

IN THE CIRCUIT COURT FOR THE 18TH
JUDICIAL CIRCUIT, IN AND FOR BREVARD
COUNTY, FLORIDA

CASE NO.: 05-2010-CA-10

WELLS FARGO BANK, N.A.

Plaintiff,

v.

C [REDACTED], S [REDACTED], ET AL.,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER having come before the Court for hearing on June 8, 2009 on Defendant's Motion to Dismiss. The basis of the motion was the Plaintiff's failure to verify the complaint pursuant to Florida Rule of Civil Procedure 1.110(b). The Court having reviewed the subject motion and the complaint and having heard argument of counsel adjudicates the motion as follows:

I. PROCEDURAL HISTORY

1. The subject lawsuit, is a complaint to foreclosure on residential real property located in Brevard County, Florida. The subject complaint was filed on March 19, 2010.
2. The court docket indicates and counsel agree that the subject complaint was NOT verified when it was filed.

II. APPLICABLE LAW

3. Florida Rule of Civil Procedure 1.110(b) was amended by the Florida Supreme Court to require verification of complaints for foreclosure of residential real property. The amendment sets forth that:

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

III. SUBSEQUENT RULING OF FLORIDA SUPREME COURT

4. On June 3, 2010, (after the subject motion to dismiss was filed but before the motion was heard) the Florida Supreme Court denied the motions for rehearing referenced by Plaintiff's counsel.

IV. RULING

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED:

- 5 Defendant's motion to dismiss is granted.
- 6 The Plaintiff's unverified complaint is dismissed WITH LEAVE for the Plaintiff to file an Amended Verified complaint that complies with Rule 1.110(b) within 20 days of the date of this order.

Done and Ordered In Chambers, in Titusville, Florida this _____ day of June, 2010 by:

Original Signed On

JUN 15 2010

Honorable John D. Moxley, Jr. By John D. Moxley, Jr.
Brevard County Circuit Judge Circuit Judge

Copies Furnished to:

Richard Shuster, Attorney for Defendant
Ashley Price, Attorney for Plaintiff