

RONALD KURZEJA, ESQ.  
574 Newark Avenue, Suite 201  
Jersey City, New Jersey 07306  
(201) 610-1400

fax: (201) 610-1470

Ronald Kurzeja

September 21, 2012

Superior Court Clerk's Office  
Foreclosure Processing Services  
Attn: Objection to Notice of  
Intention to Foreclose  
Post Office Box 971  
Trenton, New Jersey 08625

re: In re Application of Wells Fargo Bank, NA to Issue Cor-  
rected Notices of Intent to Foreclose on Behalf of Iden-  
tified Foreclosure Plaintiffs in Uncontested Cases  
Docket Number F-9564-12

Dear Sir/Madam:

Please accept this letter memorandum in lieu of a more formal objection to the "corrected" Notice of Intent to Foreclose, a document not otherwise provided for in N.J.S.A. 2A:50-56.

This objection challenges the "corrected" Notice of Intent to Foreclose on the grounds that the document, when delivered after the fact, fails to plainly and clearly apprise the affected mortgagor of the existing pending foreclosure action and that the "corrected" Notice of Intent to Foreclose is jurisdictional rendering the pending foreclosure action defective.

N.J.S.A. 2A:50-56 sets forth certain requirements, that make sense only when given to a defaulting mortgagor prior to the initiation of a foreclosure action.

Specifically, N.J.S.A. 2A:50-56(a) states that:

"...before any residential mortgage lender may. . . commence any foreclosure or other legal action to take

possession of the residential property . . . the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section."

Based on the plain language of subsection a, a "corrected" after the fact Notice of Intent to Foreclose is improper. In fact, the specific boiler plate notice of intent to foreclose sent to defendant inadequately and erroneously addresses the existence of a pending foreclosure action as follows:

"If you do not cure this default and bring your account current by 09/17/2012, then America's Servicing Co. may take steps to terminate your ownership of the Property by starting a mortgage foreclosure action against you.

(see attached NOTICE OF INTENT TO FORECLOSE sent to defendant dated 08/14/2012.)

The residential mortgage lender fails to clearly and conspicuously state that the foreclosure action has already been filed and is pending. The proper inference given the requirement that a "corrected" Notice of Intent to Foreclose is required is that the existing foreclosure action should be dismissed and that the residential mortgage lender should, in compliance with this section of the Fair Foreclosure Act, start anew.

The above reasoning is supported by the language of N.J.S.A. 2A:50-56(c) which states that:

(5) "the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective..." and

(6) "if the debtor does not cure the default by the date specified under paragraph (5) of this subsection (c), the lender may take steps to terminate the debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction;"

Furthermore, N.J.S.A. 2A:50-56(f) states that:

"Compliance with this section shall be set forth in the pleadings of a legal action referred to in this section."

Based on the language of subsection (f), the pleading must be rendered defective inasmuch as the residential mortgage lender can not fairly and accurately rely on the original Notice of Intent to Foreclose given that a "corrected" Notice of Intent to Foreclose is now required.

The Notice of Intent to Foreclose is properly a prerequisite to initiation of a foreclosure proceeding and therefore must be deemed jurisdictional. The Court should consider the jurisdictional aspects of notice requirements and their effect on the proceedings upon which notices are a prerequisite. One area of the law that exists and supports the contention that notices are jurisdictional is landlord/tenant law. This area is being cited and relied on because of its similarity to the foreclosure area. Both involve interests in real property and both involve forfeiture actions.

In any instances in which a notice is required as a prerequisite to the entry of a judgment for possession, the notice must be factually accurate in every substantial respect. Without a notice that is factually correct and formally sufficient, the court lacks jurisdiction to entertain the complaint for possession. Bayside Condominiums, Inc. v. Mahoney, 254 N.J. Super. 323 (App. Div. 1992). Carteret Properties v. Variety Donut, Inc., 49 N.J. 116 (1967). RWB Newton Associates v. Gunn, 224 N.J. Super. 704 (App. Div. 1988). The court should recognize the similarities between landlord tenant actions and foreclosure actions. Both are

effectively forfeiture actions in which a possessory interest in real property is being terminated. The loss of a possessory interest in real property between a landlord and a tenant except for non-payment of rent requires an effective notice. N.J.S.A. 2A:18-53 et seq and N.J.S.A. 2A-18-61.1 et seq.

The lack of an effective notice as set forth above deprives the court of jurisdiction to hear and decide the case. Likewise, in a foreclosure action, the pre-foreclosure notice, the Notice of Intent to Foreclose, should be deemed jurisdictional also. The foreclosure process involves forfeiture of an interest in real property. The intent of the Fair Foreclosure Act requires that it clearly and conspicuously apprise the borrower of the implications of the failure to cure. Specifically, it in a cookbook fashion sets forth the requirements that must be satisfied for the residential mortgage lender to proceed to a foreclosure action. The Notice of Intent to Foreclose would be rendered meaningless if it were not jurisdictional. In fact, the improvised procedure by which an after the fact "corrected" Notice of Intent to Foreclose distorts the requirements of the statute at the very time when the right to cure would be most effective and meaningful.

