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FILED
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MARGARET MARY McVEIGH, P.J.Ch.

In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PASSAIC COUNTY

DOCKET NO.: F-009564-12

A Civil Action

ORDER TO SHOW CAUSE

THIS MATTER being brought before the Court by Denbeaux & Denbeaux, attorneys for Defendants William Saracino, Monica Chacon, John Quattro, Victor Valera, Hilde Lezaron, Pogos Minasian, Marine Minasian, David Ferwerda, Richard Rokow, Donna Rokow, James Jakubowski, Victor Castano, Shran Helms, Jeff Ransom, and Stuart Lederer, by way of _____notice_____; and the Court finding a probability of recovery on behalf of defendants, the existence and likelihood of immediate and irreparable harm, and and that considering the equities, the same preponderate in favor of defendants, and further to preserve the *status quo*, and the Court having considered the papers received;

IT IS on this 16 day of November 2012,

ORDERED that the defendants show cause before the Honorable Mary Margaret McVeigh P.J.Ch., Passaic County Courthouse, 71 Hamilton Street, Paterson, New Jersey, on the 16 day of Nov, 2012 at 10:-- 00.m., why an Order should not be entered in favor of defendants enjoining plaintiff, as follows:

(1) Plaintiff Wells Fargo is directed to produce discovery as to the manner and methods utilized in formulating the list of 4,277 homeowners originally made part of the underlying Wells Fargo OSC of F-009564-12, as well as the methods utilized in uncovering errors and formulating the final list of 946 defendants.

(2) Appointment of a Special Master to oversee the discovery process and review the accuracy and integrity of Plaintiff's list of homeowners for which it seeks relief.

(3) Plaintiff Wells Fargo is directed to re-file and serve the pending Order to Show Cause upon counsel for each Defendant homeowner for whom counsel has previously made an appearance before the Trial Court in each individual foreclosure action.

(4) Plaintiff's Order to Show Cause returnable November 15, 2012 is stayed pending an investigation as to the accuracy of Plaintiff's list of 946 homeowners included in its request for relief.

(5) Plaintiff, via its attorney Reed Smith LLP, is directed to issue a letter of explanation to each of the 3,313 it wrongfully served with corrective notices of intention to foreclose. These Defendants must be informed by Plaintiff that no relief was obtained against them through the Order to Show Cause process.

IT IS FURTHER ORDERED that for each foreclosure defendant who has been deemed wrongly included within Plaintiff's application for relief:

(1) Plaintiff is ordered to pay costs for defending the action incurred by each Defendant who was wrongfully included in Plaintiff's application;

IT IS FURTHER ORDERED that Reed Smith LLP is recused from representing Wells Fargo in the pending action bought under F-009564-12.

IT IS FURTHER ORDERED that a copy of this Order to Show Cause, supporting Certifications, and Memorandum of Law be served upon the plaintiff on the date hereof, and said service to be made by certified mail, return receipt requested, and regular mail or by personal service, which means of service shall be deemed sufficient service of process upon the plaintiff; and it is further

ORDERED that plaintiff's briefs, certifications and other responsive papers shall be served and filed by the _____ day of _____, 2012, and any reply papers of defendants shall be served and filed by the _____ day of _____, 2012.

HON. Mary Margaret McVeigh, P.J.Ch.

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BRIEF IN SUPPORT OF DEFENDANTS' ORDER TO SHOW CAUSE

PRELIMINARY STATEMENT

Plaintiff's pending Order to Show Cause is an unprecedented summary action brought against 4,277 individual homeowners. It is known by Plaintiff and this Court that the original list of 4,277 homeowners was severely flawed. Wells Fargo has no vested interest in the accuracy of its homeowner list because its monetary interest rests in over inclusion not accuracy. [1]

This law firm represents approximately 200 homeowners. We are aware of 8 clients who have been wrongfully made part of the OSC. It was our assumption using similar statistics

[1] Denbeaux & Denbeaux prepared a substantially similar motion to be filed on October 29, 2012. At that time Wells Fargo's list of exclusions had evidently been filed with the Court but was not made available to Defense Counsel. Following Hurricane Sandy, the Courts remained closed and the Defendant's motion was not filed. Once the November 1 hearing date was adjourned Denbeaux & Denbeaux discovered the Plaintiff's exclusion list and set out to revise its motion.

across the entire population of defendants within the class, that 5-10% of the OSC class has been wrongfully included. That estimate fell far short of the actual errors made by Wells Fargo. Upon notifying Wells Fargo of its errors regarding our clients, Plaintiff instantaneously acknowledged its error and agreed to withdraw its application against the majority of our clients who have been improperly included form whom an objection was filed. Wells Fargo's counsel has acknowledge its methodology is flawed and it has attempted to conceal the flawed methodology by dismissing cases where objections are filed so that it may obtain relief against parties who are outside the scope of the Supreme Court's April 4 Order. Whatever process Wells Fargo utilized to determine which homeowners should be included within the scope of the Supreme Court's Order, the methodology used was flawed.

Wells Fargo has kept its methodology cloaked in secrecy. None of its applications or certifications to the Court explain how the list of homeowners was created and by what means of scrutiny it was analyzed for errors. Now Wells Fargo has reduced the number of defendants in the Order to Show Cause from 4,277 to 942. This means an astonishing 78% of the original list of defendants was wrongfully included in the motion. Having subjected Plaintiff to no independent oversight this Court almost entered relief in favor of Wells Fargo, against 2,848 homeowners over whom this Court had no jurisdiction. Plaintiff again asks this Court to simply trust its word that *this time there are no errors*. Such inferences should not be afforded to Wells Fargo because nothing in their past behavior suggests they are capable of self-policing to follow the limited jurisdiction afforded to this court and this action.

In an effort to prevent irreparable harm from occurring and to further prevent this Court from entering relief it is not authorized to grant Defendants seek the following relief:

- Discovery as to the manner and methods utilized in formulating the list of 4,277 defendant homeowners made part of the Wells Fargo OSC as well as the methods utilized in uncovering errors and formulating the final list of 946 defendants.
- Appointment of a Special Master to oversee this discovery process and to review the accuracy and integrity of Plaintiff's list of homeowners for which it seeks relief.
- A Stay of Wells Fargo's OSC returnable November 15, pending an investigation as to the accuracy of the list of 4,277 homeowners originally included in its application and the 942 currently included in its application.
- In light of its violation of R.P.C. 4.2, Reed Smith LLP is recused from representing Wells Fargo in the pending action brought under F-009564-12.
- An Order directing Plaintiff Wells Fargo to re-file and serve the pending Order to Show Cause upon counsel for each Defendant homeowner for whom counsel previously made an appearance before the Trial Court in each individual foreclosure action.
- An Order directing Reed Smith LLP on behalf of Wells Fargo to issue a letter of explanation to each of the 3,313 it wrongfully served with corrective notices of intention to foreclose. These Defendants must be informed by Plaintiff that no relief was obtained against them through the Order to Show Cause process.
- Compensation of costs associated with defending this action as to Defendant homeowners who were wrongfully included in the summary action OSC.

LEGAL ARGUMENT

Defense Counsel believes this Court has put forth its best intentions in overseeing the Summary Action before it. It is clear that one of the primary goals of the Court is to achieve a level of expediency by hearing an application for 4,277 cases at one time. In light of the 2,848

errors acknowledged and the likelihood that many more remain unnoticed at this time, the Court is going to hinder the foreclosure process further if the motion is heard as planned. There is a very real risk that relief will be erroneously granted against dozens or even hundreds of homeowners for whom the Supreme Court's April Order permitting this Summary Action specifically excludes.

These people are parents, grandparents, and children. The defendant homeowners involved are teachers, doctors, little league coaches, realtors, lawyers, small business owners and other respected members of the New Jersey community. Affirmative relaxation of the ordinary Court Rules has resulted in the elimination of due process and the lumping together of individuals to be viewed as a single unit with one thing in common: the existence of a foreclosure action. This Court does not know and is not being asked to determine whether the homeowners were victims of bank fraud, suffered layoffs, illness, or other unforeseen hardship. Rather, the Court is being asked to determine if each of the remaining 942 homeowners have been properly made part of the Order to Show Cause and whether the corrective NOI's contain additional defective characteristics. Instead of making this determination, the Court of Equity is betraying its spirit by rushing to rubber stamp the entirety of Plaintiff's demand for relief. In doing so, the Court is actively pursuing the inequitable rather than upholding justice and due process.

