

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

CASE NO.: 16-2006-CA-000998-MA
DIVISION: CV-C

JP MORGAN CHASE BANK, NA,
Plaintiff,

vs.

EDWARD H. DOLDRON, *et al.*
Defendants.



ORDER GRANTING WASHINGTON MUTUAL'S MOTION FOR LEAVE TO FILE A
SECOND AMENDED MORTGAGE FORECLOSURE COMPLAINT

This case came on to be heard this 19TH day of June, 2006 upon the Defendant's Motion to Strike the motion filed ex parte by Washington Mutual Bank, NA, (WaMu), a stranger to this action, for leave to file a second amended mortgage foreclosure complaint. Plaintiff, JP Morgan Chase Bank, NA, and Defendant, Edward H. Doldron (Mr. Doldron) were represented by counsel. Counsel for JP Morgan stipulated to the entry of an order striking the motion for leave to amend filed by WaMu. The Court heard argument of counsel relating to the sufficiency of the second amended complaint before the Court. The Court also reviewed the Plaintiff's initial amended complaint, the proposed second amended complaint and the documents attached to the second amended complaint and otherwise filed herein and having been sufficiently advised in the premises, finds:

1. On May 18, 2006, this Court entered an order dismissing the Plaintiff, JP Morgan Chase Bank, NA's first Amended Complaint and allowed Plaintiff 30 days to file a second

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amended complaint.

2. In the now dismissed, first amended complaint, Plaintiff, JP Morgan Chase Bank, NA claimed it was owner of the claim sued upon based upon an Assignment of Mortgage from Mortgage Electronic Registration Systems ("MERS") as "nominee" of the original lender Main Line Mortgage, Inc. to JP Morgan Chase Bank, NA. This assignment was not executed until after the filing of the subject lawsuit and the date of delivery was left blank.

3. At the hearing on Defendant's motion to dismiss, he raised the following inconsistencies appearing on the face of the first amended complaint and the attachments thereto:

- a) five years before the purported assignment by MERS as "nominee" for Main Line Mortgage, Inc. to JP Morgan Chase, Main Line had already given a power of attorney to a third party, Taylor, Bean & Whitaker Mortgage Corporation to act in its stead including the power of assignment of the mortgage and related note to Taylor, Bean & Whitaker Mortgage Corporation, therefore Main Line had no right to assign the already assigned mortgage to MERS; and
- b) the promissory note attached to the first amended complaint had three different stamped endorsements which were not dated and one of these "endorsements" was in blank.

4. On or about Wednesday, May 10, 2006, Washington Mutual Bank f/k/a Washington Mutual Bank, NA, (WaMu) a stranger to this action, delivered to Judge's Chambers an *ex parte* motion for Leave to File Amended Mortgage Foreclosure Complaint and a proposed order. This would be the second amended complaint filed in this action.

5. Since the entry of order on Defendant's motion to dismiss Plaintiffs first amended complaint, the original purported plaintiff, JP Morgan Chase Bank, NA has not filed a second amended complaint as directed in this Court's May 18, 2006 order.

6. Rule 1.210(a) of the Florida Rules of Civil Procedure provides, in pertinent part:

Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought...

7. In its motion for leave to file the proposed second amended complaint, non-party WaMu claims it is the owner and holder of the note and mortgage pursuant to a Corrective Assignment of Mortgage from Mortgage Electronic Registration Systems, Inc. as Nominee for Main Line Mortgage to Washington Mutual Bank. However, this "corrective" assignment was also not executed until after the filing of the above-styled case and was not recorded as of the time of the filing of the motion.

8. The mortgage attached to non-party WaMu's proposed second amended complaint is a mortgage from Mildred Elaine Early, a single woman, to MERS and lists the "Lender" as Florida Capital Mortgage Company. This mortgage has no connection to the present case and appears to be a mistaken filing.

9. Also, attached to the non-party, WaMu's motion for leave to amend, is a promissory note from Mr. Doldron to Main Line Mortgage, this note also contains an endorsement from Main Line Mortgage to Taylor, Bean & Whitaker Mortgage Corp., another endorsement from Taylor, Bean & Whitaker Mortgage Corp. to Washington Mutual Bank, FA and a third endorsement in blank by Washington Mutual Bank, FA. to yet another third party.

