

Joseph A. Chang & Associates, L.L.C.

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Attorneys for Carlos and Rita Marta DaSilva

IN RE APPLICATION BY NATIONSTAR MORTGAGE, LLC TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MERCER COUNTY Docket No.: F-23925-12 <u>Civil Action</u> OBJECTION TO ORDER TO SHOW CAUSE
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Carlos and Rita Marta DaSilva, recipients of applicant's Order to Show Cause and defendants in Docket No. F-19445-09, object to Nationstar Mortgage, LLC's order to show cause for the following reasons:

Objection: Carlos DaSilva and Rita Marta DaSilva are not properly within the class of homeowners identified by the Order to Show Cause.

The order to show cause was authorized specifically for uncontested foreclosure cases. The DaSilvas have attempted to file a contesting answer in Docket No. F-19445-09 out of time, but their petition was denied by the trial court, and are presently awaiting final judgment.

A request to reform the Notice of Intent to Foreclose, as is at issue in the pending order to show cause, would be more properly heard by the trial judge, Hon. Hector R. Velazquez, in the Hudson County Superior Court, Chancery Division. As such, the DaSilvas object to being subject to the order to show cause and the permission to file a corrective Notice of Intent to Foreclose. They ask that this Court deny the order to show cause as it directly effects the defendants of Docket No. F-19445-09. This request is brought before the wrong court and must be withdrawn and filed through the contested foreclosure action.

Objection: Counsel did not receive notice of the pending action.

Counsel has appeared of record in the underlying foreclosure action referenced in the exhibit to the Order to Show Cause. However, counsel was not notified by Nationstar that an Order to Show Cause had been issued which affects the proceedings in the foreclosure matter. Instead, Nationstar chose to communicate directly with the clients outside of the presence of counsel in violation of the Rules of Court and the Rules of Professional Conduct. R. 1:5-1 and 2;

and RPC 4.2. Counsel's due diligence in searching the voluminous exhibits revealed which clients were subject to the Order.

Objection: Notice of Intent deficiency issues have been raised in applications filed under the foreclosure dockets.

Counsel has filed objections to the sufficiency of the Notices of Intent. Counsel has properly brought the issue before the Chancery Court and has been litigating in search of a remedy appropriate to the circumstances of the case. To permit Nationstar to correct the Notices of Intent at this point would be fundamentally unfair to the homeowners that have raised the issue, and are either awaiting argument, awaiting an order, or awaiting a final judgment before raising the issue on appeal. Permitting the proposed corrections at this juncture strips the homeowners of the rights they have asserted in presenting the issue as an affirmative defense.

Objection: Nationstar did not attach the Complaint to the issued notices and Defendant rejects such improper service.

Contrary to R. 4:67-2 and R. 4:52-1(b), a copy of the complaint was not attached to the explanatory letter served upon defendants subject to the Order to Show Cause, despite the letter's reference to the complaint. Such absence is confusing to defendants and creates imperfect service. Applicants were excused from serving the exhibits to the complaint on every homeowner, but they were not excused from serving the complaint at all. As such, Applicant did not serve the complaint in compliance with the court rules, proper service of the Order to Show Cause has not been effectuated, and the fundamental due process rights of the homeowners have been violated.

Objection: Nationstar did not properly serve the identified homeowners.

The Order to Show Cause requires that the packages be sent certified and regular mail to all homeowners identified in the exhibit. The only exception pertained to married borrowers. The certified mail copy of the packages was not received by the homeowners, and it is believed that Nationstar only sent the packages via regular mail. Additionally, certain homeowners identified in the exhibits did not even receive the regular mail copy of the package. Counsel's due diligence permits a response on their behalf, but many of the homeowners identified in the exhibit are not represented by counsel and do not have a 3rd party protecting their interests.

Objection: The language of the proposed Notice of Intent to Foreclose is misleading.

All of the mortgagors identified in the Order to Show Cause are defendants in active foreclosure litigation with the debt accelerated as due in full. However, the proposed corrective Notice of Intent to Foreclose indicates that the mortgagor is in a pre-foreclosure status, that the debt may be accelerated, and that the servicer will start a mortgage foreclosure action upon failure to forward the amount indicated. It later says "we may file initiate foreclosure proceedings against you..." which again indicates that such an action has not already been commenced.

In addition, the Notice fails to include an amount for which Nationstar claims the homeowners are in default. The Notice simply states that "we have not received the installment in the amount of \$163,010.21, due from the months of December 1, 2008," a sentence which ends incomplete. There is no breakdown of the amount owed in payments and fees, and does not state the amount of months the DaSilvas are behind.

These notices are not tailored to the situation at hand and are written in a manner that is confusing to the mortgagor. The majority of persons affected by the Order to Show Cause have not retained counsel and will be misled by the language contained therein. It appears that the moving party is merely attempting to use judicial resources to approve a proposed form for future notices without regard for the deficiencies they are currently encountering. This form does not clearly indicate the nature and status of the debt and litigation as to the parties it is meant to effect. This is merely an attempt to sweep past mistakes under the rug without actually addressing the gravity of the situations that have arisen due to those mistakes.

