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Attorneys for Clayton S. Pierce and Mrs. Clayton S. Pierce, (Evelyn Nelson)
By: Margaret Lambe Jurow

RECEIVED

OCT 18 2012

**SUPERIOR COURT
CLERK'S OFFICE**

U.S. BANK NATIONAL ASSOCIATION	:	SUPERIOR COURT OF NEW JERSEY
AS TRUSTEE FOR THE STRUCTURED	:	CHANCERY DIVISION
ASSET INVESTMENT LOAN TRUST,	:	UNION COUNTY
2006-3,	:	
	:	
Plaintiff,	:	DOCKET NO. F-29698-08
	:	
v.	:	Civil Action
	:	
CLAYTON S. PIERCE;	:	CERTIFICATION OF CLAYTON S. PIERCE
MRS. CLAYTON S. PIERCE, HIS WIFE,	:	
	:	
Defendants.	:	

1. I am the defendant in the above-referenced matter, and as such I have personal knowledge of the facts set forth herein. I make this certification in opposition to the motion of Wells Fargo, aka, ASC the servicer on my mortgage loan to be permitted to serve me with a corrected Notice of Intention to Foreclose.

2. For the reasons set forth herein, I respectfully request that this court deny that motion and dismiss the foreclosure case.

3. I purchased my home at 3 Robin Road, Fanwood New Jersey (the subject of this foreclosure action) in June, 1970 with my ex-wife, and I have lived here ever since, almost 40 years.

4. Before this foreclosure action was filed, I received a Notice of Intention to Foreclose that did not identify the plaintiff in this matter and did not properly state how much I owed.

5. The notice of intention to foreclose only identified America's Servicing Company (ASC) as the loan servicer and did not identify a lender at all.

6. By including me in the Order to Show Cause, the plaintiff is admitting its failure to identify the lender.

7. When I received the foreclosure complaint, I immediately contested the foreclosure by filing a motion to dismiss the case instead of an answer.

8. Ultimately, I filed an Answer that included ten separate affirmative defenses that included some related to predatory lending and others related to standing.

9. In my first affirmative defense, I alleged that the Notice of Intention to Foreclose was defective for failure to identify the lender.

10. Summary Judgment was entered against me on April 30, 2012 and my answer was stricken and the matter sent to the Superior Court Office of Foreclosure.

11. Final Judgment has not entered.

12. I understand from my attorneys that after final judgment enters I have the right to appeal from the denial of the motion to dismiss the case and from the denial of my discovery motions.

13. ASC has engaged in misconduct in the servicing of my loan.

14. I believe that ASC has charged me excessive fees and that the cure amount is wrong on both the original Notice of Intention to Foreclose and the proposed corrected Notice of Intention to Foreclose.

15. ASC has also failed to negotiate in good faith with me for a loan modification.

16. I have submitted and resubmitted loan modification packets and documents including all of my personal and financial information. I calculate that I have filled out the loan modification packet 29 times.

17. At one point I was told by a Mr. Daubenspeck, who I believe is a manager at Wells Fargo that I was approved for a loan modification.

18. I received a loan modification agreement in the mail.

19. Mr. Daubenspeck told me to send in payments totaling \$12,519.80.

20. I sent the requested payments to ASC.

21. Mr. Daubenspeck told me that I should sign and return the agreement.

22. I promptly signed the agreement before a notary and returned it to ASC by overnight mail.

23. Mr. Daubenspeck told me that I would receive a copy of the fully signed agreement in the mail.

24. Instead of receiving the agreement from ASC, I received the return of my payments.

25. I called Mr. Daubenspeck and was told that he no longer works at Wells Fargo.

26. ASC reneged on the loan modification agreement.

27. ASC informed me several times that they have a "single point of contact" plan to process my loan modification. As I understand it, this means I am supposed to work with one person instead of being transferred around from representative to representative.

28. To date, I have had 30 single points of contact.

29. The corrected Notice of Intention to Foreclose I received told me that if I disagree with the correctness of the calculation of the amount required to cure default, I should contact a Randy Bockenstedt who is identified as a Senior Vice President.

30. I was very hopeful that finally ASC had appointed someone who would process my loan modification application.

31. I tried to call Randy Bockenstedt at the phone number given for him on the corrected Notice of Intention to Foreclose, 1-800-868-0043 on or around August 27, 2012.

32. The telephone was answered by a representative who identified herself as "Erica" and told me she works in Default Services.

33. I asked to be connected to Mr. Bockenstedt, and she told me that she had no idea who he was.

34. After that, I was directed to one representative after another, and my loan modification application has yet to be processed.

35. I have been told by my attorneys that ASC recently entered into an agreement with the Attorney's General of 49 states, called the National Mortgage Settlement.

