

such conduct by Defendant's counsel in the future, and to protect GMACM and its employees from further such embarrassment, annoyance, oppression and intimidation.

2. On June 7, 2010, Thomas A. Cox, attorney for the Defendant Nicole Bradbury, deposed Jeffrey D. Stephan, an employee of GMACM. Much of Mr. Stephan's deposition testimony concerned GMACM's business practices with respect to the execution of affidavits in foreclosure actions. A copy of the transcript from Mr. Stephan's deposition is attached as Exhibit A.

3. Prior to the deposition, on June 4, 2010, Plaintiff's counsel Julia Pitney sent Mr. Cox a letter, attached as Exhibit B, stating that Mr. Stephan's deposition should be limited to Plaintiff's damages, i.e., the outstanding balance of the loan, which is the only remaining issue in the action. Ms. Pitney further warned against using Mr. Stephan's deposition to gather information exceeding the scope of the issues of this action for purposes wholly unrelated to this action. (*See Id.*). Ms. Pitney obviously had concerns going into the deposition that Mr. Stephan's deposition testimony would be used for purposes exceeding what is contemplated by and appropriate under the Maine Rules of Civil Procedure. Unfortunately, as discussed herein, Ms. Pitney's concerns were realized as Mr. Stephan's deposition testimony was posted to at least one Internet blog before Mr. Stephan had the opportunity to review his testimony and before counsel for Plaintiff even received a copy of the transcript.

4. In response to Ms. Pitney's June 4, 2010 correspondence, Mr. Cox assured Ms. Pitney that it was his "intent to conduct myself and this deposition fully in accordance with the Maine Rules of Professional Conduct and the Maine Rules of Civil Procedure." (6/4/10 Cox Letter, attached as Exhibit C). Nowhere in his letter did Mr. Cox suggest that he would disseminate the deposition transcript to third parties for purposes unrelated to this litigation. (*See Id.*).

5. Only after Ms. Pitney requested that Mr. Cox stipulate on the record that Mr. Stephan's deposition would be used only in connection with this action did Mr. Cox acknowledge his representation of other individuals adverse to GMACM and that he may use Mr. Stephan's deposition in those other cases. (See 6/4/10 Pitney E-mail attached as Exhibit D; 6/6/10 Cox Letter attached as Exhibit E). Mr. Cox also admitted that in his role as Volunteer Program Coordinator for the Maine Attorney's Saving Homes ("MASH") Program, he may be inclined to share Mr. Stephan's deposition with other MASH lawyers involved in other cases against GMACM. (See *Id.*). Still, Mr. Cox said nothing that would have put Ms. Pitney on notice that the deposition testimony of Mr. Stephan might be disseminated in such a manner that it would be posted to an Internet blog spot, much less disseminated before Plaintiff's counsel or Mr. Stephan even had the opportunity to review the transcript.

6. Mr. Cox has acknowledged sending the deposition transcript to an attorney in Florida who, in turn, posted the transcript to his or her blog spot. Mr. Cox did not reveal the identity of the Florida attorney to whom he sent the deposition transcript, but Plaintiff believes that the transcript was sent to attorney Matthew Weidner. On June 15, 2010, Mr. Stephan's deposition transcript from this case was posted to Mr. Weidner's blog spot, located at <http://mattweidnerlaw.com/blog/2010/06/new-robo-signer-deposition-jeffrey-stephan/>. A copy of the blog, in pertinent part, is attached as Exhibit F. The blog dubs Mr. Stephan the "New Robo Signer" and solicits comments from viewers.¹

¹ In Mr. Stephan's deposition, Mr. Cox inquired as to Mr. Stephan's prior testimony in a foreclosure action pending in Florida. (Deposition Transcript, pp. 57-58, Ex. A). The deposition to which Mr. Cox referred occurred on December 10, 2009, in connection with the case styled *GMAC Mortgage, LLC v. Neu*, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach, Florida, Case No. 50-2008-CA-040805XXX-MB. The transcript from the December 10, 2009 deposition was posted by Florida attorney Carol C. Asbury on her blog spot, which is located at www.4closurefraud.com, which refers to Mr. Stephan as the "Affidavit Slave." A copy of the blog spot, in pertinent part, is attached as Exhibit G.

