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JAN 21 2014

Haskell Rosenferd, Esq.

Attorney at Law

Rosenfeld Law Group, LLC

2 Perlman Drive – Suite 310

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Tel. 845-512-8703

Attorney for GOLDY MANDEL and EDWARD MANDEL

SUPERIOR COURT
CLERK'S OFFICE

IN RE APPLICATION BY GREEN TREE
SERVICING, LLC TO ISSUE
REMEDiated NOTICES OF INTENT
TO FORECLOSE IN CERTAIN
UNCONTESTED FORECLOSURES

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PASSAIC COUNTY

DOCKET NO.; F-35398-13

CIVIL ACTION
AFFIRMATION IN OPPOSITION

HASKELL ROSENFELD, ESQ., Attorney for GOLDY MANDEL and EDWARD
MANDEL hereby Affirms that the following statements are true to the best of his knowledge
under penalty of perjury:

1. I am the Attorney for the Defendants herein and I make this Affirmation in
Opposition to Plaintiff's Order to Show Cause.

BACKGROUND

2. GOLDY MANDEL and EDWARD MANDEL, husband and wife, have a Foreclosure
pending in the Superior Court of New Jersey, Union County, Chancery Division, BAC HOME
LOAN SERVICING, ET AL vs. GOLDY MANDEL, EDWARD MANDEL, ET AL Docket
Num. 31946-10.

3. Plaintiff has made the present Order to Show Cause since Defendants were sent a defective Notice of Intent to Foreclose (hereinafter: NOI), and now Plaintiff is asking the court that the appropriate remedy be for them to send a corrected NOI. Plaintiff by its Motion admits that neither the Lender nor its Servicer was listed in the NOI. For the reasons set forth below Plaintiff's requested remedy should be denied as (1) being an entirely a fictitious remedy that in no way corrects the nature or purpose of the original defective NOI, and thus would be severely inequitable towards Defendants; and (2) Plaintiff lacks Standing to do such.

STATEMENT OF LAW

4. The Fair Foreclosure Act was enacted in 1995 in an attempt to provide protection to homeowners facing foreclosure. N.J.S.A. 2A:50-54. The statute provides a variety of procedural and substantive protections for homeowners. Most importantly, the statute provides that the owners of properties subject to the statute are permitted to cure defaults in the payments required under the mortgage at various times, thereby avoiding foreclosure. Under the FFA, a Notice of Intent to Foreclosure must be sent at least 30 days in advance of a foreclosure and must "clearly and conspicuously state" certain information "to make the debtor aware of the situation." N.J.S.A. 2A:50-56(c). On the NOI "the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default." N.J.S.A. 2A:50-56(c) (11).

5. In our instant Plaintiff makes the present Motion since neither BAC HOME

LOAN SERVICING nor its servicer's contact information were provided on the NOI sent to Defendants, and as such per *US Bank Nat. Ass'n v. Guillaume*, 209 N.J. 449, 470 (2012) the NOI is thereby deficient.

ARGUMENT

Plaintiff GREEN TREE should be deemed to have no standing to correct the NOI

6. The present case is not a standard case analogous to *Guillaume* whereby a court can fashion a remedy for Plaintiff to correct the NOI. the reason is that in our instance Defendants were sued in their foreclosure Action by BAC HOME LOAN SERVICING who has since- during the pendency of the Foreclosure Action- sold the Note and Mortgage to the Plaintiff in this Action, GREEN TREE.

7. New Jersey courts have held that Plaintiff must own or possess the Note at the commencement of the foreclosure Action. (See *Deutsche Bank National Trust, et al v. Mitchell et al*, A-4925-09T3, where the Appellate Division vacated summary judgment since the assignment of mortgage was not perfected until after the filing of the complaint, and therefore the plaintiff lacked standing to prosecute the action. Also see *Bank of N.Y. v. Raftogianis*, ___ N.J. Super. ___, ___ (Ch. Div. 2010) (slip op. at 3) ("As a general proposition, a party seeking to foreclose a mortgage must own or control the underlying debt"); see also *Wells Fargo Bank, N.A. v. Ford*, A-3627-06T1 (decided Jan. 28, 2011).

8. Therefore, since the courts have ruled that a Plaintiff must have had owned the Note at

the commencement of the Action, the same reasoning of law should apply to the NOI- which is sent *prior* to the foreclosure suit, and thus the Holder of the Note at the commencement of the Action must be the one to send out the NOI, or a corrected NOI. Thus, in our instance, since GREEN TREE purchased the Note *after* the commencement of the foreclosure Action, per *Bank National Trust, et al v. Mitchell* they should have no Standing to correct the NOI.

