

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

BANK OF AMERICA, NATIONAL ASSOCIATION,

Plaintiff,

Case No. 10-3541-CI-21

v.

TANYA LEE, *et. al.*

Defendant.

ORDER GRANTING SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on June 28, 2012 on Defendant's Motion for Summary Judgment, and the Court, and the Court, having reviewed the motion and the Court file and being duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED as follows:

1. There are no disputed issues of material fact, and Defendant is entitled to judgment as a matter of law. To wit, Plaintiff failed to send the notice and cure letter required by paragraph 22 of the subject mortgage, a fact proven by Defendant's affidavit and the absence of any contrary affidavit or other such summary judgment evidence from Plaintiff.

2. Although Plaintiff alleges in its Amended Complaint that it has complied with all conditions precedent, and the Amended Complaint is verified to the best of Plaintiff's "knowledge and belief," information verified in this manner cannot be considered for summary judgment purposes. See Ballinger v. Bay Gulf Credit Union, 51 So. 3d 528 (Fla. 2d DCA 2010).

3. Plaintiff's failure to comply with this condition precedent does not justify a summary judgment on the merits, but the motion is GRANTED, and this case is dismissed without prejudice and without leave to amend.

4. This Court reserves jurisdiction on the issues of attorneys' fees and costs.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida on this
___ day of June, 2012.

cc: Mark P. Stopa, Esq.
Ronald Wolfe & Associates

JOHN A. SCHAEFER
Circuit Court Judge