36. My attorneys told me that the agreement requires \$17 billion in principal reduction.

37. My attorneys told me that the review process for a principal reduction just started in June 2012, and is expected to take three years.

38. My attorneys told me that the National Mortgage Settlement makes servicers change the kinds of practices that I have been dealing with, such as prohibiting "dual track" foreclosures i.e., simultaneously negotiating a loan modification and pursuing foreclosure.

39. By including me in the Order to Show Cause, ASC is clearly taking legal steps to pursue foreclosure.

40. At the same exact time, ASC representatives tell me that they are considering me for a loan modification.

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: _____

Clayton S. Pierce



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Duke University School of Law
Alice Davis*
Harvard Law School

*Pursuant to R:1-21-3(b)

October 17, 2012

Clerk,
Superior Court Clerk's Office,
Foreclosure Processing Services
25 W. Market Street, 6th Floor, North Wing
Trenton, NJ 08611

Re: **U.S. Bank National Association, et al.**
v. Clayton S. Pierce; Mrs. Clayton S. Pierce, his wife
Docket No. F-29698-08

**In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices
of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in
Uncontested Cases
Docket No. F- 009564-12**

Dear Sir or Madam:

Please accept this letter brief in lieu of more formal submission in opposition to the Order to Show Cause in the matter of In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases, Docket No. F-009564-12.

This matter is filed in the defendants' individual foreclosure action rather than in the Order to Show Cause as required by paragraph 8 of the Order to Show Cause: the defendants' objections relate to the corrected Notice of Intent to Foreclose and not to the Order to Show Cause process itself. Copies are being provided simultaneously to Judge McVeigh, Judge Kessler, Mark Melodia, counsel for Wells Fargo and Vladimir Palma, counsel for the foreclosure plaintiff.

PROCEDURAL HISTORY

The foreclosure complaint in this matter was filed by U.S. Bank National Association, as Trustee for the Structured Asset Investment Loan Trust, 2006-3 on or about August 8, 2008. Mr. and Mrs. Pierce were served with the Complaint. The parties executed a Stipulation Extending Time to Answer through October 1, 2008. In lieu of an answer, by motion dated September 29, 2008, the Defendants moved pursuant to R. 4:6-2(a) and (e) for an order dismissing the complaint or in the alternative requiring the plaintiff to set forth "a recital of all assignments in the chain of title" to both the promissory note and the mortgage instrument in connection with this loan and mortgage as required by R. 4:64-1(b) (10). Oral

Argument on the motion was heard on November 7, 2008, at which time the Court denied the motion based on R. 4:6-2(e) and adjourned the motion to dismiss pursuant to R. 4:6-2(a) pending completion of limited discovery on the issues raised in Defendant's motion.

During the discovery period, the plaintiff sent a proposed form of a Protective Order to the court. The court entered the protective order without a formal motion or an opportunity for a hearing. Despite the court's November 7, 2008 order requiring certain discovery, plaintiff failed to meet its discovery obligation and on or about January 30, 2009 Defendants filed a motion to compel discovery. The motion was unopposed by the plaintiff and the court granted defendant's motion and entered an Order granting the motion on February 20, 2009. On March 3, 2009, plaintiff moved for reconsideration, and defendants timely opposed the reconsideration motion on April 8, 2009. However, prior to the expiration of the defendant's opposition period, on April 3, 2009, the court granted the plaintiff's motion for reconsideration and vacated the order compelling discovery. The order was not immediately served upon the defendants' counsel. The court took no action on the defendants' opposition. Plaintiffs then filed opposition to defendants' motion to compel discovery, whereupon the court reversed itself and denied defendants' motion to compel discovery.

Following the limited discovery period, on December 14, 2009 the Court entered an order denying defendants' motion to dismiss and permitted the defendants to file an answer. The defendants timely answered on December 23, 2010, and specifically raised the plaintiff's failure to comply with the Fair Foreclosure Act for failure to identify the lender as one of their ten Affirmative Defenses.

Plaintiff filed a motion for summary judgment on March 4, 2010. The defendants did not oppose the motion for summary judgment as the opposition would have been duplicative with the motion to dismiss and the motion did not go to the amount due. On April 30, 2010, the court entered an Order granting plaintiff's motion for summary judgment, striking the defendant's answer and returning the matter to the Superior Court Office of Foreclosure for further proceedings as an uncontested matter.

Pursuant to the Fair Foreclosure Act, the plaintiff served the defendants with notice that they intended to file a motion seeking entry of judgment. The defendants responded to the letter. The defendants challenge the amount due and specifically many of the fees and costs imposed upon them. They also challenge the rate of interest and assert a good faith belief that they could cure any legitimate mortgage arrears. The motion for judgment has not been filed with the court to the best of the defendants' knowledge. It does not appear on the docket and was not served upon the defendants. Final judgment has not entered.