The Court's decision to rush to expediency will backfire. For each defendant included in this action there will likely be additional motion practice following the November 1 return date. It is foreseeable that relief will be granted against homeowners for whom there is no open foreclosure docket at this time. Such orders will have to be vacated. It is foreseeable that relief will be granted against homeowners currently in bankruptcy. Such orders will have to be vacated. It is foreseeable that relief will be granted against homeowners currently in contested foreclosure

litigation. Such orders will have to be vacated. Despite knowing these risks are real and despite Wells Fargo's admission of errors within the list of 4,277 homeowners, Wells Fargo continues to be afforded the presumption that its list is accurate. It is not.

1. **Plaintiff has Acknowledged Errors in its List of Defendants Made Part of the OSC and there are Likely Many More Errors Remaining Undetected.**

Prior to the publication of Wells Fargo's amended defendant list on the Judiciary Web Site in early November, this law firm was aware of fifteen files for which Wells Fargo wrongly included the defendant homeowners in its application. Wells Fargo has now acknowledged there were a nearly unimaginable 2,848 wrongful inclusions. Analysis of the complete list of 2,848 has not been undertaken by this law firm, however the original 15 identified wrongful inclusions show there is no distinguishable pattern to the errors. The errors have occurred by information presented by multiple law firms relating to homeowners in multiple counties. The individuals known to Defendant who were wrongly included in the Order to Show Cause are the following:

Defendant	**Trial Firm**	**Reason for Withdrawal**	**Posted on Judiciary Website yes/no**	**Exhibit of 4,277 Defendants**	**County**
Roger Villatoro	Phelan Hallinan & Schmieg	Final Judgment entered 12-8-2010	Yes	19	Hudson
William Saracino & Monica Chacon	Zucker Goldberg &Ackerman	Currently before Trial Court & always contested	No	19	Passaic
Hilde Lezaron	Zucker Goldberg & Ackerman	Plaintiff withdrew its foreclosure in February 2012. There is no open docket	No	19	Bergen
Richard & Donna Rokow	Zucker Goldberg & Ackerman	Currently before Trial Court as a contested matter	No	33	Hunterdon

James Jakubowski	Phelan Hallinan & Schmieg	Foreclosure was dismissed on November 9, 2011 and there is no open docket	No	8	Morris
Phyllis Vanderbeck	Phelan Hallinan & Schmieg	Currently in Bankruptcy	Yes	8	Unkown
Phillip Deegan	Phelan Hallinan & Schmieg	Final Judgment entered in 2008	Yes	8	Monmouth
Elizabeth Blackwell		Dismissed without prejudice on July 10, 2009	Yes		Unknown
Claudine Labady	Phelan Hallinan & Schmieg	Final Judgment entered on November 17, 2010	Yes	8	Bergen
Vilma & Ramon Mejia	Zucker Goldberg & Ackerman	Presently in forbearance	Yes	13	Bergen
Justin & Michele Sciarra	Phelan Hallinan & Schmieg	Final Judgment entered in December 2010	Yes	19	Cape May

This list demonstrates that known errors exist among several Plaintiff's law firms, and multiple counties. Dismissals wrongly included in the Order to Show Cause date back at least four years. To suggest Plaintiff's had substantial time to make their list and check it twice (or as many as is necessary to ensure accuracy) is an understatement. The lack of transparency to the process by which Wells Fargo removed 78% of defendants from this action is troublesome. Whatever information this Court has been provided to assure it that the remaining 942 defendants are appropriate to this motion, that information has not been made public nor released to the Defendants themselves.

a. **The Court Lacks Jurisdiction to Hear this Summary Proceeding Because Plaintiff's Application Exceeds the Scope of the Supreme Court Order.**

This Court was granted limited jurisdiction to entertain a Summary Action concerning Wells Fargo's request to issue corrective Notices of Intention to Foreclose. By Order of the Supreme Court, the Hon. Paul Innes, P.J.Ch. and Hon. Margaret Mary McVeigh, P.J.Ch. were both

> authorized to entertain 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, who served Notices of Intention to Foreclose that are deficient under the Fair Foreclosure Act, N.J.S.A. 2A:50-56, should not be allowed to serve corrected Notices of Intention to Foreclose on defendant mortgagors and/or parties obligated on the debt. Such summary actions should be filed with the Clerk of the Superior Court and assigned to each judge upon filing.
>
> [**Exhibit 1** Supreme Court Order of April 4, 2012] (emphasis added)

It is now undisputed that the list of 4,277 defendants submitted to the Court under F-009564-12 contained homeowners who are outside the scope of the Supreme Court's Order because they are engaged in contested litigation, have no open foreclosure docket, or have already had Final Judgment entered. On July 17, 2012 Reed Smith LLP submitted to the Court its application pursuant to the April 4 Order. Two days later, presuming as truthful the representations of Wells Fargo, this Court entered an Order permitting the entire list of Defendants to be included in the F-009564-12 NOI OSC.

This Court's July 19, 2012 Order permitting the pending action to proceed, was based upon false information submitted to the Court by Wells Fargo and its counsel. Whatever process

Wells Fargo and its counsel put into place to determine which homeowners were properly within the scope of the Supreme Court's Order, was woefully insufficient. Wells Fargo's flawed methodology lead it to wrongfully include several of this law firm's clients in the Summary Action. The improper inclusion of this firm's clients in the action is not just an indictment of Wells Fargo's sloppy procedures and methodology as to Denbeaux & Denbeaux's clients, but a sign that there are far more errors not raised by objection. Wells Fargo has exceeded the scope of the Supreme Court's Order. On the eve of the hearing, Wells Fargo's sudden admission there were at least 2,848 wrongfully included homeowners is a signal that there may very well be more errors within the remaining 942 defendants. The decision to exclude 2,848 people is not admirable, its an indictment of Wells Fargo's shoddy work product[2].

Had the Court known that 78% of the original class are outside the scope of its jurisdiction, this Court would never have permitted Plaintiff to proceed in a summary action. To suggest otherwise would necessarily mean the Court is actively participating in pursuing a course of action in contravention of the Supreme Court's limited April 4 Order. As a result of these misrepresentations and violations, Plaintiff's summary action must be vacated and Plaintiff's counsel should be disqualified from proceeding in this matter.

2. **Communications between the Plaintiff and Court have Occurred Ex-Parte and Plaintiff has Sent all Material Motion Correspondence Directly to the Defendant Homeowners Rather than Counsel, to the Detriment of the 4,277 Defendants.**

The Court's Order permitting service of the OSC directly on homeowners without regard to their status of representation by counsel has exacerbated the problem. Denbeaux & Denbeaux

[2] Plaintiff's October 25 Brief states "As this recitation shows, this Court and Wells Fargo have worked very hard and very diligently toward the November 1, 2012 Final Hearing Date." [PB5] The recitation of corrective efforts does not show hard work and diligence, but rather a mad scramble undertaken once it was clear Wells Fargo was perpetrating a massive fraud on the Court.

represents approximately 200 homeowners, and we are certain that we have many clients included in the OSC who should not have been included and whom have not notified us of their inclusion. Homeowners are entitled to presume their counsel would be served with the OSC just as they are served with all litigation documents during the course of foreclosure litigation. These homeowners are also entitled to believe their attorneys are taking diligent action on their behalf for the OSC, despite having not been served.

The exclusion of communications with Defense Counsel for the defendant homeowners is problematic. All correspondence pertaining the filing of the OSC has been delivered directly to the homeowners. [Certification of Adam Deutsch] On its most basic level, this is a violation of R. 1:6-3(c) dictates that "service of motion papers is complete only on receipt at the office of adverse counsel." Therefore, since Reed Smith has never sent the Wells Fargo OSC to counsel for any represented Defendant, the motion has never been served. In practicality the issue is far more dire than what some might claim to be a "technical rule" of service.

Rule 1:6-3 is bolstered by R.P.C. 4.2 which prohibits an adversary from communicating directly with a party represented by counsel. The purpose of the rule is not only to prevent bullying and preservation of the attorney-client privilege. The rule also supports an essential reality, individual defendants retain counsel because they on their own are not equipped with the knowledge to know when legal correspondence requires action and what action must be taken.

Each and every individual homeowner who ever had an attorney appear on their behalf in the underlying foreclosure action should have been maintained as counsel of record and served all correspondence relating to the Wells Fargo OSC. Failure to do so has resulted in injury to one or more of the 4,277 defendants made part of this action.

The Court Rules specifically place the obligation on counsel to communicate with counsel, and not client. This again is an example of Wells Fargo and the Court favoring expediency to the detriment administration of justice.

