

File No. 15260-0001

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**IN RE SPECIAL SUMMARY ACTION
AUTHORIZED BY ORDER OF THE
NEW JERSEY SUPREME COURT
DATED APRIL 4, 2012 BY AMS
SERVICING, LLC TO ISSUE
CORRECTED NOTICES OF INTENT
TO FORECLOSE**

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
_____ COUNTY**

DOCKET NO. _____

CIVIL ACTION

**BRIEF IN SUPPORT OF SUMMARY
ACTION AUTHORIZED BY ORDER
OF THE SUPREME COURT OF NEW
JERSEY DATED APRIL 4, 2012 TO
ISSUE CORRECTED NOTICES OF
INTENT TO FORECLOSE**

INTRODUCTORY STATEMENT

On February 27, 2012, the New Jersey Supreme Court decided US Bank, N A v. Guillaume, 209 N.J. 449 (2012) Guillaume addressed, among other issues, whether Notices of Intent to Foreclose (“NOI”) sent to borrowers in advance of the filing of a foreclosure complaint pursuant to N.J.S.A. 2A:50-56(a) must strictly comply with and set-forth therein the information required in N.J.S.A. 2A:50-56(c)(11)¹ and, absent strict compliance (should that be the standard), what was the appropriate remedy for an NOI that did not comply with

¹ N.J.S.A. 2A:50-56(c)(11) requires an NOI to disclose, among other things, the name and address of the lender. The NOI at issue in Guillaume disclosed the name and address of the loan servicer.

N.J.S.A. 2A:50-56(c)(11).

The Guillaume Court held that NOIs must strictly comply with N.J.S.A. 2A:50-56(c)(11) by setting forth the name and address of the lender as opposed to the loan servicer. However, the Guillaume Court left the decision of how to remedy any such deficiency to the discretion of the Chancery/Trial Courts. The Guillaume Court expressly rejected the argument (and reversed the holding in Bank of New York v Laks, 422 N.J. Super. 201 (App. Div. 2011)) that the only remedy to address a (c)11 NOI deficiency was dismissal of the underlying foreclosure action.

Shortly after Guillaume was decided, the Supreme Court of New Jersey issued a Court Order on April 4, 2012 that authorized The Honorable Paul Innes, P.J. Ch. and The Honorable Margaret Mary McVeigh, P.J. Ch. to hear 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 been entered who served NOIs that were not compliant with N.J.S.A. 2A:50-56 should not be allowed to serve corrected NOIs to remedy the originally non-compliant NOI. The Supreme Court's April 4, 2012 Order also requires that corrected NOIs, if permitted to be issued by Judge Innes or Judge McVeigh, must be accompanied by a letter of explanation setting forth to the borrowers the reasons why the corrected NOI is being issued, the procedure to follow if the borrower wishes to object, the individuals to contact with any questions and that receipt of the corrected NOI allows the borrowers thirty (30) days in which to object or to cure the specified payment default.

AMS Servicing, LLC ("AMS") now moves pursuant to the Supreme Court's April 4, 2012 Order with respect to the borrower(s)/defendant(s) identified in Exhibit "A" attached to

AMS's Verified Complaint (hereinafter the "Foreclosure Defendants") Each of the Foreclosure Defendants was originally served with an NOI that did not identify the name and address of the lender in contravention to N.J.S.A. 2A:50-56(c)(11)- instead, the name and address of the loan servicer was provided Moreover, with respect to Foreclosure Defendants, Joao A. Fontes and Geralda A. Fontes, the original NOI may also be non-compliant with N.J.S.A. 2A:50-56(b) in that a single NOI was sent to said defendants/borrowers. N.J.S.A. 2A:50-56(b) states that an NOI "shall be . sent to the "debtor" " and may be interpreted as requiring separate NOIs being sent to each joint debtor- hence the inclusion in this application out of an abundance of caution.

Non-compliance with N.J.S.A. 2A:50-56(c)(11) (and the possibility of non-compliance with N.J.S.A. 2A:50-56(b)) is the only NOI deficiency at issue in this special application

For the reasons detailed below, it is respectfully submitted that AMS (or its designee) should be permitted to serve corrected NOIs and letters of explanation on the Foreclosure Defendants in the forms attached to AMS's Verified Complaint as Exhibits "C" and "D" respectively.

STATEMENT OF FACTS

AMS incorporates the Verified Complaint as if set-forth herein at length.

