STATE OF MAINE MAINE DISTRICT COURT

CUMBERLAND, ss. DISTIRICT NINE

DIVISION OF NORTHERN CUMBERLAND

CIVIL ACTION

BRI-RE-09-65

# FEDERAL NATIONAL MORTGAGE )

ASSOCIATION )

)

Plaintiff )

v. )

) *Defendant requests oral argument*

NICOLLE M. BRADBURY )

)

Defendant )

**MOTION FOR RELIEF PURSUANT TO M.R.Civ.P 56(g)**

**I. Request for Determination that Stephan Summary Judgment Affidavit was Presented in Bad Faith.**

Defendant hereby moves for a finding pursuant to M.R.Civ.P. 56(g) that the Affidavit of Jeffery Stephan dated August 5, 2009 filed in support of Plaintiff's Motion for Summary Judgment was presented in bad faith.

**II. Request for Award of Counsel Fees and Costs Against Plaintiff in Favor of Defendant.**

Defendant further moves pursuant to said Rule 56(g) and said finding of bad faith for an order requiring Plaintiff to pay to counsel for Defendant their reasonable fees and costs in responding to the motion for summary judgment and for all work thereafter through an including all proceedings on this motion, the Defendant's Motion for Revision and Reversal of Partial Summary Judgment Order dated June 17, 2010, and Plaintiff's Motion for Protective Order dated June 25, 2010.

**III. Request for Finding of Contempt Against Plaintiff and for Determination of Whether Plaintiff's Initial Counsel Should be Held in Contempt.**

Defendant moves pursuant to said Rule 56(g) for an for an order holding Plaintiff in contempt for the bad faith filing of the Stephan Affidavit and ordering that Plaintiff shall be barred from seeking recovery against Defendant of any attorney fees or other costs relating to this foreclosure action.

Defendant moves further pursuant to such finding of contempt for an order that Plaintiff's Complaint against Defendant shall be dismissed with prejudice, that Plaintiff shall be ordered to discharge the mortgage sued upon, and for an order that Plaintiff shall be barred from any recovery from Defendant upon the note and mortgage sued upon.

Defendant moves further that the court conduct an inquiry as to whether the initial counsel for Plaintiff was complicit in the bad faith presentation of the Stephan affidavit on behalf of Plaintiff such that an order should be entered holding said counsel to be in contempt and imposing sanctions therfore.

**IV. Request for Other and Further Relief.**

Pursuant to the contempt powers of the Court under Rule 56(g) and the inherent power of the Court to sanction non-compliance with the rules of the Court, Defendant seeks an order for such other and further relief as the Court shall deem appropriate in the circumstances

Filed in support hereof is the Affidavit of Thomas A. Cox.

DATED: July 2, 2010

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Thomas A. Cox, Esq., Maine Bar no. 1248

P.O.Box1314

Portland, Maine 04104

(207) 749-6671

Co-Counsel for Defendant

RULE 7(b) NOTICE

Matter in opposition to this motion pursuant to M.R. Civ. 7(c) must be filed not later than 21 days after the filing of this motion. Any failure to file timely opposition shall be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

CERTIFICATE OF SERVICE

I hereby certify that I have sent, via US Postal Mail, a copy of this Motion for Sanctions to the Plaintiff’s Attorneys, Julia D. Pitney, Esq., John J. Aromando, Esq. and D. Brian O'Dell, Esq.

