

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA

BANK OF AMERICA, N.A.,

Plaintiff,

Case No. 2011-CA-006939

v.

Division: FC-H

ANA F. BASANTES A/K/A  
ANA FINOTTI- CORTEZ, et al.,

Defendant,

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**VERIFIED MOTION TO QUASH SERVICE AND VACATE DEFAULT**

Defendant, ANA F. BASANTES A/K/A ANA FINOTTI-CORTEZ, by and through undersigned counsel, moves this Court for an Order quashing personal service of process and abating this cause for lack of personal jurisdiction, and would show:

1. The requirements for service of process are quite basic. Fla. Stat. § 48.031(1)(a) provides:

Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.

2. Under well-established Florida law, the failure to “inform the person of the contents” of the Summons/Complaint being served requires that service of process be quashed. See Bache, Halsey, Stuart, Shields, Inc. v. Mendoza, 400 So. 2d 558 (Fla. 3d DCA 1981).

3. In the case at bar, Plaintiff filed a Return of Service on September 28, 2011 which purports to reflect service of process on Defendant. However, Defendant was never informed of the contents of the Summons/Complaint upon this alleged service. As a result Plaintiff’s attempt to effectuate personal service of process is defective.

4. Significantly, Plaintiff's Return of Service is irregular in that it does not even reflect that the process server informed Defendant of the contents. In contrast to the cases where a valid Return of Service creates a presumption of valid service, the irregular Return of Service in this case forces Plaintiff to meet its burden of proving valid service. See Bennett v. Christiana Bank & Trust Co., 50 So. 3d 43 (Fla. 3d DCA 2010) ("Once a defect in the return of service is shown, the burden of demonstrating regular service is on the party seeking to invoke the court's jurisdiction."). On the facts at bar, this is a burden that Plaintiff cannot meet. Defendant was not informed of the contents of the papers and the process server does not contend otherwise. As such, service must be quashed. See Mendoza, supra.

5. As service has not been effectuated, this Court lacks jurisdiction over Defendant and as a result the default entered against Defendant must be vacated. Moreover, this case should be abated until such time as the Court acquires personal jurisdiction over Defendant.

6. Since service was ineffectual, Defendant has no obligation to show excusable neglect, meritorious defenses, or due diligence. Nonetheless, in an abundance of caution, Defendant will show all three.

7. There can be no doubt that any neglect by Defendant was excusable. Defendant was not properly served with the summons and complaint and was not informed of the contents within. As a result of the defective service she was misinformed. Defendant previously entered into loan modification negotiations with Plaintiff, and understood she was doing all she could to respond to the foreclosure. Defendant should not be penalized when she was unaware of the risk of default, due to Plaintiff's defective service attempts.

8. Defendant has meritorious defenses to Plaintiff's Complaint, including but not limited to, failure to state a cause of action (*See* Defendant's contemporaneously filed "Motion to

Dismiss”), lack of standing (Plaintiff has failed to tender the original promissory Note in this case), unclean hands, estoppel, failure to mitigate damages, set-off, and violations of the Fair Debt Collection Practices Act. Defendant would like an opportunity to litigate these defenses on the merits.

9. On or about March 8, 2012 Defendant learned of a final summary judgment hearing and the entry of the clerk’s default via consult with Stopa Law firm. Defendant now diligently moves to quash service and vacate the default.

WHEREFORE Defendant respectfully requests relief in accordance with the foregoing.

**VERIFICATION**

Under penalty of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

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ANA F. BASANTES A/K/A -                      Date  
ANA FINOTTI- CORTEZ

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Monica L. Borne, Esq., Florida Foreclosure Attorneys, PLLC, 601 Cleveland Street, Suite 690, Clearwater, Florida 33755 on this \_\_\_\_ day of March, 2012.

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