It has also become clear that since initially filing the OSC, Wells Fargo's counsel has maintained ex-parte communications with the Court. By way of example, each letter from Reed Smith attorney Diane Bettino acknowledging wrongful inclusion of a defendant homeowner states that an "Exclusion Order" will be filed. No exclusion orders have been served on counsel by Plaintiff. Had the Judiciary not voluntarily published the document, it would have remained unkown to this firm that 78% of the original class was included in "error".

a. **Reed Smith's Direct Communication with Defendants Represented By Counsel is a Violation of The Rules of Professional Conduct Warranting Their Disqualification and Recusal from This Matter.**

Reed Smith's failings unfortunately do not stop at their failure to properly exclude contested matters from Plaintiff's "Corrected NOI List". Reed Smith also failed to determine which defendants were represented by counsel. As a result, it is likely that the Court has received far fewer objections to the pending OSC than it would have otherwise received had counsel appropriately been served the pending OSC motion papers.

New Jersey Rule of Professional Conduct 4.2 states that

> a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter . . .
> Reasonable diligence shall include, but not be limited to, a specific inquiry of the person as to whether that person is represented by counsel.
> [RPC 4.2]

The intent of the rule is to "protect the lay person who may be prone to manipulation by opposing counsel." Goff v. Wheaton Indus., 145 F.R.D. 351 (D.N.J. 1992)

Courts have held that violations of the Rules of Professional Conduct are not to be taken lightly and have determined that "disqualification is justified when an attorney's continued participation will taint the proceedings." Essex County Jail Annex Inmates v. Treffinger, 18 F. Supp. 2d 418, 439 (D.N.J. 1998). The Court there also stated that "if past improprieties are shown to have occurred, disqualification is appropriate where 'the likelihood of public suspicion or obloquy outweighs the social interest which will be served by a lawyer's continued participation in a particular case.'" Id. (citing Kleiner v. First Nat'l Bank of Atlanta, 751 F.2d 1193, 1209 (11th Cir. 1985))

Specifically with regards to violation of RPC 4.2, Courts have held that violation of the prohibition on *ex parte* communication can be a particularly serious offense. See e.g. In re Tyler, 204 N.J. 629 (N.J. 2011) (Attorney forced to remit funds earned for violation of "RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of negligence), RPC 1.3 (lack of Diligence), RPC 1.4(b) (failure to communicate with client) and **RPC 4.2 (a lawyer shall not communicate the subject of the representation with a person the lawyer knows, or by exercise of reasonable diligence should know to be represented by another lawyer)**"); In re Brett, 193 N.J. 296 (N.J. 2007) (Attorney suspended for one year for violation of "RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with client), RPC 3.1 (pursuing frivolous claim), **RPC 4.2 (communicating with person represented by counsel)**, RPC 5.5(a) unauthorized practice of law), RPC 8.1(a) (knowingly making false statement of material fact in connection with disciplinary matter), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice)"); In re

Milita, 180 N.J. 116, 117 (N.J. 2004) (Attorney suspended for three months for violation of "**RPC 4.2 (a lawyer shall not communicate with a person represented by another lawyer)**, and RPC 8.4(d) (conduct prejudicial to the administration of justice)")[3]

As a result of Plaintiff's counsel's blatant disregard of RPC 4.2 they should be disqualified from continuing to act as Wells Fargo's counsel. Plaintiff's counsel knew, or should have known, that several of the Defendants they served the "corrected NOI" on were currently represented by counsel. This conscious decision to communicate with those Defendants despite the fact that they had counsel demonstrates Plaintiff's counsel clear indifference to the Rules of Professional Conduct their overarching desire to move these foreclosures forward quickly even if it was at the expense of getting it done properly.

As a result of Plaintiff's failures and violations, the entire Summary Action must be vacated as there is no way to ensure that the List is accurate based on Plaintiff's explicit violations. It is clear that the List as it currently exists is deeply flawed and cannot stand. Plaintiff has admitted in several instances that a particular Defendant should not have been included. In those instances, the Defendant has agreed to dismiss that Defendant. However, this process does not remove the inherent flaw with this List. Defendant's method will only ferret out Defendants whom have the foresight to object. For those Defendants who have contested, but believe, because they are represented, that they are not required to personally object, they will be left out and presumably held to the "corrected NOI", an injustice that certainly cannot stand.

[3] Reed Smith has itself recognized the seriousness of a RPC 4.2 violation. In Andrews v. Goodyear Tire & Rubber Co., 191 F.R.D. 59 (D.N.J. 2000), the Defendant Goodyear Tire, represented by Reed Smith, petitioned the court for disqualification of the Plaintiff for their *ex parte* communications. There, the trial court determined that Plaintiff had violated RPC 4.2 and was therefore disqualified.

Denbeaux & Denbeaux urges this Court to take the issue very seriously. Not only have defendants under the OSC been harmed if their counsel was not served, the law firms who represent foreclosure defendants are also at risk of harm. Any law firm who represents a foreclosure defendant included in the OSC, for whom an objection was not filed, is now at risk for being held liable in a malpractice case. Consider this very real example referenced in section 1 of this brief.

This law firm represents Cynthia Barton in a contested foreclosure action. As of today, Ms. Barton's case remains contested and before the Trial Court overseen by The Honorable Gerald Escala in Bergen County. [Certification of Adam Deutsch; **Exhibit 9**] This Firm was unaware of Ms. Barton's wrongful inclusion in the pending OSC until after the October 16 objection deadline passed. Accordingly, no objection was filed on her behalf. If this Court grants the relief sought against Ms. Barton in the pending OSC, Denbeaux & Denbeaux can be sued for malpractice in failing to adequately defend Ms. Barton's rights. The sole cause for the liability would be Reed Smith LLP's violation of the Court Rules and Rules of Professional Responsibility. Nonetheless, the liability is very real. For this Firm or any other law firm to be subject to future litigation resulting solely from the dereliction of Reed Smith made with the complicit approval of this Court is a risk that must be avoided now.

3. **Appointment of a Special Master Would Ensure the Integrity of the OSC Process, Providing Expediency Without Sacrificing Accuracy.**

The Court's goal of expediency is admirable, however it has caused a sacrifice of accuracy that stands to cause long-term credibility challenges to the court. Having acknowledged that 78% of its original class was wrongfully included, this Court has a duty to make sure the remaining 942 homeowners are rightfully part of this action. By hearing Wells Fargo's prayer

for relief against 4,277 individual homeowners without any independent scrutiny, the Court is drawing a line in the sand that it will accommodate business to the exclusion of its citizens. It is clear and admitted there are many errors as to the wrongful inclusion of defendant homeowners in the Wells Fargo OSC. If a single order is entered against a person wrongfully included in the OSC, the harm will not only be to that defendant, but to the entire court system. Currently, the danger is being overlooked and the simple step of appointing a special master can re-establish the legitimacy of the Wells Fargo OSC process.

In 2010, when the Supreme Court of New Jersey issued its Order to Show Cause regarding document irregularities in foreclosure matters, retired Superior Court Judge Walter R. Barisonek was appointed as a Special Master. Once again, the Courts should appoint a special master to review all of Plaintiff's submissions in connection with the motion before the Court. By appointing a special master, the Court can continue its goal of expediency while at the same time balancing due process and notions of substantial justice.

Unfortunately, the Plaintiff banks simply cannot be trusted to submit reliable information to the Courts. This is likely not a product of poor legal representation as much disorganization within the banks and their servicers. It is within this Court's power to appoint a special master, and once again the power must be utilized as it was during 2010. [**Exhibit 2**: Special Master Appointment] The Court previously noted that "94 percent of foreclosure cases proceed in the absence of any meaningful adversarial proceeding. The significance of this disparity is even more striking because many of the contested proceedings are defended pro se. Because these actions frequently lack an aggressive defense, **the Office of Foreclosure and our General Equity judges are tasked with the responsibility of ensuring that justice is done for absent and pro se parties.**" [**Exhibit 2**: Special Master Appointment p3]

This Court remains tasked with the responsibility to ensure justice is done for absent and pro se parties. The risk is heightened in the present circumstance where defendant homeowners have been directly sent correspondence rather than normal service upon counsel. There is great risk that homeowners have not raised objections because they obtained competent counsel. If counsel remains unaware of the pending Wells Fargo OSC, no objection will have been made despite a homeowners wrongful inclusion.

a. **Wells Fargo's Corrected List of Defendants Should Not be Trusted Without Further Scrutiny.**

Without being aware, this Court almost entered 2,848 erroneous orders in a single afternoon. Had no objections been received by Plaintiff from pro-se defendants and law firms, there would not have been a deeper in house investigation to the errors of Wells Fargo's original class list of defendants. Having whittled its list down by 78% to 942 homeowners, Wells Fargo hopes this Court will renew its steadfast faith in information presented to it by Reed Smith LLP. Such deference must not be provided.