7. The effect of Mr. Cox's dissemination of this transcript has been annoyance, embarrassment, intimidation and oppression not only of GMACM and Mr. Stephan but also to other employees of GMACM who fear that their respective deposition testimonies may be also be distributed widely and gratuitously on the internet or in some other very public fashion or otherwise used for improper purposes completely unrelated to the litigation in which the testimony is provided.

8. This dissemination of Mr. Stephan's deposition testimony is inconsistent with the Maine Rules of Civil Procedure, which contemplates the use of discovery material for proper purposes in connection with the action in which such discovery is generated, and seeks to protect parties and witnesses from embarrassment, annoyance, oppression and intimidation as described in Rule 26(c), and, as discussed below, the Court should enter a protective order prohibiting the further dissemination of Mr. Stephan's deposition transcript and any other discovery materials obtained in this action.

II. LEGAL ARGUMENT

9. Rule 26(c) of the Maine Rules of Civil Procedure governs protective orders. Specifically, Rule 26(c) provides that "[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, any justice or judge of the court in which the action is pending may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense."

10. Courts interpreting Rule 26(c) of the Federal Rules of Civil Procedure, which is in all relevant respects identical to its Maine counterpart, generally contemplate broad, public discovery but do not permit the misuse of the judicial system in order to disseminate information that has been obtained through pretrial discovery. *See, e.g., Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 104 S.Ct. 2199 (1984) (rejecting the plaintiff's contention that a protective order offends

the First Amendment when the order is limited to the context of pretrial civil discovery and does not restrict the dissemination of the information it gained from other sources).

11. For example, in *Baker v. Buffenbarger*, the United States District Court for the Northern District of Illinois held that the plaintiff's request for a protective order fell squarely within Rule 26(c) where evidence indicated that the plaintiff's attorney refused to agree to limit the use of defendant's deposition transcript to the subject lawsuit and where plaintiff's attorney admitted his intent to disseminate the deposition transcript. 2004 WL 2124787 (N.D. Ill. Sept. 22, 2004). In *Baker*, prior to the subject depositions, defense counsel inquired as to the purpose of videotaping the depositions. *Id.* at *1. When the plaintiffs' counsel responded that perhaps the plaintiffs would send the videotapes to the media or post the transcripts on the internet, defense counsel requested that the use of the transcripts and videotapes be limited to purposes directly related to the lawsuit. *Id.* The plaintiffs' counsel declined, asserting that the public had a right to access the materials and that the plaintiffs were free to do as they see fit with any materials obtained during discovery. *Id.* The court opined that litigants do not have an absolute right to do whatever they choose with discovery materials. Where the evidence indicates that a litigant intends to use discovery materials for a purpose unrelated to settlement or trial preparation, but instead to embarrass the party moving for a protective order, the moving party's request for a protective order falls squarely within Rule 26(c). *Id.* at *2.

12. Here, the sole remaining issue is Plaintiff's damages. Notwithstanding, Mr. Cox deposed Mr. Stephan primarily concerning GMACM's and Mr. Stephan's procedures for executing affidavits in foreclosure matters. By the time that Plaintiff's counsel received a copy of the deposition transcript, Mr. Cox had already disseminated the transcript to an attorney in Florida who, Mr. Cox acknowledged, posted the transcript on the internet. Plaintiff has reasonable grounds for concluding that Mr. Weidner is the attorney to whom Mr. Cox disclosed

the transcript and that Mr. Weidner posted the transcript to his blog spot for purposes of embarrassing Mr. Stephan and GMACM. However, it is irrelevant whether or not Mr. Weidner is the attorney to whom Mr. Cox disclosed the transcript because one thing is clear – Mr. Cox obviously did not disclose the transcript for purposes relating to settlement or trial preparation in this lawsuit.

