

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ET AL
Plaintiff.

vs.
ERNEST E. HARPSTER
Defendant.

CASE NO. 51-2007-CA-6684ES

**AMENDED ORDER GRANTING MOTION TO COMPEL, GRANTING
MOTION IN LIMINE AND GRANTING MOTION FOR REHEARING**

THIS CAUSE came on to be heard on March 1, 2010 upon the Defendant, ERNEST E. HARPSTER'S Motions to Compel, Motion in Limine/Motion to Strike and his Motion for Rehearing. The court heard argument of counsel for the Defendant and makes the following findings of fact:

1) The Plaintiff was properly served with a Second Amended Notice of Hearing dated November 19, 2009.

2) The hearing time was set for March 1, 2010 at 3 p.m. for a 20-minute hearing but the Plaintiff failed to appear. The Plaintiff's law firm has long experience with calling in to participate in hearings with this court, whether noticed as telephonic hearings or not.

3) The court delayed the hearing until 3:10 p.m.; however, after sounding the halls and after awaiting telephonic communication from the Plaintiff, the Plaintiff still failed to appear. An assistant for Plaintiff's counsel called at about 3:44 p.m. to find out the outcome of the hearing.

4) The three motions of the Defendant were properly before the court: a Motion to Compel Responses to Interrogatories and Request for Production; Amended Motions in Limine regarding the Promissory Note and a Second Motion in Limine/Motion to Strike based on an allegation of fraud on the court; and finally a Motion for Rehearing.

5) Regarding the Motion to Compel, the court finds that the Plaintiff has failed to produce answers to the Interrogatories for a period of 26 months, between the time the Interrogatories and the Request for Production were served on January 8, 2008 and the date of the hearing on the Motion to Compel took place on March 1, 2010. Additionally, the court finds that the Plaintiff failed to produce responses to the Request for Production propounded in July 2009.

6) The Defendant's Motion in Limine/Motion to Strike was based on an allegation that the Assignment of Mortgage was created after the filing of this action, but the document date and notarial date were purposely backdated by the Plaintiff to a date prior the filing of this foreclosure action.

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7) The Assignment, as an instrument of fraud in this Court intentionally perpetrated upon this court by the Plaintiff, was made to appear as though it was created and notarized on December 5, 2007. However, that purported creation/notarization date was facially impossible: the stamp on the notary was dated May 19, 2012. Since Notary commissions only last four years in Florida (see F.S. Section 117.01 (1)), the notary stamp used on this instrument did not even exist until approximately five months after the purported date on the Assignment.

8) Confirming this, the Notary Bonding Company's representative, Erika Espinoza, stated in a sworn affidavit that the Notary Stamp used by Terry Rice, the Notary, did not exist on the purported date it was notarized. Specifically, Espinoza testified in her affidavit that the notary stamp didn't come into existence until sometime in April 2008, five months after the date on the Assignment.

9) The affidavit of Erika Espinoza was un-rebutted by any pleading, testimony, or affidavits of the Plaintiff.

10) The Motion for Rehearing alleged proper legal grounds for rehearing the Defendant's Motion to Dismiss, based on newly discovered evidence and discovery of fraud on the Court.

11) The court specifically finds that the purported Assignment did not exist at the time of filing of this action; that the purported Assignment was subsequently created and the execution date and notarial date were fraudulently backdated, in a purposeful, intentional effort to mislead the Defendant and this Court. The Court rejects the Assignment and finds that it is not entitled to introduction in evidence for any purpose. The Court finds that the Plaintiff does not have standing to bring its action. (See BAC Funding Consortium, Inc. ISOA/ATIMA v. Genelle Jean-Jacques, Serge Jean-Jacques, Jr. and U.S. Bank National Association, as Trustee for the C-Bass Mortgage Loan Asset Backed Certificates, Series 2006-CB5 (2nd DCA Case No. 2D08-3553) Feb. 12, 2012.)

12) The Motion to Strike is moot.

13) The court finds that the Defendant is the prevailing party in this litigation and is therefore entitled to an award of attorney's fees and costs to be determined in a future evidentiary hearing before this Court.

