

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

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

Case No. 10-3008-CI-15

NUNZIO J. CARRUBBA, II, *et. al.*,

Defendants.

---

**MOTION TO DISQUALIFY TRIAL JUDGE**

Defendant, NUNZIO J. CARRUBBA II, by and through his undersigned counsel and pursuant to Fla.R.Jud.Admin. 2.330, moves this Court for entry of an Order disqualifying the Honorable W. Douglas Baird (“the Judge”), and would show:

**BACKGROUND**

1. This is a mortgage foreclosure case.
2. On or about May 5, 2010, Defendant served his Motion to Dismiss Complaint (“Motion to Dismiss”).
3. On or about June 1, 2010, Plaintiff served its written Response to Motion to Dismiss. This response was not unlike a lot of responses filed by Plaintiff’s firms in mortgage foreclosure cases such as this (so, candidly, Defendants’ undersigned counsel did not think much of it).
4. In the ensuing months, Plaintiff made no attempt to set the Motion to Dismiss for hearing. Quite simply, for whatever reason, Plaintiff chose not to prosecute this lawsuit.
5. On October 25, 2010, the Judge issued an Order, out of the blue, *sua sponte*, directing Defendant to reply to the Motion to Dismiss “within five (5) days from the date of this

Order.” The Order further reflected that the Judge would “either rule on the Defendant’s motion on the basis of the written submissions of the parties or will indicate that it is necessary for hearing to be set thereon.”

6. With all due respect, this Court’s procedure is way out of whack, unduly prejudicial, and shows the Judge to be hopelessly biased.

7. First off, the fact that the Judge has done anything at all *vis a vis* the Motion to Dismiss reflects his bias against Defendant. After all, since the filing of Defendant’s Motion to Dismiss, Plaintiff has not prosecuted this lawsuit, as is Plaintiff’s right and Plaintiff’s decision.<sup>1</sup> Respectfully, **when a Plaintiff chooses not to prosecute a lawsuit, it is not the Judge’s role, as neutral arbiter, to file an Order, *sua sponte*, to advance the case towards judgment.** When a Plaintiff chooses not to prosecute a lawsuit, it is not the Judge’s role to pick up with the prosecution of that lawsuit (where the Plaintiff left off). By entering the Order, and advancing this case towards judgment, the Judge has essentially taken it upon himself to prosecute Plaintiff’s lawsuit. It’s as if the Judge is saying “if the Plaintiff won’t prosecute its lawsuit, I will. And I’ll rule on the Motion to Dismiss quickly, perhaps without a hearing.”<sup>2</sup> Worse yet, it seems clear the Judge is doing so based on a personal agenda, i.e. his perceived backlog of foreclosure cases and the “goal” of removing such cases from his docket.

8. The Judge’s conduct in prosecuting this case is particularly disturbing because of

---

<sup>1</sup> This is why the Florida Supreme Court invoked a rule of procedure for lack of prosecution.

<sup>2</sup> The Judge has a history of denying motions to dismiss without affording Defendants in foreclosure cases notice or an opportunity to be heard. In fact, it was only after the undersigned counsel moved to disqualify the Judge in other, similar cases that the Judge changed his procedure, such that he now allows mortgage foreclosure Defendants file a written reply (before he denies their motions to dismiss without a hearing). Although the Order does say the Judge may decide whether a hearing is necessary, under the circumstances, it seems the Judge has no intention of granting such hearings and is intent on systematically denying all motions to dismiss in foreclosure cases without a hearing.

the nature of the case. Plaintiff is the party seeking relief. Defendant is seeking no relief. Where the Judge is advancing a case towards judgment, *sua sponte*, and the Plaintiff is seeking relief and the Defendant is not, it's clear the Judge is acting for the benefit of Plaintiff and the detriment of Defendant. Respectfully, these are not the actions of a neutral arbiter.

9. Compounding these concerns, the Judge gives Defendant “five days from the date of this Order” to reply to Defendant’s Response to the Motion to Dismiss. Respectfully, that is patently ridiculous. This case has been languishing for many months. For this Court to suddenly prosecute the lawsuit, and give such an abbreviated turnaround to file a written memo, with legal authorities, shows the Judge’s bias.

10. To illustrate, the undersigned received the Order for the first time on October 27, 2010. As such, the undersigned has just three business days to prepare a written response, with legal citations, and provide them to the Judge, absent which his client faces an adverse ruling without a hearing. In nearly ten years of practicing law, the undersigned cannot recall an instance where any judge, in any case, had so little regard for a party’s position that the Judge gave counsel such a brief period of time to file something, much less in a situation where the Judge was threatening a ruling without a hearing. The unreasonable nature of the Judge’s actions is accentuated by the complete and utter absence of any sort of emergency.

11. Notably, the Florida Supreme Court has the exclusive authority to create rules of practice and procedure in all courts, a power expressly granted to it by Article V, Section II of the Florida Constitution. If the Florida Supreme Court’s wanted to require or allow rulings on motions to dismiss without a hearing, that would be the Court’s prerogative. The Court has not so acted, so this Court cannot, either, particularly in the absence of an Administrative Order.

12. Defendant learned of the facts giving rise to this Motion on October 28, 2010.

WHEREFORE Defendants respectfully request that this Court enter an Order disqualifying the Honorable W. Douglas Baird from presiding over this cause.

**CERTIFICATE OF GOOD FAITH**

Defendants' counsel, Mark P. Stopa, Esquire, hereby certifies that the instant motion and the statements set forth herein are made in good faith.

---

Mark P. Stopa

**VERIFICATION**

Under penalty of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

---

Nunzio J. Carrubba, II

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Honorable W. Douglas Baird, 315 Court Street, Room 421 Clearwater, FL 33756 and Samir Maasarani, Esq., Florida Default Law P.O. Box 25018, Tampa, FL 33622-5018 on this \_\_\_\_ day of October, 2010.

---

Mark P. Stopa, Esquire  
FBN: 550507  
STOPA LAW FIRM  
2202 N. West Shore Blvd.  
Suite 200  
Tampa, FL 33607  
Telephone: (727) 667-3413  
ATTORNEY FOR DEFENDANTS