

File No 15262-0001

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**IN RE SPECIAL SUMMARY ACTION  
AUTHORIZED BY ORDER OF THE  
NEW JERSEY SUPREME COURT  
DATED APRIL 4, 2012 BY  
SPECIALIZED LOAN SERVICING,  
LLC TO ISSUE CORRECTED  
NOTICES OF INTENT TO  
FORECLOSE**

**SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
\_\_\_\_\_ COUNTY**

**DOCKET NO. F -014989-12**

**CIVIL ACTION**

**ORDER TO SHOW CAUSE**

**THIS MATTER** being brought before the Court by Parker McCay P.A., attorneys for Specialized Loan Servicing, LLC (“Specialized”), seeking relief by way of summary action pursuant to the Order of the New Jersey Supreme Court dated April 4, 2012 for an Order permitting Specialized to issue corrected Notices of Intent to Foreclose (“NOI”) together with a letter of explanation to the borrowers/defendants identified in the pending, prejudgment, uncontested foreclosure case identified in Exhibits “A-1” to “A-8” to the Verified Complaint (hereinafter the “Subject Borrowers”), and based upon the New Jersey Supreme Court's decision in US Bank, N A. v. Guillaume, 209 N J 449 (2012), the Supreme Court of New Jersey's Order of April 4, 2012, and for other good cause shown;

It is on this \_\_\_\_\_ day of 2012 **ORDERED** that the Subject Borrowers may appear and show cause before The Honorable \_\_\_\_\_, P.J.Ch., of the Superior Court of New Jersey, Chancery Division, \_\_\_\_\_ County, New Jersey at \_\_\_\_\_ o'clock a.m /p.m on the \_\_\_\_\_ day of \_\_\_\_\_, 2012 at \_\_\_\_\_ to object to this Court's Order allowing Specialized to issue corrected NOIs pursuant to this Order to Show Cause

**AND IT IS FURTHER ORDERED THAT FOR EACH FORECLOSURE ACTION IN WHICH SPECIALIZED ISSUES A CORRECTED NOI:**

1. Specialized shall issue a letter of explanation in the format attached to the Verified Complaint as "D". The letter of explanation shall explain (a) the reasons why the corrected NOI is being served; (b) the procedure to follow in the event the Subject Borrowers wish to object to the NOI; (c) the individuals to contact with any questions; and (d) the Subject Borrowers' right to object to the corrected NOI or their right to cure the default within 30 days of the date of the corrected NOI

2 Specialized shall issue a corrected NOI in the format attached to the Verified Complaint as Exhibit "C", and shall attach to said NOI the letter of explanation referenced in paragraph one (1) above The corrected NOI shall exclude attorneys' fees and foreclosure costs that have been incurred in the Subject Borrowers' pending foreclosure cases.

3. Specialized shall serve the corrected NOI, letter of explanation and a copy of this executed Order to Show Cause (the "OSC Package") via certified mail, return receipt requested and regular mail at the last known address of the Subject Borrowers on or before \_\_\_\_\_, 2012.

4 A copy of Specialized's complete application to this Court shall be loaded on the New Jersey Courts website within \_\_\_\_\_ days of the date of this Order where it shall be available for review by the general public at the website link.

<http://www.judiciary.state.nj.us/>. All attachments shall be provided in searchable PDF files

5 In addition to providing service of the OSC Package as required by paragraph three (3) above, Specialized shall provide publication notice two (2) times in each of the following daily publications: (1) The Newark Star Ledger; (2) The Bergen Record; (3) the Courier Post, and (4) The Press of Atlantic City Both publication notices shall be completed on or before \_\_\_\_\_, 2012.

6. Within \_\_\_\_\_ days of the return date identified herein, Specialized shall file a proof of service of the OSC Package pursuant to paragraph three (3) above and proof of publication notice pursuant to paragraph five (5) above with this Court,

7 You, the Subject Borrowers, have the right to object in this proceeding to this Order to Show Cause (the process by which the Court gave Specialized or its designee permission to serve the corrected NOI). To do so, you must file a written objection under the docket number listed on the first page of this Order to Show Cause. You must set forth with specificity the basis for your objection and file your objection on or before \_\_\_\_\_, 2012 with:

The Clerk of the Superior Court, Foreclosure Processing Services  
Attention: Objection to Notice of Intention to Foreclose  
P O. Box 971  
Trenton, New Jersey 08625

You must also serve a copy of your written objection on Specialized's attorney, Gene R. Mariano, Esquire of Parker McCay P.A., 9000 Midlantic Drive, Suite 300, P.O. Box 5054,

Mount Laurel, New Jersey 08054-1539 and mail a copy of your written objection to Judge \_\_\_\_\_ at \_\_\_\_\_.