ARGUMENT

I. AMS SHOULD BE PERMITTED TO ISSUE CORRECTED NOIS TO THE FORECLOSURE DEFENDANTS BECAUSE THE ORIGINAL NOIS PROVIDED THE FORECLOSURE DEFENDANTS NOTICE OF THEIR DEFAULT, THE CONSEQUENCES OF THEIR CONTINUED DEFAULT AND THE OPPORTUNITY TO CURE THEIR DEFAULT AND KEEP THEIR HOMES

The Guillaume Court undertook an exhaustive analysis of the Fair Foreclosure Act, N.J.S.A. 2A:50-53-68, in making its decision that N.J.S.A. 2A:50-56(c)(11) must be strictly complied with, but that the Chancery/Trial Courts were empowered to use their discretion to fashion a remedy for non-compliance with N.J.S.A. 2A:50-56(c)(11) Id. at p 22-38. With respect to the Fair Foreclosure Act in general, the Guillaume Court noted that it was intended to “advance the public policies of the State by giving debtors every opportunity to pay their home mortgages, and thus keep their homes” while ensuring that “lenders will be benefited when debtors cure their defaults and return the residential mortgage loan to performing status” and to “to expedite the foreclosure proceedings to bring New Jersey in line with its neighboring states. . .” Id. at 22 citations omitted).

With respect to fashioning a remedy for non-compliance with N.J.S.A. 2A:50-56(c)(11), as noted above, the Guillaume Court empowered the Chancery/Trial Courts to fashion appropriate remedies but specifically instructed that said Courts should consider the express purpose of the provision (i.e. N.J.S.A. 2A:50-56(c)(11))- “to provide notice that makes the debtor aware of the situation and to enable the homeowner to attempt to cure the default”. Id. at 37 (citations omitted) Providing further clarity the Guillaume Court also stated “[a]ccordingly, a trial court fashioning an equitable remedy for a violation of N.J.S.A. 2A:50-56(c)(11) should consider the impact of the defect in the notice of intention upon the

homeowner's information about the status of the loan, and on his or her opportunity to cure the default". Id. at 37-38.

Noting that these principals "animated" the Trial Court's decision to permit US Bank to issue a corrected NOI identifying the name and address of the lender, the Guillaume Court declared the Trial Court's decision a proper exercise of its discretion. Id. at 38

In this matter, just as with Guillaume, the non-compliance with N.J.S.A. 2A:50-56(c) is limited to subpart eleven (11) (with the exception of the possibility of non-compliance with N.J.S.A. 2A:50-56(b) for Foreclosure Defendants, Joao A. Fontes and Geralda A. Fontes) The original NOIs that were issued to the Foreclosure Defendants failed to identify the name and address of the lender and, instead, identified name and address of the loan servicer (and telephone number).

Thus, the operative question in this matter, as noted by the Guillaume Court, is whether the original NOIs issued to the Foreclosure Defendants provided notice that made the Foreclosure Defendants aware of the situation and enabled them to attempt to cure their default (or, stated another way, whether the original NOIs properly notified the Foreclosure Defendants about the status of their loan and the opportunity to cure their default). Id. at 37-38. The clear answer to this question is "yes"

There is no question that the original NOIs provided the Foreclosure Defendants with notice that, among other things, their loans were in default and the nature of the default; that they had a right to cure the default; the amount needed to cure the default and the date on which that amount must be tendered, and, absent the default being cured, that a foreclosure suite may be commenced. Moreover, the Foreclosure Defendants were given the contact information of the loan servicer, including a telephone number, and instructed to contact the

servicer in the event they disagreed with the assertion that a default had occurred, and were also given a comprehensive list of state and other agencies to contact for financial and other assistance.

In other words, notwithstanding that the name and address of the actual lender was not included in the NOIs at issue, the Foreclosure Defendants were, **in fact**, provided notice that made them acutely aware of the situation (i.e. that they were in default of their payment obligations on their mortgage loan and, absent a timely cure, they faced foreclosure and the potential loss of their home), and gave them an opportunity and the contact information to cure the default and keep their homes. The fact of the matter is that the Foreclosure Defendants chose not to cure their defaults and/or save their homes.

Thus, with respect to the Foreclosure Defendants, it is respectfully submitted that AMS should be permitted to issue corrected NOIs (and a letter of explanation) to cure the originally defective NOIs. Such relief in no way, shape or form circumvents the legislative intent that underpins the Fair Foreclosure Act in general and N.J.S.A. 2A:50-56(c)(11) in particular. The undeniable fact is that the Foreclosure Defendants were provided ample notice that made them directly aware of their situations with respect to their mortgage loans and homes and gave them an opportunity to cure the default and keep their homes. Having established this irrefutable fact, it clearly is a proper exercise of its discretion for the Court in this matter to permit AMS to issue corrected NOIs and letters of explanation to the Foreclosure Defendants to cure the originally defective NOIs.

