

FILED Oct 18, 2012
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SUPERIOR COURT
CLERK'S OFFICE

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October 18, 2012

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

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SUPERIOR COURT
CLERK'S OFFICE

RE: U.S. Bank National Association v. Dilcia Mendez, F-20614-09
In Re Application by Wells Fargo Bank, N.A. to issue corrected Notices of Intent to
Foreclose on behalf of Identified Foreclosure Plaintiffs F-9564-12
Letter Brief Objecting to Plaintiff's Corrected Notice of Intention to Foreclose

Dear Sir/Madam:

Please accept this letter brief in lieu of a more formal brief objecting to Plaintiff's Corrected Notice of Intention to Foreclose.

PRELIMINARY STATEMENT

Defendant Dilcia Mendez ("Defendant") objects to Plaintiff's Corrected Notice of Intention to Foreclose ("NOI") because it does not strictly comply with the provisions of the Fair Foreclosure Act and because on the eve of Defendant's deadline for curing her default and opposing the Order to Show Cause and the Corrected NOI, new information further modifying the Notice of Intention to Foreclose was received, confusing Defendant and causing her more legal expense in preparing her oppositions to Plaintiff's Notice of Intention to Foreclose and the Court's Order to Show Cause. For this reason, Defendant objects to Plaintiff's Corrected Notice of Intention to Foreclose.

FACTS

In a letter dated August 14, 2012, America's Servicing Company ("ASC") informed Defendant that Plaintiff had not complied with the requirements of the Fair Foreclosure Act and that by an Order to Show Cause dated July 19, 2012, America's Servicing Company had been

given permission by the Court to serve Defendant a corrected Notice of Intention to Foreclose. See Correspondence from America's Servicing Company, dated August 14, 2012 ("ASC Correspondence").

Although that letter stated that it included a copy of a verified complaint, there was no verified complaint included with the letter. Id. The letter also indicated that the verified complaint was available online at <http://www.judiciary.state.nj.us/>, however it did not indicate how Defendant should locate the verified complaint on that website. Id. It would not be possible to find mortgages serviced or held by "America's Servicing Co" because there is no list containing them. The ASC Correspondence caused Defendant great expense in that she sought additional legal advice due to the confusing and incomplete nature of the communication.

The Notice of Intention to Foreclose enclosed with the correspondence gave four different addresses for ASC along with an address for Defendant's lender who was identified as U.S. Bank National Association, as Trustee for CSMC ARMT 2007-1. The NOI lists the address of ASC for correspondence as 3480 State view Boulevard, MAC X7802-03H, Fort Mill, SC 29715, while indicating that the address to use if Defendant disagrees with the assertion that a default has occurred as 3480 Stateview Boulevard, MAC X7802-03H, Fort Mill, SC 29715. Id. The notice itself comes from address 3480 Stateview Blvd, MAC# D3348-027, Fort Mill, SC 29715, while providing address 1200 W 7th Street, Suite L2-200, Los Angeles, CA 90017 for payments only. The letter also gives the address for U.S. Bank National Association, as Trustee for CSMC ARMT 2007-1 as 60 Livingston Avenue, St. Paul, MN 0.

In a letter dated September 20, 2012, Wells Fargo Bank, N.A. ("Wells Fargo") indicated that the Corrected NOI sent to Defendant by ASC in August was incorrect because it had given Defendant an incorrect date by which she could cure her default, reinstate her mortgage and thereby avoid foreclosure. See Correspondence from Wells Fargo, dated September 20, 2012 ("Wells Fargo Correspondence").

Defendant received the Wells Fargo Correspondence on September 21, 2012, just one business day before the ASC Correspondence indicated Defendant's oppositions to the NOI and the Court's Order to Show Cause would be due. This cost Defendant additional legal expense in that due to the receipt of additional papers she sought further assistance from counsel.

Furthermore, the Wells Fargo Correspondence caused Defendant further confusion with regard to who she should communicate regarding the foreclosure action and any attempts she

might make for loss mitigation pertaining to her mortgage in that it came from Wells Fargo Home Mortgage at address 3480 Stateview Blvd, MAC# D3348-027, Fort Mill, SC 29715. Id. Between the two correspondences, the Order to Show Cause and the NOI, this was one of eight addresses provided to Defendant related to responses she could take with regard to the foreclosure action and the Corrected NOI.

More confusing was the fact that neither the ASC Correspondence nor the Wells Fargo Correspondence indicated why Defendant was receiving information from two different entities nor how the two entities were related to her mortgage loan, which she originally took out with W.F.S. Mortgage Services.

LEGAL ARGUMENT

I. PLAINTIFF'S NOTICE OF INTENTION TO FORECLOSE SHOULD BE STRICKEN BECAUSE IT DOES NOT STRICTLY COMPLY WITH THE FAIR FORECLOSURE ACT.

N.J.S.A. § 2A:50-53 requires that a Notice of Intention to Foreclose be mailed to a Defendant prior to the filing of a complaint when a foreclosure is being filed. N.J.S.A. § 2A:50-53 to -68 (FFA). As the Supreme Court recently recognized in the matter of US Bank Nat'l Ass'n v. Guillaume, 208 N.J. 380 (2011), complete and accurate compliance with this provision is a pre-condition to acceleration or foreclosure, absent which a foreclosure complaint may be dismissed.

