

FILED Oct 03, 2013

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2 Bucks Lane
Marlboro, NJ 07746
(732) 303-8599
Attorneys for Emigrant Mortgage Company, Inc.

**IN RE SPECIAL SUMMARY ACTION
AUTHORIZED BY ORDER OF THE
NEW JERSEY SUPREME COURT
DATED APRIL 4, 2012 BY
EMIGRANT MORTGAGE
COMPANY, INC. TO ISSUE
CORRECTED NOTICES OF INTENT
TO FORECLOSE**

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

DOCKET NO.

ORDER TO SHOW CAUSE

THIS MATTER being brought before the Court by the law firm of Richard A. Epstein, P.C., attorneys for Emigrant Mortgage Company, Inc. ("Emigrant"), seeking relief by way of summary action as set forth in Chief Justice Stuart Rabnor's April 4, 2012 Order and based upon the facts set forth in the Verified Complaint filed herewith, and based upon the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to R. 4:67-2 and for good cause shown;

It is on this _____ day of _____, 2013,

ORDERED that the parties in interest listed in Exhibit "B" of the Verified Complaint appear and show cause on the _____ day of _____, 2013, before The Honorable Paul Innes, P.J.Ch., Superior Court, MERCER County, Chancery Division at 175 South Broad Street, Trenton, NJ 08650 at _____ o'clock, why judgment should not be entered as follows:

A. Declaring Plaintiff's Form Notice of Intention to Foreclose to be compliant with the requirements of the Fair Foreclosure Act; and

B. Allowing Plaintiff to send new Notices of Intention to Foreclose, giving the borrower(s) at least thirty days from the date the letter is mailed to cure the default on the mortgage without having to pay legal fees or costs; and

C. Granting such other relief as the Court deems equitable and just.

It is FURTHER ORDERED that:

1. Plaintiff shall serve a copy of this Order to Show Cause and Verified Complaint (without exhibits) upon all individuals obligated on the Note secured by a Mortgage on residential property that is the borrower's, or their immediate family's, principle residence in the matters listed in Exhibit "B" of the Verified Complaint. Service shall be effectuated by certified mail return receipt requested and regular mail to the property address and the last known address (if different) in Plaintiff's records.

2. A copy of this Order to Show Cause and the Verified Complaint shall be posted on Judiciary Web Page at <http://www.judiciary.state.nj.us>.

3. A true copy of this Order to Show Cause and the Verified Complaint shall be served upon borrowers listed in Exhibit "B" to the Verified Complaint, by certified mail, return receipt requested (or by registered mail, return receipt requested with respect to any borrower listed in Exhibit "B" of the Verified Complaint who resides outside the United States) and regular mail.

4. Along with the Order to Show Cause, Plaintiff may serve the corrective Notice of Intention to Foreclose allowing the borrower at least thirty days to cure the default on the subject mortgage without having to pay attorneys fees or costs, in a form as set forth in Exhibit "D" of the Verified Complaint. Plaintiff shall also serve an Explanatory Letter in the form set forth in Exhibit "E" of the Verified Complaint.

a. For any borrower in an active Bankruptcy case where the provisions of the automatic stay are still in place, Plaintiff may serve a copy of this Order to Show Cause and Verified Complaint but may choose to delay serving a corrective Notice of Intention to Foreclose until such time as the stay is vacated if it believes that service of the corrective Notice of Intention to Foreclose will violate the automatic stay.

b. If the Court grants final relief on the return date of this Order to Show Cause and Plaintiff has not already sent a corrective Notice of Intention to Foreclose, Plaintiff shall serve the corrective Notice of Intention to Foreclose once the provisions of the automatic stay in the bankruptcy case are no longer in place. In the alternative, Plaintiff may apply to the United States Bankruptcy Court for relief from the provisions of the automatic stay to effectuate service of the corrective Notice of Intention to Foreclose pursuant to this Order.

c. In the event that Plaintiff does not serve a corrective Notice of Intention to Foreclose with this Order to Show Cause, Plaintiff may not proceed with a foreclosure action until such Notice of Intention is served as authorized by this Court's Order.

d. If Plaintiff believes that service of this application will be a violation of the provisions of the automatic stay, once the stay is vacated, Plaintiff may file a motion with the Chancery Judge in the vicinage where the property lies requesting permission to send a new Notice of Intention to Foreclose. Plaintiff shall not be required to file a new Order to Show Cause for cases currently in bankruptcy.

5. If service cannot be made by regular and certified mail as set forth in paragraph 1 above, then Plaintiff shall publish a legal notice of this action at least two days prior to _____ in the following newspapers in a manner consistent with similar legal notices:

a. The Star Ledger

- b. The Herald News
- c. The Press of Atlantic City
- d. The Courier Post
- e. The Asbury Park Press
- f. The News of Cumberland County

6. The Court will only entertain objections to the process outlined in the Supreme Court's April 4, 2012 Order. Any party in interest who wishes to object to the process shall file the objection under the docket number for this Order to Show Cause, **in writing**, with the:

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.

