

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

WELLS FARGO BANK, NA,

Plaintiff,

v.

Case No. 10CA6846

JOSE A. CAICEDO, *et. al.*

Defendants,

MOTION FOR SANCTIONS FOR FRAUD ON THE COURT

Defendants, JOSE A. CAICEDO and MARIA CAICEDO, by and through their undersigned counsel, move this Court for an award of sanctions in their favor and against Plaintiff for Plaintiff's commission of a fraud upon this Court, and would show:

1. "Courts throughout this state have repeatedly held "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." Rosenthal v. Rodriguez, 750 So. 2d 703 (Fla. 3d DCA 2000) (quoting Metropolitan Dade County v. Martinsen, 736 So. 2d 794 (Fla. 3d DCA 1999)).

2. "A trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a party perpetuates a fraud on the court." See Andrews v. Palmas De Majorca Condominium, 898 So. 2d 1066 (Fla. 5th DCA 2005) (citing Kornblum v. Schneider, 609 So.2d 138, 139 (Fla. 4th DCA1992)); see also Brown v. Allstate Ins. Co., 838 So. 2d 1264 (Fla. 5th DCA 2003) ("Brown knowingly and intentionally concealed his lack of employment at the time of the accident... The record supports the trial court's ... dismissal of the case with prejudice."); Cox v. Burke, 706 So. 2d 43 (Fla. 5th DCA 1998).

3. In Andrews, the plaintiff purposefully altered a check in their initial suit and submitted it as authentic to the trial court. The Fifth District concluded that such conduct "fails to

comport to with the standards of integrity required by the judicial system.” Affirming the lower court’s dismissal with prejudice, the Fifth District reasoned:

...such misconduct must be discouraged in the strongest possible way. Although the Andrewses have the right to have their case heard, they can and have, by their own conduct, forfeited that right.

898 So. 2d at 566.

4. On May 17, 2010, Plaintiff filed its motion for summary judgment. The sole evidence in support was an affidavit executed by Xee Moua (“Moua”), ostensibly as VP of Loan Documentation of Wells Fargo Bank, N.A, and notarized by Carolyn Evans in South Carolina. The affidavit was purportedly given on Moua’s personal knowledge, but it is clear that Moua lacked personal knowledge of the facts contained therein. In fact, Moua has admitted in deposition testimony that she routinely “robo-signed” affidavits such as this without the requisite personal knowledge and, essentially, without any idea what she was signing. Nonetheless, Plaintiff tried to use this fraudulent affidavit as the basis for final judgment in this case.

5. After a handful of foreclosure defense attorneys helped uncover the widespread and systemic fraud via these “robo-signed” affidavits, Plaintiff and its counsel finally admitted the fraud, months later (but only after being caught red-handed). Instead of acknowledging the propriety of a sanction for the misconduct, Plaintiff tries to sweep that fraud under the rug, and act as if it does not exist, by filing a “Reverified Affidavit,” ostensibly in an attempt to proceed with summary judgment.

6. Respectfully, Plaintiff’s conduct is an insult to this Court. Once a plaintiff has committed a fraud, it should not get a “do-over.” Plaintiff should not be permitted to say “I committed fraud, I got caught, but I’m not going to rely on that fraud any more, so let me continue with my case.” The widespread nature of the fraud, the fact that it has been done in


many cases where defendants are unrepresented by counsel, and the lack of any sanction to date only heightens these concerns. To rule otherwise is an insult to the integrity of this Court and the entire judicial process. Respectfully, fraud cannot be swept under the rug.

7. In light of the foregoing, this Court should impose severe sanctions, including, in its discretion, dismissal with prejudice, dismissal without prejudice (allowing Plaintiff to re-file a new lawsuit which is un-tainted by fraudulent affidavits), an Order precluding Plaintiff from relying on any affidavits in support of summary judgment, an Order preventing Plaintiff from seeking summary judgment, an Order restricting Plaintiff's ability to present evidence, attorneys' fees, and such other and further relief that this Court deems proper.

WHEREFORE Defendants respectfully request an Order in accordance with the foregoing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Stacey A. Rickles, Florida Default Law Group, P.L., P.O. Box 25018, Tampa, FL 33622-5018 on this 21st day of February, 2011.



Mark P. Stopa, Esquire - FBN: 550507
Philip J. Healy, Esquire - FBN: 0071953
STOPA LAW FIRM
2202 N. Westshore Blvd. Suite 200
Tampa, Florida 33607
Telephone: (727) 667-3413
Attorneys for Defendants