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IN RE APPLICATION BY
HOUSEHOLD FINANCE CORPORATION III TO
ISSUE CORRECTED NOTICES OF
INTENT TO FORECLOSE ON
BEHALF OF IDENTIFIED
FORECLOSURE PLAINTIFFS
IN UNCONTESTED CASES

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY

DOCKET NO.: F-015390-13

CIVIL ACTION

INJURED PARTYS'
VERIFIED OBJECTION
TO OSC IN RE APPLICATION BY
HOUSEHOLD FINANCE CORPORATION III
TO
ISSUE CORRECTED NOTICES OF
INTENT TO FORECLOSE ON
BEHALF OF IDENTIFIED
FORECLOSURE PLAINTIFF'S
IN UNCONTESTED CASES

COMES NOW, Kathleen Melincavage, *Sui Juris*, Raymond Melincavage, *Sui Juris*, as One of the People of the state of New Jersey, and Real Injured Parties in Interest (hereinafter "Injured Parties"), by special appearance and not general appearance; denying, questioning and not granting jurisdiction of this Court over the instant foreclosure action to which the Injured Parties are currently involved in, hereby submit this Verified Objection to the Verified Complaint, inclusive of all attachments, the re-serving of a "corrected" Notice of Intention to Foreclose ("NOI"), as well as the "corrected NOI" itself, and Order to Show Cause ("OSC") issued by the Hon. Mary McVeigh, by and through HOUSEHOLD FINANCE CORPORATION III ("HFC III"), and states:

We, Kathleen Melincavage, *Sui Juris*, Raymond Melincavage, *Sui Juris*, of age and competent to testify, state as follows based on my own personal knowledge:

INTRODUCTION

We, Kathleen Melincavage, *Sui Juris*, Raymond Melincavage, *Sui Juris*, hereby reserve and invoke all of our rights under all applicable law, including but not limited to those rights stated under the U.S. and New Jersey Constitution, Mortgage Security Instrument, and New Jersey Commercial Code, with respect to defending my property.

We, Kathleen Melincavage, *Sui Juris*, Raymond Melincavage, *Sui Juris*, believe there is an active campaign to distract homeowners, attorneys who represent homeowners in foreclosure, and judges, among others, throughout this State from acknowledging the “elephant in the room” described herein: that, which is the duty of the *Lender and Note Holder* to notice the homeowner of a default, and thus, carry out the conditions precedent to foreclosure.

The Injured Parties are defendants in a foreclosure action filed in the Superior Court of Camden County, Chancery Division by HOUSEHOLD FINANCE CORPORATION, III, in the case of HOUSEHOLD FINANCE CORPORATION, III v. MELINCAVAGE, ET AL. (F-6310-10).

As this Court is aware, the above action filed by HOUSEHOLD FINANCE CORPORATION III comes pursuant to the Supreme Court of New Jersey's (SCNJ) April 4, 2012 Order entered following the Court's decision in U.S. Bank, N.A. v. Guillaume, 209 N.J. (2012), (“Guillaume”)¹.

The SCNJ authorized both Hon. Innes² and Hon. McVeigh³ “to entertain 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 yet been entered, who served Notices of Intention to Foreclose that are deficient under the Fair Foreclosure Act, N.J.S.A. §2A:50-56,

¹ On February 27, 2012, the SCNJ decided Guillaume and held that the Fair Foreclosure Act requires strict adherence to the notice requirements set forth in N.J.S.A. §2A:50-56(c) for all NOIs. The Court further held that a court adjudicating a foreclosure action in which the requirements of N.J.S.A. §2A:50-56 were not followed has the discretion to choose the appropriate remedy, permitting a cure of the deficient NOI, or imposing such other remedy as may be appropriate to the specific case.

² P.J.Ch., Passaic Vicinage.

³ P.J.Ch., Mercer Vicinage.

should not be allowed to serve corrected Notices of Intention to Foreclose on defendant mortgagors and/or parties obligated on the debt."

