

**COPY**

IN THE DISTRICT COURT OF APPEAL OF THE  
SECOND DISTRICT OF FLORIDA

ONEWEST BANK, F.S.B.,

Plaintiff

vs.

CASE NO 09-CA-068784

CARMEN M. GARCIA,

Defendant

---

ORDER

THIS CAUSE came on upon the Court's sui sponta order for docket sounding:

FINDINGS OF FACT

1. Defendant failed to set for hearing it's Motion to Dismiss as instructed by this Court at the prior docket sounding;
2. Although the Defendant did not comply with the Court's previous Order the Court's attention was directed to the fact that there was no record activity for over ten months and Plaintiff has been put on notice as to Rule 1.420 Failure to Prosecute;
3. Additionally, it was brought to the Court's attention that setting Defendant's Motion to Dismiss for a hearing as directed by the Court would obviate the Defendant's right to a dismissal for Lack of Prosecution;
4. The Court determines that the case has not moved forward for over ten (10) months and, for that reason, this Court elects to set this matter to the next trial docket.

**ORDERED and ADJUDGED:**

1. Defendant's Motion to Dismiss is waived by the Court;
2. The Defendant is to file an Answer and Affirmative Defenses within 20 days of the date of this order;
3. The matter is hereby set for trial February 22, 2011. Lee County is not requiring compliance with *Fla. R. Civ. P 1.440* and does not consider the holding in *Leeds v. C. Chemical Corp.*, 280 So.2d 718 (Fla. 3<sup>rd</sup> DCA 1973) controlling in foreclosure matters.

**DONE AND ORDERED** in chambers in Fort Myers, Lee County, Florida this

**DEC 9 2010**  
By of \_\_\_\_\_, 201\_\_\_\_.

/s/ Hugh E. Stames  
Honorable James Thompson

cc:

Marshall C. Watson, P.A.

K. Jack Breiden, Esq.