

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

CASE NUMBER: 16-2004-CA-4835-XXXX-MA

DIVISION: CV-E

TCIF REO2, LLC,

Plaintiff,

v.

MARTIN L. LEIBOWITZ, AS TRUSTEE,
etc., et al.,

Defendants.



FILED 05/02/06 PM 01:00 JIM FILLER

ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS

This cause came before the Court on April 5, 2006 on Defendants Robert Jackson and Lillian Jackson's Motion for Sanctions for Fraud Upon the Court. The Court has reviewed the pleadings, considered arguments of counsel, and is otherwise fully advised in the premises.

The Court finds Plaintiff, through its servicing entity, GMAC Mortgage Corporation, submitted false testimony to the Court in the form of Affidavits of Indebtedness signed and subscribed by Margie Kwiatanowski, a "Limited Signing Officer" with GMAC Mortgage Corporation. The submission of the false Affidavits was pursuant to protocols and procedures wherein Ms. Kwiatanowski, as Limited Signing Officer, would attest to review of the relevant loan documents, the Complaint, and the loan payment records, when in fact (as sworn to by Ms. Kwiatanowski in her deposition) she neither reviewed the referenced records nor was familiar with the manner in which the records were created by GMAC on behalf of Plaintiff. In her deposition, Ms. Kwiatanowski admitted none of the Affidavits were signed before a Notary, and that Affidavits of the sort filed by Plaintiff would be signed and then left in a folder, to be notarized at a different

time. The admissions by Ms. Kwiatanowski in her deposition directly contradict the sworn testimony to the Court in the form of the referenced Affidavits, both as to the substance of the Affidavits and with regard to whether the Affidavits were sworn to before a notary.

The Court recognizes the statements made by Plaintiff's counsel at the hearing to the effect that the procedures in place at GMAC with regard to servicing of this Plaintiff's loans were being corrected. The Court finds the submission of false testimony to the Court in the manner described does not rise to the level required in order for this Court to dismiss the action. Cox v. Burke, 706 So.2d 43 (Fla. 5th DCA 1998.) The Court will not condone Plaintiff's actions in filing false testimony, however, and the Court has both the inherent authority to sanction Plaintiff's actions, based upon the findings set forth above, and finds sanctions to be appropriate. It is therefore:

ORDERED AND ADJUDGED:

1. Defendants' Motion for Sanctions for Fraud Upon the Court is GRANTED.
2. The subject Affidavits as completed by Ms. Kwiatanowski are and same be stricken.
3. The Court orders Plaintiff to pay Defendants' attorneys' fees and costs for the efforts related to the taking of Ms. Kwiatanowski's deposition. Based upon a review of the record and the Affidavit filed by Defendants' counsel, the Court finds a reasonable sanction to be 30 hours of attorney's time and further finds a reasonable, local hourly rate to be \$250.00, and further awards costs in the amount of \$634.75. Therefore, the Plaintiff, TCIF REO2, LLC, Inc. shall forward to defense counsel payment of \$ 8,134.75 in sanctions for the reasons set forth above within 30 days from the date of this Order.

4. Counsel for Plaintiff shall file with the Court GMAC's written explanation and confirmation, on behalf of Plaintiff, that GMAC's policies and procedures with regard to the servicing of all of this Plaintiff's loans within the State of Florida have been modified, in accord with

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