

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

FIFTH THIRD MORTGAGE COMPANY,

Plaintiff,

v.

Case No. 2011-10854

Division C

ALCIDES HERNANDEZ, *et. al.*

Defendant.

ORDER GRANTING SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on September 12, 2012 on Defendant's Motion for Summary Judgment, and the Court, being duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED as follows:

1. The undisputed evidence shows that 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 summary judgment evidence from Plaintiff to the contrary. Hence, there are no disputed issues of material fact, and Defendant is entitled to summary judgment as a matter of law.

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

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

ORIGINAL SIGNED

SEP 12 2012

DONALD C. EVANS
Circuit Court Judge
CLERK OF CIRCUIT JUDGE

cc: Mark P. Stopa, Esq.
Florida Foreclosure Attorneys