Lack of jurisdiction is non-waivable and it may be raised at any time even on appeal. Macysyn v. Hensler, 329 N.J. Super. 476, 481 (App. Div. 2000). See also Gilbert v. Gladden, 87 N.J. 275 (1981). The principle is well settled that a court cannot hear a case as to which it lacks subject matter jurisdiction. Peper v. Princeton University Board of Trustees, 77 N.J. 55, 65 (1978). State v. Osborn, 32 N.J. 447, 454 (1951). Subject matter

jurisdiction cannot be conferred by waiver resulting from a party's failure to interpose a timely objection to the assumption of jurisdiction. Lay Faculty Ass'n of Regional Secondary Schools of Archdiocese of Newark v. Roman Catholic Archdiocese of Newark, 122 N.J. 260, supplemented, 124 N.J. 153 (1973). Objection to jurisdiction of the court over the subject matter is effective whenever made. Keeby v. Arthur, 7 N.J. 174 (1951).

Jurisdiction cannot be bestowed by consent or acquiescence. Estelle v. Board of Education of Red Bank, 14 N.J. 256, 261 (1954). The rule is that parties cannot, by consent, give the court jurisdiction of the subject matter which the court did not have without such consent. The phrase "jurisdiction of the subject matter" may relate to the particular case at the time receiving the attention of the court or it may mean jurisdiction over the class of cases to which the particular case belongs. Hoffman v. Jinks, N.J. Eq. 91, 96 (E&A 1943). Jurisdiction over the subject matter may not be conferred by consent or waiver where the tribunal has no jurisdiction over the subject matter. Brown v. Allied Plumbing & Heating Co., 130 N.J.L. 487, 488 (1943).

Defendant objects to the "corrected" Notice of Intent to Foreclose and to the foreclosure action since without a Notice of Intent to Foreclose that was factually correct and legally sufficient prior to the filing of the foreclosure action, the court did not and could not acquire jurisdiction. The logical result is that the within foreclosure action must be dismissed and plaintiff should be required to initiate a foreclosure action based upon a factually correct and legally sufficient notice of intent.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ronald Kurzeja", with a long horizontal flourish extending to the right.

Ronald Kurzeja, Esq.

cc: Honorable Margaret Mary McVeigh, P.J.Ch.  
Mark S. Melodia, Esq., Reed Smith, LLP



3480 Stateview Blvd  
MAC# D3348-027  
Fort Mill, SC 29715

Date: 8/14/2012

LAMIAA GOUDA  
72 CORBIN  
JERSEY CITY, NJ 07306

RE: America's Servicing Co. 106/1115003763  
Mortgagor(s): LAMIAA GOUDA  
Mortgaged Premises: 24 MARION PL  
JERSEY CITY  
NJ  
07306-6408

**NOTICE OF INTENTION TO FORECLOSE**

Dear Borrower(s):

America's Servicing Co. services a mortgage (hereafter, the "Mortgage") in the original principal amount of \$ 328,000.00 on the residential property commonly known as 24 MARION PL, JERSEY CITY, NJ 07306-6408, which Mortgage was made on 11/2/2005.

Your Mortgage is now in default because you have not made the required payments. The total amount required to cure this default, in other words, the amount required to bring your mortgage current as of 9/17/2012 is as follows:

Monthly payments (principal, interest, and escrow) from 3/1/2007 are as follows:

Payments- Totaling	\$	196,139.46
Total Accrued Unpaid Late Charges (Monthly Late Charge \$ 107.46)	\$	7,307.28
Unapplied Funds	\$	0.00
Miscellaneous Fees	\$	1,594.19
Total Delinquency as of 8/14/2012	\$	205,040.93

**Your Pre-Foreclosure Action Right to cure this Default**

To avoid the possibility of acceleration, you must pay this amount plus any additional monthly payments, late charges and other charges that may be due under applicable law after the date of this notice and on or before 9/17/2012 in CERTIFIED funds, to:

**Payments only address:**

America's Servicing Co.  
1200 W 7th Street  
Suite L2-200  
Los Angeles, CA 90017

**Correspondence only address:**

Randy Bockenstedt, Senior Vice President  
America's Servicing Co.  
Address: 3480 State view Boulevard  
MAC X7802-03H  
Fort Mill, SC 29715  
Phone Number: 1-800-868-0043

Please be advised that America's Servicing Co. cannot guarantee that payments received at the "correspondence only address" will be applied within the required timeframes.

If you do not cure this default and bring your account current by 9/17/2012, then America's Servicing Co. may take steps to terminate your ownership of the Property by starting a mortgage foreclosure action against you.

If you cure this default before the filing of the foreclosure action, America's Servicing Co. may not institute a foreclosure action against you for that default; your Mortgage will be reinstated to the same position as if the default had not occurred, and any acceleration of any obligation under the Mortgage or Note will be nullified as of the date of cure.