Plaintiff's counsel provides a vague description of what he portrays as steadfast diligent work to assure that no errors remain. Reading this passage, there is no explanation for why or how a list containing 2,848 errors was submitted. Nor is there explanation as to the precise steps to ensure that no errors remain. Finally, Defendant is troubled by the fact that there is no plan set forth by Wells Fargo as to how errors remaining should be resolved if the Court erroneously grants the relief sought against a wrongfully included homeowner.

> On September 24, 2012, after it was clear that the Corrected NOI List included cases that should not have been included, i.e. post-judgment cases, closed cases and some contested cases, Reed Smith retained a company to pull and print the 4,277 JEFIS dockets on the Corrected NOI List so that we could review them to determine their status. We simultaneously worked with the

> foreclosure firms and they re-reviewed their prior lists and provided those to us. We spent several weeks reviewing the JEFIS dockets and comparing our results to those of foreclosure counsel in order to arrive at the most accurate final List possible. From that long review process, we have developed two lists – the Exclusion List and the Final Corrected NOI List. We have also included on the Exclusion List those foreclosure cases that were in a pre-judgment modification, shortsale or dismissal.....
> Oct 25, 2012 PB5 emphasis added

After admitting its errors, why does Wells Fargo continue to operate in secrecy as to its flawed and supposedly corrective methodology? Wells Fargo claims to have retained an external company to pull and print the dockets for each included case. What company was hired? What precise service did they provide? How is the Court to know they performed their job accurately? Next we are told that Reed Smith, LLP together with the other foreclosure counsel reexamined their files. What steps were taken in the second review process to make sure errors were not repeated? It seems odd that after admitting to making 2,848 errors in a single motion, the same people who made those errors would be entrusted to do the job with immaculate precision the second time around.

Again, Cynthia Barton provides a perfect example of why Plaintiff's data should not be trusted. Ms. Barton is currently in contested foreclosure litigation in Bergen County. Yet, on the exclusion sheet she is listed as a "post-judgment" individual. Having provided no explanation as to what the meaning of "closed", "post judgment" "pre-Judgment", "Contested" as well as other terminology on the exclusion sheet, there is no way to if Plaintiff's information is consistent or accurate.

This Court must appoint an independent person or group to oversee the process and make sure not a single order is entered against a defendant homeowner who is outside the jurisdiction of this Court for the Order to Show Cause.

CONCLUSION

For any and all of the reasons discussed within this brief, the November 1 Summary Action Order to Show Cause should be stayed and all other relief sought should be granted.

Dated: November 13, 2012

Adam Deutsch, Esq.

Joshua Denbeaux, Esq.

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In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PASSAIC COUNTY

DOCKET NO.: F-009564-12

A Civil Action

CERTIFICATION OF ADAM DEUTSCH, ESQ.

I Adam Deutsch of full age hereby certify as truthful the following:

1. I am a Senior Associate Attorney with the law firm of Denbeaux & Denbeaux.
2. Since 2009 this firm has maintained a voluminous law practice in foreclosure defense. We currently represent more than 200 homeowners facing foreclosure actions. We are aware of 8 clients who were wrongfully made part of the pending Order to Show Cause.
3. Within this action docketed F-009564-12, Wells Fargo is seeking affirmative relief against 4,277 individual defendant homeowners. Based upon review of the information available to me I believe there are many homeowners wrongfully included in the OSC for whom objections may not have been filed.
4. In September 2012 I began receiving correspondence from several clients who were sent letters from the Reed Smith LLP on behalf of Wells Fargo Bank, N.A.. My clients were confused by the correspondence as it included a motion in the form of an Order to Show Cause seeking relief to issue new Notices of Intention to Foreclose ("NOI").

5. The confusion of my clients was understandable. Since retaining our firm, all correspondence relating to Court matters was directed at us, not their residence. It is my understanding that a motion is not served under R. 1:6-3(c) unless and until it is served upon counsel for a represented party. Furthermore, I believe it is a violation of R.P.C. 4.2 for Plaintiff to have directly corresponded with my clients.

6. In October, my clients made part of the Wells Fargo OSC were sent amended documents pertaining to the OSC. This letter extended the deadline for filing objections. Again, no correspondence was served upon this office. By the time my clients received the October correspondence, I had personally filed several objections and made a formal appearance on behalf of the homeowner.

7. I personally filed objections on behalf of eight clients.

    a. Pogos and Marine Minasian had their foreclosure dismissed on August 25, 2011. The Order of Dismissal signed by The Honorable Robert P. Contillo is attached hereto as **Exhibit 3**. There is no foreclosure action presently being brought against them. Plaintiff has now acknowledged that the Minasian's were wrongly included in the Wells Fargo OSC. I spent approximately four hours preparing the opposition objection filed on behalf of Pogos and Marine Minasian. Their wrongful inclusion in the Wells Fargo OSC constitutes harassment.

    b. Victor Valera obtained a permanent loan modification in July 2012 and does not have an open foreclosure case against him at this time. Mr. Valera's loan is not in default at this time. Plaintiff has now acknowledged that Victor Valera was wrongly included in the Wells Fargo OSC. I spent approximately four hours

preparing the opposition objection filed on behalf of Victor Valera. His wrongful inclusion in the Wells Fargo OSC constitutes harassment.

c. William Saracino and Monica Chacon are currently in active litigation before The Honorable Donald Volkert, Jr.A.J.S.C. Their case has been contested since its commencement. On October 12, 2012 I received a carbon copy letter sent to Judge McVeigh stating that William Saracino and Monica Chacon were improperly included in the Wells Fargo OSC. A copy of the letter dated October 9, 2012 is hereto attached as **Exhibit 4**. The correspondence states "The matter will be identified on the Exclusion Order to be submitted to Your Honor later this week." Neither my client nor this law firm has received the Exclusion Order allegedly sent to the Court by Plaintiff. I spent approximately four hours preparing the opposition objection filed on behalf of William Saracino and Monica Chacon. Their wrongful inclusion in the Wells Fargo OSC constitutes harassment.

d. James Jakubowski's foreclosure action was dismissed on November 9, 2011. The Order dismissing the foreclosure was executed by The Honorable Stephan Hansbury, P.J.Ch. On October 12, 2012 I received a carbon copy letter sent to Judge McVeigh stating that James Jakubowski was improperly included in the Wells Fargo OSC. A copy of the letter dated October 9, 2012 is hereto attached as **Exhibit 6**. The correspondence states "The matter will be identified on the Exclusion Order to be submitted to Your Honor later this week." Neither my client nor this law firm has received the Exclusion Order allegedly sent to the Court by Plaintiff. I spent approximately four hours preparing the opposition

objection filed on behalf of James Jakubowski. His wrongful inclusion in the Wells Fargo OSC constitutes harassment.

e. Hilde Lezaron's foreclosure action was dismissed on February 29, 2012. There is no open foreclosure litigation relating to Hilde Lezaron. On October 12, 2012 I received a carbon copy letter sent to Judge McVeigh stating that Hilde Lezaron was improperly included in the Wells Fargo OSC. A copy of the letter dated October 9, 2012 is hereto attached as **Exhibit 6**. The correspondence states that "The matter will be identified on the Exclusion Order to be submitted to Your Honor later this week." Neither my client nor this law firm has received the Exclusion Order allegedly sent to the Court by Plaintiff. I spent approximately four hours preparing the opposition objection filed on behalf of Hilde Lezaron. Her wrongful inclusion in the Wells Fargo OSC constitutes harassment.

f. Donna and Richard Rokow are currently engaged in active litigation regarding their foreclosure. The matter is before the Trial Court in Hunterdon County. On October 12, 2012 I received a carbon copy letter sent to Judge McVeigh stating that Richard and Donna Rokow were improperly included in the Wells Fargo OSC. A copy of the letter dated October10, 2012 is hereto attached as **Exhibit 7**. The correspondence states "The matter will be identified on the Exclusion Order to be submitted to Your Honor later this week." Neither my client nor this law firm has received the Exclusion Order allegedly sent to the Court by Plaintiff. I spent approximately four hours preparing the opposition objection filed on behalf of Donna and Richard Rokow. Their wrongful inclusion in the Wells Fargo OSC constitutes harassment.

g. David Ferwerda is currently engaged in contested foreclosure litigation. On October 12, 2012 The Honorable Harry G. Carroll J.S.C. entered an order vacating default and permitting Defendant to file its contested answer presented to the Court in connection with the motion to vacate default. A copy of the October 12 Order is attached hereto as **Exhibit 8**. During oral argument on October 12, Zucker Goldberg & Ackerman requested that the Court grant relief to file an amended Notice of Intention to Foreclose. Said request was denied. To date, neither Mr. Ferwerda nor this office have received correspondence from Plaintiff excluding Mr. Ferwerda from the Wells Fargo OSC. I spent approximately four hours preparing the opposition objection filed on behalf of David Ferwerda. His continued inclusion in the Wells Fargo OSC is wrongful.

