

FEIN, SUCH, KAHN & SHEPARD, PC
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Attorneys for Movant, BSI Financial
BSI032

	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION
	:	COUNTY
IN THE MATTER OF APPLICATION BY	:	
TO ISSUE CORRECTIVE NOTICES OF	:	
INTENT TO FORECLOSE ON BHEALF	:	DOCKET NO.: F-013792-12
OF IDENTIFIED PLAINTIFF(S) IN	:	
UNCONTESTED FORECLOSURE CASES	:	Civil Action
	:	
	:	VERTIFIED COMPLAINT IN SUPPORT
	:	OF SUMMARY PROCEEDING PURSUANT
	:	TO ORDER OF THE NEW JERSEY
Defendants.	:	SUPREME COURT DATED APRIL 4,
	:	2012 TO CURE A DEFICIENT NOTICE
	:	OF INTENT TO FORECLOSE

BSI FINANCIAL SERVICES, INC., authorized to act on behalf of Foreclosure Plaintiff RESFUND, LLC in a pending pre-judgment uncontested foreclosure action, brings this action pursuant to the April 4, 2012 Order of the New Jersey Supreme Court (the "April Order"), which was entered in response to the the Court's decision in U.S. Bank v. Guillaume, 209 N.J. 449, (2012).

- BSI respectfully sets forth the following:
1. BSI FINANCIAL SERVICES, INC., (hereinafter referred to as "BSI") is a servicing agent acting on behalf of the plaintiff, RESFUND, LLC.,
 2. BSI is responsible for servicing mortgage loans on residential properties in the State of New Jersey on behalf of RESFUND, LLC pursuant to a written agreement by

and between BSI and RESFUND, LLC.

3. In its role as a servicer, it accepts monthly mortgage payments from borrowers, engages in negotiations with regard to modifications, considers offers for short sale and other loss mitigation efforts, makes payments for taxes and insurance on behalf of borrowers on escrowed loans. As the loan is owned by another entity, RESFUND, LLC., BSI engages in these responsibilities pursuant to its contractual relationship with RESFUND, LLC., the Rules of Court of the State of New Jersey and other applicable laws and guidelines. As the entity which accepts payments, BSI holds the information relevant to the amount of the monthly payment, the amount of funds received or disbursed on behalf of a borrower, and therefore, the information as to whether a borrower is in default on his/her payments and the amount of default. This information is maintained in BSI's business records. The lender is not likely to have possession of all the servicing information as our New Jersey Supreme Court has recognized when it amended the New Jersey Rules of Court governing mortgage foreclosures at Rule 4:64-1 and R. 4:64-2. Thus, BSI makes the instant application to this Honorable Court pursuant to the authority granted to it as the servicing agent of the foreclosing plaintiff.
4. One of the duties as a servicer on a defaulted loan in New Jersey is to prepare and mail an Notice of Intention to Foreclose in accordance with the New Jersey Fair

Foreclosure Act, N.J.S.A. 2A:50-56. The NOI is prepared based on the loan information within the possession of BSI and includes items such as the amount to cure the default and reinstate the mortgage loan.

5. The Supreme Court decision in U.S. Bank v. Guillaume requires strict compliance with the notice requirements set forth in the Fair Foreclosure Act. The Guillaume court further held that a court adjudicating a foreclosure action in which the strict requirements of N.J.S.A.2A:50-56 were not met has the judicial discretion to choose an appropriate remedy permitting the cure of a deficient NOI, or another form of relief as designed by that Court.
6. In response to the Guillaume decision, the Supreme Court further entered an Order on April 4, 2012 authorizing the Honorable Mary Margaret McVeigh, of the Passaic County vicinage and the Honorable Paul Innes, of the Mercer County vicinage to entertain Orders to Show Cause in a Summary Proceeding as to why Plaintiffs in uncontested foreclosures relating to residential mortgage filed on or before February 27, 2012, in which a final judgment has not been entered, who caused NOIs to be mailed which are deficient under the Fair Foreclosure Act, should not be allowed to served corrective NOIs on borrowers obligated under the debt (the "Foreclosure Defendants").
7. The April 4, 2012 Order requires that any Corrected NOI

also be accompanied by a letter to the Foreclosure Defendants setting forth the reason why the corrected NOI is being served, the procedure to follow if a Foreclosure Defendant intends to object to the NOI, the name of a person to contact with any questions, and that the receipt of the corrected NOI allows the Foreclosure Defendant thirty (30) days in which to object or to cure the default.

