATTORNEY FOR PLAINTIFF

NOTICE OF EVICTION AND DIRECTIVE TO IMMEDIATELY SURRENDER PREMISES

TO: RENE/MAURICIO RODRIGUEZ and/or the occupants of;
4701 N. 50th DR.
PHOENIX, AZ 85031

Pursuant to the recent Court ordered sale and transfer of title of this property to Swartz & Brough Inc., you are hereby notified that you are trespassing on the premises of 4701 N. 50th DR., PHX, AZ 85031 and are subject to immediate ejection from the premises. This letter sent via hand delivery, first class mail and certified mail is legal notice to you that you are to leave the premises within FIVE (5) days from the first delivery of this letter. After five days have expired, a Court order will be sought and the assistance of law enforcement will be summoned to immediately remove you from the premises in execution of that Court order.

While Swartz & Brough Inc. has no legal obligations in this matter other than to remove you from the premises immediately, they are granting this five day period to allow you time to remove your belongings from the residence and to make arrangements for your departure there from without a breach of the peace. In no way will this period be extended past ~~June 30~~, 2009. At that time, arrangements will be made to remove you from the premises under color and force of law. If court ordered eviction becomes necessary by your failure to voluntarily surrender the premises, Sheridan Equities Holdings LLC will pursue you for an additional legal judgment seeking costs, fees and attorney's fees associated with such action.

NOV 10
2009
82

If you have questions about this notice please consult an attorney, or call counsel for Swartz & Brough Inc., at (623) 341-7515.

THIS NOTICE PREPARED BY:

DATE: 11/05/09

William E. Conner, Esq.
Attorney for Plaintiff – Law License Number 026179
13019 W. Desert Cove Road
El Mirage, AZ 85335-9752
(623) 341-7515

Hand delivered
11/6 4:22 PM
JOSH

RESIDENTIAL EVICTION INFORMATION SHEET
(PUBLICATION AND DISTRIBUTION REQUIRED BY THE ARIZONA SUPREME COURT)

Notice. A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice before this lawsuit was filed or with the summons.

Rent cases. If this lawsuit has been filed for not paying rent, the tenant can stop it and continue living in the residence by paying all rent now due, late fees, attorney's fees and court costs. After a judgment has been granted, reinstatement of the lease is solely in the landlord's discretion. Inability to pay rent is not a legal defense and the judge cannot give more time to pay, even if the tenant is having financial problems.

Before Court. Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the justice court allows the tenant to admit or deny the allegations and explain his or her position. If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver or deferral of that fee. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.

At Court. At the time and date listed on the summons, the judge will start calling cases. If both parties are present, the judge will ask the tenant whether the complaint is true. If the tenant says "no", he or she will need to briefly tell the judge why. If the reason is a legal defense, the judge will need to hear testimony from both sides and make a decision after a trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a "stipulation". A stipulation is an agreement under which the parties resolve the dispute on the basis of what the agreement says. Only matters contained in the written agreement can be enforced. These agreements should be clear and understandable by both parties. Most stipulations include judgments against tenants.

Continuances. Either party may ask that the court date be delayed. The court will agree only if there is a very good reason. A delay will be no more than three business days. There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

After a Judgment. If a landlord receives a judgment, it may apply for a writ of restitution to remove the tenant(s) and all occupants. Writs of Restitution are served by constables, who will direct the residents to leave. A tenant may avoid the difficulties associated with a writ of restitution by vacating the property and returning the keys to the landlord. This ends the tenants' possession of the residence. A tenant will have five (5) days to vacate the premises unless the court has found a material and irreparable breach of the lease by the tenant, in which case the tenant has only twelve (12) to twenty-four (24) hours to vacate. A judgment will probably appear on a tenant's credit report for several years. Parties wishing to appeal from a judgment have five days to do so after the judgment is entered and can obtain forms and information from the court filing counter. If a tenant wants to remain in the rental home during the appeal, the tenant must also pay an appropriate bond and continue to pay rent into court as it becomes due. If the tenant prevails the court will dismiss the case. Absent an appeal, the tenant will need to obtain the landlord's approval and enter a new lease to continue living in the residence.