The above foreclosure action filed by HOUSEHOLD FINANCE CORPORATION III against the Injured Parties involved a notice purporting to be a "NOI" sent by a servicer that was deficient in the manner which HOUSEHOLD FINANCE CORPORATION III and the SCNJ have acknowledged above, and, in fact, not a NOI. (*See Exhibit A attached hereto*). As MELINCAVAGE stands presently, default was entered on June, 2011, thereby deeming the Injured Parties' Answer "uncontested." HOUSEHOLD FINANCE CORPORATION III has yet to apply for final judgment in the matter.

While the Injured Parties cannot speak on behalf of all other affected homeowners, nonetheless, the issues raised herein *affects all residential homeowners' foreclosures where a purported NOI was sent by a third party servicer - in particular, HOUSEHOLD FINANCE CORPORATION III - whose authority to act under the Mortgage Security Instrument, Note, and New Jersey law, was never established*. The herein issues raised go straight to the heart of all New Jersey residential foreclosure plaintiffs' standing.

HOUSEHOLD FINANCE CORPORATION III'S VERIFIED COMPLAINT

In its Amended Verified Complaint, according to HOUSEHOLD FINANCE CORPORATION III, it has "reviewed its pending foreclosure cases with its counsel to identify those foreclosure cases which will require a corrected NOI because the lender and the lender's address were not included in the previously served NOIs." Furthermore, HOUSEHOLD FINANCE CORPORATION III 's "Corrected NOI list was reviewed for accuracy to verify the status of the foreclosures" which "includes the portfolio of loans that are pre-judgment, uncontested foreclosures that HOUSEHOLD FINANCE CORPORATION III is servicing and in which deficient NOIs were served by HOUSEHOLD FINANCE CORPORATION III."

Additionally, HOUSEHOLD FINANCE CORPORATION III claims it "services mortgage

loans for residential properties in New Jersey.”

According to HOUSEHOLD FINANCE CORPORATION III, “If a loan is owned by another entity, HOUSEHOLD FINANCE CORPORATION III undertakes these efforts in accordance with the contracts that govern its relationship with the owner of the loan as well as the loan documents, Rules of Court and any applicable laws. ... HOUSEHOLD FINANCE CORPORATION III makes this application to the Court pursuant to the authority granted to HOUSEHOLD FINANCE CORPORATION III as the servicing agent of Foreclosure Plaintiffs in pending foreclosure cases.”

HOUSEHOLD FINANCE CORPORATION III goes on to claim, “One of the duties of a servicer on a defaulted mortgage loan in New Jersey is to prepare and serve the NOI, in accordance with the applicable contracts and as required by N.J.S.A. 2A:50-56 of the FFA.”

Furthermore, HOUSEHOLD FINANCE CORPORATION III claims, “While HOUSEHOLD FINANCE CORPORATION III is not the Plaintiff in each of the foreclosure actions, it is the servicer of each such loan, maintains the records for each such loan, and is responsible for mailing the corrected NOI pursuant to the relevant contract with the Foreclosure Plaintiffs.”

HOUSEHOLD FINANCE CORPORATION III's Amended Verified Complaint proceeds to list 34 Counts with each Count naming a separate entity for which HOUSEHOLD FINANCE CORPORATION III claims it “services residential mortgage loans in New Jersey... pursuant to an agreement between the parties.”

**OBJECTION TO HOUSEHOLD FINANCE CORPORATION III'S APPLICATION,
VERIFIED COMPLAINT,
OSC AND PROPOSED “CORRECTED NOI”**

Kathleen Melincavage, *Sui Juris*, and Raymond Melincavage, *Sui Juris*, hereby object in full to HOUSEHOLD FINANCE CORPORATION III's Application and all attachments in support of its Order To Show Cause and demand strict proof, from the principal, of HOUSEHOLD FINANCE CORPORATION III's authority to act as agent and serve a lawful NOI, specifically upon the Injured

Parties, in addition to all other affected homeowners, and incorporates by reference all preceding paragraphs as though fully set forth herein and states:

The NOI 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. U.S. Bank, N.A. v. Guillaume at 582. N.J.S.A. 2A:50-56(a) requires lenders contemplating foreclosure to give defaulting homeowners “notice of such intention at least 30 days in advance of such action as provided in this section.” (emphasis added) Guillaume at 582.

Subsection (e) under N.J.S.A. 2A:50-56 states as follows:

The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice. (Emphasis added.)

