

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

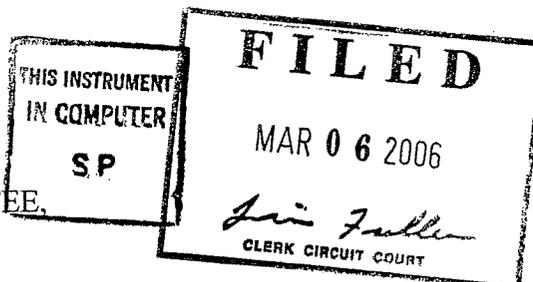
TCIF REO2, LLC,

Plaintiff,

v.

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

Defendants.



MOTION FOR SANCTIONS FOR FRAUD UPON THE COURT

COME NOW, Defendants Robert and Lillian Jackson, by and through their undersigned counsel, and pursuant to Rule 1.140, Florida Rules of Civil Procedure, hereby move the Court to enter sanctions against the Plaintiff, including Dismissal of the pending matter with prejudice and such other sanctions as the Court deems appropriate. In support of this Motion, Defendants would state as follows:

1. On or about August 6, 2004, Plaintiff filed a Motion for Summary Judgment with this Court. In support of the Motion for Summary Judgment, Plaintiff contemporaneously filed an Affidavit of Indebtedness signed and subscribed by Margie Kwiatanowski, a "Limited Signing Officer" with GMAC Mortgage Corporation ("GMAC"), the servicing agent for Plaintiff. Plaintiff filed subsequent Amended Motions for Summary Judgment on March 10, 2005 and November 3, 2005, and again filed Affidavits of Indebtedness signed and subscribed by Ms. Kwiatanowski, as a Limited Signing Officer.

2. The Affidavits of Indebtedness contains Ms. Kwiatanowski's statements, allegedly under oath, on behalf of GMAC, that she:

(a) has "personal knowledge of the status of all mortgages and notes owned and held by said corporation." (Affidavit, paragraph 1).

(b) has "examined the relevant loan documents and the Complaint, and each allegation of the Complaint is correct." (Affidavit, paragraph 2).

(c) is familiar with the loan payment records, which are regularly compiled and maintained as business records: "These records properly reflect loan payments, charges, and advances that are noted in the records at the time of the applicable transactions by persons whose regular duties include recording this information." (Affidavit, paragraph 3).

(d) swore and subscribed to the statements before a Notary.

3. The Affidavits additionally detail the alleged facts as the status of the mortgage, including the material dates, the amount owed and the fees and charges.

4. Ms. Kwiatanowski was deposed at GMAC's facility in Horsham, Pennsylvania, on January 31, 2006. See, Notice of Deposition, attached hereto as Exhibit "A" and incorporated by reference. During the deposition, Ms. Kwiatanowski admitted the above statements under oath were false:

(a) has "personal knowledge of the status of all mortgages and notes owned and held by said corporation." (Affidavit, paragraph 1).

Ms. Kwiatanowski admitted that, while she can *access* other loan documents, the statement regarding personal knowledge was false:

Q. All right. Let me ask you to go to the Amended Affidavit, which is Jackson 00006. And we'll start with page - - I'm sorry, paragraph 1.

It states that you're a limited signing officer and that you have personal knowledge of the status of all mortgages and notes owned and held by said corporation.

Do you see that?

A. Yes, I do.

Q. How is that true?

A. Well, generally, I understand what a note and a mortgage is, and how - - how the loan is originated.

Q. Right. But this says you have personal knowledge of the status of all mortgages owned and held by said corporation; corporation being TCIF RE02, LLC?

A. Well, actually, we're the servicing agent for them. We would not have originated the loan.

I'm not quite sure how to answer your question, though.

Q. Well, how is it that you have personal knowledge of the status of all mortgages serviced by GMAC for this claimant?

A. Again, I'm not - - I don't know.

Q. Do you have personal knowledge of the status of all mortgages and notes serviced by GMAC for this claimant?

A. No, I do not.

Deposition of Margie Kwiatanowski, taken January 31, 2006 (p. 30 line 9 - p. 31 line 15) (emphasis added)

(b) has "examined the relevant loan documents and the Complaint, and each allegation of the Complaint is correct." (Affidavit, paragraph 2).

Ms. Kwiatanowski testified she reviewed only a single computer screen prepared by someone else. She did not review any loan documents, much less the “relevant” ones, and did not read the Complaint:

Q. Now, paragraph 2 - - and I’m just jumping ahead to your affidavit. But your affidavits, as you may be familiar, referenced the fact that you reviewed certain things in order to sign the affidavits?

