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February 4, 2013

Via Overnight Delivery

The Honorable Paul Innes, P.J.Ch.
Mercer County Civil Courts Building
175 South Broad Street
P.O. Box 8068
Trenton, NJ 08650

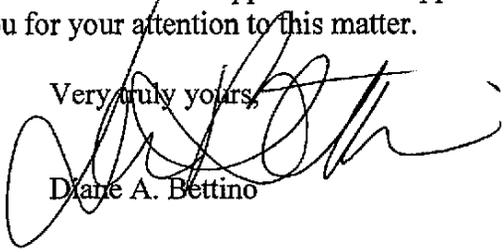
Re: In re Application of CENLAR, FSB to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases

Docket No. F-25842-12

Dear Judge Innes:

This firm represents CENLAR, FSB in the above-referenced matter. Enclosed for filing, please find the original of CENLAR, FSB's Brief in Further Support of the Application to Issue Corrected Notices of Intent to Foreclose. Thank you for your attention to this matter.

Very truly yours,


Diane A. Bettino

Enclosures

cc: Superior Court Clerk's Office (Via JEFIS on February 4, 2013)

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)	SUPERIOR COURT OF NEW JERSEY
)	CHANCERY DIVISION
IN RE APPLICATION BY CENLAR,)	MERCER COUNTY
FSB TO ISSUE CORRECTED NOTICES)	
OF INTENT TO FORECLOSE ON)	DOCKET NO.: F-25842-12
BEHALF OF IDENTIFIED)	
FORECLOSURE PLAINTIFFS IN)	<u>CIVIL ACTION</u>
UNCONTESTED CASES)	
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**CENLAR, FSB'S BRIEF IN FURTHER SUPPORT OF THE
APPLICATION TO ISSUE CORRECTED NOTICES OF INTENT TO
FORECLOSE**

I. PRELIMINARY STATEMENT

CENLAR, FSB (“CENLAR”), pursuant to the authority granted to it by the Foreclosure Plaintiffs and so that Certifications of Diligent Inquiry (“CODI”) can be signed and the uncontested foreclosures can proceed to final judgment, seeks an Order from this Court allowing service of corrected Notices of Intent to Foreclose (“NOI”) on the Foreclosure Defendants in uncontested, pre-judgment residential foreclosure actions.

This Brief summarizes the following:

- work performed by the Court and CENLAR in anticipation of the February 28, 2013 Final Hearing date; and
- why this Court should approve the process of sending corrected NOIs.

II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

On April 20, 2011, the Appellate Division decided U.S. Bank National Association v. Guillaume, 2011 WL 1485258 (App. Div. April 20, 2011). Thereafter, the borrowers filed a petition for certification to the New Jersey Supreme Court, which was accepted and expedited in the fall of 2011. The Court heard argument on November 30, 2011 and decided the matter on February 27, 2012. U.S. Bank National Association v. Guillaume, 209 N.J. 449 (2012). The decision overruled Bank of New York v. Laks, 422 N.J. Super. 201 (App. Div. 2011) and set forth the proper remedy for a technical violation of the Fair Foreclosure Act (“FFA”).

In Guillaume, the Court held that the FFA requires that an NOI “include the name and address of the actual lender, in addition to contact information for any loan servicer who is charged by the lender with the responsibility to accept mortgage payments and/or negotiate a resolution of the dispute between the lender and the homeowner.” 209 N.J. at 475. The Court’s decision applied to pending cases, and it applies prospectively. Id. The Court also held that the

remedies available for a violation of N.J.S.A. 2A:50-56(c)(11) include dismissal without prejudice, service of a corrected NOI, or another remedy appropriate to the circumstances, in the discretion of the trial court. 209 N.J. at 476.

To implement the Supreme Court's decision, on April 4, 2012, Chief Justice Rabner entered an Order authorizing the Honorable Margaret Mary McVeigh, P.J.Ch. and the Honorable Paul Innes, P.J.Ch. to entertain summary actions by Order to Show Cause as to why corrected NOIs should not be allowed to be served in pending pre-judgment, uncontested foreclosure cases. April 4, 2012 Order. The Office of Foreclosure is empowered to recommend entry of final judgment in uncontested actions where the procedures of the Court's April 4, 2012 Order have been followed. Id.