h. Cynthia Barton is currently engaged in contested litigation before The Honorable Gerald Escala in Bergen County. There is presently a motion for this firm to be relieved as her counsel. An opposition was not filed prior to the October 16 deadline. Ms. Barton was wrongly included in the Wells Fargo OSC and her action is currently being prosecuted by Sal Carollo of Udren Law Offices, P.C. Correspondence dated October 17 from Udren Law Offices confirms this matter is presently contested. That correspondence is attached hereto as **Exhibit 9.** Ms. Barton's wrongful inclusion in the Wells Fargo OSC constitutes harassment. Wells Fargo is not entitled to the relief it seeks as to Ms. Barton.

    i. This law firm did not file an objection as to Ms. Barton prior to the October 16 deadline because we did not become aware of her inclusion until after that date had passed. Ms. Barton has not notified this firm

whether she was mailed the Wells Fargo OSC documents, however her name and case information appears among the 4,277 defendants.

ii. Ms. Barton is identified inaccurately on the exclusion list as "post-judgment" when in fact she is presently in contested foreclosure litigation. [Exclusion list 33]]

8. As of October 29, 2012 the Judiciary web page dedicated to the Wells Fargo OSC contains an additional seven letters to Judge McVeigh acknowledging defendant homeowners wrongfully included in the Wells Fargo OSC. These additional persons are not represented by this law firm.

9. As of today, Plaintiff has acknowledged it wrongfully sought orders against 3,313 persons for which this Court does not have jurisdiction. This is an error rate of 78% of the original class.

10. Having reviewed the specific wrongfully included defendants known to me, I have found there is no pattern to the errors.

    a. The known errors come from the counties of Cape May, Bergen, Monmouth, Hunterdon, Morris, Passaic, and Hudson. The errors cannot be attributed to a single county.

    b. The known errors stem from cases in which the Plaintiff bank was or remains represented by different law firms. Specifically, firms involved include Phelan Hallinan & Schmieg, Zucker Goldberg & Ackerman, as well as Shimberg and Friel. The errors cannot be attributed to a single law firm.

    c. Where Wells Fargo by way of Reed Smith, has acknowledged the defendant homeowner in question was wrongfully included in the OSC the underlying errors

vary. The reasons provided are the following: There is no active foreclosure case due to dismissal, the homeowner is in bankruptcy, final judgment has been obtained, or the case is currently contested before the trial court. The errors are varied and cannot be attributed to a single case scenario.

The within statements are made truthfully. I understand that if any were made willfully false I may be subject to penalty under law.

Dated: November 13, 2012

Adam Deutsch, Esq.

EXHIBIT 1

SUPREME COURT OF NEW JERSEY

In furtherance of the Court's holding in U.S. Bank N.A. v. Guillaume, A-11-11 (February 27, 2012), it is ORDERED that Hon. Paul Innes, P.J.Ch., Mercer Vicinage, and Hon. Margaret Mary McVeigh, P.J.Ch., Passaic Vicinage, are each authorized to entertain 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, who served Notices of Intention to Foreclose that are deficient under the Fair Foreclosure Act, N.J.S.A. 2A:50-56, should not be allowed to serve corrected Notices of Intention to Foreclose on defendant mortgagors and/or parties obligated on the debt. Such summary actions should be filed with the Clerk of the Superior Court and assigned to each judge upon filing.

It is FURTHER ORDERED that, if approved by the court, any corrected Notice of Intention to Foreclose served pursuant to an order issued as a result of such an action must be accompanied by a letter to the defendant mortgagor and/or parties obligated on the debt setting forth the reasons why the corrected Notice of Intention to Foreclose is being served, the procedure to follow in the event a defendant wishes to object to the Notice of Intention to Foreclose, the individuals to contact with any questions, and that the receipt of the corrected Notice of Intention to Foreclose allows defendant mortgagors and/or parties obligated on the debt 30 days in which to object or to cure the default.

It is FURTHER ORDERED that any Rule 4:64-1(a) or Rule 4:64-2(d) Certification of Diligent Inquiry filed by a plaintiff who has served a corrected Notice of Intention to

Foreclose pursuant to an order issued as a result of such summary action shall list therein with specificity the steps taken to cure the deficient Notice of Intention to Foreclose.

It is FURTHER ORDERED that the Office of Foreclosure is authorized to recommend the entry of final judgment pursuant to Rule 1:34-6 in uncontested actions in which the procedures set forth in this Order have been followed.

For the Court,

Chief Justice

Dated: April 4, 2012

EXHIBIT 2

SUPREME COURT OF NEW JERSEY

It is ORDERED that retired Assignment Judge Walter R. Barisonek, serving on recall pursuant to N.J.S.A. 43:6A-13 by December 20, 2010 Order of the Supreme Court, during the time period set forth in that order is hereby assigned as a Superior Court judge to serve as Special Master pursuant to Administrative Order 01-2010, in In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities; this supplements the assignment portion of the Court's December 20, 2010 Order.

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: March 1, 2011

EXHIBIT 3

Received 9/8/11

SHIMBERG & FRIEL PC

ATTORNEYS AT LAW

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Anne E. Walters*
Nancy A. Nolan*
Brian P. Faulk
Kevin B. Golden*

Barbara E. Riefberg*
Of Counsel

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Mellon Bank Center
1735 Market Street, Suite 600
Philadelphia, PA 19103

° Member NJ, PA & NY Bars
* Member NJ & PA Bars

Kathleen D. Friel
(1969-2010)

September 6, 2011

Joshua W. Denbeaux, Esquire
DENBEAUX & DENBEAUX
366 Kinderkamack Road
Westwood, NJ 07675

Re: The Bank of New York Mellon etc. v. Marine Minasian, et al.
Docket No. F-12843-10
Our File No. 1315

Dear Mr. Denbeaux:

Enclosed please find Judge Contillo's Order of August 25, 2011, dismissing the complaint without prejudice in connection with the above-entitled matter.

Thank you.

Very truly yours,

SHIMBERG & FRIEL, P.C.

By: _____
Brian P. Faulk

BPF/mm
Enclosure

cc: Brian Yoder, Esquire (w/enc.)

SHIMBERG & FRIEL, P.C.
Attorneys at Law
BY: Brian P. Faulk, Esquire
20 Brace Road, Suite 350
Cherry Hill, NJ 08034
(856) 857-0700
Attorneys for Plaintiff, The Bank of New York Mellon Trust Company, NA, as to the Contesting Answer and Counterclaim only

FILED
AUG 25 2011
Robert P. Contillo
P.J.Ch.

THE BANK OF NEW YORK MELLON TRUST COMPANY NA, FKA THE BANK OF NEW YORK TRUST COMPANY, NA AS SUCCESSOR IN INTEREST TO JP MORGAN CHASE BANK, NA AS TRUSTEE FOR NOMURA ASSET ACCEPTANCE CORPORATION, ALTERNATIVE LOAN TRUST SERIES 2005-AR2 Plaintiff, vs. MARINE MINISIAN; PAUL MINISIAN; MRS. PAUL MINISIAN, HIS WIFE, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY Docket No. F-12843-10 Civil Action **ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE**

THIS MATTER, having been open to the Court by Brian P. Faulk, Esquire, of the firm of Shimberg & Friel, P.C., attorneys for Plaintiff, The Bank of New York Mellon Trust Company, NA, As Successor In Interest to JP Morgan Chase Bank NA as Trustee for Nomura Asset Acceptance Corporation, Alternative Loan Trust Series 2005-AR2, and the parties having mutually agreed to withdraw the

Plaintiff's Complaint and Contesting Answer, Affirmative Defenses and Counterclaims of the Defendant, and for good cause having been shown;

IT IS HEREBY ORDERED AND DECREED this 25 day of August, 2011, as follows:

1. The Plaintiff's Complaint is dismissed without prejudice;

2. Defendants' Answer and Counterclaims are stricken;

3. The case should continue with mediation;

4. Should the mediation prove unsuccessful the matter may be revived under the current docket number by letter request of any counsel, provided that letter request is made on or before December 1, 2011;

5. Should the mediation prove unsuccessful and counsel send in a letter request to revive the case after December 1, 2011, the case will be listed by a new docket number; and

6. A copy of this Order must be furnished upon all counsel of record within 7 days hereof.

Consent ✓
Opposed [ ]
Unopposed [ ]

J.S.C.
ROBERT P. CONTILLO, P.J.Ch.

