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SUPERIOR COURT
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IN RE APPLICATION BY BANK OF
AMERICA, N.A. TO ISSUE CORRECTED
NOTICES OF INTENT TO FORECLOSE ON
BEHALF OF IDENTIFIED FORECLOSURE
PLAINIFFS IN UNCONTESTED CASES.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PASSAIC COUNTY

CIVIL ACTION

DOCKET NO.: F-041084-13

**OBJECTION TO ORDER TO SHOW CAUSE GRANTING PERMISSION TO SERVE
CORRECTED NOTICE OF INTENTION TO FORECLOSE**

Underlying Action

**Country Wide Loans, Inc. v. Mattson, et al.
Docket No.: F-18511-08**

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PRELIMINARY STATEMENT

This matter arises out of a Note and Mortgage executed by Eric Mattson (hereinafter "Mattson") in favor of First Magnus Financial Corporation (hereinafter "Magnus"). Plaintiff in the underlying action alleges the mortgage was transferred by MERS to Countywide Home Loans, Inc. (hereinafter "Countrywide") despite the absence of a single document signed by Magnus granting MERS authority to carry out such a transfer on their behalf. Plaintiff alleged default and instituted a foreclosure action under docket number BER-F-18511-08. Upon information and belief, this filing occurred without the filing of any Notice of Intention to Foreclose. Additionally, the relief sought by way of summary action is inappropriate as the underlying action is a contested matter and is no longer pending as a dismissal has been entered on the docket.

On or about November 7, 2013, Plaintiff, through Counsel, filed an Order to Show Cause and Verified Complaint seeking relief by way of summary action for an Order permitting Bank of America (hereinafter "B of A") to issue corrected Notices of intention to Foreclose (hereinafter "NOI") to defendant mortgagor and/or parties obligated on the debt for a number of foreclosure matters, including Eric Mattson. Plaintiff's attempt to utilize the implementing Order of the New Jersey Supreme Court dated April 4, 2012 (hereinafter "the April 4th Order") is misguided as this matter was hotly contested prior to being dismissed. This matter does not fall within the purview of the April 4th Order, which requires matters to be both pending and uncontested. Additionally, the underlying action against Plaintiff makes no reference to Bank of America, the party seeking relief by way of summary action. Even if B of A were granted the

full relief sought in the instant application, they would lack standing to proceed in the underlying action filed by Countrywide. Defendant objects to the Order to Show Cause granting permission to serve corrected notice of intention to foreclose as well as the corrected Notice of Intention to Foreclose.

LEGAL ARGUMENT

Plaintiff's position is inconsistent with on the New Jersey Supreme Court's decision in US Bank, NA v. Guillaume, 209 N.J. 449 (2012), which over-ruled Bank of New York v. Laks, 422 N.J. Super, 201 (App. Div 2011) only to the extent that dismissal is no longer the **exclusive** remedy available in cases where there is not strict compliance with the technical requirements for the contents of the NOI under the Fair Foreclosure Act, N.J.S.A. § 2A:50-56C(11).

In Guillaume, Defendants objected to the form of a notice of intention to foreclose, which listed the name, address and contact information for the servicer of the loan rather than the lender as required by N.J.S.A. § 2A:50-56C(11). In Guillaume, the Court decided that dismissal should not be the only available remedy stating:

In determining an appropriate remedy for a violation of N.J.S.A. § 2A:50-56C(11), trial courts should consider the express purpose of the provision: to provide notice that makes the debtor aware of the situation, and to enable the homeowner to attempt to cure the default N.J.S.A. § 2A:50-56C(11). Accordingly, a trial court fashioning an equitable remedy for a violation of N.J.S.A. § 2A:50-56C(11) should consider the impact of the defect in the notice of intention upon homeowner's information about the status of the loan, and on his or her opportunity to cure the default.

[Id at 479]

In Guillaume, the Supreme Court determined that Court's had equitable power to fashion remedies on a **case-by-case** basis according to the nature of the defect and effect on the homeowner. In the instant matter, Plaintiff seeks to implement a "one size fits all" approach to

remedy defects in thousands of cases with one swift action. Such action is inopposite the Guillaume decision and does not allow for the application of the test outlined above. Under Plaintiff's proposal, a Judge presiding in the county where the property is located would have no opportunity to address the nature of the defect or its real life effect on the defendant's ability to make informed decisions based on the NOI.

The Supreme Court in Guillaume noted:

“...a lender's **failure to serve a notice of intention**, or identify a contact person for the homeowners to call, would be **more significant** than the omission of the lender's name from the notice of intention. *Emphasis added.*
[Id at 479]

Upon information and belief, there was no NOI of any kind sent to the Defendant's in this action prior to the filing of the Complaint. The complete lack of a NOI of any kind is quite different than a small technical defect dealt with in Guillaume. When one applies the Guillaume test to the facts of the instant case, it is clear that the defect was great and Defendant was stripped of all opportunity to cure. This being the case, it would be inequitable to allow for the filing of a corrected NOI in this matter as defendant has not complied with N.J.S.A. 2A:50-56(f) or R. 4:64-1(13), which both require filing of a NOI before commencing an action in foreclosure.

Even if the Court were to look past the inequity of allowing a foreclosure to proceed without the issuance of any NOI prior to filing of the Summons and Complaint, the facts of this case do not permit the filing of a corrected notice under the April 4th Order, which “authorized 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.**”(emphasis added)

In the instant case, a contested answer was filed on behalf of Defendant on or about July 15, 2008. The parties worked toward and achieved a settlement, which the underlying plaintiff,

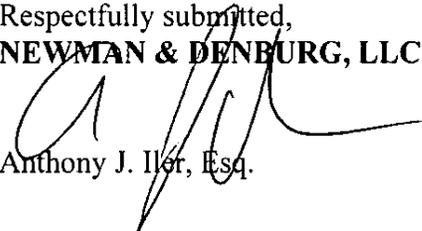
Countrywide, is currently in breach of. The fact that this matter is no longer an open case as the court has entered a dismissal on August 9, 2013 further bars the recovery sought by B of A.

In the event the Court was willing to look past the vast deficiencies addressed above, Bank of America lacks standing to proceed against Defendant in the underlying action. Plaintiff in the underlying action has not and can not allege that any rights with respect to the Note or Mortgage were held by B of A at the time of the filing of the Complaint by Countrywide. If all the facts alleged in Countrywide's Complaint are true, Countrywide would have been the only party with standing at the time of the filing. While Defendant does not admit Countrywide holds such rights, Plaintiff is bound to the allegations contained in its pleading. Even if B of A was found to eventually obtain rights with respect to the Note or Mortgage, they certainly did not hold same at the time of filing and as a result lack standing to proceed in the underlying action. See Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214 (App. Div. 2011) in which our Appellate Division further held that standing may not be obtained by the filing of an amended pleading.

CONCLUSION

Based upon the fact that the instant matter is neither pending nor uncontested and that Plaintiff, upon information and belief, has failed to send Defendants a NOI of any kind prior to the filing of the Complaint, Defendants, having suffered great prejudice to their rights and ability to make informed decisions regarding their mortgage, object to the Order to Show Cause granting permission for the filing of an amended Notice of Intention to Foreclose as well as the corrected Notice of Intention to Foreclose.

Respectfully submitted,
NEWMAN & DENBURG, LLC


Anthony J. Ilor, Esq.