

KNUCKLES, KOMOSINSKI & ELLIOTT, LLP  
565 Taxter Road, Suite 590  
Elmsford, NY 10523  
Tel: (914) 345-3020  
Fax: (914) 366-0080  
Attorneys for Emigrant Mortgage Company, Inc.

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IN RE SPECIAL SUMMARY ACTION  
AUTHORIZED BY ORDER OF THE NEW  
JERSEY SUPREME COURT DATED  
APRIL 4, 2012 BY EMIGRANT  
MORTGAGE COMPANY, INC. TO ISSUE  
CORRECTIVE NOTICES OF INTENT TO  
FORECLOSE IN UNCONTESTED  
FORECLOSURE ACTIONS

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
PASSAIC COUNTY

DOCKET NO.: F-24807-13

CIVIL ACTION

ORDER TO SHOW CAUSE

THIS MATTER being brought before the Court by Knuckles, Komosinski & Elliott, LLP, attorneys for Emigrant Mortgage Company, Inc. ("Emigrant"), authorized to act on behalf of foreclosure plaintiffs in pending foreclosure cases in New Jersey, seeking relief by way of summary action for an Order permitting Emigrant to issue corrective Notices of Intent to Foreclose ("NOI") to the defendant mortgagors and/or parties obligated on the debt ("Foreclosure Defendants") in the pending, pre-judgment, uncontested foreclosure cases listed on the Exhibit "A" to the Verified Complaint ("Corrective NOI List") to include the name and address of the lender, and based upon the New Jersey Supreme Court's decision in US Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), the implementing Order of the New Jersey Supreme Court dated April 4, 2012, and for good cause shown;

It is on this \_\_\_\_ day of \_\_\_\_\_ 2013 **ORDERED** that the Foreclosure Defendants whose names appear on the Corrective NOI List may appear before the Superior Court at the Passaic County Courthouse, 71 Hamilton Street, Paterson, New Jersey at \_\_\_\_ o'clock in the \_\_\_\_ noon or as soon thereafter as counsel can be heard, on the \_\_\_\_ day of \_\_\_\_\_, 2013 to object to as to why this Court should not allow Emigrant to issue corrective NOIs pursuant to this Order to Show Cause;

**AND IT IS FURTHER ORDERED THAT FOR EACH FORECLOSURE ACTION IN WHICH EMIGRANT ISSUES A CORRECTIVE NOI TO A FORECLOSURE DEFENDANT:**

1. Emigrant will issue a letter ("Explanatory Letter") to each Foreclosure Defendant in the form attached as Exhibit "D" to the Verified Complaint. The Explanatory Letter will explain:

- The reasons why the corrective NOI is being served;
- The procedure to follow in the event a Foreclosure Defendant wishes to object to the NOI;
- The individuals to contact with any questions; and
- Their right to object to the corrective NOI or their right to cure the default within 30 days of the date of the corrective NOI.

2. Emigrant will issue a corrective NOI in the form attached as Exhibit "C" to the Verified Complaint and shall attach such NOI to the Explanatory Letter referenced in paragraph 1 above. The corrective NOI will exclude attorneys' fees and foreclosure costs that have been incurred in the pending foreclosure cases. In accordance with the servicing guidelines and as required by N.J.S.A. 2A:50-56(e), the Explanatory Letter and corrective NOI will be sent by Emigrant, the servicing agent.

3. Emigrant will serve the corrective NOI, the Explanatory Letter and a copy of this Order to Show Cause (collectively, the "OSC Package"), via certified mail, return receipt requested, and regular mail at the last known address of the Foreclosure Defendant. For purposes of this Order to Show Cause, Emigrant may serve each marital couple residing at the same address with one OSC Package via certified mail and regular mail.<sup>1</sup>

4. Emigrant shall file with the Court its proof of service of the OSC Package on Foreclosure Defendants on the Corrective NOI List in the manner consistent with this Order no later than three (3) days before the return date.

5. You [Foreclosure Defendants] have the right to object in this proceeding to this Order to Show Cause (the process by which this Court gave Emigrant permission to serve the corrective NOI). To do so, you must file a written objection under the docket number listed on the first page of this Order for this case. You must set forth with specificity the basis for your objection and file your objection with the Superior Court Clerk's Office at the following address on or before \_\_\_\_\_, 2013:

Superior Court Clerk's Office, Foreclosure Processing Services  
Attention. Objection to Notice of Intention to Foreclose  
P.O. Box 971  
Trenton, New Jersey 08625

You must serve a copy of the objection on Emigrant's attorney, Karen B. Olson, Esquire, at Knuckles, Komosinski & Elliott, LLP, 565 Taxter Road, Suite 590, Elmsford, New York 10523 and mail a copy of your objection to Judge McVeigh at the Superior Court of New Jersey, Passaic County Courthouse, Chambers 100, 71 Hamilton Street, Paterson, New Jersey 07505.

