

FEIN, SUCH, KAHN & SHEPARD, PC

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 Parsippany, New Jersey 07054
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Attorneys for Movant, THIRD FEDERAL SAVINGS AND LOAN ASSOCIATON OF CLEVELAND

| | | |
|---------------------------------|---|--|
| | : | SUPERIOR COURT OF NEW JERSEY |
| | : | CHANCERY DIVISION |
| | : | COUNTY |
| IN THE MATTER OF APPLICATION BY | : | |
| TO ISSUE CORRECTIVE NOTICES OF | : | |
| INTENT TO FORECLOSE ON BEHALF | : | DOCKET NO.: F-021960-12 |
| OF IDENTIFIED PLAINTIFF(S)THIRD | : | |
| FEDERAL SAVINGS AND LOAN | : | Civil Action |
| ASSOCIATION OF CLEVELAND IN | : | |
| UNCONTESTED FORECLOSURE CASES | : | VERTIFIED COMPLAINT IN SUPPORT |
| | : | OF SUMMARY PROCEEDING PURSUANT |
| | : | TO ORDER OF THE NEW JERSEY |
| | : | SUPREME COURT DATED APRIL 4, |
| | : | 2012 TO CURE A DEFICIENT NOTICE |
| | : | OF INTENT TO FORECLOSE |

THIRD FEDERAL SAVINGS AND LOAN ASSOCIATON OF CLEVELAND, as Plaintiff in pending pre-judgment uncontested foreclosure actions, brings this action pursuant to the April 4, 2012 Order of the New Jersey Supreme Court (the "April Order"), which was entered in response to the Court's decision in U.S. Bank v. Guillaume, 209 N.J. 449, (2012).

Third Federal Savings and Loan Association of Cleveland, respectfully sets forth the following:

1. Third Federal Savings and Loan Association of Cleveland, (hereinafter referred to as "Third Federal") is the plaintiff foreclosing upon properties in the State of New Jersey.
2. It accepts monthly mortgage payments from borrowers, engages in negotiations with regard to modifications, considers offers for short sale and other loss mitigation efforts, makes payments for taxes and insurance on behalf of borrowers on escrowed loans. It is in compliance with the

Rules of Court of the State of New Jersey and other applicable laws and guidelines. As the entity which accepts payments, Third Federal holds the information relevant to the amount of the monthly payment, the amount of funds received or disbursed on behalf of a borrower, and therefore, the information as to whether a borrower is in default on his/her payments and the amount of default. This information is maintained in its business records. Thus, Third Federal makes the instant application to this Honorable Court as the foreclosing plaintiff and not as a servicing agent.

3. One of the duties as Plaintiff on a defaulted loan in New Jersey is to prepare and mail an Notice of Intention to Foreclose in accordance with the New Jersey Fair Foreclosure Act, N.J.S.A. 2A:50-56. The NOI is prepared based on the loan information within the possession of Third Federal and includes items such as the amount to cure the default and reinstate the mortgage loan.
4. The Supreme Court decision in U.S. Bank v. Guillaume requires strict compliance with the notice requirements set forth in the Fair Foreclosure Act. The Guillaume court further held that a court adjudicating a foreclosure action in which the strict requirements of N.J.S.A. 2A:50-56 were not met has the judicial discretion to choose an appropriate remedy permitting the cure of a deficient NOI, or another form of relief as designed by that Court as may be appropriate to the specific action.
5. In response to the Guillaume decision, the Supreme Court further entered an Order on April 4, 2012 authorizing the

Honorable Mary Margaret McVeigh, of the Passaic County vicinage and the Honorable Paul Innes, of the Mercer County vicinage to entertain Orders to Show Cause in a Summary Proceeding as to why Plaintiffs in uncontested foreclosures relating to residential mortgage filed on or before February 27, 2012, in which a final judgment has not been entered, who caused NOIs to be mailed which are deficient under the Fair Foreclosure Act, should not be allowed to served corrective NOIs on borrowers obligated under the debt (the "Foreclosure Defendants").

6. The April 4, 2012 Order further requires that any Corrected NOI also be accompanied by a letter to the Foreclosure Defendants setting forth the reason why the corrected NOI is being served, the procedure to follow if a Foreclosure Defendant intends to object to the NOI, the name of a person to contact with any questions, and that the receipt of the corrected NOI allows the Foreclosure Defendant thirty (30) days in which to object or to cure the default, as an Explanatory Letter which form is promulgated by the Court.
7. Third Federal has reviewed its pending foreclosure portfolio with the firm of Fein Such Kahn and Shepard as counsel and it has identified only three (3) cases which is a residential foreclosure, pre-judgment and which will require a Corrected NOI because the plaintiff's name and address were not included in the NOI previously mailed. The list is attached hereto as Schedule "A" includes the name and address of the foreclosing plaintiff and the docket number of the foreclosure action along with the names of the defendant

obligors.