A copy of the objection to the Order to Show Cause must also be sent to:

Honorable Paul Innes, P.J. Ch.
MERCER County Courthouse
175 South Broad Street
Trenton, NJ 08650

A copy of the objection to the Order to Show Cause must also be served upon the attorney for the Plaintiff at:

Richard A. Epstein, Esquire
2 Bucks Lane
Marlboro, NJ 07746

Objections to this Order to Show Cause must state with specificity the basis for the objection and must be filed no later than _____, 2013.

7. If a timely objection is not filed, the matter may proceed to judgment in accordance with the Rules of Court.

8. Any objection in regard to a specific corrected NOI in a specific foreclosure case must be filed **in writing under the docket number of the individual foreclosure action, NOT this Order to Show Cause**. Any objection must state the basis for the objection with specificity

and be filed and served as set forth in Paragraph 6 above. Objections to a specific NOI will be referred to the Chancery Judge in the vicinage in which the property lies for resolution.

9. Parties in interest are hereby advised that a telephone call to the Plaintiff, to the Plaintiff's attorney, to the Superior Court Clerk's office, or to the Court, will not protect your rights. You must file and serve your written objection as outlined in this Order.

10. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. If you do not have an attorney or are not eligible for free legal assistance through the Legal Services office (or such office does not provide services for this particular type of proceeding), you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these offices is provided with the corrective NOI

11. If no party in interest timely files and serves an objection to this Order to Show Cause as provided above, the application may be decided by the Court on the date this matter is scheduled to be heard, provided that the Plaintiff has filed a proof of service and a proposed form of judgment as required by this Order to Show Cause.

12. If written objection to this Order to Show Cause is filed, the Plaintiff's written reply shall be filed and served by _____, 2013. A copy of the reply, if any, shall be served upon the Clerk of the Superior Court, with a courtesy copy directly to the Honorable Paul Innes, P.J. Ch. Plaintiff is only required to serve its response upon any party or parties who have filed written objections to this Order to Show Cause.

13. Plaintiff shall submit to the court an original and two copies of a proposed form of judgment addressing the relief sought on the date this matter is scheduled to be heard no later than ___ days before the date this matter is scheduled to be heard.

14. The Plaintiff shall file proof of service of the Verified Complaint, this Order to Show Cause and all supporting documents with the Clerk of the Superior Court no later than ____ () days before the return date of this matter.

15. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court is advised to the contrary no later than ____ days before the return date.

HONORABLE Paul Innes, P.J.CH.

Richard A. Epstein, P.C.
2 Bucks Lane
Marlboro, NJ 07746
(732) 303-8599
Attorneys for Emigrant Mortgage Company, Inc.

**IN RE SPECIAL SUMMARY ACTION
AUTHORIZED BY ORDER OF THE
NEW JERSEY SUPREME COURT
DATED APRIL 4, 2012 BY
EMIGRANT MORTGAGE
COMPANY, INC. TO ISSUE
CORRECTED NOTICES OF INTENT
TO FORECLOSE**

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

DOCKET NO.

**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**

PRELIMINARY STATEMENT

On February 27, 2012, the New Jersey Supreme Court decided US Bank, N A v. Guillaume, 209 N.J. 449 (2012). The Court held that Notices of Intent to Foreclose ("NOI")s 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 Court left the decision of how to remedy any such deficiency to the discretion of the Chancery Trial Courts. The Court 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 acceptable remedy for 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 non-compliant NOIs. The 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 to the borrowers setting forth 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.

Emigrant Mortgage Company, Inc. (“Emigrant”) now moves pursuant to the Supreme Court’s April 4, 2012 Order with respect to the defendants identified in Exhibit “B” attached to Emigrant’s Verified Complaint (hereinafter the “Foreclosure Defendants”). The Foreclosure Defendants were originally served with NOIs that either failed to identify or incorrectly identified the name of the lender, and/or did not provide the lender’s address, in contravention to N.J.S.A. 2A:50-56(c)(11). Non-compliance with N.J.S.A. 2A:50-56(c)(11) is the only NOI deficiency at issue in this special application.

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

STATEMENT OF FACTS

Emigrant hereby incorporates the allegations in the Verified Complaint as if set forth herein at length.