10. The above-described assignments conflict with, the Fair Debt Collection Practices Act notice that WaMu attached to its proposed second amended complaint that is dated January 30, 2006 lists Homecomings Financial Network as the creditor or servicing agent to the creditor

to which the subject mortgage debt is owed.

11. The documents upon which the non-party WaMu seeks to rely to state a cause of action contain inconsistencies with its assertions in its second amended complaint that it is the owner and holder of the note and mortgage. Some of the documents constituting the inconsistencies were created and/or executed after the filing of this action. When exhibits are inconsistent with allegations of material fact as to who the real party in interest is, such allegations cancel each other out. Fladell v. Palm Beach County Canvassing Board, 772 So.2d 1240 (Fla. 2000); Greenwald v. Triple D Properties, Inc., 424 So. 2d 185, 187 (Fla. 4th DCA 1983); Costa Bella Development Corp. v. Costa Development Corp., 441 So. 2d 1114 (Fla. 3rd DCA 1983).

12. There is no rule of procedure that permits JP Morgan Chase Bank, NA, as a Plaintiff that never had standing to pursue this foreclosure, to now substitute in another stranger, WaMu as a party Plaintiff to the action. There is also no rule of procedure that allows a stranger to an action, in this case WaMu, to file a motion for leave to file an amended complaint in a proceeding to which it is not a party. See Progressive Express Insurance Company v. McGrath Community Chiropractic, 913 So.2d 1281 (Fla. 2nd DCA 2005), *infra*.

13. WaMu and Plaintiff's are both without any legal authority to change the original Plaintiff in the caption of a case: "(t)he names of the parties in the caption are never changed, regardless of changes in the parties, even when all original parties have ceased to be parties." Trawick, Florida Practice and Procedure, Section 6-2.

14. As the Court previously ordered in its May 18, 2006 Order, JP Morgan Chase Bank, NA failed to sufficiently allege in its original complaint that it owns and holds the note and

mortgage that are the subject of this foreclosure or that it had standing to maintain this foreclosure action. Your Construction Center, Inc. v. Gross, 316 So. 2d 596 (Fl. 4th DCA 1975).

15. "Parties may be added by order of court on its own initiative or on motion of any party at any stage of the action and on such terms as are just. Rule 1.250(c) of the Florida Rules of Civil Procedure.

16. The misjoinder rule, that appears at Rule 1.250(a) is not applicable because it refers to severing claims against a party and otherwise specifies that misjoinder of parties is not grounds for dismissal.

17. It is proper to add as a party a person who is a real party in interest. Scott v. Mico Auto Sales, Inc. 187 So.2d 910 (Fla. 3rd DCA 1966).

18. It is also proper to add as a party a person whose presence is indispensable to the resolution of the action. See, Field v. City of Ft. Lauderdale, 227 So.2d 530 (Fla. 4th DCA 1969); Jefferson Realty of Ft. Lauderdale v. United States Rubber Co., 222 So.2d 738 (Fla. 1969) (permitting joinder as plaintiff of parent corporation as the real party in interest where all parties recognize that the corporation was the real party in interest is proper); Garner v. Ward, 251 So.2d 252 (Fla. 1971) (any person whose presence is needed for a completed determination of the cause may be made a party).

19. However, the court may not add parties to the litigation when it is without jurisdiction in the case. General Capital Corp. v. Tel Service Co., 212 So.2d 369 (Fla. 2d DCA 1968).

20. Unlike statutory prerequisites to filing a lawsuit, standing is having a sufficient interest in the outcome of litigation which will warrant a court's entertaining it such that the

Court is presented with a justiciable case or controversy and being the real party in interest. Assignment of an interest in the mortgage note and mortgage is required as the basis of a Plaintiff's standing to invoke the processes of the court in the first place.

21. JP Morgan failed to establish its standing to bring this action and a stranger can now not unilaterally insert itself into a case in which it was never properly before this Court. *See Progressive*, 913 So.2d at 1285.

22. Further, the record discloses that MERS does not have the authority to assign the subject mortgage to anyone and did not have the authority to sign a "corrective" assignment to WaMu.