EXHIBIT 4

ReedSmith

Reed Smith LLP
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Fax +1 609 951 0824
reedsmith.com

Diane A. Bettino
Direct Phone: +1 609 514-5962
Email: dbettino@reedsmith.com

October 9, 2012

Via Regular Mail

Honorable Margaret Mary McVeigh, P.J Ch.
Passaic County Courthouse, Chambers 100
71 Hamilton Street
Paterson, New Jersey 07505

OCT 1 2 2012

Re: In re application of Wells Fargo Bank, N.A.
Docket No. F-9564-12

Dear Judge McVeigh:

We are in receipt of the objection filed by Adam Deutsch, Esq. on behalf of William C. Saracino and Monica Chacon.

The individual foreclosure action filed against Mr. Saracino and Ms. Chacon, docket number F-057710-10 in Hudson County, is contested. Accordingly, it was not properly included on the corrected NOI list. The matter will be identified on the Exclusion Order to be submitted to Your Honor later this week.

We thank the Court for its consideration of this matter.

Respectfully submitted,

Diane A. Bettino

cc: Superior Court Clerk's Office (Via Regular Mail)
Adam Deutsch, Esq. (Via Regular Mail)

EXHIBIT 5

ReedSmith

Diane A. Bettino
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Email: dbettino@reedsmith.com

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Fax +1 609 951 0824
reedsmith.com

October 9, 2012

Via Regular Mail

OCT 1 2 2012

Honorable Margaret Mary McVeigh, P.J Ch.
Passaic County Courthouse, Chambers 100
71 Hamilton Street
Paterson, New Jersey 07505

Re: In re application of Wells Fargo Bank, N.A.
Docket No. F-9564-12

Dear Judge McVeigh:

We are in receipt of the objection filed by Adam Deutsch, Esq. on behalf of James P. Jakubowski.

The individual foreclosure action filed against Mr. Jakubowski in the matter captioned Deutsche Bank National Trust Company, as Trustee for HSI Asset Loan Obligation Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 v. Jakubowski, docket number F-29480-10 in Morris County, was dismissed without prejudice on November 9, 2011. Accordingly, it was not properly included on the corrected NOI list. The matter will be identified on the Exclusion Order to be submitted to Your Honor later this week.

We thank the Court for its consideration of this matter.

Respectfully submitted,

Diane A. Bettino

Diane A. Bettino IKAL

cc: Superior Court Clerk's Office (Via Regular Mail)
Adam Deutsch, Esq. (Via Regular Mail)

EXHIBIT 6

ReedSmith

Diane A. Bettino
Direct Phone: +1 609 514-5962
Email: dbettino@reedsmith.com

OCT 11 2012

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+1 609 987 0050
Fax +1 609 951 0824
reedsmith.com

October 9, 2012

Via Regular Mail

Honorable Margaret Mary McVeigh, P.J Ch.
Passaic County Courthouse, Chambers 100
71 Hamilton Street
Paterson, New Jersey 07505

OCT 11 2012

Re: In re application of Wells Fargo Bank, N.A.
Docket No. F-9564-12

Dear Judge McVeigh:

We are in receipt of the objection filed by Adam Deutsch, Esq. on behalf of Hilde B. Lezaron.

On February 16, 2010, a Complaint for Foreclosure was filed against Ms. Lezaron in the matter captioned HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-PA6 v. Lezaron, docket number F-10078-10 in Bergen County. The matter was dismissed without prejudice on February 29, 2012. *See enclosed JEFIS docket.*

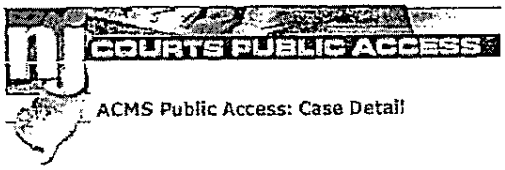
Ms. Lezaron's individual foreclosure action was dismissed. Accordingly, it was not properly included on the corrected NOI list. The matter will be identified on the Exclusion Order to be submitted to Your Honor later this week.

We thank the Court for its consideration of this matter.

Respectfully submitted,

Diane A. Bettino

cc: Superior Court Clerk's Office (Via Regular Mail)
Adam Deutsch, Esq. (Via Regular Mail)



ACMS Public Access: Case Detail

VENUE: SUP CLERK COURT: GENL EQUI DOCKET #: F 010078 10 CASE VENUE : BER
CASE TITLE : HSBC BANK USA NATION VS LEZARON HILDE

CASE FILED DATE	: 02 16 2010	CASE TYPE	: ORF RESIDENT F
CASE STATUS	: CLOSED	CASE INITIATION TYPE	: C COMPLAINT
DISPOSITION TYPE	: DSM W/O PR	DATE DISPOSED	: 02 29 2012
DISCOVERY DATE	:	ARGUMENT REQST DATE	: 00 00 0000
CASE PARTY COUNT	: 008	JUDGMENT ENTERED	: NO
FIRST ANSWER DATE	:		
EXPECTD SERVICE DATE	:	ACTUAL SERVICE DATE	:
CONSOLIDATION TYPE	:	CONSOLIDATION STATUS	:
TRANSFER FROM VENUE	: TO	DATE TRANSFERRED OUT	:
LAST PROCEEDING TYPE	: MOTION HRG	LAST PROCEEDING DATE	: 08 19 2011
PENDING ACTION	:	PENDING ACTION DATE	: 00 00 0000
UNDISTRIBUTED AMOUNT	: 0.00	DEMAND AMOUNT	: 0.00
DF ATTORNEY/PRO SE	: A DF HAS AN ATTY	DENOVO INDICATOR	: NO

CMP DISPUTE RESOLUTN	: TRIAL	TITLE 59 INDICATOR	: NO
JURY REQUEST	: NO JURY	CASE IMPOUNDED	: NO
DATE ENTERED	: 03 27 2010		

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Session ID: U92649 Case Count: 1
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MORE ...

VENUE : SUP CLERK COURT : GENL EQUIT DOCKET #: F 010078 10
CASE TITLE : HSBC BANK USA NATION VS LEZARON HILDE

SEL	DATE FILED			DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME	MUL PTY	DOC STA
○	02	16	2010	001	COMPLAINT		HSBC BANK US	ZUCKER GOLDB		Y
○	06	07	2010	003	ANSWER		CTY OF BERGE	BERGEN COUNT		N
○	06	10	2010	002	FORBEARANCE REQ		BLK 219 LOT	ATTY REQUIRE		N
○	11	03	2010	015	REQ DEFLT		HSBC BANK US	ZUCKER GOLDB		N
○	11	22	2010	004	ANS TO CNTRCLM		HSBC BANK US	ZUCKER GOLDB		N
○	11	22	2010	016	ANS CNTRCLAIM		LEZARON	DENBEAUX & D		Y
○	02	04	2011	007	AFFID/CERT INQ		HSBC BANK US	ZUCKER GOLDB		N
○	02	04	2011	008	AFFID/CERT INQ		HSBC BANK US	ZUCKER GOLDB		N
○	02	04	2011	009	PRF SERVC		LEZARON MR	ATTY REQUIRE		N
○	02	04	2011	010	AFFDVT NMS		HSBC BANK US	ZUCKER GOLDB		N

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Page: 2

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VENUE : SUP CLERK COURT : GENL EQUIT DOCKET #: F 010078 10
CASE TITLE : HSBC BANK USA NATION VS LEZARON HILDE

SEL	DATE FILED			DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME		MUL PTY	DOC STA	
○	02	08	2011	021	NOT PRT DISMISL		HSBC BANK	US	ZUCKER GOLDB	N		
○	02	15	2011	005	MOTN SUMM JDGMT		HSBC BANK	US	ZUCKER GOLDB	N		DN
○	02	15	2011	006	PRF MAIL		HSBC BANK	US	ZUCKER GOLDB	N		
○	02	24	2011	011	MISC OTHER		LEZARON		DENBEAUX & D	N		
○	02	24	2011	012	MISC BRIEF		LEZARON		DENBEAUX & D	N		
○	02	24	2011	013	PRF MAIL		LEZARON		DENBEAUX & D	N		
○	03	04	2011	014	MOTN CRSS MOTN		LEZARON		DENBEAUX & D	Y		DN
○	03	22	2011	017	MISC OTHER		HSBC BANK	US	ZUCKER GOLDB	N		
○	03	24	2011	020	MISC OTHER		HSBC BANK	US	ZUCKER GOLDB	N		
○	03	25	2011	018	ORDR SUMM JDGMT		HSBC BANK	US	ZUCKER GOLDB	N		DN