Sources of Additional Information. You can get copies of the Arizona Residential Landlord Tenant Act, the Arizona Mobile Home Parks Residential Landlord and Tenant Act and the Long Term Recreational Vehicle Rental Space Act from a library or from the Secretary of State's office or web page: www.azsos.gov. In Maricopa County if you wish to consult an attorney, you may want to contact the Arizona State Bar Attorney Referrals Line at (602) 257-4434 or Community Legal Services at (602) 258-3434. Contact the court in other counties for similar referrals. You can obtain a summary of the obligations of landlords and tenants on the web page for justice courts in Maricopa County: www.superiorcourt.maricopa.gov/justicecourts/info

WILLIAMS & ZINMAN P.C.
 ATTORNEYS AT LAW
 7701 E. Indian School Rd, Ste. J
 Scottsdale, Arizona 85251
 Phone (480) 994-4732
 Fax (480) 946-1211
 SCOTT E. WILLIAMS #012417
 MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
 4622 W. INDIAN SCHOOL ROAD, STE. D10
 PHOENIX AZ, 85031
 MARICOPA COUNTY, ARIZONA
 623 245 0432

CASE NO. CC 2009 670502 FD
 WRIT OF RESTITUTION

PLAINTIFF SWARTZ & BROUGH INC. Contact: DAVI KRUGER 623 329 7000	DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031
--	---

MARYVALE JUSTICE COURT
 2009 DEC 21 PM 12:55

WRIT OF RESTITUTION

THE STATE OF ARIZONA TO THE SHERIFF OR ANY CONSTABLE IN MARICOPA COUNTY:

On 11/25/2009, Plaintiff obtained judgment against the defendants for restitution of the following premises:
 4701 N. 50TH DRIVE, PHOENIX, AZ 85031

THEREFORE YOU ARE COMMANDED to remove the Defendant(s), and all persons holding under or though Defendant(s), from the premises described above and to return possession of the premises to the Plaintiff.

MAKE SERVICE AND RETURN THIS WRIT.

Warning to Defendants: Pursuant to ARS 12-1178, Defendants are hereby advised that a person who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remaining on or returns to the mobile home space or the recreational vehicle space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to ARS section 13-1502.

Dated: 12-01-09

[Signature]
 Judicial Officer/Clerk of Court

CERTIFICATE OF SERVICE

Date Received: _____ Date Served: _____ Time Served: _____

Person Served: _____

Location Where Served: _____

MARICOPA COUNTY: PRECINCT: MARYVALE JUSTICE COURT

I certify that I personally served this document as stated above

 CONSTABLE / SHERIFF DEPUTY

STATEMENT OF COSTS

Service Fee \$ _____ Mileage Fee \$ _____ Other \$ _____ TOTAL \$ _____

Prepared: 12/01/09



10823

WILLIAMS & ZINMAN P.C.
ATTORNEYS AT LAW
7701 E. Indian School Rd, Ste. J
Scottsdale, Arizona 85251
Phone (480) 994-4732
Fax (480) 946-1211
SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
4622 W. INDIAN SCHOOL ROAD, STE. D10
PHOENIX AZ, 85031
MARICOPA COUNTY, ARIZONA
623 245 0432

CASE NO. CC 2009 670502 FD
EX PARTE MOTION TO EXECUTE WRIT

*** EXPEDITED ***

PLAINTIFF SWARTZ & BROUGH INC.	DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031
--	---

2009 DEC -2 PM 1:54
MARYVALE JUSTICE COURT

MOTION

Plaintiff, by and through undersigned counsel hereby moves this Court pursuant to A.R.S. § 12-1178 and 11 U.S.C. 362(b)(22), to sign the writ of restitution in this matter. Judgment was entered on: November 25, 2009

This Court signed a judgment against Defendant for restitution of the premises with a writ to issue on: December 1, 2009

Since the entry of judgment, Defendant has filed bankruptcy. However, as the judgment was entered prior to the filing of bankruptcy, such filing has no bearing on the present action and this court should proceed with the writ of restitution. See 11 U.S.C. 362(b)(22). Specifically, 11 U.S.C. 362(b)(22) provides that a bankruptcy petition:

does NOT act as a stay of ... any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor.

This language provides that if a judgment has already been entered, the filing of a bankruptcy does not affect the writ of restitution. In the present action, as the judgment was entered prior to the bankruptcy filing, Plaintiff is entitled to have the writ of restitution executed and a return of possession of the Premises. Therefore, pursuant to A.R.S. § 12-1178 and 11 U.S.C. 362(b)(22), Plaintiff requests that this Court sign the writ of restitution filed.