8. BSI has reviewed its pending foreclosure portfolio with the firm of Fein Such Kahn and Shepard as counsel and it has identified only one (1) case which is a residential foreclosure, pre-judgment and which will require a Corrected NOI because the plaintiff's name and address were not included in the NOI previously mailed. The list is attached hereto as Schedule "A."
9. BSI will also mail with the NOI the court ordered form of letter of explanation to send to the Foreclosure Defendants.
10. The Corrected NOI will not include either attorney's fees or foreclosure costs incurred during the course of the pending foreclosure action. It will include the requisite information pertinent to the Foreclosure Defendants' mortgage, including the plaintiff's name and address and amount necessary to reinstate the loan, among other items.
11. In the action presently pending before this Court, there is only one pending action. While most cases would

require an Omnibus action pertaining to multiple actions, BSI has only identified one defective NOI in its portfolio to date.

12. Furthermore, BSI is aware that the Foreclosure Defendants still reside at the mortgaged premises as the parties engaged in the State Mediation program as recently as January, 2012. Unfortunately, the mediation was unable to resolve the instant action. Based on the fact that there is only one action and we have confirmation that the borrowers still reside at the mortgaged premises, it is respectfully requested that BSI need not publish in this particular circumstance.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order permitting BSI to issue a corrective NOI as permitted in the April 4, 2012 Order on the uncontested residential mortgage foreclosure action in which a judgment in foreclosure has not been entered, direct that the new NOI be deemed curative and satisfactory for the applicant to continue to enter judgment in its foreclosure action, and for such other and further relief as this Court may deem just and equitable under the circumstances.

FEIN, SUCH, KAHN AND SHEPARD, P.C.

Dated: June 12, 2012

By: 

SHARI SEFFER

CERTIFICATION

I certify pursuant to Rule 4:5-1 that, to the best of my knowledge, this matter is not the subject of any other pending action in any other court or of a pending arbitration proceeding, other than an action to foreclose a mortgage against premises nor is any other action contemplated. I further certify that I am not aware of any non-party who should be joined in this action pursuant to Rule 4:28 or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party based on the same transactional facts.

FEIN, SUCH, KAHN AND SHEPARD, P.C.

Dated: June 12, 2012

By: Shari Seffer
SHARI SEFFER

VERIFICATION

STATE OF Pennsylvania :

COUNTY OF Crawford :

I, Karen L Shoup being duly sworn,

1. I am the AVP of Loss Mitigation

for BSI, the applicant in the foregoing Verified Complaint in Support of a Summary Proceeding.

2. The allegations in the Verified Complaint are true to the best of my knowledge and belief.

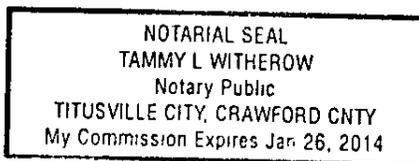
3. The exhibits attached to the Verified Complaint are true and correct copies.


Karen L Shoup

SWORN AND SUBSCRIBED TO BEFORE
ME ON THIS 11th DAY OF July, 2012



NOTARY PUBLIC
Tammy L Witherow



CERTIFICATION OF MAILING AND SERVICE

I hereby certify that on *July 17*, 2012 an original and two (2) copies of the within Order to Show Cause and supporting papers have been transmitted for filing to Jennifer Perez, Esq., Clerk of the Superior Court, CN 971, Trenton, New Jersey 08625 by Lawyers Service.

By: *Sharon Albert*

FEIN, SUCH, KAHN & SHEPARD, P.C.

COUNSELLORS AT LAW

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July 17, 2012

VIA LAWYER SERVICE

Jennifer Perez
Clerk of Superior Court
CN971
Trenton, NJ 08625

RECEIVED

JUL 18 2012

**SUPERIOR COURT
CLERK'S OFFICE**

Re: ORDER TO SHOW CAUSE PURSUANT TO U.S. BANK-V-GUILLAUME
Docket No. F-37079-09
Our File No. BSI032

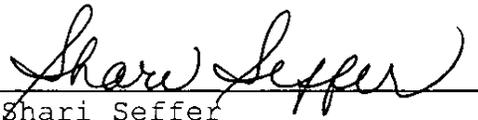
Dear Ms. Perez:

Enclosed herewith please find an original and two (2) copies of an Order to Show Cause, Verified Complaint and proposed Notice of Intent to Foreclose with regard to the Plaintiff, RESFUND LLC.

Kindly assign to the appropriate Judge for review and entry of Order to Show Cause, if acceptable to the Court. We would request that our account #140870 be debited accordingly.

Very truly yours,

FEIN, SUCH, KAHN & SHEPARD, P.C.

By: 

Shari Seffer

SS/sa
Encs.