The Appellate Division in Bank of New York v. Laks (N.J. Super. A-4221-09T3, WL 3424983, (2011)) also acknowledged subsection (e) of the FFA, holding that the lendor's "duty" to provide the notice of intention is "independent of any other duty to give notice." (emphasis added).

The Appellate Division has consistently concluded that lenders must strictly comply with the FFA. Laks; see Chaudhri, supra, 400 N.J. Super. at 139; Kim, supra, 361 N.J. Super. at 346. Compliance with this notice provision is, in effect, a condition the lender must satisfy in order to either "accelerate the maturity of any residential mortgage obligation" or "commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage." (emphasis added) N.J.S.A. 2A:50-56(a); Bank of New York v. Laks. The FFA entitles a residential borrower to service of a conforming notice of intention before acceleration of a mortgage obligation and before commencement of foreclosure proceedings. N.J.S.A. 2A:50-56(a); Laks.

Most recently, our Supreme Court in U.S. Bank, N.A. v. Guillaume noted and held what the trial court observed in its opinion at 588:

A lender's failure to serve a notice of intention would be more significant than the omission of the lender's name from the notice of intention. (Emphasis added.)

In accordance with the pre-foreclosure notice requirements under the FFA is the subject Mortgage Security Instrument conditions precedent which states in part:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrowers breach of any covenant or agreement in this security instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the property; (e) the Borrower's right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure, and (f) any other disclosure required under the Fair Foreclosure Act, codified at Section 2A:50-53 et seq. of the New Jersey Statutes, or other Applicable Law. (Emphasis added.)

These conditions under the Mortgage, and Note, as described herein, entitle the Injured Parties, and all other homeowners, to service of a conforming notice of intention from the Lender and Note Holder before acceleration of a mortgage obligation and commencement of foreclosure proceedings.

N.J.S.A. 2A:50-55 defines "Lender" as:

... 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." (Emphasis added.)

Paragraph 1 of every Fannie Mae/Freddie Mac Uniform Instrument Note states in pertinent part:

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and *who is entitled to receive payments under this Note is called the "Note Holder."*⁴ (Emphasis added.)

Paragraph 7 of all Fannie/Freddie Notes state in pertinent part:

(C) Notice of Default

⁴ See, Plaintiff's Exhibit A, Note at p. 1.

If I am in default, *the Note Holder may send me a written notice* telling me that if I do not pay the overdue amount by a certain date, *the Note Holder may require me to pay immediately the full amount of Principal* which has not been paid and all the interest that I owe on that amount... [Emphasis added.]

Paragraph 7(C) stipulates that only the Note Holder can send out a Notice of Default. Paragraphs 1 and 7 (C) of the Note reserve enforcement exclusively to the person [or persons] entitled to receive Borrowers' payment. This person is the *Note Holder*. These terms are embedded as indelibly into the foundation document of this transaction as are the names of the parties and the amount being loaned.

The unambiguous meaning of Paragraphs 1 and 7(C) of the Note state that only the party entitled to Borrowers' payments can be the Note Holder and successor in interest to the Lender. From this factually incontrovertible premise, this legal corollary is self-evident. Since the Note Holder is the only party that can initiate a foreclosure proceeding, this act of enforcement can only be performed by the person [or persons] that are entitled to receive Borrowers' payments.

Under this Mortgage, the powers of the Lender are pervasive. This is declared in the *Transfer of Rights in the Property* clause. In pertinent part, the *Transfer of Rights* paragraph "secures to Lender:

(i) The *repayment of the loan*, and ... and (ii) performance of Borrower's covenants and agreements *under this security instrument*." [Emphasis added.]

Under *Acceleration, Remedies*, only the *Lender at its option* can invoke the power of sale and pursue foreclosure. Only the *Lender* may enforce the Note and pursue foreclosure. No other party but the Lender or their successor in interest is allowed to exercise this authority.