Copy Mailed 12/01/2009
to Defendant(s):

12/01/2009



ATTORNEY FOR PLAINTIFF



WILLIAMS & ZINMAN P.C.
ATTORNEYS AT LAW
7701 E. Indian School Rd, Ste. J
Scottsdale, Arizona 85251
Phone (480) 994-4732
Fax (480) 946-1211
SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
4622 W. INDIAN SCHOOL ROAD, STE. D10
PHOENIX AZ, 85031
MARICOPA COUNTY, ARIZONA
623 245 0432

CASE NO. CC 2009 670502 FD
EX PARTE MOTION TO EXECUTE WRIT

*** EXPEDITED ***

RENE MAURICIO RODRIGUEZ
JOHN AND JANE DOES I-X
4701 N. 50TH DRIVE
PHOENIX, AZ 85031

2009 DEC -2 PM 12:54
MARYVALE JUSTICE COURT



10823

United States Bankruptcy Court
District of Arizona

2009 DEC -1 AM 11:55

Notice of Bankruptcy Case Filing

MARYVALE JUSTICE COURT

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 12/01/2009 at 10:48 AM and filed on 12/01/2009.

RENE MAURICIO RODRIGUEZ
4701 N 50TH DR
PHOENIX, AZ 85031
SSN / ITIN: xxx-xx-7576



The bankruptcy trustee is:

RUSSELL BROWN
CHAPTER 13 TRUSTEE
SUITE 800
3838 NORTH CENTRAL AVENUE

PHOENIX, AZ 85012-1965
602-277-8996

The case was assigned case number 2:09-bk-30916-SSC to Judge Sarah Sharer Curley.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://ecf.azb.uscourts.gov/index.html> or at the Clerk's Office, U.S. Bankruptcy Court, Arizona, 230 North First Avenue, Suite 101, Phoenix, AZ 85003-1727, , .

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Brian D. Karth
Clerk, U.S. Bankruptcy Court

ORIGINAL

DECLARATION OF SERVICE

Maryvale Justice Court
STATE OF AZ)
County of Maricopa)

CASE NO: CC 2009 670502 FD
COURT DATE: 11/25/2009
COURT TIME: 14:00:00

PLAINTIFF:

SWARTZ & BROUGH INC.

DEFENDANTS:

RENE MAURICO RODRIGUEZ, ET AL.

4701 N. 50TH DRIVE
PHOENIX, AZ 85031

The declarant, being duly sworn, states: I am fully qualified under Rule 4(d) Ariz.R.Civ.P. to serve process in this action, having been so appointed by the court; I received and served the following documents in the manner described below:

DOCUMENT TYPE: **SUMMONS AND COMPLAINT SPECIAL/FORCIBLE DETAINER/RESIDENTIAL EVICTION INFORMATION SHEET**

PERSON(S) SERVED: RENE MAURICO RODRIGUEZ, ET AL. (Defendant)

PLACE OF SERVICE: POSTED AND MAILED CERTIFIED RETURN RECEIPT
4701 N. 50TH DRIVE
PHOENIX, AZ 85031

By delivering 3 SET(S) true copies to: RENE MAURICO RODRIGUEZ, ET AL. (Defendant)

AFTER ATTEMPTING PERSONAL SERVICE WITHIN ONE DAY OF ISSUANCE OF THE SUMMONS A COPY OF THE SUMMONS AND COMPLAINT WERE POSTED CONSPICUOUSLY AT THE MAIN ENTRANCE AND MAILED CERTIFIED RETURN RECEIPT REQUESTED

Notes:

CERTIFIED #: 7009 1680 0002 2697 4441
FILE #: 38186
REF #: 10823
DATE OF SERVICE: 11/18/2009
TIME OF SERVICE: 19:11

FEES: 37.25 Service Fee
\$37.25



DECLARANT'S SIGNATURE

Jeffrey J. Pollock

Process server licensed in Maricopa County

I declare Under Penalty of Perjury that the Foregoing is True and Correct and was Executed on this date: 11/19/2009 1:47:05 PM

SUPERIOR PROCESS SERVICES, INC.

