

Christopher S. Martone, ESQ.  
Martone & Associates, LLC  
2500 Lemoine Avenue  
Fort Lee, New Jersey 07024  
Tel. 201-944-5004  
Fax 201-334-5838  
Email: martonelaw@gmail.com

CitiMortgage, Inc

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION:BERGEN COUNTY

Plaintiff (s)

Docket No.: F-017318-13 (order to show cause)

vs.

Foreclosure Docket No.: F-043074-10

Rhona Kauffman and Stewart Kauffman  
Defendant (s)

CIVIL ACTION

Opposition to Order to Show Cause

**TO: Superior Court Clerk's Office, Foreclosure Processing Service**

The plaintiff CitiMortgage seeks an order for permission to issue a correct Notice of Intent to Foreclose. Please accept this format in lieu of a more formal brief on behalf of the Defendant Rhona Kauffman and Stewart Kauffman in support of her opposition to Plaintiff's CitiMortgage Order to Show Cause.

**LEGAL ARGUMENT**

Pursuant to N.J.S.A. 2A:50-56(c)(11) (Notice of Intention to Foreclose), "the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default".

In the case at bar, the plaintiff's notice of intention to foreclosure did not have the name and address of the lender, but rather the servicer's information was listed instead. Subsequent to

1 the Notice of Intention, the plaintiff/lender filed a foreclosure proceeding against the defendant  
2 Rhona Kauffman and Stewart Kauffman. Currently the plaintiff seeks permission to re-serve the  
3 notice of intention while the foreclosure action is pending.  
4

5 In Bank of New York vs. Laks, 422 N.J. Super. 201 (2011), the Appellate Division stated  
6 that “a violation of N.J.S.A. 2A:50-56 is best addressed by dismissal of the foreclosure complaint  
7 without prejudice”. Moreover the court stated, “Dismissal without prejudice ensures that  
8 defendants are not deprived of those non-waivable rights and that a plaintiff who has not fulfilled  
9 its duty under the Act will not reap a benefit from its noncompliance. Second, the remedy of  
10 dismissal without prejudice is constituent with the statutory mandate that a plaintiff in a  
11 residential foreclosure action plead compliance with the notice of intention precondition in its  
12 complaint”. Bank of New York vs. Laks, 422 N.J. Super. at 212.

13 After the Laks case, the Supreme Court of New Jersey in U.S. Bank National Association  
14 vs. Guillaume 209 N.J. Super 499 (2012), stated “A trial court adjudicating a foreclosure  
15 complaint in which the notice of intention does not comply with N.J.S.A. 2A:50-56(c)(11) may  
16 dismiss the action without prejudice, order the service of a corrected notice, or imposed other  
17 appropriate remedies.  
18  
19  
20

21 The circumstances of the case warrant that a trial court judge in Bergen County Chancery  
22 Division should make the determination of the appropriate remedy due to the plaintiff’s violation  
23 of the N.J.S.A 2A:50-56.  
24  
25

1 CONCLUSION

2 The defendant respectfully requests that the Superior Court Clerk's Office  
3 forward this matter to the Superior Court of New Jersey, Bergen County Chancery Division for  
4 an oral argument regarding the plaintiff's Order to Show Cause.

5  
6 Very truly yours,

7  
8 Martone & Associates, LLC  
9 Attorneys for Defendant

10 By:   
11 Christopher S. Martone, ESQ.

12 DATED: August 13, 2013

13 CSM/me

14 Cc: Theodore Wells, ESQ-Attorney for Plaintiff Citi Mortgage-via mail

15 Cc: Judge McVeigh- Superior Court of New Jersey-via mail  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Christopher S. Martone \*

*Of Counsel*  
Michael Baer ^

\* Member of NJ, NY & DC Bars

^ Member of the NJ & NY Bars

**MARTONE & ASSOCIATES, LLC**

*Attorneys at Law*

**2500 LEMOINE AVENUE  
FORT LEE, NEW JERSEY 07024**

**Telephone (201) 944-5004**

**Facsimile (201) 334-5838**

**Email martonelaw@gmail.com**

*New York address*

111 Worth Street  
New York, NY 10013

*Please respond to the New Jersey Office*

August 13, 2013

Via Mail

Superior Court Clerk's Office, Foreclosure Processing Services  
Attention: Objection to Notice of Intention to Foreclosure  
P.O. Box 971  
Trenton, New Jersey 08625

**RECEIVED**

**AUG 16 2013**

**SUPERIOR COURT  
CLERK'S OFFICE**

**Re: Order to Show Cause F-023925-12  
Citimortgage vs. Kauffman  
Docket No.: F-043074-10**

Dear Sir or Madam:

Enclosed please find the defendants objection to the plaintiff's order to show cause.

Thank you.

Very truly yours,



Christopher S. Martone, ESQ.

CSM/me

Cc: Theodore Wells, ESQ-Attorney for Plaintiff Citi Mortgage-via mail

Cc: Judge McVeigh- Superior Court of New Jersey-via mail