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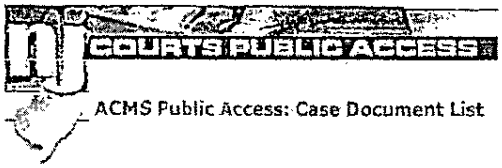

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VENUE : SUP CLERK COURT : GENL EQUIT DOCKET #: F 010078 10
CASE TITLE : HSBC BANK USA NATION VS LEZARON HILDE

SEL	DATE FILED			DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME	MUL PTY	DOC STA	
○	03	25	2011	019	ORDR CRSS MOTN		LEZARON	DENBEAUX & D	Y		DN
○	04	11	2011	022	MOTN COMP DISCR		LEZARON	DENBEAUX & D	N		PR
○	04	21	2011	023	CAS MANG ORD		COURT INIT		N		GR
○	05	20	2011	024	MISC BRIEF		HSBC BANK US	ZUCKER GOLDB	N		
○	05	20	2011	025	MOTN CRSS MOTN		HSBC BANK US	ZUCKER GOLDB	N		DN
○	06	03	2011	026	MISC BRIEF		LEZARON	DENBEAUX & D	N		
○	06	10	2011	027	ORDR COMP DISCR		LEZARON	DENBEAUX & D	N		PR
○	06	10	2011	028	ORDR CRSS MOTN		HSBC BANK US	ZUCKER GOLDB	N		DN
○	06	13	2011	029	MISC BRIEF		HSBC BANK US	ZUCKER GOLDB	N		
○	06	28	2011	030	MISC OTHER		HSBC BANK US	ZUCKER GOLDB	N		

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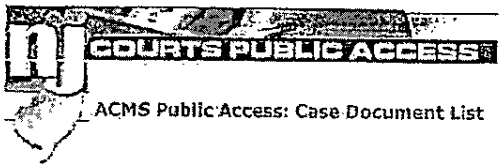

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VENUE : SUP CLERK COURT : GENL EQUIT DOCKET #: F 010078 10
CASE TITLE : HSBC BANK USA NATION VS LEZARON HILDE

SEL	DATE FILED			DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME		MUL PTY	DOC STA
○	07	01	2011	031	MOTN RECONS ORD		HSBC BANK	US	ZUCKER GOLDB	N	DN
○	07	07	2011	032	MOTN SUMM JDGMT		HSBC BANK	US	ZUCKER GOLDB	N	WD
○	07	08	2011	033	MOTN COMP DISCR		LEZARON		DENBEAUX & D	Y	DN
○	07	08	2011	034	PRF MAIL		LEZARON		DENBEAUX & D	Y	
○	07	12	2011	035	MISC BRIEF		LEZARON		DENBEAUX & D	N	
○	07	19	2011	036	OBJECT MOTION		HSBC BANK	US	ZUCKER GOLDB	N	
○	07	22	2011	037	ORDR RECONS ORD		HSBC BANK	US	ZUCKER GOLDB	N	DN
○	07	28	2011	038	OBJECT MOTION		HSBC BANK	US	ZUCKER GOLDB	N	
○	07	28	2011	039	MOTN CRSS MOTN		LEZARON		DENBEAUX & D	N	DN
○	07	28	2011	040	PRF MAIL		LEZARON		DENBEAUX & D	N	

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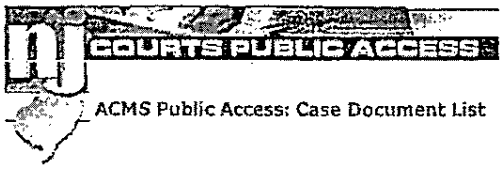

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END OF LIST

VENUE : SUP CLERK COURT : GENL EQUIT DOCKET #: F 010078 10
CASE TITLE : HSBC BANK USA NATION VS LEZARON HILDE

SEL	DATE FILED			DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME		MUL PTY	DOC STA	
○	08	02	2011	041	MISC OTHER		HSBC BANK	US	ZUCKER GOLDB	N		
○	08	05	2011	042	ORDR COMP DISCR		LEZARON		DENBEAUX & D	Y		DN
○	08	19	2011	043	ORDR CRSS MOTN		LEZARON		DENBEAUX & D	N		DN
○	08	19	2011	044	ORDR SUMM JDGMT		HSBC BANK	US	ZUCKER GOLDB	N		WD
○	02	29	2012	045	STPULTN DISMISL		HSBC BANK	US	ZUCKER GOLDB	Y		

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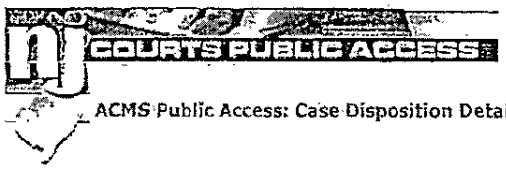
Session ID: U92649 Case Count: 1
BUILD 2012.1.0.02.02Timer Count down: 299



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Page: 1

END OF LIST

VENUE : SUP CLERK COURT : GENL EQUIT DOCKET # : F 010078 10
CASE TITLE : HSBC BANK USA NATION VS LEZARON HILDE

SE DISP : DSM W/O PR DISP DATE: 02 29 2012 CASE STATUS: CLOSED

PTY NO	PARTY NAME			PTY TYPE	PTY STATUS	DISP DATE
001	HSBC BANK USA NATION	AL ASSN		PF	DISM W/O P	02 29 2012
002	LEZARON	HILDE	B	DF	DISM W/O P	02 29 2012
003	BLK 219 LOT 11			OR	DISM W/O P	02 29 2012
004	LEZARON HEIRS	HILDE	B	DF	DISM W/O P	02 08 2011
005	LEZARON MR			DF	DISM W/O P	02 29 2012
006	CTY OF BERGEN HOME I	MPROVEMEN	T	DF	DISM W/O P	02 29 2012
007	LEZARON	HILDE		PF	DISM W/O P	02 29 2012
008	HSBC BANK USA NATION	AL		DF	DISM W/O P	02 29 2012

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Session ID: U92649 Case Count: 1
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EXHIBIT 7

ReedSmith

OCT 12 2012

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October 10, 2012

Via Regular Mail

Honorable Margaret Mary McVeigh, P.J.Ch.
Passaic County Courthouse, Chambers 100
71 Hamilton Street
Paterson, New Jersey 07505

Re: In re application of Wells Fargo Bank, N.A.
Docket No. F-9564-12

Dear Judge McVeigh:

We are in receipt of the objection filed by Adam Deutsch, Esq. on behalf of Richard and Donna Rokow.

On February 16, 2010, US Bank National Association, as Trustee for WFASC 2002-18 filed a Complaint for Foreclosure against Richard and Donna Rokow, docket number F-09992-10 in Hunterdon County. Plaintiff's Motion for Summary Judgment was granted on July 19, 2010.

On July 13, 2012, the Rokows obtained an Order vacating the Order granting summary judgment and allowing them time to file an Amended Answer. The Rokows filed an Amended Answer on August 1, 2012, and the matter became contested.

While the Rokows' individual foreclosure action was originally properly included on the corrected NOI list as a pending, uncontested, pre-judgment matter, the matter is now contested. Accordingly, the matter will be identified on the Exclusion Order to be submitted to Your Honor later this week.

We thank the Court for its consideration of this matter.

Respectfully submitted,

Diane A. Bettino

cc: Superior Court Clerk's Office (Via Regular Mail)
Adam Deutsch, Esq. (Via Regular Mail)

EXHIBIT 8

Denbeaux & Denbeaux
366 Kinderkamack Road
Westwood, New Jersey 07675
(201) 664-8855 / Fax: (201) 666-8589
Attorneys for Defendant

Federal Home Loan Mortgage Corporation Plaintiff, vs. DAVID L. FERWERDA; et al Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: BERGEN COUNTY DOCKET NO.: F-5166-10 A Civil Action ORDER

This matter having come before the Court upon application of Denbeaux & Denbeaux, counsel for defendants, upon notice to all counsel, and the Court having considered the moving papers submitted, having heard oral argument of counsel and the parties, if any, and having considered same, and for good cause shown; FOR THE REASONS STATED ON THE RECORD AND ANNEXED HERETO;

It is, on this 12 day of ~~September~~ OCTOBER, 2012, hereby ORDERED, as follows:

1. Defendant's Motion to Vacate the Default is granted; DEFENDANT SHALL FILE AND SERVE HIS ANSWER WITHIN TEN (10) DAYS.
2. A copy of the within Order shall be served on all parties within 7 days of the date of this Order.

HARRY G. CARROLL JSC

(✓) OPPOSED
( ) UNOPPOSED

MOTION DISPOSITION HEET

CASE NAME: Federal Home Loan Mortgage Corp., DOCKET NO.: F-5166-10

v.