P.O. Box 5915
Mesa, Arizona 85211
(480) 429-6886

Rene Mauricio Rodriquez
4701 N. 50th Dr.
Phoenix, AZ. 85031
(623) 204-8270

2009 NOV 25 PM 1:40

MARYVALE JUSTICE COURT

Pro Per

**MARYVALE JUSTICE COURT FOR THE STATE OF ARIZONA
MARICOPA COUNTY**

Swartz & Brough, Inc.,

Plaintiff,

CC 2009

Case Number: 0670502

vs.

Demand for Trial by Jury:

Rene Mauricio Rodriguez,
Defendant.

COMES NOW the Defendant, Rene Mauricio Rodriguez in the above captioned case specifically claiming and demanding "Trial by Jury" pursuant to the 7th Amendment to the Constitution for the United States of America, Article 2, § 23, as amended in 1971 of the Arizona State Constitution, F.R.Civ.P. 38(a) (b) and (c); 39(a); 81(c); 9(h); 48 Stat. 1064 (June 19, 1934) and Az. R. Civ. P. 38 (a) (b) (c) as to all issues of Fact, and states and declares, to wit:

1.) The Seventh Amendment, adopted in 1791, guarantees the right to trial by jury in suits "at common law," where the value in controversy exceeds twenty dollars. This "right" is not incorporated into the Fourteenth Amendment. Curtis v. Loether, 415 U.S. 189, 192 n.6 (1974); Minneapolis & St. Louis R.R. v. Bombolis, 241 U.S. 211 (1916); and extends to causes of action

created by Congress, Chauffers, Teamsters & Helpers, Local No. 391 v. Terry, 110 S.Ct. 1339, 1344 (1990), cf. Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447, 7 L.Ed. 732 (1830); and Delima v. Bidwell, 182 U.S. 1 (1901).

- 2.) In Beacon Theatres v. Westover, 359 U.S. 500 (1959), the supreme court determined that the legal claims should normally be determined by the jury prior to any determination of the equitable claims, and that only "under the most imperative circumstances...can the right to a jury trial of legal issues be lost through prior determination of equitable claims;" Dairy Queen v. Wood, 369 U.S. 469 (1962); and O'Conner v. Lee-Hy Paving Corp., 579 F.2d 194 (2nd Cir. 1978).
- 3.) The "Jurors" findings on Section 1983 claims (Title 42 USC Section 1983) are binding upon the trial court with respect to other statutory claims. Miller v. Fairchild Indus., 885 F.2d 498 (9th Cir. 1989); and Downes v. Bidwell (1901) 182 U.S. 244, with respect to 1 Stat. 51 and 52 claims arising under "The Northwest Ordinance" of July 13, 1787.
- 4.) Courts of the United States have no discretion to resolve issues common to both types of claims, legal and equitable, to defeat the right of "Trial by Jury." See: Lytle, 831 F.2d 1057 (4th Cir. 1987)(judgment order; unpublished opinion)(available LEXIS, GENFELD library); concluding that "any diminution of the interests served by collateral estoppel is justified by the greater interest in the preservation of the Seventh Amendment right to Trial by Jury." See: Byrd, 356 U.S. 525 (1958).
- 5.) Rule 38(a) provides:

"The right of trial by jury as declared by the Seventh Amendment to the Constitution [of the United States] shall be preserved to the parties inviolable." See, also: Section 2, 1 Stat. 51, The Northwest Ordinance.

6.) Rule 38(c) provides that:

"Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall have demanded trial by jury for all the issues."

7.) In U.S. v. Dougherty, 473 F.2d 1113, 1139 (1972), the Jury was allowed to judge both the law and the facts in issue, in reaching its verdict.

WHEREFORE, having submitted this separate demand for Trial by Jury, and the parties being duly notified, all issues of Fact shall be tried and determined by the Jury except where irreparable harm, injury, or damage is imminent.