As authorized by Chief Justice Rabner's Order, CENLAR filed its Complaint and Order to Show Cause on November 8, 2012. The matter was assigned to the Honorable Paul Innes, P.J.Ch. This Court entered the Order to Show Cause on November 16, 2012.

Foreclosure Defendants were permitted to file objections to the process by which the Court gave CENLAR permission to serve the corrected NOIs by January 21, 2013. OSC, ¶ 6. Foreclosure Defendants who objected to the contents of the corrected NOIs were required to file written objections under the docket numbers for their individual foreclosure actions by January 21, 2013. OSC, ¶ 6, 8.

Since the issuance of the Order to Show Cause on November 16, 2012, this Court and CENLAR have worked diligently toward the February 28, 2013 Final Hearing date. The work performed in this matter includes the following:

- CENLAR worked with its Foreclosure Counsel to identify the population of pre-judgment, uncontested foreclosures that were pending as of February 27, 2012.

- On December 14, 2012, CENLAR mailed 147 Order to Show Cause Packages to the previously identified Foreclosure Defendants on the Corrected NOI List by certified mail, return receipt requested, and by regular mail.
- In accordance with paragraph 5 of the Order to Show Cause, on December 17, 2012 and December 24, 2012, the Publication Notice was published in the “Bergen County Record,” the “Courier Post,” the “Star-Ledger,” and the “Press of Atlantic City.”

CENLAR now requests that this Court approve the process of re-serving the NOIs to Foreclosure Defendants who initially received NOIs that did not comply with N.J.S.A. 2A:50-56(c)(11).

III. LEGAL ARGUMENT

A. No Objections Were Filed in a Timely Manner.

Pursuant to the Order to Show Cause filed November 16, 2012, Foreclosure Defendants had two bases for objecting in this proceeding: first, Foreclosure Defendants could object to this Order to Show Cause process and CENLAR’s request to issue corrected NOIs in order to cure the failure to include the name of the lender and lender’s address in the previously served NOIs; and second, Foreclosure Defendants had the right to raise individual objections to the content of the Corrected NOIs served on them. OSC, ¶ 6, 8. Any objections involving issues in individual foreclosure cases must be addressed, if necessary, in the individual foreclosure cases.

Neither CENLAR nor this Court (according to the N.J. Courts website and the JEFIS Docket) received a single objection to the Order to Show Cause process or to the content of a particular corrected NOI by January 21, 2013, the deadline for submitting objections. OSC, ¶ 6

B. The Only Filed “Objection” Must be Stricken as Untimely and Improper.

After the January 21, 2013 deadline, CENLAR received a document titled “Request for Production of Document” from Angela and Jesus Ortiz, which they filed under the Order to Show Cause docket number. Although the Certificate of Service for that objection is dated January 28, 2013, the document was notarized on January 30, 2013. In either case, Mr. and Mrs. Ortiz filed their document beyond the January 21, 2013 deadline listed in this Court’s November 16, 2012 Order, so this Court should strike the request on that basis alone.

Further, the request must be stricken because it is improper and not relevant to this OSC. Again, the Order to Show Cause only allowed for objections as to the Order to Show Cause process and as to the content of corrected NOIs. OSC, ¶ 6, 8. Mr. and Mrs. Ortiz’ submission which is really a discovery demand does not relate to either the Order to Show Cause process or to their corrected NOI. Instead, Mr. and Mrs. Ortiz request production of “the original Promissory Note signed by Defendant on October 25, 2004.” Because their request does not fall within either of the two categories for objecting, it must be stricken. To the extent Mr. and Mrs. Ortiz seek discovery, they must take the appropriate actions in their individual foreclosure case (Docket No. F-59359-09). At this time, their case is uncontested, which does not permit discovery.