Correcting the NOI now, is a meaningless exercise that thwarts its entire purpose.

9. The *Guillaume* Court concluded that "[a] trial court adjudicating a foreclosure complaint in which the notice of intention does not comply . . . may dismiss the action without prejudice, order the service of a corrected notice, or impose another remedy appropriate to the circumstances of the case." *Id.* at 476. ". For the reasons stated below the only equitable remedy would be for Plaintiff to be required to file a new lawsuit with a valid NOI.

10. If the NOI had been done correctly Defendants could have possibly obtained a Modification or the like; see Certification of Defendants' enclosed. The purpose of the NOI is to facilitate, if possible, a cure on the default *prior* to the Foreclosure. As such, how would the *new* owner of the Mortgage sending a corrected NOI *four* years into the foreclose possibly adhere to the mission or purpose of the NOI?- it clearly wouldn't. Rather, a corrected NOI would be a complete fictitious remedy that entirely thwarts the purpose and mission of the NOI.

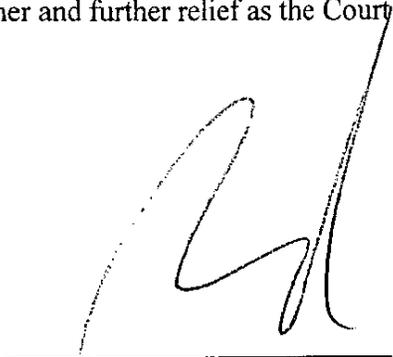
11. In addition, since at the time of the commencement of the Action BAC HOME LOAN was the owner of the loan, BAC HOME may have very well been more amenable to helping

Defendants cure the default through a modification or the like then the *new* lender listed on the corrected NOI, Green Tree. By BAC HOME LOAN sending an incorrect NOI, and by Defendants' Note now having been sold to Green Tree, Defendants forever lost the unique opportunity afforded by the NOI to work with their bank to cure the default prior to the foreclosure.

CONCLUSION

12. In conclusion, per *Guillaume*, "The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure." *Guillaume ID*. This was never effectuated, and sending a *fictitious* corrected NOI by a new lender *four years* later would not serve the purpose of the Legislature. In addition, a corrected NOI should be sent by the party who owned the Mortgage at time of the Commencement, which Plaintiff here is not.

13. WHEREFORE, for the above mentioned reasons it is respectfully requested that Plaintiff's Motion be denied with prejudice, and such other and further relief as the Court deems just and proper.



Haskell Rosenfeld, Esq.

Attorney for GOLDY MANDEL and EDWARD MANDEL

Haskell Rosenfeld, Esq.
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 Rosenfeld Law Group, LLC
 2 Perlman Drive – Suite 310
 Spring Valley, NY 10977
 Tel. 845-512-8702
 Attorney for *Defendants*

In Re Application by Green Tree Servicing LLC to Issue Remediated Notices of Intent to Foreclose in Certain Uncontested Foreclosures <p style="text-align: center;">Plaintiff</p>	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY
	DOCKET NO: F-35398-13
Goldy and Edward Mandel Defendants	DEFENDANTS' CERTIFICATIONS

We, Goldy and Edward Mandel, Husband and Wife, are the Defendants in the above captioned matter. We are making this certification in Support of our Opposition to Plaintiff's Order to show Cause.

1. A few years ago when the economy fell we were struggling to meet our financial obligation and could not make the monthly Mortgage payments; in February 2010 BAC Home Loan Servicing sued us for Foreclosure.
2. Green Tree Servicing LLC has now asked the court to correct a defective Notice of Intent to Foreclose since the NOI that was originally sent to us did not put the lender's contact information on it and as such has been ruled defective.
3. For the Court to grant Green Tree's Motion seems very unfair to us, since if the bank which initiated our Foreclosure, BAC Home Loan Servicing (and is still the named Plaintiff), had complied with the law and given us the correct information we might very well have *at that point* come to a modification agreement with BAC Home Loan.
4. Our present Attorney has now told us that Plaintiff's attorney's response is that we had plenty of opportunities to do a modification. First, even if that were so- the laws of New Jersey require a *correct* NOI to afford us a unique and singular opportunity to do a modification *at that time*- which due to BAC Home Loan Servicing malfeasance we were never given that required and unique opportunity to do at that moment of opportunity.