8. Third Federal will also mail with the NOI the court ordered form of letter of explanation to send to the Foreclosure Defendants.
9. The Corrected NOI will not include either attorney's fees or foreclosure costs incurred during the course of the pending foreclosure action. It will include the requisite information pertinent to the Foreclosure Defendants' mortgage, including the plaintiff's name and address and amount necessary to reinstate the loan, among other items. Attached as Exhibit B to the Verified Complaint is the proposed form of corrected NOI Third Federal will send to each of the Foreclosure Defendants identified on the corrected NOI list. Each Foreclosure Defendant will be served with a corrected NOI which includes, *inter alia*, the information specific to their mortgage loan, their default, the lender's name and address and the amount to reinstate, as required by the Order to Show Cause.
10. In the action presently pending before this Court, there are only three (3) pending foreclosure actions. While most cases would require an Omnibus action pertaining to multiple actions, Third Federal has only identified three defective NOIs in its portfolio of cases with the firm of Fein Such, Kahn and Shepard, to date.

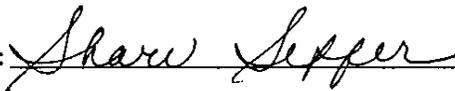
WHEREFORE, Plaintiff respectfully requests that this Court enter an Order permitting Third Federal to issue a corrective NOI as permitted in the April 4, 2012 Order on the uncontested residential mortgage foreclosure actions in which

a judgment in foreclosure has not been entered, direct that the new NOI be deemed curative and satisfactory for the applicant to continue to enter judgment in its foreclosure action, and for such other and further relief as this Court may deem just and equitable under the circumstances.

FEIN, SUCH, KAHN AND SHEPARD, P.C.

Dated: June 22, 2012

By:

_____

SHARI SEFFER .

CERTIFICATION

I certify pursuant to Rule 4:5-1 that, to the best of my knowledge, this matter is not the subject of any other pending action in any other court or of a pending arbitration proceeding, other than an action to foreclose a mortgage against premises nor is any other action contemplated. I further certify that I am not aware of any non-party who should be joined in this action pursuant to Rule 4:28 or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party based on the same transactional facts.

FEIN, SUCH, KAHN AND SHEPARD, P.C.

Dated: June 22, 2012

By: Shari Seffer

SHARI SEFFER

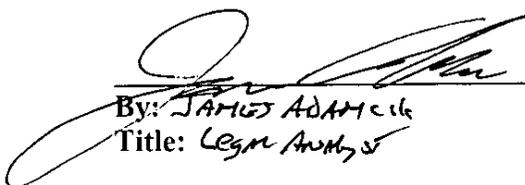
VERIFICATION

STATE OF OHIO :

COUNTY OF Cuyahoga :

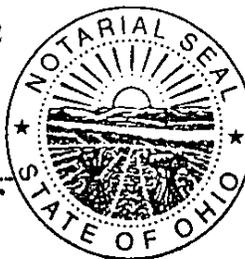
I, JAMES ADAMCIC, being duly sworn,

1. I am the Legm Analyst for Third Federal Savings and Loan Association of Cleveland, the applicant in the foregoing Verified Complaint in Support of a Summary Proceeding.
2. The allegations in the Verified Complaint are true to the best of my knowledge and belief.
3. The exhibits attached to the Verified Complaint are true and correct copies.


By: JAMES ADAMCIC
Title: Legm Analyst

SWORN AND SUBSCRIBED TO BEFORE
ME ON THIS 19 DAY OF July, 2012


NOTARY PUBLIC



BEVERLY A. SPAPE
Notary Public, STATE OF OHIO
My Commission Expires
DEC. 23, 2013

SCHEDULE OF CASES

| <u>Borrowers name</u> | <u>Our file #</u> | <u>Docket #</u> | <u>County</u> |
|---------------------------------------|-------------------|-----------------|---------------|
| Mitchell Goldfarb Marilyn Goldfarb | WNA735 | F-5395-11 | Ocean |
| John Cuomo Flora Cuomo | WNA565 | F-22811-10 | Monmouth |
| Yitzchok Singer Shoshana Singer | WNA605 | F-43349-10 | Ocean |

NOTICE

Docket No: F- _____
Superior Court of New Jersey
Chancery Division

STATE OF NEW JERSEY TO:

Any defendant in an uncontested residential mortgage foreclosure action in which Third Federal Savings and Loan Association of Cleveland is the Plaintiff.

YOU ARE HEREBY ORDERED TO SHOW CAUSE why the relief requested in the Order to Show Cause and Verified Complaint filed by Third Federal Savings and Loan Association of Cleveland in a civil action pending in the Superior Court of New Jersey, Chancery Division, bearing docket no. F- _____ -12, should not be granted by the Court. Copies of all of the pleadings filed in the instant action may be obtained from the Court's website located at <http://www.judiciary.state.nj.us>.