II. AMS SHOULD BE PERMITTED TO ISSUE CORRECTED NOIS TO THE FORECLOSURE DEFENDANTS BECAUSE THE FORECLOSURE DEFENDANTS HAVE ALSO HAD NUMEROUS NOTICES OF THEIR PAYMENT DEFAULT AND NUMEROUS OPPORTUNITIES TO CURE THEIR PAYMENT DEFAULT AND KEEP THEIR HOMES

AMS is aware of the Court's analysis in Guillaume and the guidance it declared should be employed by the Chancery/Trial Courts when determining an appropriate remedy for non-compliance with N.J.S.A. 2A:50-56(c)(11). It is respectfully submitted, however, that the Chancery/Trial Courts (or this Court, in particular) should not limit the analysis to solely whether the purpose/intent of the Fair Foreclosure Act and N.J.S.A. 2A:50-56(c)(11), in particular, were met notwithstanding that the original NOIs were defective.

The Court should also consider what transpired since the issuance of the original, defective NOI. For example, as noted in Exhibit "A" attached to AMS's Verified Complaint, the Foreclosure Defendants were also provided notice and an opportunity to cure and save their homes when the foreclosure complaints were formally served on them and when default was entered and served on them.²

Thus, the fact of the matter is that in addition to the original NOIs the Foreclosure Defendants have been given repeated notices about their current mortgage loan situation and an opportunity to cure their payment defaults and save their homes. Again, the Foreclosure Defendants chose not to cure their defaults and/or save their homes despite these notices/opportunities.

Thus, these additional facts further justify the relief sought by AMS. The Foreclosure Defendants have had repeated bites at the apple to cure their payment defaults and save their

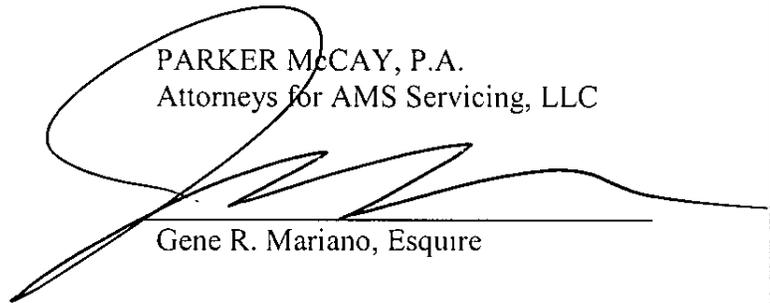
homes.

Based on the foregoing, it is respectfully submitted that AMS should be permitted to issue corrected NOIs and letters of explanation to the Foreclosure Defendants to remedy the originally defective NOIs.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that AMS should be permitted to issue corrected NOIs (and letters of explanation) to the Foreclosure Defendants to remedy the originally defective NOIs. This remedy is clearly fair, just and equitable under the totality of the circumstances

PARKER McCAY, P.A.
Attorneys for AMS Servicing, LLC



Gene R. Mariano, Esquire

Date:

8/22/12

² Further notice and an opportunity to cure was afforded the Foreclosure Defendants prior to the entry of default because the Foreclosure Defendants were also the benefactors of a 14 day notices.

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AUTHORIZED BY ORDER OF THE
NEW JERSEY SUPREME COURT
DATED APRIL 4, 2012 BY AMS
SERVICING, LLC TO ISSUE
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**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
_____ COUNTY**

DOCKET NO. _____

CIVIL ACTION

ORDER TO SHOW CAUSE

THIS MATTER being brought before the Court by Parker McCay P.A., attorneys for AMS Servicing, LLC ("AMS"), seeking relief by way of summary action pursuant to the Order of the New Jersey Supreme Court dated April 4, 2012 for an Order permitting AMS to issue corrected Notices of Intent to Foreclose ("NOI") together with a letter of explanation to the foreclosure defendants identified in the pending, prejudgment, uncontested foreclosure case identified in Exhibit "A" to the Verified Complaint filed concurrent herewith (hereinafter the "Foreclosure Defendants"), and based upon the New Jersey Supreme Court's decision in US Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), the Supreme Court of New Jersey's Order of April 4, 2012, and for other good cause shown;

It is on this _____ day of 2012 **ORDERED** that the Foreclosure Defendants (whose names appear in Exhibit "A" to the Verified Complaint) may appear and show cause

before The Honorable _____, of the Superior Court of New Jersey, Chancery Division, _____ County, New Jersey at _____ o'clock a.m./p.m. on the _____ day of _____, 2012 at _____ to object to this Court's Order allowing AMS, through its designee, Parker McCay P.A. (Kathryn M Gilbertson Shabel, Esquire) to issue corrected NOIs pursuant to this Order to Show Cause.