30. Under well settled property law concepts, only a party with *an ownership interest in the note* can enforce the mortgage. The Restatement (Third) of Property, Mortgages §5.4(c) states, "a mortgage may be enforced *only by*, or *on behalf of*, a person who is entitled to enforce the obligation the mortgage secures." [Emphasis added.] *A mortgage servicer has no ownership interest in the Note.*

By serving a notice purporting to be a NOI, HOUSEHOLD FINANCE CORPORATION III, as alleged servicer, and third party to the mortgage, is purporting to act on very basic principles of agency law that have existed in New Jersey for many decades. The principle is simply this: If an agent is acting or coming into court to act on behalf of a principal, there must be some consent of the principal upon whose behalf the agent is acting. Under New Jersey agency law, “an agency relationship is created when one party consents to have another act on its behalf, with the principal controlling or directing the acts of the agent.” Sears Mortgage Corp. v. Rose, 134 N.J. 326 (1993); Arcell v. Ashland Chem. Co., 152 N.J. Super. 471, 494-95, 378 A.2d 53 (Law Div. 1977).

The admissions of an agent bind the principal only when they are made within the scope of the agency or when they are authorized by the principal. Hansen v. Eagle-Picher Lead Co., 84 A. 2d 281 - NJ: Supreme Court 1951; Van Genderen v. Paterson Wimsett Thrift Co., 128 N.J.L. 41 (1942).

N.J.S.A. §46:2B-10 defines “Agent” as:

... the person authorized to act for another person pursuant to a power of attorney. An agent may be referred to as an 'attorney,' 'attorney-in-fact' or 'deputy' in the power of attorney.

Under New Jersey law, the alleged power of attorney bestowed upon purported servicer HOUSEHOLD FINANCE CORPORATION III must be committed to in writing. N.J.S.A. §46:2B-10. The Injured Parties’ Mortgage, nor any other New Jersey Fannie Mae/Freddie Mac Uniform Mortgage Security Instrument⁵, does NOT grant Power of Attorney to any servicer, nor HOUSEHOLD FINANCE CORPORATION III, under New Jersey or any other applicable law. In fact, the Mortgage does not expressly create an agency relationship with any entity or even mention the word “agency.” Thus, purported servicers do not constitute lawful agents under N.J.S.A. §46:2B-10 to have acted on

⁵ <https://www.efanniemae.com/sf/formsdocs/documents/secinstruments/doc/3031w.doc>
<http://www.freddie.mac.com/uniform/doc/3031-NewJerseyMortgage.doc>

behalf of an alleged undisclosed principal to the Injured Party's Mortgage, or any other New Jersey Fannie Mae/Freddie Mac Uniform Mortgage. The issue lies herein. *At all times during the servicing of the mortgage, homeowners deal directly with third party servicers, who are purportedly acting on behalf of an alleged undisclosed principal.*

Not only do servicers prevent homeowners from communicating directly with the real party in interest, but the alleged principal is withheld from the homeowner, and remains undisclosed until the foreclosure complaint is filed; and even then, in many cases, the alleged principal is *never* disclosed. In other words, servicers not only fail to disclose whom they are allegedly advancing the monthly mortgage payments to, but they also fail to disclose whom they are purportedly collecting payments and acting/foreclosing on behalf of.⁶ In many cases, there exists no proof that the principal owner ever participated in, or authorized, the foreclosure process to commence. A non-party to the mortgage who serves a "NOI" for a purported undisclosed principal, alleging a default, and who, oftentimes, ends up as the plaintiff in a foreclosure action, is nothing short of a fraud committed upon the Injured Parties, all other affected homeowners, the public [record] and the Courts of this State. Identifying exactly who owns the mortgage which is being foreclosed upon is an absolute essential element to a mortgage foreclosure action.

SERVICING SHELL GAME

This servicing shell game goes much deeper. A shadowy scheme to conceal the real party in interest and all transfers made in the secondary market regarding residential mortgages has been employed, if not created, by government sponsored entities (GSE) such as Fannie Mae (Federal National Mortgage Association) and her boyfriend, Freddie Mac (Federal Home Loan Mortgage

⁶ In cases involving a securitized trust, the mortgage servicer who collects monthly payments from the borrower is only a "sub-servicer" at best. Beyond this surface layer is another entity known as a "master servicer" (See e.g. Fannie Mae Trust Agreement, prospectus Supplement dated 03/01/2007 and 08/01/2007, for the Fannie Mae 2007-36 REMIC Trust, Securities and Exchange Commission file # 0-50231 for the fiscal year ending December 31, 2007; including but not limited to the Pooling and Servicing Agreement/Trust documents dated 09/01/2006, Issue date 03/01/2007). More layers must be peeled back before one can find the real party in interest.