There are many reasons the homeowners may not be participating in the case, including improper service of process. To permit the language of the NOI as it is presented, without reference to the pending foreclosure action, is unjust and misleading. It is an often quoted maxim in chancery that he who seeks equity must do equity. Here, Nationstar is seeking an equitable remedy permitting them to correct their own errors in violating the specific language of the Fair Foreclosure Act, which indicates that the complying Notice of Intent *shall* be sent prior to the filing of a foreclosure complaint. However, Nationstar is now seeking equitable relief in the form of judicial permission to correct their many statutory violations on a broad basis after the filing of a foreclosure action. If this action is permitted, the equities will not be balanced. The homeowners will be harmed by this action unless the Order to Show Cause is denied or reformed to undo the entry of default and permit responsive pleadings as to all affected homeowners.

Objection: Nationstar is improperly using judicial resources to address an issue more properly determined by the legislature.

Nationstar is attempting to create a safe harbor form with judicial approval. The judiciary, however, should not be asked en masse to approve a business form for a private corporation in an effort to circumvent the normal judicial process. Nationstar has brought one action regarding hundreds of borrowers requiring significant time and resources of the judiciary to save their own resources by not bringing each action in the individual matter it affects. This does not constitute judicial efficiency, so much as corporate savings for the movant. If the legislature intended that there be one specific form that addressed all of the issues required by a Notice of Intent to Foreclose, they would have added such a form to the statute. Their declining to do so is not to be seen as an oversight, but as an indication of their intent. Nationstar did not treat this application seriously enough to be entitled to the relief sought.

Objection: Nationstar has not provided reliable contact information for questions and concerns.

The Fair Foreclosure Act demands that an individual be named in the Notice of Intent who can address the many concerns a homeowner might have when receiving a notice. In the proposed corrective notices, Nationstar appears to recognize this mandate and has placed an individual's name for contact purposes. However, it is evident that Nationstar has not made a good faith effort to permit homeowners to contact the named party.

Nationstar has not provided actual contact information in the correspondence section for the named party. They have provided a phone number for Tempestt Harper that is inaccurate and does not provide a line of communication to the identified party. In fact, the undersigned counsel was unable to connect a call to the given phone number, receiving a notification that the call could not be completed as dialed.

For the reasons stated above and for those reasons that may be raised in the additional objections, it is respectfully requested that Nationstar's Order to Show Cause be denied in its entirety and/or denied as to the specifically identified homeowner at issue in this objection. It is also respectfully requested that counsel fees be awarded in favor of the identified homeowners for bringing this action against parties not appropriately within the defined class.

JOSEPH A. CHANG & ASSOCIATES, LLC
Attorneys for Defendants

DATED: January 22, 2013

/s/ David R. Cubby
David R. Cubby

Joseph A. Chang & Associates, L.L.C.
951 Madison Avenue
Paterson, New Jersey 07501
973-925-2525
Attorneys for Carlos and Rita Marta DaSilva

<p>NATIONSTAR MORTGAGE, LLC, <i>Plaintiff,</i></p> <p>v.</p> <p>CARLOS DASILVA AND RITA MARTA DASILVA, <i>Defendants.</i></p>	<p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: HUDSON COUNTY</p> <p>Docket No.: F-19445-09</p> <p>CIVIL ACTION</p> <p>OBJECTION TO PROPOSED CORRECTIVE NOTICE OF INTENT TO FORECLOSE</p>
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Carlos and Rita Marta DaSilva, defendants, object to Nationstar's proposed corrective Notice of Intent to Foreclose for the following reasons:

Objection: Amount Due

Defendants object to the stated amount due. Plaintiff has not provided proof of or a breakdown of the amounts asserted, including the monthly amount used to calculate the payment total and what the miscellaneous fees charged are for.

Defendants believe that the amounts asserted are improperly calculated and do not represent the actual amount owed. In fact, Plaintiff's complaint states that the Defendants were responsible for payments of \$1,830.01 a month, which, over the course of the four years they were allegedly in default, comes out to \$87,840.48. Plaintiff's claim of arrearages totaling \$163,010.21 in the corrective NOI is nearly double that amount. Without an itemized breakdown, however, Defendants are not able to properly verify whether this additional amount is justified. Defendants also do not believe that the default date is calculated properly.

Objection: The language of the proposed Notice of Intent to Foreclose is misleading.

All of the mortgagors identified in the Order to Show Cause are Plaintiffs in active foreclosure litigation with the debt accelerated as due in full. However, the proposed corrective Notice of Intent to Foreclose indicates that the mortgagor is in a pre-foreclosure status, that the debt may be accelerated, and that the servicer will start a mortgage foreclosure action upon failure to forward the amount indicated. It

later says “we may file initiate foreclosure proceedings against you...,” which again indicates that such an action has not already been commenced.