5. Secondly, Plaintiff now wants to send a corrected NOI, yet Green Tree Servicing LLC was not the lender at the time the NOI was sent to us so there is no possible, nor practical nor equitable way for a new lender to remedy the NOI, since the lender at the time of the NOI, BAC Home Loan Servicing, may have been of better assistance in helping us get a loan modification. That opportunity is now lost to us forever.
6. For us to lose our house through a fictitious retroactive NOI would be gravely unfair to us and our family.
7. We therefore request and beg the Court to not let Plaintiff correct the NOI, and thus obtain a final Judgment against us.

We certify that the above statements made by us are true and that if any of the Statements are willfully false, we are subject to punishment.

Edward Mandel

Edward Mandel

Goldy Mandel

Goldy Mandel

Dated: January 15, 2014

Haskell Rosenfeld, Esq.

Attorney at Law

Rosenfeld Law Group, LLC

2 Perlman Drive – Suite 310

Spring Valley, NY 10977

Tel. 845-512-8702

Attorney for Defendants

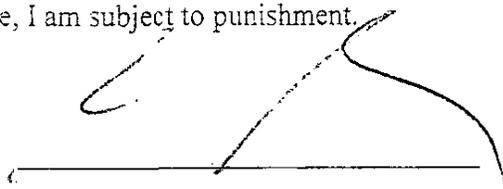
In Re Application by Green Tree Servicing LLC to Issue Remediated Notices of Intent to Foreclose in Certain Uncontested Foreclosures <p style="text-align: center;">Plaintiff</p>	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY
	DOCKET NO: F-35398-13
Goldy and Edward Mandel Defendants	CERTIFICATION OF GENUINENESS OF FACSIMILE SIGNATURES OF DEFENDANTS Goldy Mandel and Edward Mandel

I, HASKELL ROSENFELD, ESQ, of full age, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and represent Defendants Goldy Mandel and Edward Mandel, in the within action.
2. I am entrusted with the conduct and management of the within action.
3. Defendants Goldy and Edward Mandel, acknowledged to me that their signatures on the attached certification is true and accurate and that they emailed it to our office.
4. The original certification bearing Goldy's and Edward Mandel's signatures will be produced upon request.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: JANUARY 16, 204

A handwritten signature in black ink, appearing to read 'HASKELL ROSENFELD', written over a horizontal line.

HASKELL ROSENFELD, Esq.

Haskell Rosenfeld, Esq.
Attorney at Law
Rosenfeld Law Group, LLC
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Tel. 845-512-8700
Attorney for GOLDY MANDEL and EDWARD MANDEL

IN RE APPLICATION BY GREEN TREE
SERVICING, LLC TO ISSUE
REMEDIED NOTICES OF INTENT
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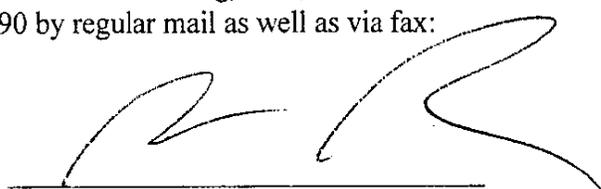
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PASSAIC COUNTY

DOCKET NO.; F-35398-13

CIVIL ACTION
CERTIFICATION OF MAILING

I certify that on January 16, 2014 I sent a copy of the Affirmation in Opposition to the following parties: Laura Scurko, Esq., Stern, Lavinthal & Frankenberg, LLC, 105 Eisenhower Parkway, Suite 302 Roseland, New Jersey 07068-0490 by regular mail as well as via fax: 973.228.2679.

Dated: January 16, 2014



Haskell Rosenfeld, Esq.

ROSENFELD LAW GROUP LLC

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2 Perlman Drive - Suite 310
Spring Valley, NY 10977

January 16, 2014

Superior Court Clerk's Office. Foreclosure Processing Services
Attn: Objection to NOI
P.O. Box 971
Trenton, NJ 08625

RE: Green Tree Servicing vs. Goldy & Edward Mandel
Docket#: F-35398-13

RECEIVED
JAN 21 2014
SUPERIOR COURT
CLERK'S OFFICE

Dear Sir/Ms.:

Enclosed herewith please find the following in regards to the above entitled matter:

1. A copy of the Affirmation in Opposition
2. Certificate of Genuineness of Facsimile Signatures of Defendant(s).
3. Certification of Mailing

Plaintiff's attorney agreed to extend the time to put in a reply. *to the Opposition.*

Should you have any problems or questions please contact the undersigned at your earliest convenience.

Very Truly Yours,



Michele Mann
Paralegal
Rosenfeld Law Group, LLC.