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<sup>1</sup> In the event Emigrant has been provided an address for the estate of a deceased Foreclosure Defendant, the OSC Package shall be mailed to the address of the estate and/or the executor or administrator, if known and available.

6. You [Foreclosure Defendants] also have the right to object to the corrective NOI that you will receive. You will also have 30 days from service of the OSC Package to cure your default. If you object to any of the contents of your corrective NOI, you must file written objection under the docket number for your foreclosure action. If you are unsure of the docket number for your foreclosure action, you can access that information on the Court's website on the attached exhibits to the Verified Complaint or by calling the Emigrant representative listed on the Explanatory Letter that will be sent with the corrective NOI. You must set forth with specificity the basis for your objection and file your objection with the Superior Court Clerk's Office at the following address on or before \_\_\_\_\_, 2013:

Superior Court Clerk's Office, Foreclosure Processing Services  
P.O. Box 971  
Trenton, New Jersey 08625

You must also serve a copy of the objection on Emigrant's attorney, Karen B. Olson, Esquire, Knuckles, Komosinski & Elliott, LLP, 565 Taxter Road, Suite 590, Elmsford, New York 10523, and mail a copy of your objection to Judge McVeigh at the Superior Court of New Jersey, Passaic County Courthouse, Chambers 100, 71 Hamilton Street, Paterson, New Jersey 07505.

7. Emigrant may file and serve any written reply to your opposition papers received by \_\_\_\_\_, 2013. The reply papers must be filed with the Clerk of the Superior Court in Passaic County, with a copy to Judge McVeigh and to each Foreclosure Defendant who filed an opposition.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided with the corrective NOI.

9. A proposed form of order addressing the relief sought on the return date (along with a self-addressed stamped return envelope with the return address and postage) must be submitted to the Court by Emigrant no later than three (3) days before the return date.

10. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless Emigrant is advised to the contrary no later than \_\_\_\_\_ (\_\_\_) days before the return date.

11. In the event a foreclosure action has been suspended or stayed as a result of a bankruptcy filing or loss mitigation activity, the OSC Package shall not be sent unless and until the suspension or stay is lifted. In such circumstances, the following procedure shall be used. Emigrant shall mail the OSC Package within 45 days of the lifting of the stay or suspension of the foreclosure action. You [Foreclosure Defendants] will have 30 days in which to object to the corrective NOI or 30 days from service of the OSC Package to cure your default. Any objections to the relief sought in this Order to Show Cause shall be made in writing to the Court in the County in which your foreclosure action is pending. You must also serve a copy of your written papers to Emigrant's attorney, Karen B. Olson, Esquire, Knuckles, Komosinski & Elliott, LLP, 565 Taxter Road, Suite 590, Elmsford, New York 10523, or the Court handling your foreclosure action will not be able to consider your objection.

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HON. MARGARET MARY MCVEIGH, P.J.Ch

**KNUCKLES, KOMOSINSKI & ELLIOTT, LLP**  
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**BRIEF IN SUPPORT**

**PRELIMINARY STATEMENT**

On February 27, 2012, the New Jersey Supreme Court decided US Bank, N A v. Guillaume, 209 N.J. 449 (2012).

Guillaume addressed, among other things, whether Notices of Intent to Foreclose ("NOI") sent to borrowers in advance of the filing of a foreclosure complaint pursuant to N.J.S.A. 2A:50-56(a) must strictly comply with and set forth therein the information required by N.J.S.A. 2A:50-56(c)(11) and, absent strict compliance (should that be the standard), what was the appropriate remedy for an NOI that did not comply with the N.J.S.A. 2A:50-56(c)(11).

The Guillaume Court held that NOIs must strictly comply with N.J.S.A. 2A:50-56(c)(11) by setting forth the name and address of the lender as opposed to the loan servicer. However, the Court left the decision of how to remedy such deficiency to the discretion of the Chancery/Trial Courts. The Court rejected the argument (and reversed the holding in Bank of New York v Laks, 422 N J Super. 201 (App. Div. 2011)) that the

only remedy to address a NOI deficient under N.J.S.A. 2A:50-56(c)(11) was dismissal of the underlying foreclosure action.