Respectfully,

 11/25/09
Rene Mauricio Rodriguez, Defendant

WILLIAMS & ZINMAN P.C.
ATTORNEYS AT LAW
7701 E. Indian School Rd, Ste. J
Scottsdale, Arizona 85251
Phone (480) 994-4732
Fax (480) 946-1211
SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
4622 W. INDIAN SCHOOL ROAD, STE. D10
PHOENIX AZ, 85031
MARICOPA COUNTY, ARIZONA
623 245 0432

CASE NO. CC 2009 670502 PD

SUMMONS - EVICTION ACTION

PLAINTIFF SWARTZ & BROUGH INC.	DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031
--	---

NOV 18 PM 1:44
MARYVALE JUSTICE COURT

SUMMONS

STATE OF ARIZONA TO THE ABOVE NAMED DEFENDANT(S):

You are summoned to appear and answer this action in the court named above:

TRIAL DATE: Wednesday, November 25, 2009 TIME: 02:00 PM Courtroom # _____

Be in the courtroom at least 15 minutes before the scheduled trial


IF YOU FAIL TO APPEAR, A DEFAULT JUDGMENT WILL LIKELY BE ENTERED AGAINST YOU, GRANTING THE RELIEF SPECIFICALLY REQUESTED IN THE COMPLAINT, INCLUDING REMOVING THE TENANT AND ALL OCCUPANTS FROM THE PROPERTY. Requests for reasonable accomodation for persons with disabilities should be made to the court as soon as possible. The court expressly authorizes service by posting and certified mailing of the Summons, Complaint, and, if applicable, the Residential Eviction Procedures Information Sheet in this matter by utilizing the procedure set forth in A.R.S. §33-1377(B) or 33-1485(B).

You must appear at the date and time shown above if you wish to contest the allegations in the attached complaint. For additional information in residential actions, please see the Residential Eviction Procedures Information Sheet. If you do not agree with the allegations in the complaint, you should file a written answer admitting or denying some or all the allegations and pay the required answer fee. In cases of hardship, you may apply for a deferral or waiver of the answer fee.

A trial may be held on the date stated above or it may be continued for up to three days.

Any pleadings, including an answer to the complaint, a copy must be given to the attorney for the plaintiff. The address is provided in the upper left hand corner of the summons and complaint.

DATED: 11-18-09


.....
JUSTICE OF THE PEACE



10823

38186

DATE/TIME: _____ PERSON SERVED: _____ INITIALS: _____

WILLIAMS & ZINMAN P.C.
ATTORNEYS AT LAW
7701 E. Indian School Rd, Ste. J
Scottsdale, Arizona 85251
Phone (480) 994-4732
Fax (480) 946-1211
SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
4622 W. INDIAN SCHOOL ROAD, STE. D10
PHOENIX AZ, 85031
MARICOPA COUNTY, ARIZONA
623 245 0432

CASE NO. CC 2009 670502 FD

COMPLAINT - EVICTION ACTION

Case Number on Summons

PLAINTIFF SWARTZ & BROUGH INC.	DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031	MARYVALE JUSTICE COURT 2009 NOV 18 PM 1:15
--	---	---

YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY

1. I am the attorney for the Plaintiff in this action, and this Court has jurisdiction over this action.
2. That Defendant wrongfully withholds possession of the premises from Plaintiff; Plaintiff is entitled to immediate possession of the following described premises: 4701 N. 50TH DRIVE, PHOENIX, AZ 85031
3. The premises are located within the judicial precinct of this Court or there is authority for the filing of this action outside the precinct where the premises are located.
4. If applicable, Defendants were served a proper notice to vacate which is attached hereto and incorporated herein.
5. In the event the Defendants are husband and wife, Plaintiff alleges that all actions and debt was on behalf of and for the benefit of the marital community.
6. Defendants retain possession after termination of their tenancy or demand of possession. On 11/06/2009 defendant was served notice pursuant to ARS 12-1173 and/or 12-1173.01 of a demand for possession of the premises. Plaintiff is entitled to the fair market rental value of \$850.00 per Month. Fair Market Rent is due and unpaid since 11/05/2009. On 11/06/2009 defendant was served Hand Delivered notice to vacate.
7. As of 11/17/2009 the following amounts are due and owing: Rent of \$850.00; Court costs of (\$45.00 Filing Fee + \$37.25 Process Server Fee) \$82.25; Attorneys' fees of \$221.00; For a total of \$1,153.25, plus after accruing costs.

Plaintiff asks for Judgment against Defendant for the periodic rent due as of the date of Judgment; late fees; attorneys' fees; damages; other charges and concessions, immediate possession of the premises; Plaintiff's costs of this suit; after accruing rent, costs and attorneys' fees; and for a Writ of Restitution to be issued in this matter. The undersigned attorney does hereby verify that the attorney believes the assertions in this complaint to be true on the basis of a reasonably diligent inquiry.

