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

CHASE HOME FINANCE LLC,

Plaintiff,

Case No. 09-19743-CI-5

v.

JACQUELINE COUCH, *et. al.*,

Defendants.
_____/

MOTION TO DISQUALIFY JUDGE

Defendant, JACQUELINE COUCH, by and through undersigned counsel, moves this Court for an Order disqualifying the Honorable W. Douglas Baird ("the Judge") from presiding in this cause, and would show:

FACTS

1. This is a mortgage foreclosure case.

2. On May 17, 2010, Defendant served her Motion to Dismiss Complaint.

3. On or about June 6, 2010, Plaintiff served a Response to Motion to Dismiss.

4. On September 15, 2010, upon realizing that this case was assigned to Judge Baird (the only judge in Pinellas County who denies motions to dismiss in foreclosure cases without a hearing), Defendant's undersigned counsel served an Amended Motion to Dismiss. Defendant's intent was to set forth the arguments in written form to clarify the arguments prior to the Judge ruling on them without a hearing.[1]

5. On September 23, 2010, this Court entered an Order directing parties to file memorandums of law on the issue of dismissal.

[1] Defendant did so without conceding the propriety of an Order being entered without a hearing, but realizing that the Judge, given his unusual practice, was likely to deny the Motion to Dismiss without a hearing regardless of what the undersigned thought about it.

6. Plaintiff and Defendant subsequently complied with the Court's Order. Defendant filed a Reply and Memorandum in Support of Defendant's Amended Motion to Dismiss.

7. On November 17, 2010 the Court entered an Order Denying Defendant's Motion to Dismiss.

8. The Order made no mention of the Amended Motion to Dismiss. Also, the Order contained lengthy rulings and legal citations on issues that were not argued or presented in the Amended Motion to Dismiss (e.g. that an Assignment of Mortgage need not be attached to the Complaint, which is something that Defendant did not argue at all). Hence, it seemed clear the Judge denied the Amended Motion to Dismiss without a hearing and without reviewing that document.

9. Upon looking at the Court's docket, Defendant's undersigned counsel noticed the Amended Motion to Dismiss did not appear on the docket. This was odd, particularly since Plaintiff's counsel had responded to it, so the Amended Motion to Dismiss had clearly been served and mailed, as is the undersigned's standard practice.[2] In any event, it seemed clear the Amended Motion to Dismiss had not been reviewed or considered, so Defendant filed a Motion to Vacate Order Denying Motion to Dismiss. Essentially, Defendant argued that it was unfair for the Court to require her to Answer when her Amended Motion to Dismiss had never been heard and the Court was not even aware it had been filed.

10. On May 4, 2011, the Judge presided over a hearing on the Motion to Vacate. During the hearing, Defendant's undersigned counsel argued that the Order should be vacated

[2] Defendant can only presume the clerk mis-filed the motion in a different case, something the undersigned has seen from time to time given the high volume of foreclosure cases and limited court funding.

because of this sequence of events, as set forth in paragraphs 1-7 of the instant motion. In particular, Defendant argued that it was patently unfair and a violation of due process for the Motion to Dismiss to be denied when the Judge never had a hearing on the Amended Motion to Dismiss and never even reviewed the content thereof. The undersigned also noted that the Order contained citations to arguments that were not contained in the Amended Motion to Dismiss, so it could not have been directed to the Amended Motion to Dismiss.

11. In response, the Judge told Defendant's counsel, in open court, that the Order may have been "inartfully" drafted but that the Judge had reviewed the Amended Motion to Dismiss prior to entering the Order and intended to deny it.

12. The undersigned was, respectfully, quite upset. After all, the Judge could not have reviewed the Amended Motion to Dismiss because, for unknown reasons, it had not been filed. As such, it was, respectfully, the Judge had been caught in, at best, a misrepresentation, or, at worst, a lie. As such, the undersigned told the Judge words to the effect of "respectfully, Judge, you couldn't have reviewed the Amended Motion to Dismiss because it had not even been filed."

13. In response, the Judge looked at the Court file and said "here it is," or words to that effect, pointing to the Amended Motion to Dismiss. However, the undersigned immediately told the Judge that the copy of the Amended Motion to Dismiss that he was looking at was attached to the Motion to Vacate, which was filed <u>after</u> the Order was entered. Hence, it was clear the Amended Motion to Dismiss had not been filed as of the date of the Order.