STATEMENT OF FACTS

Defendants rely on the attached certifications in lieu of a statement of facts.

LEGAL ARGUMENT

The New Jersey Supreme Court recognized in US Bank Nat'l Assn. v. Guillaume, that the plain language of New Jersey' Fair Foreclosure Act requires strict compliance, and specifically that (c)(11) requires identification of "any person, corporation or other entity which makes or holds a residential mortgage, and any person, corporation or other entity to which such residential mortgage is assigned." 209 N.J. 449,

Objection on behalf of Clayton Pierce

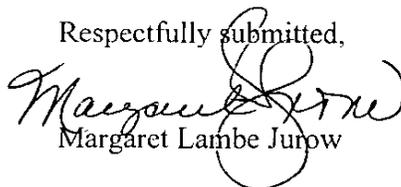
472 (2012) (quoting N.J.S.A. 2a:50-56(c)(11). In this matter, Wells Fargo admits that its Notice of Intention to Foreclose fails to comply with N.J.S.A. 2a:50-56 (c)(11). As for remedy, the court held that “a court adjudicating a foreclosure action in which N.J.S.A. 2a:50-56(c)(11)) is violated may dismiss the action without prejudice, permit a cure or impose such other remedy as may be appropriate to the specific case. . .” Id. at 458.

In this matter, dismissal is the appropriate remedy for the following reasons.

- **This matter was fully litigated at the trial level.** Presumably, the plaintiff will have to correct the standing issue. Even if the plaintiff is permitted to amend its NOI, still has the right to appeal the trial court’s decision on standing.
- **Defendants actively defended against foreclosure by timely filing responsive pleadings. Their answer specifically raised the NOI issue.**
- Defendants have been trying doggedly to work with Wells Fargo towards a loan modification, but Wells Fargo gives them the run-around.
- In connection with this OTSC, Wells Fargo identified a Wells Fargo employee, Randy Bockenstedt as the person to contact with questions. Mr. Pierce tried to contact but the number given on the NOI was to a call center, and the Wells Fargo representative refused to connect him with Mr. Bockenstedt.
- Single point of contact -- the National Mortgage Settlement – also designed to remedy false pleadings – requires identification of a single point of contact.
- The amount to cure includes excessive late fees that have been occasioned solely by delays imposed by the plaintiff.

The defendants respectfully request that this matter be scheduled for a hearing before the vicinage judge assigned to the foreclosure case and that the case be dismissed.

Respectfully submitted,


Margaret Lambe Jurow

cc: Hon. Margaret Mary McVeigh
Mark Melodia, Esq.
Vladmir Palma, Esq.
Hon. Frederic S. Kessler,

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CLAYTON S. PIERCE;	:	
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	:	
Defendants.	:	

Margaret Lambe Jurow, Esq. certifies the following:

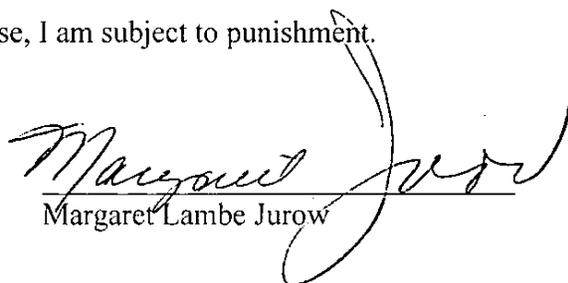
1. I am an attorney at law of the State of New Jersey and am employed by Legal Services of New Jersey as a staff attorney. In the above captioned matter, we represent Defendants.

2. In accordance with R. 1:4-4 (c):

Mr. Pierce was not available to sign the attached certification. Mr. Pierce acknowledged that the signature is genuine. The original document with the original signature affixed will be filed if requested by the Court or a party.

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

Dated: October 17, 2012



Margaret Lambe Jurow



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*Pursuant to R.1-21-3(b)

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 Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases
 Docket No. F- 009564-12**

Dear Sir or Madam:

This office represents Clayton S. Pierce and Mrs. Clayton S. Pierce, the Defendants in the above-referenced foreclosure action.

Enclosed please find and original and one copy of a certification of Mr. Pierce and a letter brief in lieu of more formal submission in opposition to the Order to Show Cause in the matter of In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases, Docket No. F-009564-12.

With respect to the above, kindly file, returning a copy stamped "filed" to the undersigned in the enclosed self-addressed stamped envelope.

Please note that pursuant to R. 1:13 no filing fees may be charged because the defendant is represented by a legal services office.

Thank you for your attention and cooperation.

Very truly yours,

 Margaret Lambe Jurow

Enclosures

cc: Honorable Margaret Mary McVeigh
 Honorable Frederic Kessler
 Reed Smith, LLP
 Phelan, Hallinan & Schmieg