C. The Proposed Exclusion Order To Be Submitted to the Court Identifies a Single Case.

CENLAR worked with its New Jersey foreclosure attorneys to compile a list of all pending, uncontested, pre-judgment foreclosures in New Jersey in which CENLAR served technically deficient NOIs that failed to identify the lender and the lender’s address (“Corrected NOI List”). The Corrected NOI List was attached as Exhibits 1-24 to the Verified Complaint.

Since filing its Complaint, CENLAR has identified one foreclosure case that should be excluded from the original Corrected NOI List. Bonnie Thomas' foreclosure case (Docket No. F-31887-10) was identified on Exhibit 2 to CENLAR's Verified Complaint and was properly included in the original submission. However, since that time, Ms. Thomas received a loan modification, and her foreclosure matter was dismissed on December 27, 2012. As such, CENLAR will submit a proposed Exclusion Order will identify her case, and request that this Court exclude her case from the Final Order.

D. Corrected NOIs Will Be Issued Once The Bankruptcy Stay Is Lifted.

In the event a Foreclosure Defendant has obtained an automatic stay as a result of filing for bankruptcy protection, CENLAR will mail the Order to Show Cause Package after the stay is lifted. OSC, ¶ 4.

E. Re-serving Corrected NOIs Constitutes the Appropriate Remedy In this Matter.

As previously discussed, in Guillaume, the Supreme Court held that dismissal did not constitute the exclusive remedy for a lender's non-compliance with N.J.S.A. 2A:50-56(c)(11). Rather, the possible remedies include service of a corrected NOI, dismissal without prejudice, or another remedy appropriate to the circumstances. Id. at 476. Further, the Court evaluated the trial court's remedy of a corrected NOI and determined that re-serving the NOI constituted an appropriate remedy. 209 N.J. at 480 (finding that "the trial court's remedy of a cure constituted a proper exercise of its discretion").

Subsequent to Guillaume, Chief Justice Stuart Rabner issued the April 4, 2012 Order, which authorized the present proceeding. In particular, the Order authorized Order to Show Cause proceedings seeking to serve corrected NOIs. April 4, 2012 Order. Thus, both Guillaume

and Chief Justice Rabner's April 4, 2012 Order permit lenders to seek to serve corrected NOIs on Foreclosure Defendants.

Importantly, both the April 4, 2012 Order and the Order to Show Cause gave Foreclosure Defendants the right to object. And no Foreclosure Defendants have submitted timely or proper objections to the Order to Show Cause. Further, if any Foreclosure Defendants have individualized issues that they wish to raise, they may still do so in their individual foreclosure actions, as the present proceeding only concerns the process of remedying a technical violation of N.J.S.A. 2A:50-56(c)(11).

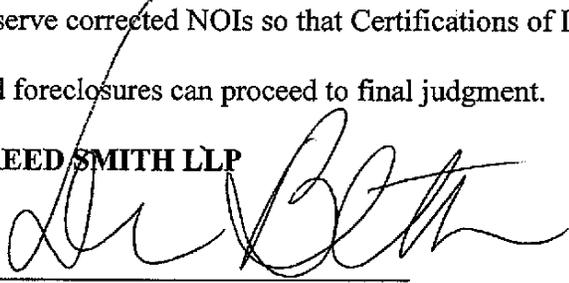
Also, CENLAR has complied with paragraphs 1-5 of the Order to Show Cause and has mailed corrected NOIs that met the requirements of the FFA.

Finally, the process of re-serving NOIs has been particularly fair for Foreclosure Defendants. The corrected NOIs excluded attorneys' fees and foreclosure costs associated with the pending foreclosure cases. And, by virtue of receiving the corrected NOIs, all of the Foreclosure Defendants had yet another opportunity to reinstate their loans.

IV. CONCLUSION

For all of the foregoing reasons, and as detailed in its moving papers, CENLAR asks that this Court permit CENLAR to serve corrected NOIs so that Certifications of Diligent Inquiry can be signed and these uncontested foreclosures can proceed to final judgment.

REED SMITH LLP



Diane A. Bettino

Dated: February 4, 2013