8. You, the Subject Borrowers, also have the right to object to the corrected NOI that you will receive. You also have the right, within thirty (30) days of service of the OSC Package, to cure your payment default. If you object to any of the contents of your corrected NOI, you must file written objection under the docket number of your foreclosure action. If you are uncertain of the docket number for your foreclosure action, you can access that information on the Court's website as noted in paragraph four (4) above (specifically, see Exhibit "A" to the Verified Complaint) or by calling Specialized's representative listed on the letter of explanation contained in the OSC Package. You must set forth with specificity the basis for your objection and file your objection on or before \_\_\_\_\_, 2012 with:

The Clerk of the Superior Court, Foreclosure Processing Services  
P O Box 971  
Trenton, New Jersey 08625

You must also serve a copy of your written objection on Specialized's attorney, Gene R. Mariano, Esquire of Parker McCay P.A., 9000 Midlantic Drive, Suite 300, P.O. Box 5054, Mount Laurel, New Jersey 08054-1539 and mail a copy of your written objection to Judge \_\_\_\_\_ at \_\_\_\_\_.

9. Specialized may file and serve written reply to any opposition papers filed by the Subject Borrowers on or before \_\_\_\_\_, 2012. Any such reply papers shall be made in writing and the original documents must be filed with the Clerk of the Superior Court in Mercer County, New Jersey with a copy timely provided to Judge

\_\_\_\_\_ at \_\_\_\_\_ and to each Subject Borrower who filed opposition.

10. If you can not 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 corrected NOI in the OSC Package.

11. A proposed form of Order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted by Specialized to this Court no later than \_\_\_\_\_ days before the return date identified herein.

12. This Court will entertain argument, but not testimony, on the return date identified herein.

13. In the event a foreclosure action identified in Exhibits "A-1" to "A-8" to the Verified Complaint 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 procedures shall be used. Specialized or its designee shall mail the OSC Package within 45 days of the lifting of the suspension or stay of the foreclosure action. You, the Subject Borrowers, shall have 30 days in which to object to the corrected NOI or 30 days from service of the OSC Package to cure your payment default. Any objections to the relief set forth 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 objection on Specialized's attorney, Gene R. Mariano, Esquire of Parker McCay P.A., 9000 Midlantic Drive, Suite 300, P.O. Box 5054, Mount

Laurel, New Jersey 08054-1539, or the Court handling your foreclosure action will not be able to consider your objection.

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J.S.C.

File No. 15262-0001

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Attorneys for Specialized Loan Servicing, LLC

**RECEIVED**

JUL 27 2012

SUPERIOR COURT  
CLERK'S OFFICE

**IN RE SPECIAL SUMMARY ACTION  
AUTHORIZED BY ORDER OF THE  
NEW JERSEY SUPREME COURT  
DATED APRIL 4, 2012 BY  
SPECIALIZED LOAN SERVICING,  
LLC TO ISSUE CORRECTED  
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**SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
\_\_\_\_\_ COUNTY**

**DOCKET NO. \_\_\_\_\_**

**CIVIL ACTION**

**BRIEF IN SUPPORT OF SUMMARY  
ACTION AUTHORIZED BY ORDER  
OF THE NEW JERSEY SUPREME  
COURT DATED APRIL 4, 2012 BY  
SPECIALIZED LOAN SERVICING,  
LLC TO ISSUE CORRECTED  
NOTICES OF INTENT TO  
FORECLOSE**

**INTRODUCTORY 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 issues, 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 in N.J S A. 2A:50-56(c)(11)<sup>1</sup> and, absent strict compliance (should

<sup>1</sup> N.J.S.A. 2A:50-56(c)(11) requires an NOI to disclose, among other things, the name and address of the lender. The NOI at issue in Guillaume disclosed the name and address of the loan servicer.

that be the standard), what was the appropriate remedy for an NOI that did not comply with 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 Guillaume Court left the decision of how to remedy any such deficiency to the discretion of the Chancery/Trial Courts. The Guillaume Court expressly 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 (c)11 NOI deficiency 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 Honorable Paul Innes, P.J Ch. and The Honorable 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 corrected NOIs to remedy the originally non-compliant NOI. The Supreme Court's April 4, 2012 Order also requires that corrected NOIs, if permitted to be issued by Judge Innes or Judge McVeigh, must be accompanied by a letter of explanation setting forth to the borrowers the reasons why the corrected 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 corrected NOI allows the borrowers thirty (30) days in which to object or to cure the specified payment default

Specialized Loan Servicing, LLC (“Specialized”) now moves pursuant to the Supreme Court’s April 4, 2012 Order with respect to the borrower(s)/defendant(s) identified in Exhibits “A-1” to “A-8” attached to Specialized’s Verified Complaint (hereinafter the “Subject Borrowers”). Each of the Subject Borrowers was originally served with an NOI that did not identify the name and address of the lender in contravention to N.J.S.A. 2A:50-56(c)(11)- instead, the name and address of the loan servicer was provided.

For the reasons detailed below, it is respectfully submitted that Specialized should be permitted to serve corrected NOIs and letters of explanation on the Subject Borrowers in the forms attached to Specialized’s Verified Complaint as Exhibits “C” and “D” respectively.

#### **STATEMENT OF FACTS**

Specialized incorporates the Verified Complaint as if set-forth herein at length.