Dated: June \_\_\_, 2010

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Thomas A. Cox

STATE OF MAINE MAINE DISTRICT COURT

CUMBERLAND, ss. DISTIRICT NINE

DIVISION OF NORTHERN CUMBERLAND

CIVIL ACTION DOCKET NO. BRI-RE-09-65

# FEDERAL NATIONAL MORTGAGE )

ASSOCIATION )

)

Plaintiff )

v. )

)

NICOLLE M. BRADBURY )

)

Defendant )

**ORDER**

Defendant has moved for relief pursuant to M.R.Civ.P. 56(g) alleging that the affidavit of Jeffery Stephan (a "limited signing officer" for GMAC Mortgage, LLC, the loan servicer in this case) dated August 5, 2009 filed in support of Plaintiff's Motion for Summary Judgment was presented in bad faith. Defendant alleges that Stephan signs his affidavits without reading them or knowing their contents (except for his claim that he checks the figures in the affidavits against numbers appearing the GMAC Mortgage, LLC computer system), that he does not check for the presence of exhibits referenced in his affidavits or review them if they are attached, that he does not personally appear before the notary to be sworn, and that the notary statements are therefore false.

Defendant has presented documents from a 2006 decision in the State of Florida sanctioning GMAC Mortgage Corporation, now using the name GMAC Mortgage, LLC, for virtually the same conduct. Defendant has also presented a transcript of a depostion of Jeffery Stephan taken in another case in Florida where GMAC Mortgage, LLC on December 10, 2009, where GMAC Mortgage, LLC was represented by counsel and in which Stephan revealed the types of improper affidavit signing practices outlined above. Finally, Defendant has presented the transcript of the deposition of Stephan taken in this case on June 7, 2010 showing that there has been no apparent change in the types of improper affidavit signing practices that were sanctioned in Florida in 2006 or that were exposed again at his deposition on December 10, 2009.

The Court finds that the Motion of the Defendant is properly filed and fully supported by the evidence presented by Defendant and that there are good grounds for the granting of said motion. Accordingly, the Motion for Relief Pursuant to M.R.Civ.P. 56(g) is hereby granted, and the Court finds that the affidavit of Jeffery Stephan filed in this case and dated August 5, 2009 was presented in bad faith. The Court further finds that Plaintiff, having contracted with GMAC Mortgage, LLC to be its loan servicer, is chargeable with responsibility for its actions in this matter. Accordingly, it is hereby:

1. ORDERED that Plaintiff is ordered to pay to counsel for Defendant their fees and costs for all work by them in representing the Defendant on matters resulting from the bad faith filing of the Stephan affidavit including:

a. All work in responding to the summary judgment motion;

b. All work in preparing for and taking the deposition of Jeffery Stephan;

c. All work relating to the filing of Defendant's Rule 54(b) motion;

d. All work relating to proceedings on Plaintiff's motion for protective order relating to said deposition transcript.

Rule 56(g) requires that such fees shall be paid "forthwith." Defendant shall submit to the Court an affidavit setting forth the amount of such fees and any related costs within 30 days. Promptly upon receipt the Court shall schedule a hearing do determine the amount of such fees and costs that shall be allowed.

In the event of any further proceedings in this Court resulting from the bad faith presentation of the Stephan affidavit, or any appeal from this order by Plaintiff resulting in the sustaining of this order, the Plaintiff shall be required to pay to counsel for Defendant any further fees and costs incurred in representing the Defendant in such proceedings.

2. ORDERED that as a result of the bad faith presentation of the Stephan Affidavit by Plaintiff through its loan servicer, GMAC Mortgage, LLC, which was previously sanctioned for substantially the same misconduct in 2006, the Plaintiff shall be and hereby is held to be in contempt for such conduct in this case. As sanctions for such contempt,

a. Plaintiff is hereby barred from seeking from Defendant any recovery of any sums claimed to be due on the note and the mortgage that are the subject of this action, and Plaintiff is hereby ordered to discharge said mortgage.

b. That the Plaintiff's foreclosure action shall be and is hereby dismissed with prejudice, with the Court however retaining jurisdiction to enforce all other provisions of this Order.

3. ORDERED that the Court shall take under advisement and issue a further order determining what if any additional investigation or action shall be taken to determine whether counsel who presented the Stephan affidavit shall be held in contempt and appropriately sanctioned.

4. ORDERED that the following additional relief shall be granted:

Dated: \_\_\_\_\_\_\_\_\_\_\_\_, 2010

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, Judge

Maine District Court