14. The Judge then said words to the effect of "How am I supposed to rule on the Amended Motion if it is not before me?" to which the undersigned responded "that's the point, Judge. The Amended Motion to Dismiss couldn't and shouldn't have been denied when you did

not even know about it."

15. Unfortunately, by that point, it was clear the Judge had prejudged the Amended Motion to Dismiss and was no longer neutral and detached. After all, the Judge misrepresented to the undersigned that he had reviewed the Amended Motion to Dismiss and intended to deny it (despite the "inartfully" drafted Order) when he necessarily could not have done those things because the Amended Motion to Dismiss was not even in the Court file and there had been no hearing. As such, the undersigned made an *ore tenus* motion to disqualify, then asked for a continuance to file a Motion to Disqualify. In response, the Judge said "do what you need to do." The instant motion ensues.

ANALYSIS

16. The Judge's practice of denying Motions to Dismiss in foreclosure cases without a hearing is suspect at best. Respectfully, it causes reasonable people to wonder whether the Judge has actually reviewed the motions he is adjudicating.[3]

17. The Judge's conduct really went out of bounds, though, when he told Defendant's counsel he had reviewed the Amended Motion to Dismiss and had intended to deny it, despite the "inartfully" drafted Order.

18. There were two obvious problems with the Judge's representation.

19. First, the Judge's representation that he had reviewed the Amended Motion to Dismiss prior to entering the Order and had "intended" to deny it was necessarily untrue because the Amended Motion to Dismiss had not even been filed as of that date. By expressing his intent to deny a motion which he had not seen or read and which had never been heard or set for hearing, the Judge prejudced the merits of the Amended Motion to Dismiss. This caused

[3] To illustrate, one judge in this circuit has openly expressed doubt to the undersigned that the Judge reviews motions to dismiss prior to denying them without a hearing.

Defendant a well-reasoned fear the Judge would not afford a fair hearing, requiring his disqualification. See Marvin v. State, 804 So. 2d 360, 363 (Fla. 4th DCA 2001) ("A trial judge's announced intention before a scheduled hearing to make a specific ruling, regardless of any evidence or argument to the contrary, is the paradigm of judicial bias and prejudice. We could not imagine a more telling basis for a party to fear that he will not receive a fair hearing."); see also Barnett v. Barnett, 727 So. 2d 311 (Fla. 2d DCA 1999) (requiring judicial disqualification where the judge's comments during trial created the impression that he had prejudged the case); Wargo v. Wargo, 669 So. 2d 1123 (Fla. 4th DCA 1996) (Writ of Prohibition issued where the judge began to rule without giving a party a chance to be heard).

20. Second, and perhaps more troubling, the Judge tried to conceal the fact that he had not actually reviewed the Amended Motion to Dismiss by saying he had reviewed it and had "intended" to deny it (through the "inartfully" drafted Order) when that was not true and could not have been true. Candidly, it is not clear whether this misrepresentation was intentional or inadvertent.[4] Either way, when the Judge is misrepresenting the fact that he reviewed Defendant's motion to cover up for the fact that he had not reviewed that motion prior to denying it, Defendant has a well-reasoned fear the Judge cannot be neutral and detached.

21. It would have been very easy for the Judge to vacate the Order and rule on the Amended Motion to Dismiss. That was all Defendant asked. Unfortunately, the Judge has such an obvious disdain for foreclosure cases, and, in particular, homeowners who defend foreclosure cases, that he preferred to say he reviewed the Amended Motion to Dismiss, when that was not true, so as to deprive Defendant of a hearing. This is not the conduct of a neutral and detached judge. Defendant's fear that she will not receive a fair hearing or trial is eminently reasonable.

[4] The undersigned would certainly like to think this was unintentional. Even if it were, though, this only underscores the problems with denying motions to dismiss without a hearing.

Disqualification is required.

WHEREFORE Defendant respectfully requests that this Court enter an Order disqualifying the Honorable W. Douglas Baird.

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.

_____
Jacqueline Couch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Ashleigh L. Politano, Florida Default Law Group, P.L., P.O. Box 25018, Tampa, FL 33622 and Honorable W. Douglas Baird, 315 Court Street, Room 421, Clearwater, FL 33756 on this ____ day of May, 2011.

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