14) This Amended Order reflects the court's additional finding regarding the telephone call from the law offices of the Plaintiff at 3:44 p.m. and corrects the date the Request for Production was served upon the Plaintiff by the Defendant and the length of time those requests went unanswered.

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IT IS THEREFORE, ORDERED AND ADJUDGED THAT:

1) The Motion to Compel is granted. As a sanction for egregious failure to comply with discovery Rules the Plaintiff shall be prohibited from presenting the alleged Promissory Note to this Court.

2) The Motion in Limine is granted. The Plaintiff shall be prohibited from introducing into evidence the alleged Promissory Note.

3) The Second Motion in Limine is granted. The Plaintiff's recording and filing regarding the fraudulent Assignment of Mortgage is stricken, and the Plaintiff is prohibited from entering the Assignment of Mortgage into evidence.

4) The Motion for Rehearing of Defendant's Motion to Dismiss is granted and the Motion to Dismiss is granted. The Plaintiff's complaint is dismissed with prejudice, based on the fraud intentionally perpetrated upon the Court by the Plaintiff. This Court has the power to dismiss a case upon a showing of a commission of fraud on the Court by a party. (See Taylor v. Martell (4th DCA, 2005). Also, F.R. C.P. 1.150 allows the striking of sham pleadings upon a proper showing. The Defendant shall go henceforth without day.

5) This Court reserves ruling on the issue of the amount of reasonable attorney's fees and costs to be awarded the Defendant. Attorney's fees shall be assessed in favor the Defendant against the Plaintiff at a future evidentiary hearing.

Done and Ordered this ____ day of March, 2010 at Dade City, Florida.

**Done and Ordered
at Dade City,
Pasco County, Florida**

MAR 25 2010

LYNN TEPPER
CIRCUIT JUDGE

Lynn Tepper,
Circuit Judge

Cc: David Stern, P.A

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RECEIVED

APR 06 2010



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DS: 0.00 IT: 0.00
09/10/08 Dpty Clerk

JED PITTMAN, PASCO COUNTY CLERK
09/10/08 11:18am 1 of 1
OR BK 7922 PG 1108

This space is for recording purposes only

Prepared by DAVID J. STEAN, ESQ
Record & Return to: 801 S. University Drive Suite 300
Plantation, FL 33324
07-16058(ASCF)

Re
900 Spine Island Rd
Ste 400

Matthew,
I thought you'd
be interested
in this
assignment & per
attached et.
order -
Best regards,
Ralph [Signature]
913 949 2749

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

THAT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Residing or located at c/o WELLS FARGO BANK, N.A., 3476 STATEVIEW BLVD., FT. MILL, SC 29715 herein designated as the assignor, for and in consideration of the sum of \$1.00 Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BANC OF AMERICA FUNDING 2007-6 TRUST residing or located at: C/O AMERICAS SERVICING COMPANY 3476 STATEVIEW BLVD FT. MILLS, SC 29715 herein designated as the assignee, the mortgage executed by ERNEST E. HARPSTER AND JANETH L. HARPSTER, HUSBAND AND WIFE recorded in PASCO County, Florida at book 7358 and page 1120 encumbering the property more particularly described as follows:

LOT 77, BLOCK 21A, LEXINGTON OAKS VILLAGES 18, 19 & 20, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 45, PAGES 80 THROUGH 86, OF THE PUBLIC RECORDS OF PASCO COUNTY, FLORIDA.

together with the note and each and every other obligation described in said mortgage and the money due and to become due thereon

TO HAVE AND TO HOLD the same unto the said assignee, its successors and assigns forever, but without recourse on the undersigned.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed.

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

BY:

WITNESS:

PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

Print Name: Terry Rice

WITNESS:

Print Name: Harry Innocent

STATE OF FLORIDA
COUNTY OF BROWARD

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the day of Dec 5, 2007 within my jurisdiction, the within named CHERYL SAMONS who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 5 day of Dec 2007

[Signature]
NOTARY PUBLIC

NOTARY PUBLIC STATE OF FLORIDA
Terry Rice
Commission # DD782247
Expires: MAY 19, 2012
BONDED THRU ATLANTIC BONDING CO., INC