

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

CASE NO.: 2010-CA-0109

HSBC BANK, N.A., AS TRUSTEE
ON BEHALF OF ACE SECURITIES
CORP. HOME EQUITY LOAN TRUST, ET AL.,

Plaintiff,

v.

ET. AL,

Defendant.

**ORDER ON DEFENDANT'S MOTION FOR RULE TO SHOW CAUSE AND FOR
SANCTIONS, OR IN THE ALTERNATIVE TO COMPEL BETTER RESPONSE TO
REQUEST TO PRODUCE**

THIS CAUSE having come before this Court on May 3, 2011 upon the Defendant's Motion for Rule to Show Cause and for Sanctions, or in the Alternative to Compel Better Response to Request to Produce. The Court having reviewed the pleadings, the subject motion and having heard argument of counsel, does hereby ORDER and ADJUDGE:

I. Procedural History

1. This Court on May 5, 2010 entered an order on Plaintiff's Motion for Extension of Time which stated "The Plaintiff is ordered to serve responses to the Defendant's First Request to Produce within Thirty (30) days of the signing of this order.
2. Thereafter the Defendant filed his first Motion to Show Cause and for Rule to Show Cause or In the Alternative To Compel Better Response to Request to Produce on May 27, 2010.
3. On September 30, 2010, a hearing was held on Defendant's First Motion to Show Cause and to Compel Better that resulted in the Court's October 13, 2010, execution of any eleven page order granting the motion in part and providing thirty days for the ordered discovery to be furnished.

4. The Plaintiff failed to comply with the Court's October 13, 2010 order.
5. On February 15, 2011, Defendant served its Second Motion to Show Cause.
6. On May 2, 2011, on the day before the hearing on Defendant's Motion the Plaintiff served "Supplemental Plaintiff's Responses to Defendant's _____ Amended Request For Production" to which were attached copies of the note, mortgage, assignment of mortgage and a payment register. With respect to multiple requests the Plaintiff responded that "These documents have been requested and will be provided upon receipt."

II. Ruling

7. The Court finds that the Plaintiff's response that documents were requested and "will be provided upon receipt" when the Court ordered the production of such documents more than six months ago is a willful violation of this Court's order by the Plaintiff.
8. The Defendant's request that the subject action be dismissed is granted. This case shall be dismissed without prejudice as a discovery sanction.
9. The Court awards sanctions in the form of attorney's fees for the time spent by Defendant's counsel to obtain discovery. Such fees shall be separate from and in addition to fees (if any) that Defendant may be entitled to if the Court adjudicates that that Defendant is entitled to prevailing party attorney's fees.
10. The attorney for the Defendant shall submit to this Court an affidavit of hours expended to obtain discovery and an affidavit as to reasonable hourly rate for the services provided. The attorney for the Plaintiff shall serve a response to the two affidavits filed by the Defendant within twenty (20) days of service of the Defendant's affidavits.
11. Jurisdiction is reserved to adjudicate the amount of sanctions.
12. Jurisdiction is reserved to determine whether the Defendant is entitled to prevailing party attorneys fees.

DONE and ORDERED in Chambers in Viera, FL on this _____ day of May 2011.

ORIGINAL SIGNED ON
MAY 10 2011
BY JUDGE CHARLES M. HOLCOMB
CIRCUIT JUDGE

Honorable Charles Holcomb

Copies Furnished to: Richard Shuster, Esquire (for Defendant) and
Kerry Cummings, Esquire, (for Plaintiff)