David L. Ferwerda; et. al.

PLAINTIFF'S ATTORNEY: Zucker, Goldberg & Ackerman, LLC

DEFENDANT'S ATTORNEY: Denbeaux & Denbeaux

MOTION DATE: October 12, 2012 ORDER: Attached

Background

Mr. David Ferwerda, hereinafter Defendant, executed a promissory note payable to the order of America's Mortgage Outsource Program in the sum of $211,120.00 on June 8, 2007. See Defendant's Exhibit 1. On that same date, Defendant executed a mortgage also with America's Mortgage Outsource Program on the subject property, 11C Rolling Ridge Road, Montvale, NJ 07645. Execution of both the note and mortgage are acknowledged by Defendant. See Defendant's Exhibit 2. In 2007, Defendant's father fell ill with ailments including, cancer, diabetes and neuropathy, which required Defendant to care for his father. See Ferwerda Certification ¶4. In April of 2009 Defendant filed for bankruptcy and hired counsel who advised him to avoid communications with banks and other possible creditors regarding his property.

On January 11, 2010, Plaintiff, Federal Home Loan Mortgage Corporation, acquired ownership of the mortgage by way of an assignment. See Exhibit 1. Defendant purports to have not been made aware of the assignment until he was served in this foreclosure action. On or about January 20, 2010, Plaintiff filed a complaint commencing litigation and default was entered on June 11, 2012. See Exhibit 3. To date no default judgment has been entered.

Legal Analysis

Defendant now moves to vacate the Default entered against him. Pursuant to R. 4:43-3, a court may set aside an entry of default for good cause shown. Generally, the defendant must show excusable neglect or some other "good cause" for failing to file an answer in a timely manner as well as a meritorious defense. The court will examine the record to see why the defendant failed to file an answer within the time allocated by the court rule and also examine whether defendant has a colorable defense to the claims set forth in the Complaint. Such a motion also must be accompanied by "either an answer to the complaint and Case Information Statement or a dispositive motion pursuant to Rule 4:6-2." Id. The motion is viewed with liberality. Local 478 v. Baron Holding Corp., 224 N.J. Super. 485, 488 (App. Div. 1988) (citing O'Connor v. Altus, 67 N.J. 106, 128-29 (1975)). The required "good cause" showing for setting aside an entry of default pursuant to R. 4:43-3 is a less stringent standard than that imposed by R. 4:50-1 for setting aside a default judgment. See NJ Mfrs. Ins. v. Prestige Health, 406 N.J. Super. 354, 360 (App. Div. 2009). In O'Connor v. Altus, 67 N.J. 106, 129 (1975), the New Jersey Supreme Court found that a meritorious defense worthy of judicial determination, coupled with a lack of contumacious behavior by the defendant, constituted "good cause" to vacate the entry of default and provide the defendant an opportunity to be heard on the merits. Therefore, Defendant must set forth both a meritorious defense and demonstrate a lack of contumacious behavior in order to establish that he is entitled to vacate the Default previously entered against him.

Defendant asks this Court to find "good cause" in his loyally caring for his father coupled with his bankruptcy attorney's advice not to respond to any correspondence regarding his

property. In 2007 Defendant's father became gravely ill and was diagnosed with colon cancer amongst other ailments. Defendant's father required constant attention and because he lived alone, Defendant was required to frequently make trips to his home to care for him. Defendant lost his job shortly thereafter and bankruptcy soon followed. In disregarding all communication pertaining to his property based on the unjustifiable claim of his bankruptcy attorney, Defendant was imprudent. Although the Court notes that the Defendant should have realized his pending bankruptcy may result in further legal proceedings which warranted his attention, it must also observe the great liberality afforded by R. 4:43-3 to set aside a default. Since the Court cannot conclude that Defendant's failure to answer was contumacious but rather attributable to Defendant's ill father and disconcerting legal advice from his previous attorney, the Court hence finds the liberal "good cause" standard has been met. In this regard the Court further notes that Defendant submitted this motion on or about August 24, 2012 and hence moved promptly within approximately two months of the entry of default against him.

In addition to "good cause" defendant must advance at least one compelling meritorious defense in order to have the default set aside. Id. Defendant advances three defenses which he urges are meritorious: (1) Validity of Assignment; (2) Standing; (3) Deficient Notice of Intent ("NOI") to Foreclose. At least at this time, while there may be doubt as to the first two, Defendant does, however, advance a meritorious defense by way of Plaintiff's deficient NOI. In the NOI sent by Plaintiff to Defendant, the lender (Plaintiff), failed to state its own name on the notice and merely sent the notice with the contact information of the servicer who delivered the notice. The failure to state the name of the lender is a direct violation of N.J.S.A. 2A:50-56(c)(11). U.S. Bank Nat'l Assoc., et. al. v. Guillaume, 200 N.J. 449, 480 (2012). Plaintiff concedes the NOI is deficient and that it needs to be remediated. The Court in Guillaume

concluded that the FFA does not provide a "meritorious defense" sufficient to vacate a default judgment under R. 4:50-1(a) where the borrowers were thoroughly familiar "with the status of their mortgage – reflected in their consultations with a professional adviser and active loan modifications with [the lender]." The Court went on to state that in determining the appropriate remedy, the court should consider, "the impact of the defect upon the homeowner's information about the loan's status and on the opportunity to cure the default." Guillaume differs from the present case, because in Guillaume the court was viewing the defective NOI in the context of a meritorious defense to vacating a final judgment (R. 4:50-1(a)) as opposed to here, where the Court is determining whether the defective NOI will suffice as a meritorious defense to vacate a default. Because setting aside a default is a far more lenient standard, this Court regards Plaintiff's defective NOI as being an adequate meritorious defense. Ultimately, as further facts are developed, a determination will then need to be made as to whether remediation or dismissal without prejudice is the proper remedy in this particular case.

Having reviewed Defendant's Motion under the standard set forth above, the Court finds that Defendant does satisfy the requisite "good cause" showing required to vacate the Default entered against him. Moreover, Defendant successfully sets forth a valid meritorious defense based on a deficient NOI. Although two years have elapsed since he was served with the Summons and Complaint, only a relatively short time has elapsed since entry of default, and the Court does find sufficient facts before it to arrive at a determination that Defendant's Motion should be granted, allowing Defendant opportunity to oppose this foreclosure.

Accordingly, for the reasons stated above, Defendant's Motion to Vacate Default is hereby granted. However, due to the age of the case, the Court contemporaneously will enter a

Case Management Order setting relatively tight timeframes within which to conduct pre-trial discovery and bring the matter to an expeditious conclusion.

Dated: September 28, 2012

Hon. Harry G. Carroll, J.S.C.

EXHIBIT 9

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FREDDIE MAC
PENNSYLVANIA
DESIGNATED COUNSEL

October 17, 2012

Via Fax 201-371-1117

The Honorable Gerald C. Escala, J.S.C.
Superior Court of New Jersey, Chancery Division
Bergen County Courthouse
10 Main Street, 4th Floor
Hackensack, NJ 07601

Re: Newbury Place Reo II, LLC vs. Cynthia Barton, et al.
Docket No. F-010010-11

Dear Judge Escala:

Please allow this to confirm that Trial of this matter has been adjourned from October 25, 2012, to November 29, 2012.

Thank you for your courtesy and consideration.

Respectfully submitted,

UDREN LAW OFFICES, P.C.

By: _____
Elizabeth L. Wassall, Esquire
Attorney for Plaintiff

cc: Adam Deutsche, Esquire (via fax 201-666-8589)

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FILED

NOV 14 2012

MARGARET MARY McVEIGH, P.J.CH.

November 13, 2012

DENBEAUX
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ATTORNEYS AT LAW

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Joshua W. Denbeaux*
Adam Deutsch*
David L. Kurtz

Of Counsel
Mark P. Denbeaux*
Abigail D. Kahl, Esq*

*Admitted in NJ and NY

Via Hand Delivery
Clerk, Superior Court of New Jersey
Chancery Division, General Equity Part
Passaic County Courthouse
71 Hamilton Street
Paterson, NJ 07505

Re: In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases
Docket: F-009564-12

Dear Clerk:

This office represents several defendants in the above-referenced litigation.

Enclsoed for filing please find an original and one copy of defendant's Order to Show Cause, Brief in Support of Order to Show Cause, Certification of Adam Deutsch, Esq. and Certification of Service. Kindly file these enclosed documents returning a copy marked "Filed" to this office.

Also enclosed is this firm's check in the amount of $30.00 for the filing fees.

Thank you.

Adam Deutsch, Esq
Denbeaux & Denbeaux