

THIS IS NOT A
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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

10m. CA.

10-190879

BANK OF AMERICA, NA,

Plaintiff,

vs.

IGNATIUS JAMES DE MIO, et al.,

Defendants.

Case No. 10-CA-020354

Division K

ORDER ON COMPETING MOTIONS FOR JUDGMENT ON THE PLEADINGS

This case has been before the Court numerous times, most recently on March 8, 2012. This is a foreclosure case and the basic issue to be decided by this Court is whether an advance payment of \$22,000.00 made by the borrower in 2005 should have been credited as a lump-sum pay down of the mortgage loan's principle (as the Plaintiff argues), or whether it should be considered as future monthly installment payments to be held by the lender and applied toward the monthly payments (as the Defendant argues). Both counsel for the Plaintiff and the self-represented Mr. De Mio have agreed that this Court could consider and rule upon the ultimate issue without further pleadings or hearings. So in essence this Order is the equivalent of a ruling on cross-motions for judgment on the pleadings, by consent of the parties.

The issue comes down to a combined question of law and equity. The promissory note for \$144,875.00 was signed on December 9, 2004, amortized over 30 years at 5.375% interest. The monthly payments for principle and interest were locked in at \$811.26 beginning on February 1, 2005. On July 26, 2005, while the loan was performing and being paid on time, Mr. De Mio made a lump-sum payment of \$22,000.00 at one of the Plaintiff's branch offices. He directed that this sum was to be applied against the future recurring monthly payments. The net effect would be to pre-pay his mortgage payments for a little over 27 months, or through at least



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September 2007. Subsequent to that time period, De Mio continued to make payments, yet Bank of America sent a Notice of Intent to Accelerate on June 10, 2010, and filed this law suit on October 7, 2010.

It is the conclusion of this Court that Mr. De Mio was not in default when the lender declared a default, and that the Defendant's loan should be reinstated. Accordingly, this action is dismissed without prejudice, the debt should be recalculated, and the resulting/remaining loan balance should return to the contracted-for monthly payment amount.

DONE AND ORDERED at Tampa, Florida, on March 15, 2012. ORIGINAL SIGNED
CONFORMED COPY

MAR 15 2012

WILLIAM P. LEVENS
CIRCUIT JUDGE

William P. Levens
CIRCUIT JUDGE

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10-190879

M.C.

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

BANK OF AMERICA, NA,

Plaintiff,

vs.

IGNATIUS J. DEMIO,

Defendant.

Case No. 10-CA-020354

Division K

ORDER DENYING PLAINTIFF'S MOTION FOR REHEARING

This case was before the court on Plaintiff's motion for rehearing served March 26, 2012, without a hearing. The Plaintiff seeks a rehearing of the Order entered on March 15, 2012, which granted the Defendant a Judgment on the Pleadings. Because there was evidence adduced as well as argument during the hearing on March 8, 2012, the Order should more properly be considered an Order Granting Defendant's Motion for Summary Judgment. There is no issue of material fact. The only issue is how to apply the Defendant's \$22,000 lump sum payment.

Because this court is convinced that the right decision was made, the Plaintiff's Motion for Rehearing is DENIED.

DONE AND ORDERED at Tampa, Florida, on March 30, 2012.

ORIGINAL SIGNED
CONFORMED COPY

MAR 30 2012

WILLIAM P. LEVENS
CIRCUIT JUDGE

William P. Levens
CIRCUIT JUDGE

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APR 03 2012



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