13. In *Damiano v. Sony Music Entertainment, Inc.*, the United States District Court of the District of New Jersey upheld a confidentiality order entered four years earlier which prohibited the plaintiff from posting confidential discovery materials on various websites, disseminating such confidential information via e-mail and in chat rooms, and offering such materials for sale. 2000 WL 1689081, *2 (D. N.J. Nov. 13, 2000). Noting that a confidentiality order may be granted at any stage of the lawsuit, including settlement, so long as it is supported by good cause, the court held that the subject confidentiality order did not violate the plaintiff's First Amendment right to speak about his claim with whomever he so desires so long as the discovery materials were not exploited for "publicity, profit or collateral gain." *Id.* at *11.

14. Exploiting Mr. Stephan's deposition transcript is exactly what has occurred here. Mr. Cox has exceeded merely discussing his claims with other attorneys but, instead, has provided to at least one other attorney Mr. Stephan's deposition transcript which was subsequently posted on the internet for the ultimate purpose of publicity and profit for the posting attorney. Although Mr. Stephan's deposition transcript may not be confidential, as were the discovery materials in the *Damiano* case, the transcript still should not be used to make a profit for attorneys with whom Mr. Cox converses.

15. Accordingly, Plaintiff asks that the Court prohibit Defendant and her counsel from disseminating discovery materials for purposes unrelated to trial preparation, trial or settlement of this particular lawsuit.

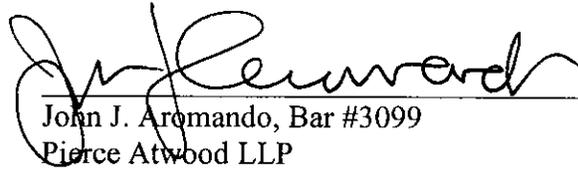
16. Plaintiff also requests that any order by the Court be applied retroactively so as to protect information already obtained through discovery from being disseminated inappropriately.

17. Furthermore, Plaintiff requests that sanctions be entered against Mr. Cox. Specifically, Plaintiff requests that Mr. Cox be required to reimburse Plaintiff for all fees and costs associated with filing this motion for protective order. As a consequence of his improper conduct, Mr. Cox should be barred from using Mr. Stephan's deposition transcript in his other cases against GMACM. Plaintiff is aware that Mr. Cox has attached this deposition transcript to a brief he filed in the case captioned *U.S. Bank National Association v. Ciraldo*, Civil Docket No. RE-10-04 pending in Maine Superior Court, Waldo County.

III. CONCLUSION

Despite having previously promised Plaintiff's counsel that he would abide by Maine's Rules of Civil Procedure, Mr. Cox admittedly disclosed Mr. Stephan's deposition transcript to an attorney in Florida who subsequently posted the transcript on the internet. The use of the deposition transcript has caused undue annoyance, embarrassment and oppression to Plaintiff and Mr. Stephan, not to mention other employees of GMACM who are now reluctant to provide deposition testimony for fear the testimony will be posted on various blog spots. For these reasons, Rule 26(c) warrants the entry of a protective order prohibiting the dissemination of discovery materials obtained in this case. Plaintiff respectfully requests the Court to enter such a protective order which would apply to all discovery materials, including the use of Mr. Stephan's deposition transcript. Plaintiff requests such other and additional relief that the Court deems appropriate.

Dated at Portland, Maine, this 25th day of June, 2010



John J. Aronando, Bar #3099
Pierce Atwood LLP
One Monument Square
Portland, ME 04101
207-791-1100

D. Brian O'Dell, Esq. (Admitted *Pro Hac Vice*)
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119

*Attorneys for Plaintiff Federal National Mortgage
Association and Parties-in-Interest GMAC
Mortgage, LLC d/b/a DiTech, LLC.com and Bank of
America, NA*

NOTICE

Matters in opposition to this Motion pursuant to Me. R. Civ. P. 7(c) must be filed not later than 21 days after the filing of this motion unless another time is provided by the Maine Rules of Civil Procedure or by the Court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.