Shortly after Guillaume was decided, the Supreme Court of New Jersey issued a Court Order on April 4, 2012 that authorized the Hon. Paul Innes, P.J. Ch. and Hon. Margaret Mary McVeigh, P.J Ch. to hear summary actions by Orders to Show Cause as to why plaintiffs in any uncontested residential mortgage foreclosure actions filed on or before February 27, 2012 in which final judgment has not been entered, who served NOIs that were not compliant with N.J.S.A. 2A:50-56, should not be allowed to serve corrective NOIs to remedy the noncompliant NOIs. The Order also requires that corrective NOIs, if permitted to be issued by Judge Innes or Judge McVeigh, must be accompanied by a letter of explanation to the borrowers setting forth the reasons why the corrective NOI is being issued, the procedure to follow if the borrower wishes to object, the individuals to contact with any questions and that receipt of the corrective NOI allows the borrowers thirty (30) days in which to object or to cure the specified payment default.

Emigrant Mortgage Company, Inc. ("Emigrant") now moves pursuant to the Supreme Court's April 4, 2012 Order with respect to the defendants identified in Exhibit "A" attached to Emigrant's Verified Complaint ("Foreclosure Defendants"). Each of the Foreclosure Defendants was originally served with an NOI that did not identify the address of the lender in contravention to N.J.S.A. 2A:50-56(c)(11).

Non-compliance with N.J.S.A. 2A:50-56(c)(11) is the only NOI deficiency at issue in this special application.

For the reasons detailed below, it is respectfully submitted that Emigrant (or its designee) should be permitted to serve corrective NOIs and letters of explanation on the Foreclosure Defendants in the forms attached to Emigrant's Verified Complaint as Exhibits "C" and "D" respectively.

### **STATEMENT OF FACTS**

Emigrant hereby incorporates the allegations in the Verified Complaint as if set forth herein at length.

### **ARGUMENT**

**EMIGRANT SHOULD BE PERMITTED TO ISSUE CORRECTIVE NOIS TO THE FORECLOSURE DEFENDANTS BECAUSE THE ORIGINAL NOIS PROVIDED THE FORECLOSURE DEFENDANTS WITH NOTICE OF THEIR DEFAULT, THE CONSEQUENCES OF THEIR CONTINUED DEFAULT AND THE OPPORTUNITY TO CURE THEIR DEFAULT AND KEEP THEIR HOMES**

The Guillaume Court undertook a thorough analysis of the Fair Foreclosure Act, N.J.S.A. 2A 50-56 (the "FFA"), in making its decision that while N.J.S.A. 2A:50-56(c)(11) must be strictly complied with, Chancery/Trial Courts were empowered to use their discretion to fashion a remedy for non-compliance with N.J.S.A. 2A:50-56(c)(11). Id. at p. 22-38. With respect to the FFA in general, the Court noted that said statute was intended to "advance the public policies of the State by giving debtors every opportunity to pay their home mortgages, and thus keep their homes" while ensuring that "lenders will be benefited when debtors cure their defaults and return the residential mortgage loan to performing status" and "to expedite the foreclosure proceedings to bring New Jersey in line with its neighboring states..." Id. at 22 (citations omitted).

With respect to fashioning a remedy for non-compliance with N.J.S.A. 2A:50-56(c)(11), as noted above, the Guillaume Court empowered the Chancery/Trial Courts to fashion appropriate remedies and instructed those Courts to consider the express purpose of the provision of N.J.S.A. 2A:50-56(c)(11): "to provide notice that makes the debtor aware of the situation and to enable the homeowner to attempt to cure the default." Id. at 37 (citations omitted). Further, the Court stated that "[a]ccordingly, a trial court fashioning an equitable remedy for a violation of N.J.S.A. 2A:50-56(c)(11) should consider the impact of the defect in the notice of intention upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the default." Id. at 37-38.

Noting that these principals "animated" the Trial Court's decision to permit US Bank to issue a corrective NOI identifying the name and address of the lender, the Guillaume Court declared the Trial Court's decision a proper exercise of its discretion. Id. at 38.

In this matter, just as with Guillaume, Emigrant's non-compliance with N.J.S.A. 2A:50-56(c) is limited to subpart eleven (11). The original NOIs that were issued to the Foreclosure Defendants provided the name, address and telephone number of the loan servicer. At the time of the respective mailings, the addresses of the lender and servicer were the same. However, all of the original NOIs did not identify the address of the lender and some of which misidentified the name of the lender.

Therefore, the question before the Court is whether the original NOIs issued to the Foreclosure Defendants provided notice that made the Foreclosure Defendants

aware of the situation and enabled them to attempt to cure their default (or, stated another way, whether the original NOIs properly notified the Foreclosure Defendants about the status of their loan and the opportunity to cure their default). Id. at 37- 38. The clear answer to this question is "yes".