DATED: 11/17/2009


ATTORNEY FOR PLAINTIFF



10823

NOTICE OF EVICTION AND DIRECTIVE TO IMMEDIATELY SURRENDER PREMISES

TO: BENE/MAURICIO RODRIGUEZ and/or the occupants of;
4701 N. 50th DR.
PHOENIX, AZ 85031

Pursuant to the recent Court ordered sale and transfer of title of this property to Swartz & Brough Inc., you are hereby notified that you are trespassing on the premises of 4701 N. 50th DR., PHX, AZ 85031 and are subject to immediate ejection from the premises. This letter sent via hand delivery, first class mail and certified mail is legal notice to you that you are to leave the premises within FIVE (5) days from the first delivery of this letter. After five days have expired, a Court order will be sought and the assistance of law enforcement will be summoned to immediately remove you from the premises in execution of that Court order.

While Swartz & Brough Inc. has no legal obligations in this matter other than to remove you from the premises immediately, they are granting this five day period to allow you time to remove your belongings from the residence and to make arrangements for your departure there from without a breach of the peace. In no way will this period be extended past ~~June 30,~~ 2009. At that time, arrangements will be made to remove you from the premises under color and force of law. If court ordered eviction becomes necessary by your failure to voluntarily surrender the premises, Sheridan Equities Holdings LLC will pursue you for an additional legal judgment seeking costs, fees and attorney's fees associated with such action.

NOV 10
2009
202

If you have questions about this notice please consult an attorney, or call counsel for Swartz & Brough Inc., at (623) 341-7515.

THIS NOTICE PREPARED BY:

DATE: 11/05/09

William E. Conner, Esq.
Attorney for Plaintiff – Law License Number 026179
13019 W. Desert Cove Road
El Mirage, AZ 85335-9752
(623) 341-7515

JOSH

Hand delivered
11/6 4:22 pm

WILLIAMS & ZINMAN P.C.
 ATTORNEYS AT LAW
 7701 E. Indian School Rd, Ste. J
 Scottsdale, Arizona 85251
 Phone (480) 994-4732
 Fax (480) 946-1211
 SCOTT E. WILLIAMS #012417
 MARK B. ZINMAN #024028

MARYVALE JUSTICE COURT
 4622 W. INDIAN SCHOOL ROAD, STE. D10
 PHOENIX AZ, 85031
 MARICOPA COUNTY, ARIZONA
 623 245 0432

ENTERED

CASE NO. CC 2009-670502 FD

WRIT OF RESTITUTION

<p>PLAINTIFF SWARTZ & BROUGH INC.</p> <p>Contact: DAVI KRUGER 623 329 7000</p>	<p>DEFENDANT(S) RENE MAURICIO RODRIGUEZ JOHN AND JANE DOES I-X 4701 N. 50TH DRIVE PHOENIX, AZ 85031</p>
--	--

MARYVALE JUSTICE COURT
 2009 DEC -2 PM 12:55

WRIT OF RESTITUTION

THE STATE OF ARIZONA TO THE SHERIFF OR ANY CONSTABLE IN MARICOPA COUNTY:

On 11/25/2009, Plaintiff obtained judgment against the defendants for restitution of the following premises:
 4701 N. 50TH DRIVE, PHOENIX, AZ 85031

THEREFORE YOU ARE COMMANDED to remove the Defendant(s), and all persons holding under or though Defendant(s), from the premises described above and to return possession of the premises to the Plaintiff.

MAKE SERVICE AND RETURN THIS WRIT.

Warning to Defendants: Pursuant to ARS 12-1178, Defendants are hereby advised that a person who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remaining on or returns to the mobile home space or the recreational vehicle space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to ARS section 13-1502.

Dated: 12-3-09 
 Judicial Officer/Clerk of Court

CERTIFICATE OF SERVICE

Date Received: 12/9/09 Date Served: 12/10/09 Time Served: 120
 Person Served: [Signature]
 Location Where Served: SLAID
 MARICOPA COUNTY: PRECINCT: MARYVALE JUSTICE COURT

I certify that I personally served this document as stated above


 CONSTABLE / SHERIFF DEPUTY

STATEMENT OF COSTS

Service Fee \$ _____ Mileage Fee \$ _____ Other \$ _____ TOTAL \$ _____

Prepared: 12/01/09



30523

5-3-09