

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

U.S. BANK NATIONAL ASSOCIATION, etc.,

Plaintiff,

Case No.: 2010-CA-000157

v.

PATRICIA ANN HINES, et al.,

Defendants

OBJECTION TO PROPOSED ORDER TO SHOW CAUSE

Defendant, PATRICIA ANN HINES, by and through undersigned counsel, hereby objects to Plaintiff's proposed Order to Show Cause, and would show:

1. On January 3, 2013, Plaintiff's counsel sent this Court a letter with a Motion for Order to Show Cause and a proposed Order thereon. For two reasons, it would be improper for this Court to enter the proposed Order.

VERIFICATION

2. The requirements for an Order to show cause are quite basic. Fla. Stat. § 702.10(1), provides:

After a complaint in a foreclosure proceeding has been filed, the mortgagee may request an order to show cause for the entry of final judgment and the court shall immediately review the complaint. If, upon examination of the complaint, the court finds that the complaint is *verified* and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the defendant to show cause why a final judgment of foreclosure should not be entered. [emphasis added]

3. Here, Plaintiff failed to meet the requirements set forth above. Specifically, Plaintiff failed to file a Verified Complaint as required by the statute.

4. Fla. Stat. § 92.525 authorizes verification in one of two ways: (i) if the document is notarized under oath; or (ii) if it contains the following: "Under penalties of perjury, I declare

that I have read the foregoing [document] and that the facts stated in it are true.”

5. Plaintiff’s “verified” Complaint in the case at bar is not verified in the manner required by Fla. Stat. 702.10 or 92.525, but is instead verified on “knowledge and belief.” That is insufficient to support an Order to Show Cause as a matter of law. See *Muss v. Lennar Fla. Partners I, L.P.*, 673 So. 2d 84, 85 (Fla. 4th DCA 1996) (deeming verification on “information and belief” insufficient for the purposes of an order to show cause under Fla. Stat. § 702.10).

6. Defendants are well aware of recent decisions from the Second District which authorize foreclosure complaints to be verified on “knowledge and belief.” See *Trucap Grantor Trust 2010-1 v. Pelt*, 84 So. 3d 369 (Fla. 2d DCA 2012). The issue in such cases, however, was the sufficiency of verifications in ordinary, run-of-the-mill foreclosure cases, not the verifications necessary to support an Order to Show Cause under Fla. Stat. 702.10.

7. There is, of course, a significant difference. Fla. Stats. 92.525 and 702.10 have existed since long before the Florida Supreme Court amended Rule 1.110(b). The obvious purpose of 702.10 is to force foreclosure plaintiffs who wish to avail themselves of an expedited foreclosure process to verify their allegations under oath, i.e. under penalty of perjury.

8. To accept that an Order to Show Cause can be issued upon a verification done on “knowledge and belief” is to conclude the Florida Supreme Court lowered the long-standing requirements for foreclosure plaintiffs to obtain an Order to Show Cause, and it did so without even mentioning Fla. Stat. 702.10 or the Order to Show Cause standard.¹ Such a position makes no sense.

9. The Court did not lower the bar by creating Rule 1.110(b) – the Court raised the bar. That was the entire purpose of the verification requirement – to get rid of sloppy pleading practices and force foreclosure plaintiffs to adequately investigate their filings. It strains

¹ The Florida Supreme Court does not overrule itself or established precedent *sub silentio*.

credulity to argue that a rule which raised the bar somehow lowered the bar for a totally different statute – one which existed long before the Rule – without even mentioning that statute.

10. Verifications on “knowledge and belief” may be sufficient in the run-of-the-mill foreclosure case. However, they simply aren’t sufficient when it comes to prevailing on the merits. This is why, for instance, Florida law specifically preclude parties who seek summary judgment from relying on qualified verifications of this type. See Ballinger v. Bay Gulf Credit Union, 51 So. 3d 528 (Fla. 2d DCA 2010). Where verifications on “knowledge and belief” are inadequate to obtain summary judgment, clearly such verifications are likewise insufficient to avail oneself of the accelerated foreclosure procedure set forth in Fla. Stat. 702.10. In other words, Florida law has long required proof in order to foreclose – proof by sworn pleading, not a unique rule intended to raise the bar in all foreclosure cases.

11. In light of the foregoing, Plaintiff’s proposed Order to Show Cause in this case should not be entered. Plaintiff did not support its proposed Order with a verification that is required by Fla. Stat. 702.10, so there is no basis for this Court to issue the Order.

SHOWING CAUSE

12. This Court should take note of the fact that this case has been pending since 2010. Fla. Stat. 702.10 is not a new statute, it has been in place since long before this suit was filed. This prompts an obvious question – why now, all of a sudden, is Plaintiff trying to avail itself of the accelerated procedure?

13. It is true that there is nothing in the statute which prevents Plaintiff from seeking an Order to Show Cause three years into a case. However, the statute plainly provides:

If a defendant files defenses by a motion or by a verified or sworn answer at or before the hearing, such action constitutes cause and precludes the entry of a final judgment at the hearing to show cause.

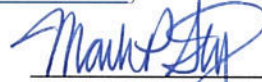
14. Here, Defendant filed multiple defensive motions and an Answer. Clearly, under

the plain language of the statute, Defendant has already “shown cause” so as to “preclude the entry of a final judgment at the hearing to show cause.” As a result, there is plainly no point in entering an Order to Show Cause in the first place; it’s like requiring proof that already has already been proven.

15. The proposed Order to Show Cause should not be entered.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Sara Evans, Esq., servealaw@albertellilaw.com, on this 7th day of January, 2013.



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