Corporation) as evidenced in their own servicing guidelines.⁷ These “guidelines” direct servicers such as HOUSEHOLD FINANCE CORPORATION III to avoid recording assignments of mortgages in instances where Mortgage Electronic Registration Systems, Inc. (“MERS”)⁸ is the original mortgagee of record, with absolute disregard for the State's centuries-long property recordation system and maintaining a valid chain of title to property.⁹ Moreover, under these guidelines, servicers such as HOUSEHOLD FINANCE CORPORATION III are required to foreclose in their own name, as opposed to Fannie or Freddie, or in other words, the real party in interest, and further manufacture their own assignments from MERS to themselves (servicers) for litigation purposes.¹⁰ Such guidelines for servicers are repugnant to New Jersey law specifically regarding mortgage assignments, property records, real party in interest and fraud, *inter alia*, while violating the due process and substantive rights of all respective homeowners.

The SCNJ, by and through the appointed Special Master, is well aware of this new age where mere servicers have attempted to evolve into lenders. In its *Order Approving the Report of the Special Master Concerning* HOUSEHOLD FINANCE CORPORATION III, the Hon. Mary C. Jacobson's stipulations include but are not limited to:

- a.) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees;
- c.) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings.

The banks, GSEs and servicers, now with the help of our Courts, are outrageously attempting to

⁷ <https://www.efanniemae.com/sf/guides/ssg/svcgpdf.jsp>, <http://www.allregs.com/tpl/Main.aspx>

⁸ MERS purportedly holds approximately 60 million mortgage loans (*See* Michael Powell and Gretchen Morgenson, *MERS? It May Have Swallowed Your Loan*, New York Times, March 5, 2011), and is involved in the origination of approximately 60% of all mortgage loans in the United States (*see* Peterson at 1362; Kate Berry, *Foreclosures Turn Up Heat on MERS*, Am Banker, July 10, 2007, at 1).

⁹ Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 66.17.

¹⁰ Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 22.14.

allow servicers to simply step into the shoes of the lender and carry out the foreclosure process in full, inclusive of serving the NOI and alleging a default, and filing the lawsuit; all in spite of what every Fannie Mae/Freddie Mac New Jersey Residential Uniform Mortgage states, and the New Jersey laws as they exist today. The Courts of New Jersey are allowing servicers to be plaintiffs without demanding the real party in interest to step forward because, as it now appears, all are following GSE's guidelines. Allowing a servicer to initiate foreclosure proceedings based upon a third party's defective notice purporting to be a NOI, where the delivery and claims made within said notice are *prima facially* suspect, violates all respective homeowners' substantive and due process rights.

Freddie Mac is directing servicers to file foreclosures in servicers' name.¹¹ As described above, this is a fraud upon the Courts and all homeowners, while denying due process in the foreclosure action. Assignments to and from servicers and the GSEs are not only colorable and give rise to unclean hands, but are in fact fraudulent as the servicers, by and through local foreclosure mill law firms, manufacture the assignments in anticipation of a foreclosure proceeding as opposed to creating the assignment when the transfer actually occurs.¹² "A servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation." 12 C.F.R. §226.39 (a)(1).

New Jersey law does not allow for servicers, and other non-owners, to initiate foreclosure proceedings, bring an action in its own name, verify complaints nor use GSE guidelines to foreclose on homeowners. R. 4:26-1; Bank of New York v. Raftogianis, 13 A. 3d 435 - NJ: Superior Court, Chancery Div. 2010; Gotlib v. Gotlib, 399 N.J.Super. 295, 944 A.2d 654 (App.Div. 2008); Garroch v. Sherman, 6 N.J.Eq. 219 (Ch.1847) ; N.J.S.A. §46:2B-10; Sears Mortg. Corp. v. Rose; Hansen v. Eagle-

11 Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 66.17.

12 Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 22.14.