This action has been instituted for the purpose of determining whether the Court should allow Third Federal Savings and Loan Association to re-send Corrective Notices of Intention to Foreclose pursuant to a process established by Order of the New Jersey Supreme Court on April 4, 2012. Any objection to this action must be in writing with specificity and filed with the Clerk of the Superior Court of New Jersey, Hughes Justice Complex, CN971, Trenton, NJ 08625 and the Honorable _____, New Jersey and upon Shari Seffer, Esq., Fein Such Kahn and Shepard, P.C., 7 Century Drive, Parsippany, New Jersey 07054. Any written objection must be filed no later than _____. If a timely objection is filed, the Court may conduct oral argument on _____, 2012. If no timely objection is filed, the Court may rule on the application on the papers on the return date above.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services offices and Lawyer Referral Services is available in the Civil Division Management Office in the county in which you reside and online at:

http://www.judiciary.state.n.jus.prose/10153_deptyclerkla_wref.pdf.

s/Jennifer Perez
Clerk of the Superior Court of NJ

FEIN, SUCH, KAHN & SHEPARD, PC

7 Century Drive - Suite 201
Parsippany, New Jersey 07054
(973) 538-9300

Attorneys for Movant, THIRD FEDERAL SAVINGS AND LOAN ASSOCIATION
OF CLEVELAND

| | | |
|-----------------------------------|---|--------------------------------------|
| | : | SUPERIOR COURT OF NEW JERSEY |
| | : | CHANCERY DIVISION |
| | : | COUNTY |
| IN THE MATTER OF APPLICATION BY : | : | |
| TO ISSUE CORRECTIVE NOTICES OF : | : | |
| INTENT TO FORECLOSE ON BEHALF : | : | DOCKET NO.: F- |
| OF IDENTIFIED PLAINTIFF(S)THIRD : | : | |
| FEDERAL SAVINGS AND LOAN : | : | Civil Action |
| ASSOCIATION OF CLEVELAND IN : | : | |
| UNCONTESTED FORECLOSURE CASES : | : | CERTIFICATION OF SHARI SEFFER |
| | : | IN SUPPORT OF ORDER TO SHOW |
| | : | CAUSE ON BEHALF OF THIRD |
| | : | FEDERAL SAVINGS AND LOAN |
| | : | ASSOCIATION OF CLEVELAND |

SHARI SEFFER, does hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and of counsel with the firm of Fein Such Kahn and Shepard, PC, attorneys for the applicant, Third Federal Savings and Loan Association of Cleveland in the above entitled action. I am duly authorized to make the instant certification and am fully familiar with the facts and circumstances surrounding the instant application.
2. This application has been made on behalf of the investor Third Federal Savings and Loan Association of Cleveland (hereinafter referred to as "Third Federal"), for three (3) residential mortgage foreclosure actions pending which have pre-judgment invalid Notices of Intention to Foreclose ("NOI").
3. As I was able to ascertain from Third Federal, they have a

very small portfolio of loans in New Jersey, and as such, this is a small application compared to other Guillaume Orders to Show Cause which may have been or are to be filed in this State.

4. Furthermore, I am not aware of any other actions currently pending in this State.
5. The foregoing is not necessarily the case with the larger servicers. The instant investor is small investor with a very limited portfolio of cases.
6. It is the intent of this office to limit the number of applications to be brought before this court as we recognize the necessity to ensure that judicial economy remains one of the paramount concerns of all parties involved in the residential mortgage foreclosure process.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/Shari Seffer

SHARI SEFFER

Dated; September 20, 2012

FEIN, SUCH, KAHN & SHEPARD, P.C.

COUNSELLORS AT LAW

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FACSIMILE 973-993-2961

www.feinsuch.com

October 2, 2012

VIA LAWYERS SERVICE

Jennifer Perez, Esq.
Clerk of Superior Court
CN971
Trenton, NJ 08625

Re: ORDER TO SHOW CAUSE PURSUANT TO U.S. BANK-V-GUILLAUME
Docket No.
Our File Nos. WNA735, WNA565, WNA605

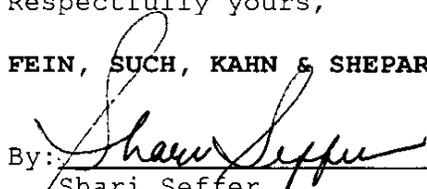
Dear Ms. Perez:

Enclosed herewith please find an original and two (2) copies of a proposed Order to Show Cause, Verified Complaint and Certification In Support of Order to Show Cause on behalf of Third Federal Savings and Loan Association.

Kindly assign to the appropriate Judge for review and entry of Order to Show Cause, if acceptable to the Court and debit our Collateral Account #140870 accordingly.

Respectfully yours,

FEIN, SUCH, KAHN & SHEPARD, P.C.

By: 
Shari Seffer

RECEIVED
OCT 03 2012
SUPERIOR COURT
CLERK'S OFFICE

SS/sa

Encs.

cc: Kristi Robinson, Esq., Chief Civil Practice Liaison NJ
Administrative Office of the Courts (via lawyers service)

Kevin Wolfe, Esq., Assistant Director Civil Practice Division NJ
Administrative Office of the Courts (via lawyers service)