AND IT IS FURTHER ORDERED THAT FOR EACH FORECLOSURE ACTION IN WHICH AMS ISSUES A CORRECTED NOI:

1. AMS, through its designee, Parker McCay P.A. (Kathryn M Gilbertson Shabel, Esquire), shall issue a letter of explanation in the format attached to the Verified Complaint as "D". The letter of explanation shall explain (a) the reasons why the corrected NOI is being served; (b) the procedure to follow in the event the Foreclosure Defendants wish to object to the NOI, (c) the individuals to contact with any questions; and (d) the Foreclosure Defendants' right to object to the corrected NOI or their right to cure the default within 30 days of the date of the corrected NOI

2 AMS, through its designee, Parker McCay P.A (Kathryn M Gilbertson Shabel, Esquire), shall issue a corrected NOI in the format attached to the Verified Complaint as Exhibit "C", and shall attach to said NOI the letter of explanation referenced in paragraph one (1) above. The corrected NOI shall exclude attorneys' fees and foreclosure costs that have been incurred in the Foreclosure Defendant' pending foreclosure cases

3. AMS shall serve the corrected NOI, letter of explanation and a copy of this executed Order to Show Cause (the "OSC Package") via certified mail, return receipt requested and regular mail at the last known address of the Foreclosure Defendants.

4. A copy of AMS's complete application to this Court shall be loaded on the New Jersey Courts website within _____ days of the date of this Order where it shall be available for review by the general public at the following website link in a searchable format. <http://www.judiciary.state.nj.us/>.

5 In addition to providing service of the OSC Package as required by paragraph three (3) above, AMS shall provide publication notice two (2) times in each of the following daily publications (1) The Newark Star Ledger, (2) The Bergen Record; (3) the Courier Post; and (4) The Press of Atlantic City. Both publication notices shall be completed on or before _____, 2012.

6 Within _____ days of the return date identified herein, AMS shall file a proof of service of the OSC Package pursuant to paragraph three (3) above and proof of publication notice pursuant to paragraph five (5) above with this Court;

7 You, the Foreclosure Defendants, have the right to object in this proceeding to this Order to Show Cause (the process by which the Court gave AMS or its designee permission to serve the corrected NOI). To do so, you must file a written objection under the docket number listed on the first page of this Order to Show Cause setting forth said objection with specificity. You must also file your written objection on or before _____, 2012 with:

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

You must also serve a copy of your written objection on AMS's attorney, Gene R. Mariano, Esquire of Parker McCay P.A., 9000 Midlantic Drive, Suite 300, P.O. Box 5054,

Mount Laurel, New Jersey 08054-1539 and mail a copy of your written objection to The Honorable _____, P.J.Ch., at _____.

8. You, the Foreclosure Defendants, also have the right to object to the corrected NOI that you will receive. You also have the right, within thirty (30) days of service of the OSC Package, to cure your payment default. If you object to any of the contents of your corrected NOI, you must file written objection under the docket number of your foreclosure action. If you are uncertain of the docket number for your foreclosure action, you can access that information on the Court's website as noted in paragraph four (4) above (specifically, see Exhibit "A" to the Verified Complaint) or by calling AMS's representative listed on the letter of explanation contained in the OSC Package. You must set forth with specificity the basis for your objection and file your objection on or before _____, 2012 with.

The Clerk of the Superior Court, Foreclosure Processing Services
P O Box 971
Trenton, New Jersey 08625

You must also serve a copy of your written objection on AMS's attorney, Gene R. Mariano, Esquire of Parker McCay P.A., 9000 Midlantic Drive, Suite 300, P.O. Box 5054, Mount Laurel, New Jersey 08054-1539 and mail a copy of your written objection to The Honorable _____, P.J.Ch., at _____.

9 AMS may file and serve written reply to any opposition papers filed by the Foreclosure Defendants on or before _____, 2012. Any such reply papers shall be made in writing and the original documents must be filed with the Clerk of the Superior

Court in Mercer County, New Jersey with a copy timely provided to The Honorable

_____, P.J Ch , at _____

_____ and to each Foreclosure Defendant who filed opposition.

10 If you can not afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided with the corrected NOI in the OSC Package.

11. A proposed form of Order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted by AMS to this Court no later than _____ days before the return date identified herein.

12. This Court will entertain argument, but not testimony, on the return date identified herein.

13. In the event a foreclosure action identified in Exhibit "A" to the Verified Complaint has been suspended or stayed as a result of a bankruptcy filing or loss mitigation activity, the OSC Package shall not be sent unless and until the suspension or stay is lifted. In such circumstances, the following procedures shall be used. AMS or its designee shall mail the OSC Package within 45 days of the lifting of the suspension or stay of the foreclosure action. You, the Foreclosure Defendants, shall have 30 days in which to object to the corrected NOI or 30 days from service of the OSC Package to cure your payment default. Any objections to the relief set forth in this Order to Show Cause shall be made in writing to the Court in the county in which your foreclosure action is pending. You must also serve a copy of your written objection on AMS's attorney, Gene R. Mariano, Esquire of Parker McCay P.A., 9000 Midlantic Drive, Suite 300, P.O. Box 5054, Mount Laurel, New Jersey

08054-1539, or the Court handling your foreclosure action will not be able to consider your objection.

J.S.C.