Picher Lead Co.; Van Genderen v. Paterson Wimsett Thrift Co. To further add to this absurdity, Freddie Mac's Guidelines under *Section 66.54* specifically instructs servicers to avoid payment of Property Transfer Tax even though by law it would be the foreclosing entity's responsibility to do so:

The Servicer must ensure that its foreclosure counsel or trustee conducts the foreclosure in the Servicer's name and that title to the property is vested in Freddie Mac's name (if property is not purchased by a third party). This must be done in a manner that does not result in an obligation to pay transfer tax. Freddie Mac will not reimburse the Servicer for any transfer taxes.

The record is presently clear: Our Counties in New Jersey desperately need this funding. The foregoing unlawful and fraudulent acts allow Freddie Mac to bid (credit bid, no cash) on the foreclosure sale of each property despite not being the alleged disclosed plaintiff, party in interest, or the true creditor in any of the foreclosure complaints and suits. In addition to the substantive and due process rights of all respective homeowners being violated, this creates a cloud on the title that will continue to exist if not corrected immediately.

HOUSEHOLD FINANCE CORPORATION III claims that “[o]ne of the duties of a servicer on a defaulted mortgage loan in New Jersey is to prepare and serve the [NOI], in accordance with the applicable contracts and as required by the [FFA].” Despite HOUSEHOLD FINANCE CORPORATION III's claims of alleged “contracts that govern its relationship with the owner of the loan” and “authority granted to HOUSEHOLD FINANCE CORPORATION III as the servicing agent of Foreclosure Plaintiffs,” proof of such authority has yet to be evidenced at any time. **The Injured Parties hereby object to, deny, and question HOUSEHOLD FINANCE CORPORATION III's authority as alleged servicer to serve a NOI and file a foreclosure complaint on behalf of the alleged undisclosed principal/true owner; and the Injured Parties hereby demand strict proof thereof. Proof of such authority must come from the mouth of the principal. See Sears; Hansen; Van Genderen.** A servicer's authority and duty to serve a NOI as agent on behalf of its alleged

undisclosed principal must come from the principal and be evidenced in writing by way of a duly recorded Power of Attorney. There is no provision within the four corners of the Mortgage allowing a servicer to step into the shoes of the lender and send the NOI, let alone file a foreclosure action, on the lender's behalf. To allow a servicer to serve a NOI and/or file a complaint for foreclosure without proof of authority and/or ratification of commencement is be repugnant to New Jersey law and precedent, and federal law.

The Injured Parties assert that a violation of subsections (a) and (e) under the FFA, as well as the failure to fulfill the conditions precedent under the Mortgage, are not mere technicalities but proof of a fatal defect in HOUSEHOLD FINANCE CORPORATION III's standing. This Court must refrain from focusing all of its attention on the notice's defective content but rather concern itself more with from whom the notice was sent, and who the actual Lender was at the time the notice was to have been sent pursuant to and in accordance with the provisions of the Mortgage and New Jersey law.

The FFA and Mortgage entitle the Injured Parties and all other homeowners to service of a conforming notice from Lender before foreclosure. Moreover, the notice provisions under the Mortgage require that Lender must inform the Injured Party of his "right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrowers to acceleration and foreclosure." The Injured Party not only failed to receive such notice, but simply allowing HOUSEHOLD FINANCE CORPORATION III to serve a "corrective NOI" during the present foreclosure(s) would fail to serve the intent and purpose of the FFA and Mortgage conditions, thus depriving the Injured Parties and all other affected homeowners of their rights under both the FFA and Mortgage.

The re-serving of a "corrective" NOI during a pending foreclosure where the foreclosing plaintiff has already filed suit and obtained a judgment would be improper, void, and a forfeiture and violation of the due process and substantive rights of the Injured Parties and all respective homeowners.

The only available option remaining to the Injured Parties and respective homeowners from a “corrective NOI” at this stage in the proceedings would be to pay the alleged amount due, to which the Injured Parties, and many other homeowners, have maintained a denial of a default since the inception of the foreclosure proceedings, or the purported debt was discharged in a bankruptcy proceedings, and that HOUSEHOLD FINANCE CORPORATION III lacks standing as it is not the real party in interest entitled to receive payment or foreclose.