#### **ARGUMENT**

**I. SPECIALIZED SHOULD BE PERMITTED TO ISSUE CORRECTED NOIS TO THE SUBJECT BORROWERS BECAUSE THE ORIGINAL NOIS PROVIDED THE SUBJECT BORROWERS 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 an exhaustive analysis of the Fair Foreclosure Act, N.J.S.A. 2A 50-53-68, in making its decision that N.J.S.A. 2A.50-56(c)(11) must be strictly complied with, but that the 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 Fair Foreclosure Act in general, the Guillaume Court noted that it 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 “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 but specifically instructed that said Courts should consider the express purpose of the provision (i.e. 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). Providing further clarity the Guillaume Court also stated “[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 corrected 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, the 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 Subject Borrowers failed to identify the name and address of the lender and, instead, identified name and address of the loan servicer (and telephone number).

Thus, the operative question in this matter, as noted by the Guillaume Court, is whether the original NOIs issued to the Subject Borrowers provided notice that made the Subject Borrowers aware of the situation and enabled them to attempt to cure their default

(or, stated another way, whether the original NOIs properly notified the Subject Borrowers 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 Subject Borrowers with notice that, among other things, their loans were in default and the nature of the default; that they had a right to cure the default, the amount needed to cure the default and the date on which that amount must be tendered; and, absent the default being cured, that a foreclosure suite may be commenced. Moreover, the Subject Borrowers were given the 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, and were also given a comprehensive list of state and other agencies to contact for financial and other assistance

In other words, notwithstanding that the name and address of the actual lender was not included in the NOIs at issue, the Subject Borrowers 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 Subject Borrowers chose not to cure their defaults and/or save their homes

Thus, with respect to the Subject Borrowers, it is respectfully submitted that Specialized should be permitted to issue corrected NOIs (and a letter of explanation) to cure the originally defective NOIs. Such relief in no way, shape or form circumvents the legislative intent that underpins the Fair Foreclosure Act in general and N.J.S.A. 2A:50-56(c)

in particular. The undeniable fact is that the Subject Borrowers were provided ample notice that made them directly aware of their situations with respect to their mortgage loans and homes and gave them an opportunity to cure the default and keep their homes. Having established this irrefutable fact, it clearly is a proper exercise of its discretion for the Court in this matter to permit Specialized to issue corrected NOIs and letters of explanation to the Subject Borrowers to cure the originally defective NOIs.

**II. SPECIALIZED SHOULD BE PERMITTED TO ISSUE CORRECTED NOIS TO THE SUBJECT BORROWERS BECAUSE THE SUBJECT BORROWERS HAVE ALSO HAD NUMEROUS NOTICES OF THEIR PAYMENT DEFAULT AND NUMEROUS OPPORTUNITIES TO CURE THEIR PAYMENT DEFAULT AND KEEP THEIR HOMES**

Specialized is aware of the Court's analysis in Guillaume and the guidance it declared should be employed by the Chancery/Trial Courts when determining an appropriate remedy for non-compliance with N.J.S.A. 2A:50-56(c)(11). It is respectfully submitted, however, that the Chancery/Trial Courts (or this Court, in particular) should not limit the analysis to solely whether the purpose/intent of the Fair Foreclosure Act and N J S A. 2A 50-56(c), in particular, were met notwithstanding that the original NOIs were defective.

The Court should also consider what transpired since the issuance of the original, defective NOI. For example, as noted in Exhibits "A-1" through "A-8" attached to Specialized's Verified Complaint, the Subject Borrowers were also provided notice and an opportunity to cure and save their homes when (a) the foreclosure complaints were formally served on them (on July 15, 2011, January 2, 2010, September 22, 2008 and September 25, 2009) and when default was entered and served on them (on September 2, 2011, February 15,

2010, October 28, 2008 and November 17, 2009).<sup>2</sup>

Thus, the fact of the matter is that in addition to the original NOIs the Subject Borrowers have been given repeated notices about their current mortgage loan situation and an opportunity to cure their payment defaults and save their homes. Again, the Subject Borrowers chose not to cure their defaults and/or save their homes despite these notices/opportunities.

Thus, these additional facts further justify the relief sought by Specialized. The Subject Borrowers have had repeated bites at the apple to cure their payment defaults and save their homes.

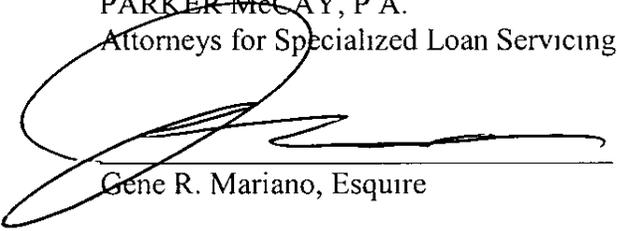
Based on the foregoing, it is respectfully submitted that Specialized should be permitted to issue corrected NOIs and letters of explanation to the Subject Borrowers to remedy the originally defective NOIs

### CONCLUSION

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

PARKER McCAY, P A.  
Attorneys for Specialized Loan Servicing, LLC

Date: 7/27/12

  
Gene R. Mariano, Esquire

LAW OFFICE  
PARKER McCAY P A

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<sup>2</sup> Further notice and an opportunity to cure was afforded the Subject Borrowers prior to the entry of default because the Subject Borrowers were also the benefactors of a 14 day notices.