23. On September 28, 2005, Circuit Judge John Gordon in Dade County entered an omnibus order dismissing foreclosure actions filed by MERS based on a lack of standing and a finding that MERS' assertions that it was the owner of the notes at issue were sham and/or frivolous pleadings. In his order of dismissal, Judge Gordon stated that pending appellate review, "the Court intends to stay by separate order all other pending or subsequently filed mortgage foreclosure actions filed by MERS..."

24. This Court finds Judge Gordon's order as persuasive and relevant to a determination that MERS' never had any interest in or power to execute a "corrective" assignment which is the main document upon which JP Morgan Chase Bank previously relied for standing and which WaMu now relies for standing to pursue this foreclosure.

25. In his order, now on appeal, Judge Gordon concluded that:

MERS is not the 'owner' of these mortgage loans as alleged. The problem for MERS is obvious; it is not the 'owner', ought not to have ever pled it and cannot prove it.

26. Judge Gordon also concluded that:

The evidence is clear and convincing in the [sic] MERS' allegations that it 'owned' 'held' and 'possessed' the mortgage notes in question are clearly, palpably and inherently false based upon the plain and conceded facts in the case. The evidence is likewise convincing that MERS at all times prior to making these allegations acted in bad faith knowing them to be false and indeed, it was forewarned of the potential consequences for making such false allegations. The falsity of the allegations is readily apparent from a cursory review of their own documents readily available on their official website and incorporated by reference into the amended complaint...

27. By its own Terms and Conditions of Membership that are published on MERS' website at www.MERSINC.org, MERS agrees not to assert any rights with respect to mortgage loans and states:

MERS and the member agree that: (i) the MERS System is not a vehicle for creating or transferring beneficial interests in mortgage loans.

28. Neither JP Morgan Chase Bank, NA nor WaMu meet the criteria of Rule 1.210(a) of the Florida Rules of Civil Procedure, *supra*.

29. Standing is an essential element of a justiciable case or controversy and requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bringing the claim be recognized in the law as being a real party in interest entitled to bring the claim. This entitlement to prosecute a claim in Florida courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. Kumar Corp. v Nopal Lines, Ltd, et al, 462 So. 2d 1178, (Fla. 3d DCA1985)

30. No Florida case holds that a separate entity can maintain suit on a note payable to another entity unless the requirements of Rule 1.210(a) of the Florida Rules of Civil Procedure

and applicable Florida law are met. Corcoran v. Brody, 347 So. 2d 689 (Fl. 4th DCA 1977)

31. "The determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party." Rogers & Ford Constr. Corp. v. Carlandia Corp., 626 So.2d 1350,1352 (Fla. 1993), See Progressive, supra.

32. Neither JP Morgan Chase Bank, NA nor WaMu have established ownership the note and failed to establish in any of their papers or filings that either one owned or held the mortgage or the note at the commencement of this action.

Based upon the foregoing, it is ORDERED and ADJUDGED

A. Non party WaMu's Motion for leave to file a second amended complaint is granted subject to the provisions of Paragraph C below; however, pursuant to stipulation of the parties, this motion should not have been filed *ex parte*.

B. WaMu shall have an additional twenty (20) days from the date of this order to file a second amended complaint which complies with this Court's Order of May 18, 2006 and contains specific allegations of fact to include the dates that the conditions precedent to foreclosure, the FHA/HUD pre-foreclosure regulations described in the mortgage note and mortgage, have been met.

C. In the second amended complaint, WaMu shall attach written assignments consistent with its allegations that it was the owner and holder of the subject mortgage and note at the time this action was filed and JP Morgan Chase Bank must be a part of the chain of assignments or the case shall stand dismissed without prejudice. WaMu can not rely upon endorsements. See §673.1041 (1)(c), Fla. Stat.

D. Defendant shall have twenty (20) days from the date of service of the second amended complaint to file responsive pleadings.

DONE and ORDERED in Chambers this 5 day of ~~August~~^{Sept.}, 2006.


BRAD STETSON
Circuit Court Judge

Copies provided to:
Hollan M. Fintel, Esquire, Attorney for Plaintiff
Mark S. Kessler, Esquire, Attorney for Plaintiff
Lynn Drysdale, Esquire, Attorney for Mr. Doldron