STOPA LAW FIRM

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Chief Justice Charles T. Candady
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1900

RE: Response to Congressman Grayson's letter;
Is this what it's come to in foreclosure cases?

Chief Justice Canady:

As a foreclosure defense attorney who is constantly on the front lines of the foreclosure crisis that is plaguing our great state, I am disappointed at the Florida Supreme Court's recent letter to Congressman Grayson. Essentially, the Court took the position it had "no authority" to act in response to the ongoing foreclosure crisis, when, in my respectful view, the Court plainly has such authority. The purpose of this letter is to provide my respectful opinion on how the Court has the authority to act as well as why it should do so.

As you know, Article V, Section 2 of the Florida Constitution gives the Florida Supreme Court the exclusive authority to "adopt rules for practice and procedure in all courts..." Hence, if the Court were so inclined, it could pass an amendment to Fla.R.Civ.P. 1.510 such as this:

> Notwithstanding the foregoing, this Rule cannot be used to seek or obtain summary judgment in any lawsuit in which the Plaintiff is seeking a mortgage foreclosure at any time between now and December 31, 2010.

The Court could make this rule amendment effective immediately, and it would be binding on all courts within the State. See Art. V, Sect. 2, Fla. Const. This would be no different, from the standpoint of the Court's authority, than the Court's recent amendment to Fla.R.Civ.P. 1.110, which now requires a verified complaint in all foreclosure cases on residential property.

As the Court's authority to act is clear, I have to think the Court has refrained from taking such action because it deems a foreclosure moratorium inappropriate. From the standpoint of someone on the "front lines," my disagreement, while respectful, could not be stronger. Before you dismiss my opinion as that of a self-interested foreclosure defense attorney, please consider

the rest of this letter. You may be amazed to read what happens on the "front lines" in foreclosure defense cases.[1]

Earlier this summer, a Florida judge entered a Final Judgment of Foreclosure in a case where I am counsel before the scheduled summary judgment hearing even began. (I know this because a conformed copy of the Final Judgment was sitting in the Court file, available for public inspection, hours before the hearing.) As the hearing began, and I expressed my dismay about how the Final Judgment of Foreclosure had already been signed before the hearing had started, the judge indicated that I "did not understand procedure." For me, that response was scary, as it showed the judge had not made an innocent mistake in that case; she utilized this "procedure" on a regular basis. Respectfully, is that what it's come to in foreclosure cases, that final judgment is entered before the hearing even begins?

This was not an isolated incident. For instance, I recently received a conformed copy of a Final Judgment of Foreclosure, signed by a fill-in judge on September 8, 2010, even though: (i) the presiding judge had cancelled the hearing in open court on September 2, 2010; (ii) opposing counsel filed a Notice of Cancellation, which appeared on the docket on September 7, 2010; and (iii) nobody for either side attended the hearing. After some investigating, I learned this is standard procedure in Pinellas County - if a summary judgment is duly noticed, and nobody appears, the Final Judgment of Foreclosure is "automatically" entered, even if plaintiff's counsel does not attend.[2] Respectfully, is that what it's come to in foreclosure cases, that final judgment is entered without a hearing?

I've seen many other perversions in the system as well, including: (1) the Orlando homeowner who was foreclosed upon by Bank of America even though there was no mortgage on his home; (2) two different banks filing an "original" Note, on the same mortgage, in two different cases;[3] (3) "rocket dockets" in Palm Beach County where judges limit counsel to sixty seconds in opposition to summary judgment (with the judge sometimes "counting down" as the minute nears conclusion); (4) docket soundings in Lee County, set right after a case is filed, *sua sponte* and without allowing telephone appearances, the express purpose of which is to enter summary judgment or, if denied, set a trial date, even on cases that are obviously not "at issue" under Fla.R.Civ.P. 1.440; (5) obviously forged signatures on assignments of mortgage and other such documents, as shown on Congressman Grayson's recent youtube video; (6) orders on contested matters, signed *ex parte* and without hearing, without defense attorneys such as myself even receiving copies of any correspondence to the court; and (7) temporary loan modifications, entered between banks and *pro se* homeowners with promises that a permanent loan

[1] I am not asking you to comment on any pending case. Rather, I am providing you with some anecdotes to give you a sense of what is transpiring in courts throughout Florida on a daily basis.
[2] I am not trying to pick on Pinellas County. In fact, the procedures in Pinellas are fairer than those in many other counties, and I respect Chief Judge Thomas McGrady's ongoing efforts greatly. In a way, though, that's part of my concern – I'm seeing these types of problems in Pinellas, and it's one of the best counties in the state in handling such issues.
[3] I suspect the Honorable Anthony Rondolino would gladly expound on this situation, if asked.

modification is being evaluated and the foreclosure case is "on hold," even though the foreclosure case is moving full speed ahead.[4]

The perversions in the system are so significant that three of the country's biggest banks have now admitted that the individuals who signed affidavits in support of summary judgment in foreclosure cases (commonly called "robo-signers") did not even read the affidavits before signing, did not have the requisite personal knowledge, and signed outside the presence of a notary. Amazingly, in the face of such admissions, it's not the courts that are taking action – the banks themselves have finally admitted their procedures are flawed and must be fixed. Respectfully, it is unfathomable to me that foreclosure fraud is so widespread and so undeniable that the banks themselves have admitted wrongdoing but our courts have essentially taken no action. Is that what it's come to in foreclosure cases; the banks admit pervasive misconduct in hundreds of thousands of cases but the most powerful Court in the State does nothing?

