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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

THE BANK OF NEW YORK, AS TRUSTEE FOR
TBW MOTGAGE-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-2,

Plaintiff,

Case No. 10 06966

v.

Division: C

MICHAEL J. LAFALCE, *et. al.*

Defendant,

FINAL JUDGMENT

THIS CAUSE, having come before the Court on March 7, 2012 on Defendant's Amended Motion to Strike Amended Complaint as a Sham and for Sanctions for Fraud on the Court and Defendant's Motion for Summary Judgment, and the Court, having reviewed the motions, heard the arguments of counsel, and being duly advised in the premises, hereby;

FINDS as follows:

1. On October 11, 2011, this Court directed Plaintiff to provide some documentation or other evidence showing the authority of the original mortgage holder, Taylor, Bean & Whitaker ("TBW"), to assign the subject mortgage to it in light of a bankruptcy filed by TBW in August, 2009. Even after being given additional time to comply, and even after its then-counsel was disqualified after failing to comply, Plaintiff willfully failed to comply with this Court's Order. Tellingly, even when Defendant sought entry of Final Judgment based on Plaintiff's failure to comply with this Order, Plaintiff still failed to comply.

2. On January 4, 2012, Defendant served requests for admissions upon Plaintiff. At the Case Management Conference on February 17, 2012, this Court granted Plaintiff's motion

for an extension of time and gave Plaintiff 20 additional days to respond to these requests. Nonetheless, Plaintiff failed to serve any such responses (and failed to even submit an Order to this Court reflecting the 20-day extension that was given at the February 17, 2012 hearing). As such, the following facts are admitted, conclusively established, and the findings of this Court:

- a. Plaintiff is not the owner of the Note.
- b. Plaintiff is not the holder of the Note.
- c. Plaintiff has no right to enforce the Note.
- d. Defendant does not owe Plaintiff any money.
- e. Plaintiff does not have standing to foreclose on Defendant's home.
- f. Plaintiff never had standing to foreclose on Defendant's home.
- g. Plaintiff is not entitled to foreclose on Defendant's home.
- h. Plaintiff did not give Defendant notice of any alleged default or an opportunity to cure any default, as required by paragraph 22 of the Mortgage.
- i. The Assignment of Mortgage from MERS, as Nominee for Taylor, Bean, and Whitaker, was not authorized by any bankruptcy court.
- j. The Assignment of Mortgage from MERS, as Nominee for Taylor, Bean, and Whitaker ("TBW"), is a nullity since TBW had filed bankruptcy.

3. On March 7, 2012, Plaintiff failed to attend the hearing on the above-listed motions, through counsel or otherwise, despite actual and sufficient notice of the hearing. This is not a situation where Plaintiff was somehow unaware of the hearing, either. After all, the pendency of this hearing was discussed in open court on February 17, 2012 at a Case Management Conference in which Plaintiff's counsel was present, yet Plaintiff failed to attend the March 7, 2012 hearing.

4. Plaintiff failed to submit any affidavits or other record evidence in opposition to Defendant's Motion for Summary Judgment.

5. There are no material issues of fact and Defendant is entitled to judgment as a matter of law.

It is thereby ORDERED AND ADJUDGED:

6. The foregoing findings are incorporated herein.

7. Both of Defendant's motions are GRANTED. This case is dismissed with prejudice, and final summary judgment is entered in favor of Defendant, Michael LaFalce.

8. Plaintiff shall take nothing by this action and Defendant shall go hence without day.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida on this ____ day of January, 2012.

CONFORMED COPY

MAR 12 2012

JAMES M. BARTON II
CIRCUIT JUDGE

Hon. James Barton
Circuit Court Judge

cc: Mark P. Stopa, Esq.
Joanne Galipault, Esq.