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Nationstar has not provided actual contact information in the correspondence section for the named party. They have provided a phone number for Tempestt Harper that is inaccurate and does not provide a line of communication to the identified party. In fact, the undersigned counsel was unable to connect a call to the given phone number, receiving a notification that the call could not be completed as dialed.

Objection: Communications were sent directly to the Defendants.

Although Plaintiff is aware that Counsel represents Defendants in this matter, they have chosen to directly communicate with the Defendants outside of the presence of their attorney through their servicer, ASC. Such communication violates the Rules of Court and the Rules of Professional Conduct. R 1:5-1 and 2; and RPC 4.2.

Objection: The proposed Notice truncated the time to respond.

Although dated December 10, 2012, adjusting for the generally accepted 3 days for receipt of items sent through USPS, they were not deemed received until December 13, 2012. Therefore, the cure date of January 9, 2013, does not provide the statutorily required 30 day period.

For the reasons stated above, it is respectfully requested that Nationstar Mortgage, LLC's proposed corrective Notice of Intent be rejected in its entirety.

JOSEPH A. CHANG & ASSOCIATES, LLC
Attorneys for Defendants

DATED: January 22, 2013

s/ David R. Cubby
David R. Cubby

JOSEPH A. CHANG & ASSOCIATES, L.L.C.

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* ADMITTED NY/NJ

January 22, 2013

VIA JEFIS

Honorable Paul J. Innes, P.J.Ch.
Mercer County Superior Court of New Jersey
175 South Broad Street
Trenton, New Jersey 08625-0971

**Re: In Re Application of Intent to Foreclosed Served by NationStar
Mortgage LLC
Order to Show Cause Docket No. F-023925-12
Docket No: F-19445-09 (Hudson)**

Dear Judge Innes:

This firm is counsel to Defendants Carlos and Rita Marta DaSilva in the above referenced matter. Please find enclosed objection to NationStar Mortgage, LLC's Order to Show Cause and Objection to the Proposed Corrective Notice of Intent to Foreclose. The within documents are being filed with JEFIS on even date.

Should you have any questions, please do not hesitate to contact our office. Thank you your attention to this matter.

Very truly yours,
JOSEPH A. CHANG & ASSOCIATES, LLC

/s/ David R Cubby
David R Cubby

DRC/dr

cc: McCabe Weisberg & Conway, P.C. (Via Facsimile and Regular Mail, with enclosures)

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Attorneys for Carlos and Rita Marta DaSilva

<p>IN RE APPLICATION BY NATIONSTAR MORTGAGE, LLC TO ISSUE CORRECTED NOTICES OF INTENT</p> <p>TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONTESTED</p> <p>CASES</p>	<p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MERCER COUNTY</p> <p>Docket No.: F-23925-12</p> <p><u>Civil Action</u></p> <p>CERTIFICATION OF FILING AND SERVICE</p>
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David R. Cubby, being of full age, hereby certified as follows:

1. I am an attorney at law of the State of New Jersey and an associate at the law firm of Joseph A. Chang & Associates, LLC, counsel for Defendants Mario Dumenden and Gloria Dumenden (“Defendants”).

2. On January 22, 2013, I caused to E-File via JEFIS on Objection to the Order to Show Cause and within Certification of Service.

3. On January 22, 2013, I have also caused to be serve a true and correct copy this document by sending same via Facsimile and First Class Mail to counsel of record at the following addresses:

Corrin M. DeMent, Esq.
McCabe Weisberg & Conway LLC
216 Haddon Avenue Suite 303
Westmont, New Jersey 08108
Counsel for Plaintiff NationStar Mortgage, LLC

I certify under penalty of perjury that the foregoing is true and correct.

JOSEPH A. CHANG & ASSOCIATES, LLC

DATED: January 22, 2012

/s/ David R. Cubby
David R. Cubby

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951 Madison Avenue
Paterson, New Jersey 07501
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David R. Cubby, being of full age, hereby certified as follows:

1. I am an attorney at law of the State of New Jersey and an associate at the law firm of Joseph A. Chang & Associates, LLC, counsel for Defendants Carlos DaSilva and Rita Marta DaSilva (“Defendants”).

2. On January 22, 2013, I caused to E-File via JEFIS on Objection to Proposed Corrective Notice of Intent to Foreclose and within Certification of Service.

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Corrin M. DeMent, Esq.
McCabe Weisberg & Conway LLC
216 Haddon Avenue Suite 303
Westmont, New Jersey 08108
Counsel for Plaintiff, NationStar Mortgage, LLC

I certify under penalty of perjury that the foregoing is true and correct.

JOSEPH A. CHANG & ASSOCIATES, LLC

DATED: January 22, 2012

/s/ David R. Cubby
David R. Cubby