ARGUMENT

EMIGRANT SHOULD BE PERMITTED TO ISSUE CORRECTED NOI_s TO THE FORECLOSURE DEFENDANTS BECAUSE THE ORIGINAL NOI_s PROVIDED THE FORECLOSURE DEFENDANTS WITH 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 a thorough analysis of the Fair Foreclosure Act, N.J.S.A. 2A:50-56 (the “FFA”), in making its decision that while N.J.S.A. 2A:50-56(c)(11) must be strictly complied with, Chancery Trial Courts were empowered to use their discretion to fashion a remedy for non-compliance with N.J.S.A. 2A:50-56(e)(11) *Id.* at p 22-38. With respect to the FFA in general, the Court noted that the FFA 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 and instructed those Courts to consider the express purpose of the provision of 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). Further, the Court stated that “[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, Plaintiff’s non-compliance is limited to N.J.S.A. 2A:50-56(c)(11). Here, the original NOIs that were issued to the Foreclosure Defendants provided the correct name, address and telephone number of the loan servicer, Emigrant, but did not identify, or incorrectly identified the lender’s name and/or address (which was the same as Emigrant’s address).

Therefore, the question before the 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 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; the date on which that amount needed to be tendered; and, absent the default being cured, that a foreclosure suit could be commenced.

The Foreclosure Defendants were also told that if they failed to cure their default by the date in the letter, they would be responsible for additional legal fees if a foreclosure complaint was filed. Moreover, the Foreclosure Defendants were given the contact information of the loan servicer, Emigrant, including Emigrant’s address and telephone number, and instructed to contact an individual at Emigrant in the event they disagreed with the assertion that a default had occurred. In each instance the lender was an affiliate of Emigrant, and the address of the lender was the same as Emigrant’s address. Moreover, in each instance the loan was originated by

Emigrant, so it is unlikely that the Foreclosure Defendants would have been confused by receipt of a notice from Emigrant that directed them to contact a representative of Emigrant with respect to their mortgage. The Foreclosure Defendants were also given a comprehensive list of state and other agencies to contact for financial and other assistance as required by the statute.

In other words, notwithstanding that the NOIs at issue did not strictly comply with N.J.S.A. 2A:50-56(c)(11), as required, the Foreclosure Defendants were, in fact, provided notice that made them acutely aware of their situation (i.e., that they were in default of their payment obligations on their mortgage loan and, absent a timely cure, that they faced foreclosure and the potential loss of their home). The NOIs also gave the Foreclosure Defendants the opportunity and the contact information required to cure their default and keep their homes. The fact of the matter is that the Foreclosure Defendants either elected not to cure their defaults or were unable to do so.

Thus, with respect to the Foreclosure Defendants, it is respectfully submitted that Emigrant should be permitted to issue corrected NOIs (and a letter of explanation) to cure the originally defective NOIs. Such relief is consistent with the legislative intent that underpins the FFA 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 the opportunity to cure the default and keep their homes, as required by the FFA. Clearly, it is a proper exercise of the Court's discretion to permit Emigrant to issue corrected NOIs and letters of explanation to the Foreclosure Defendants to cure the original defective NOIs.

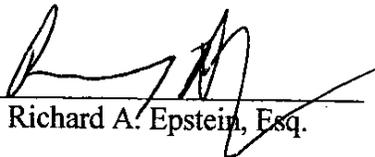
Based on the foregoing, it is respectfully submitted that Emigrant should be permitted to issue corrected NOIs and letters of explanation to the Foreclosure Defendants to remedy the original defective NOIs.

CONCLUSION

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

RICHARD A. EPSTEIN, P.C.
Attorneys for Emigrant Mortgage
Company, Inc.

Dated: October 2, 2013

By: 
Richard A. Epstein, Esq.

Richard A. Epstein, P.C.

Attorney at Law
2 Bucks Lane & Hwy. 79, Suite 3
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(732) 303-8599
(732) 303-1566 (Fax)

Richard A. Epstein, Esq.

E-Mail: raelaw@optonline.net

October 3, 2013

HAND DELIVERED

Clerk, Superior Court of New Jersey
25 W. Market Street
Trenton, NJ 08625

Re: Emigrant Mortgage Company, Inc. – Summary Action/NOI Order to Show Cause

Dear Sir or Madam:

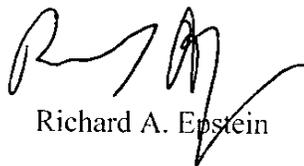
Please be advised that I represent Emigrant Mortgage Company, Inc. in the above referenced matter.

Enclosed for filing with the Court please find an original and copy of Emigrant's Verified Complaint, Order to Show Cause and Brief in Support, along with two (2) checks in the amount of \$200.00 and \$30.00.

Kindly file the above and return a copy marked "filed" to my office in the stamped return envelope enclosed herewith.

If you have any questions or require any additional information, please contact me.

Very truly yours,



Richard A. Epstein

RAE:dec
Enclosures