The FFA is remedial legislation that should be strictly construed. Atlantic Palace Dev. v. Robledo, 396 N.J. Super 171, 178-179 (Ch. Div. 2007) (citing Service Armament Co. v. Hyland, 70 N.J. 550 (1976)). The New Jersey Superior Court, Appellate Division has consistently held that strict compliance with the FFA is required, and that either substantial compliance or merely satisfying the spirit of the FFA is insufficient. EMC Mortgage Corp. v. Chaudhri, 400 N.J. Super. 126, 138 (App. Div. 2008) (“a lender’s ‘substantial compliance’ with the contents of a notice of intent ... was not authorized by the statute’s terms”); Cho Hung Bank v. Kim, 361 N.J. Super. 331, 344-45 (App. Div. 2003) (reversing the denial of a motion to vacate judgment where the NOI was defective); See also Bank of New York Mellon v Elghossain, 419 N.J. Super. 336, 342 (Ch. Div. 2010) (dismissing the complaint, the court held “Lenders’ substantial compliance with the FFA is not enough; strict compliance is required”).

Fair Foreclosure Act provision 2A:50-56 (c) states in pertinent part:

[t]he written notice **shall clearly and conspicuously state** in a manner calculated to make the debtor aware of the situation: (1) the particular obligation or real estate security interest; .. (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 the name and address and phone number of a person to whom the payment or tender shall be made; ... (11) 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

N.J.S.A 2A:50-56(c)(emphasis added).

The Plaintiff failed to serve an NOI that was compliant with the statutory requirements of the New Jersey Fair Foreclosure Act upon Defendant. The statute indicates that a notification pursuant to the FFA must be written in a clear and conspicuous manner so as “to make the debtor aware of the situation” and to permit the debtor to recognize to which property the action is pertaining to and how to contact the lender should the debtor wish to clarify matters related to her default.

A. PLAINTIFF DOES NOT CLEARLY AND CONSPICUOUSLY IDENTIFY THE REAL ESTATE SECURITY INTEREST TO WHICH THE FORECLOSURE ACTION PERTAINS.

Plaintiff's notice incorrectly identified the real estate security interest as “25 27-27 Myrtle Ave, Dover, NJ 07801” when in fact the address of subject property is 25-27 Myrtle Avenue, Dover, NJ 07801. Thus the notice fails to strictly comply with the FFA and does not clearly and conspicuously inform Defendant of which real estate security interest the notice pertains to. Because Defendant owns more than one property, this could cause her confusion and prejudice her attempts to assert her rights and protect her interest in the property which is the subject of the within foreclosure action.

B. PLAINTIFF DOES NOT GIVE DEFENDANT THE CORRECT DATE BY WHICH SHE MAY CURE THE DEFAULT OF HER MORTGAGE TO AVOID THE CONTINUATION OF THE FORECLOSURE ACTION.

Plaintiff's Corrected NOI gave Defendant the incorrect date by which she was allowed by law to cure the default on her loan and avoid the continuation of the foreclosure action against her property. By giving Defendant an inaccurate understanding of her rights under the circumstances, the error could have resulted in Defendant failing to act as the law permits to protect her property interest. The provision of this incorrect date is further evidence that Plaintiff failed to strictly comply with the requirements of the FFA or to comply with the spirit of the statute.

C. PLAINTIFF DOES NOT CLEARLY AND CONSPICUOUSLY IDENTIFY THE ADDRESS BY WHICH DEFENDANT'S LENDER CAN BE REACHED.

Plaintiff's notice failed to provide the proper address by which Defendant's lender could be reached by U.S. postal mail. The NOI provided address, "U.S. Bank National Association, as Trustee for CSMC ARMT 2007-1, 60 Livingston Avenue, St. Paul, MN 0," but does not give the correct zip code for Defendant's lender. This error could interfere with Defendant's ability to contact her lender to discuss loss mitigation options or other matters pertaining to her mortgage and her default. See Clemency v. Beech, 306 N.J. Super. 244 (Law Div. 1997) (holding that a candidate must be added to the ballot for city council where clerk had used an incorrect zip code and defendant failed to receive the required documents within a prescribed period of time.)

Clearly Defendant's ability to effectively communicate with her lender could be frustrated by the use of the incorrect zip code in Plaintiff's NOI. The potential increase of time that would be added to Defendant's potential communications with her lender could prejudice Defendant under the circumstances given the limited period of time within which she could cure the default of her mortgage.

D. THE VOLUMINOUS AND CONFUSING LEGAL PAPERS FILED ON DEFENDANT BY PLAINTIFF HAVE NEEDLESSLY CAUSED HER DISTRESS AND COSTLY LEGAL EXPENSE WITHOUT CLEARLY AND CONSPICUOUSLY PROVIDING HER WITH NOTICE AS REQUIRED UNDER THE FAIR FORECLOSURE ACT.

Finally, Defendant was confused due to the receipt of documents and legal filings from America's Servicing Company and Wells Fargo Bank, N.A., when the Plaintiff who filed suit

against Defendant is U.S. Bank National Association. Due to the proliferation of entities and addresses supplied in the multiple correspondences served on Defendant relative to her foreclosure, Defendant does not feel that she understands with whom to communicate in matters related to the foreclosure action or in matters related to loss mitigation attempts she may make with respect to her mortgage default. Clearly the voluminous entities, addresses and court filings addressed to Defendant pertaining to the foreclosure action and Plaintiff's faulty NOI has done nothing more cause defendant legal expenses, and confusion rather than "clearly and conspicuously [providing facts and circumstances] in a manner calculated to make the debtor aware of the situation."

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Plaintiff's Corrected Notice of Intention to Foreclose be rejected by the court and the Plaintiff not be permitted to submit another correction but instead that Plaintiff's complaint be dismissed and Plaintiff be permitted to refile their complaint in foreclosure once they are prepared to make their filings properly and timely.

Respectfully submitted,



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cc:

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