You have the right to transfer the property to another person subject to the Mortgage; that person will have the right to cure this default, subject to the Mortgage and the Note, and this Notice.

Your Post-Foreclosure Action Right to cure this Default

Even if America's Servicing Co. starts a mortgage foreclosure action against you, you shall still have the right to cure this default, de-accelerate and reinstate your Mortgage up to the time when a final judgment for foreclosure is entered. To do so, you must pay America's Servicing Co., at the address specified above, by cashier's check or certified check, all sums which would have been due in the absence of default and which are due at the time of payment including principal and interest payments, escrow payments and other necessary charges which come due prior to the date of payment and you must perform any other obligation which you would have been bound to perform in the absence of default or the exercise of an acceleration clause, if any. In addition you must pay court costs, if any, and attorney(s) fees in an amount which shall not exceed the amount permitted under the Rules governing the Courts of the State of New Jersey, plus all contractual late charges, as provided for in the Note and Mortgage. You shall not be required to pay any separate charge, fee or penalty attributable to the exercise of your right to cure this default. This right to cure your default, de-accelerate and reinstate the Mortgage after a foreclosure action has been started may only be exercised by you once every 18 months. You have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and sale.

If you cure the default after a foreclosure action has been started, America's Servicing Co. shall give written notice of the cure to the Court and, upon such notice, the Court shall dismiss the foreclosure action, without prejudice. Your Mortgage will be reinstated to the same position as if the default had not occurred and any acceleration of any obligation under the Mortgage and Note arising from the default will be nullified as of the cure date.

We urge you to immediately seek the advice of an attorney(s) of your own choosing concerning this residential mortgage default. If you are unable to obtain an attorney(s), you may communicate with the New Jersey Bar Association or the Lawyers Referral Service of the county where the property is located. If you are unable to afford an attorney(s), you may communicate with the Legal Services Office in the county where the property is located. These telephone numbers are listed on the attached sheet; they can also be found in the local telephone directory.

There may be available to you financial assistance for curing a default from programs operated by the state or federal government or non-profit organizations, if any, as identified by the Commissioner of Banking and Insurance. A list of such governmental and non-profit entities is enclosed. You may also wish to call the following numbers to ascertain whether you qualify for such assistance:

- |  |                |
|--|----------------|
| * HUD Housing Counseling Service             | 1-800-569-4287 |
| * Veterans Affairs                           | 1-800-827-1000 |
| * New Jersey Commissioner of Banking         | 1-609-292-7272 |
| *New Jersey Commissioner of Banking Hotline: | 1-800-446-7467 |

If you disagree with America's Servicing Co.'s assertion that a default has occurred, or if you disagree with the correctness of America's Servicing Co.'s calculation of the amount required to cure this default, you may contact America's Servicing Co. at the following:

Randy Bockenstedt, Senior Vice President  
America's Servicing Co.  
Address: 3480 Stateview Boulevard  
MAC X7802-03H  
Fort Mill, SC 29715  
Phone Number: 1-800-868-0043

The lender of your loan is:

U.S. BANK, N.A.  
60 Livingston Avenue  
St. Paul, MN 55107

Your right to cure this default, as provided in this Notice, is independent of any right of redemption or any other right or remedy under the common law, principles of equity, state or federal statute or rule of court. Financial Assistance for curing your default may be available. Attached you will find a list of possible programs.

Very truly yours,

America's Servicing Co.  
Default Management Department

This communication is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you have received a discharge of this debt in bankruptcy or are currently in a bankruptcy case, this notice is not intended as an attempt to collect a debt and, this company has a security interest in the property and will only exercise its rights as against the property.

RONALD KURZEJA, ESQ.  
574 Newark Avenue, Suite 201  
Jersey City, New Jersey 07306  
(201) 610-1400

fax: (201) 610-1470

Ronald Kurzeja

September 21, 2012

Superior Court Clerk's Office  
Foreclosure Processing Services  
Attn: Objection to Notice of  
Intention to Foreclose  
Post Office Box 971  
Trenton, New Jersey 08625

**RECEIVED**

SEP 24 2012

SUPERIOR COURT  
CLERK'S OFFICE

re: In re Application of Wells Fargo Bank, NA to Issue Cor-  
rected Notices of Intent to Foreclose on Behalf of Iden-  
tified Foreclosure Plaintiffs in Uncontested Cases  
Docket Number F-9564-12

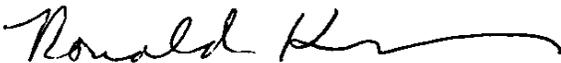
Dear Sir/Madam:

Enclosed please find Lamiaa Gouda's objection to plaintiff's  
"corrected" Notice of Intent to Foreclose.

Please return a filed copy in the enclosed self-addressed, stamped  
envelope.

Thank you for your courtesy and cooperation.

Very truly yours,



Ronald Kurzeja

cc: Honorable Margaret Mary McVeigh, P.J.Ch.  
Mark S. Melodia, Esq., Reed Smith, LLP