The FFA and subject Mortgage protects the Injured Parties and all other homeowners from undue harm, paying an imposter posing as “Lender.” In order for an entity to claim the title of lender, it must meet the statutory definition under the FFA. N.J.S.A. 2A:50-55. A duly recorded Assignment of Mortgage is a condition precedent for subsequent lenders to qualify as, and thus become, Lender as defined under the FFA. It is very clear and obvious only the Lender can claim and enforce Lender's rights and remedies under the FFA and Mortgage. A duly recorded Assignment is innately interwoven and fundamentally inseparable with the State's pre-foreclosure filing mandates, all to which is the duty of the Lender. Only the lender of record is authorized under the FFA and Mortgage to fulfill the conditions precedent and serve the proper notices to the Injured Parties, and all other homeowners, before foreclosure. Serving the Injured Parties, and all other homeowners, with a corrected NOI does not cure this deficiency as the NOI must be served thirty (30) days *prior* to instituting the foreclosure action. HOUSEHOLD FINANCE CORPORATION III, with the help of New Jersey's courts, are attempting to strip away homeowners' pre-foreclosure rights and remedies in their attempt to steal homes.

The Appellate Division in Laks concluded:

In the end, the Legislature has imposed a duty that lenders must perform before they accelerate a residential mortgage obligation or commence an action to foreclose. In this case, plaintiff did not fulfill its obligation before filing the action, and, regardless of the relative merits and equities, it is not entitled to accelerate the mortgage principal or maintain a

foreclosure action until it complies. (Emphasis added.)

US BANK v. GUILLAUME

In the recently decided case before the SCNJ, U.S. Bank, N.A., as Trustee v. Guillaume, defendant homeowners were dealt a default judgment having failed to answer the foreclosure complaint. Thereafter, plaintiff, U.S. Bank, N.A., was awarded a final judgment. It was not until then did the defendants seek counsel and attempt to move to vacate the default judgment.

With regards to the FFA, defendants, the Guilllaumes, moved under R. 4:50-1(a) alleging the NOI they received was in violation of N.J.S.A. 2A:50-56(c)(11) exclusively, having failed to name the lender and lender's address. Solely because of this violation, defendants further argued the judgment was void and the court lacked jurisdiction. The SCNJ overruled the Appellate Division in the Bank of New York v. Laks, concluding that a violation of subsection (c)(11) did not render a judgment void, did not deprive a court of jurisdiction, nor limit a court to the remedy of a dismissal alone.

As evidenced by the SCNJ's April 4, 2012 Orders, the decision in Guillaume now appears to have an all-encompassing affect on each and every residential foreclosure action where a defective NOI is of issue, notwithstanding the fact that the NOI issues in each case may vary. The circumstances, procedural history, and fact pattern surrounding Guillaume are vastly dissimilar to the most critical issues raised herein. Not only did the Guilllaumes fail to argue a violation of subsections (a) and (e) under the FFA, but they also failed to state whether the notice conditions under their own Mortgage were fulfilled. In other words, the Guilllaumes did not argue from *whom* the NOI was sent, and did not challenge the servicer's authority, as purported agent, to have served them with a NOI. To which had the Guilllaumes effectively done so, a more favorable outcome may have been reached.

The Injured Party and all affected homeowners have been extremely prejudiced by the New Jersey Courts' grouping of every case where a defective NOI has been served under the decision and subsequent Orders from Guillaume. The Guillaume decision and subsequent Orders from the SCNJ

concerned only a matter of defective contents within a properly served NOI, never addressing the conditions precedent under the Mortgage, nor from whom the notice is to be sent. This is clearly not the case herein. The Guillaume decision and SCNJ's April 4, 2012 Orders, as it is being employed the SCNJ, GMACM, and this Court, have no effect on the lender's duty to serve the NOI as stated under New Jersey law and those respective Mortgage instruments.

THE CRUX OF THE NOI

The issue concerning the NOI is the very essence to bring an action to foreclose through established facts that the account is default, to which the NOI's content, delivery, and propriety will be argued. The question which the Court must consider is, have all the facts alleged by the purported servicer in the NOI been rightly contributed to a full accounting and proper authorization before the fact of default was attained?