It's clear, at least in my eyes, that banks did not suspend foreclosure proceedings out of sympathy for homeowners or the sudden urge to "do the right thing." The reason banks have admitted misconduct is that title insurance companies such as Old Republic have (per recent media stories in the New York Times, USA Today, St. Pete Times, and Palm Beach Post, among others) refused to issue title insurance policies on foreclosure properties. What's frustrating to me is that I've been discussing that issue to Florida judges for nearly two years, but it seems nobody in a position of authority is listening, and now it may be too late. Respectfully, is that what it's come to in foreclosure cases; the courts are so intent on "pushing through" foreclosure cases they're willing to watch the title insurance industry start to collapse around us?

I don't profess to be an expert on title issues, but I don't think it's hard to foresee, when hundreds of thousands of foreclosure judgments are being "pushed through," essentially all at once, major title problems with many such properties.[5] After all, how many final judgments are void for insufficient service of process, particularly in the thousands of cases where service was done by publication, and subject to being vacated at any point in the future?[6] How many final judgments are voidable based on fraudulent affidavits and/or assignments? In how many cases did the plaintiff fail to join a junior lien holder or MERS, the mortgage holder of record? On this latter point, I'd estimate, conservatively, that in at least 30% of my cases, the plaintiff has no assignment of mortgage in the official records, so MERS remains the mortgage holder of record, yet MERS is not named in the lawsuit. In all such cases, what good does a foreclosure sale do, from a title perspective, if it's not binding on the mortgage holder of record? "Great, there was a foreclosure sale, but the purchaser still takes title subject to MERS' existing mortgage of record." Suffice it to say that, from a title company's perspective, it's not hard to see that the risk of

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[4] I recently blogged about one such example, in detail, on www.stayinmyhome.com/blog.

[5] In most cases, the only people looking at the file are attorneys are the "foreclosure mills" who are fresh out of law school.

[6] The Court has expressed concerns about the improper use of service by publication in foreclosure cases in the past.

writing a title insurance policy, in the face of all of these problems, is simply not worth the reward.

In my view, the future of Florida's economy is at stake. I fear that if we proceed on the current path much longer, title insurance companies will stop issuing policies altogether (at least on foreclosure properties), putting everyone in a situation where the only way to get clear title to a foreclosure property is the same as with a property purchased at a tax deed sale – wait four years or file a separate lawsuit to quiet title. Obviously, that would destroy the real estate market even further, creating hundreds of thousands of homes that nobody would want because there would be no clear title. Additionally, that would cause many of the foreclosure cases that Florida courts are trying to "push through" to boomerang back to them in the form of a quiet title lawsuit or a second foreclosure action. Respectfully, prompt action from persons in a position of leadership is necessary to avoid the prospect of such horrific consequences.

Proof of fraud in foreclosure cases has become apparent, even on a widespread level. Websites such as www.foreclosurehamlet.com and www.4closurefraud.com are becoming more popular. The best reporters in the country are reporting about fraud in Florida courtrooms on a daily basis. In my view, the average Floridian's opinion of lawyers, judges, the Florida court system, and the judiciary as a whole hangs in the balance. In other words, your actions, or lack thereof, are likely what the average person will remember in 20-30 years, long after your tenure as Chief Justice on the Florida Supreme Court is over. Respectfully, it's time for this Court to show the people that it will not tolerate pervasive fraud in Florida courts. Creating an amendment to Fla.R.Civ.P. 1.510, as suggested above, would accomplish that result, as it would give all parties and judges involved a chance to implement appropriate procedures in foreclosure cases. I realize that's an extraordinary result, but these are extraordinary circumstances.

This Court may believe that a Rule amendment is inappropriate, and I'm certainly not oblivious to such arguments. If you think I'm wrong, then -- and I say this with all sincerity - you're a Florida Supreme Court Justice and I'm not. However, with all due respect, if the Court believes a foreclosure moratorium is inappropriate, shouldn't the Court explain its rationale?[7] That way, even though many Floridians would dislike and/or disagree with the ruling, at least everyone will know that the Court recognized these problems and gave careful consideration to the issues. Unfortunately, as things now stand, I'm not sure most people feel that way.

Thank you for your attention to the matters set forth herein.

Respectfully,
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[7] Given the present state of affairs, waiting for any one particular case to get to the Florida Supreme Court is not practical. Plus, by that point, it may be too late.