There is no question that the original NOIs provided the Foreclosure Defendants with notice that their loans were in default and the nature of the default; that they had a right to cure the default; of the amount needed to cure the default and the date on which that amount needed to be tendered; and, absent the default being cured, that a foreclosure suit could be commenced. The Foreclosure Defendants were also apprised that if they failed to cure their default by the date in the letter, they would be responsible for additional legal fees if a foreclosure complaint was filed. Moreover, the Foreclosure Defendants were given the name and contact information of the loan servicer, including a telephone number, and instructed to contact the servicer in the event they disagreed with the assertion that a default had occurred. The Foreclosure Defendants were also provided a comprehensive list of state and other agencies to contact for financial and other assistance.

In other words, notwithstanding that the address of the actual lender was not specified in the NOIs at issue, the Foreclosure Defendants were, in fact, provided notice that made them acutely aware of the situation (i.e., that they were in default of their payment obligations on their mortgage loan and, absent a timely cure, they faced foreclosure and the potential loss of their home), and gave them an opportunity and the contact information to cure the default and keep their homes. The fact of the matter is

that the Foreclosure Defendants either elected not to cure their defaults or were unable to do so.

Thus, with respect to the Foreclosure Defendants, it is respectfully submitted that Emigrant should be permitted to issue corrective NOIs (and a letter of explanation) to cure the originally defective NOIs. Such relief is consistent with the legislative intent that underpins the FFA in general and N.J.S.A. 2A:50-56(c)(11) in particular. The undeniable fact is that the Foreclosure Defendants were provided ample notice that made them directly aware of their situations with respect to their mortgage loans and gave them the opportunity to cure the default and keep their homes, as required by the FFA. Having established this irrefutable fact, clearly it is a proper exercise of the Court's discretion to permit Emigrant to issue corrective NOIs and letters of explanation to the Foreclosure Defendants to cure the originally defective NOIs.

### CONCLUSION

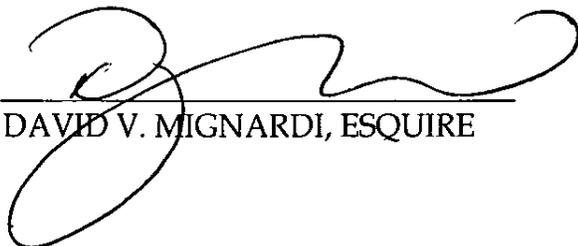
For all of the foregoing reasons, it is respectfully submitted that Emigrant should be permitted to issue corrective NOIs (and letters of explanation) to the Foreclosure Defendants to remedy the originally defective NOIs. This remedy is clearly fair, just and equitable under the totality of the circumstances.

Dated: July 8, 2013

**KNUCKLES, KOMOSINSKI & ELLIOTT, LLP.**  
Attorneys for Emigrant Mortgage Company, Inc.  
565 Taxter Road, Suite 590  
Elmsford, New York 10523

By: \_\_\_\_\_

DAVID V. MIGNARDI, ESQUIRE



# KNUCKLES, KOMOSINSKI & ELLIOTT LLP ATTORNEYS AT LAW

565 Taxter Road, Suite 590, Elmsford, NY 10523

Tel: 914.345.3020 • Fax: 914.366.0080

www.kkelawfirm.com

Mark R. Knuckles  
Richard F. Komosinski  
Peter L. Elliott  
Kenneth J. Flickinger

Karen B. Olson\*  
Jordan J. Manfro\*\*  
Fincey John†  
Robert T. Yusko†  
Frank Badalato  
Michel Lee†  
Stephen M. Forte\*\*  
Allison J. Marden  
Sinead J. Daly  
David V. Mignardi†  
Roshene A. Kemp  
Christopher Messina

\* ALSO ADMITTED IN NJ  
\*\* ALSO ADMITTED IN CT  
† ALSO ADMITTED IN NJ and CT

Syracuse Office:  
The Galleries of Syracuse  
441 South Salina Street  
Syracuse, NY 13202

Extension:326  
Email:alyssac@kkelaw.com

July 12, 2013

**Via Overnight Mail**

Superior Court of New Jersey  
Court Clerk Michele Smith  
25 Market Street  
6<sup>th</sup> Floor North Wing  
Birmingham, NJ 08611

**RECEIVED**

**JUL 15 2013**

**SUPERIOR COURT  
CLERK'S OFFICE**

**Re: NOI Order to Show Cause**

Dear Ms. Smith:

Please be advised this office represents Emigrant Mortgage Company, Inc. in the above referenced matter.

Enclosed please find Emigrant's Verified Complaint and Order to Show Cause along with two (2) checks in the amount of \$200.00 and \$30.00.

Kindly file the above and return a copy marked "filed" to my office in the enclosed reply envelope.

Please do not hesitate to contact the undersigned if you have any questions or require any additional information.

Very Truly Yours,



Alyssa Catalano  
Paralegal