The role of the NOI is an important part of the foreclosure process, but the NOI's content is only part and parcel of an accounting and agency analysis that is incomplete. The cart is placed before the horse, meaning the content contained in the NOI is a false presumption that a default is established against a homeowner without a full analysis and accounting of all parties and policies under their subject instrument's terms, to which immediately subjects and prejudices homeowners to an action under false pretenses of misrepresentations, nondisclosure, and misleading of the facts. The very nature of the NOI in this process puts homeowners at a disadvantage because foreclosing plaintiffs and the chancery courts in this State rely on the NOI, and a foreclosing plaintiff's certification under R. 4:64-1, as facts establishing default prior to commencing a foreclosure action. All of the cards have not been shown on the table prior to this action establishing the ultimate facts to proceed. This makes the NOI deficient in nature and content.

Equally as important, contained in the NOI is the identifying or not of the homeowners' purported Lender, Lender's contact information, and whether the notice was sent by the purported

Lender, to which the New Jersey statutes address as paramount to protect a homeowner's relationship with the Lender from imposters. Also at issue with the NOI is that the Lender is obligated to and shall give notice to the borrower, and with such notice shall specify the borrower of his right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of the borrower to acceleration and foreclosure under the terms of the subject purported Mortgage Security Instrument. The Lender on record at the time the alleged default occurred had a duty under the Mortgage to send the notice specified in the Mortgage prior as a condition precedent to filing suit. The word 'shall' in the Mortgage and under the FFA created conditions precedent to foreclosure. Where the Lender has failed to perform the conditions precedent to foreclosure, the instant foreclosure action(s) must be dismissed.

CONCLUSION

As the Injured Parties have established above, HOUSEHOLD FINANCE CORPORATION III as a servicer, as well as any other alleged servicer, lacks the authority under the FFA and the four corners of the Mortgage to serve the Injured Parties, and all respective homeowners, with a NOI minus proof of a lawful Power of Attorney granted and signed by the principal, and dated prior to the original serving of the purported NOI.

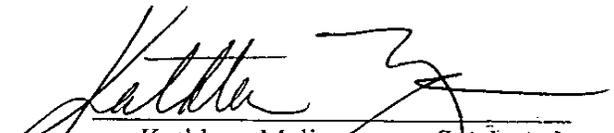
The conditions precedent, inclusive but not limited to those conditions under the Mortgage, specifically from *whom* the NOI is to be sent, were never argued by the defendant homeowners in US Bank, N.A. v. Guillaume. Defendants, the Guilllaumes, argued that the NOI was defective in content only (N.J.S.A. §2A:50-56(c)) and not that it was sent from a party who lacked authority to do so. Contrary to Guillaume, the foregoing issues raised by the Injured Party are not mere technicalities, but in fact establish a fatal defect in the jurisdiction and standing of the foreclosing plaintiffs.

The Injured Parties re-allege and incorporate by reference the foregoing statements as though fully set forth herein, and for these reasons the Injured Parties object in full to HOUSEHOLD FINANCE CORPORATION III's Application, in full, in support of its Order To Show Cause; and

respectfully move this Court to enter an Order denying the re-serving of ALL "corrected" NOIs during the pendency of a foreclosure action, and dismiss each and every matter accordingly; and furthermore, the Injured Parties respectfully move this Court to place an Order demanding that HOUSEHOLD FINANCE CORPORATION III produce Powers of Attorneys signed by the principal establishing HOUSEHOLD FINANCE CORPORATION III 's authority to act as agent at the time it originally served the defective NOI, for each and every alleged principal named in its Amended Verified Complaint.

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

Dated this 31st day of July, 2013.


Kathleen Melincavage, *Sui Juris*


Raymond Melincavage, *Sui Juris*

JURAT

Subscribed and Sworn to before me this 31st day of July, 2013, the Notary Public of the State of New Jersey, Camden County thereby certifies: 1.) that the individual(s) signing this document did so in my presence, 2.) that the individual(s) signing this document appeared before me on the date indicated, and 3.) that I administered affirmation to the individual(s) signing this document, who affirmed the contents of this document.

Patricia A. Noyce
Notary Public

Sworn to and subscribed
before me this
31st day of July, 2013

(seal)

PATRICIA A. NOYCE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 7/11/2016

My Commission expires _____