A. That’s correct.

Q. Okay. The records in paragraph 2 that are requested are: Any and all documents, electronic memoranda, policy manuals, servicing manuals, or other items of any kind reviewed in preparation for completion of the Affidavit of Indebtedness dated July 15, 2004, and Amended Affidavit of Indebtedness dated October 20, 2005. And your affidavits are then attached after this.

But my next question is: Is there anything other than what’s sitting to your left, that you recall reviewing in order to prepare the two affidavits?

A. I would have - - excuse me, I’m sorry. I would have reviewed a screen in our system that populates what the total indebtedness is. And I don’t believe a copy of that screen is within this pile.

Q. Okay. Are you saying that you reviewed a single screen?

A. Yes.

Q. And when I’m picturing a screen, I’m picturing a single page of information; or is there more than one page of information that appears on your screen?

A. There is one page of information.

Q. What is that page of information called?

A. It’s called the foreclosure work screen.

* * *

Q. Okay. Did you review the payment history separately?

A. I would have no reason to review it separately.

Q. Okay. In other words, you did not review the payment history before completing your affidavit?

A. That's correct.

Q. Would you have reviewed the actual note of mortgage before completing your affidavit?

A. No, I would not have.

Q. Would you have reviewed any of the customer history log, the document, the discussions back and forth between the mortgagors and the servicing company?

A. No, I would not have.

Q. Is it fair to say, then, that in completing an affidavit such as the ones we have attached as Bates stamped Jackson 3 through 5, and Jackson 6 through 8, that you would have reviewed one computer screen called the foreclosure work screen?

A. That's correct.

Q. And nothing else?

A. That's correct.

Deposition of Margie Kwiatanowski, taken January 31, 2006 (p. 22 line 16 - p. 23 line 17) (emphasis added)

* * *

Q. Paragraph 2, it says: I have examined the relevant loan documents and the Complaint, and each allegation of the Complaint is correct.

Is the Complaint part of the foreclosure work screen?

A. No, it is not.

Q. Would you have actually read the Complaint before signing the Amended Affidavit of Indebtedness?

A. No, I would not. I could have reviewed it because generally they are downloaded in a system that we have linked to our attorneys.

Q. Scanned?

A. Yes. Imaged.

Q. Imaged?

A. Um-hmm.

Q. Do you know whether it's general practice to bring up the image of the Complaint when you're reviewing the foreclosure work screen?

A. No, I would not.

Q. So typically you would not examine the Complaint before signing the affidavit?

A. That's correct.

Q. We've already covered that you review the foreclosure work screen.

What are the "relevant loan documents" that are referenced in paragraph 2?

A. I would think that they would have been anything that is supplied to the foreclosing attorney; it would be the mortgage, the note, the title policy.

Q. And did you review the relevant loan documents consisting of the mortgage and the note and the title policy before signing the Amended Affidavit of Indebtedness?

A. No, I did not.

Deposition of Margie Kwiatanowski, taken January 31, 2006 (p. 31 line 16 - p. 33 line 6) (emphasis added)

(c) “These records properly reflect loan payments, charges, and advances that are noted in the records at the time of the applicable transactions by persons whose regular duties include recording this information.” (Affidavit, paragraph 3).

Ms. Kwiatanowski admitted that she had no knowledge of whether the information kept was recorded “at the time of the applicable transaction by persons whose regular duties include recording this information,” and simply relies on the “system” without having any idea how or whether the “system” confirms entries are made accurately and timely:

Q. Do you agree that that sentence, the last sentence of paragraph 3 of your affidavit, indicates that the entries are made at the time of the transactions?

A. Yes, I do.

Q. Okay. So then, let me step back and re-ask the question. How is the system set up to confirm that those entries are made accurately and timely?

A. I wouldn't be able to answer that. That's not my area of expertise.

Q. Well, you swore to this affidavit.

A. Well –

Q. You swore to the truth of the fact that the history is noted in the record at the time of the transaction.

How do you know that to be true?

A. Because I – I have to rely on our system of record.

Q. Right. I agree that it's set up for you to rely on that, but that's not what this says. It says you're swearing to the fact that that record is accurate and timely.

A. I just would have to have confidence in my system that it is true and correct.

Q. Okay. Is there any – let me go back to my hypothetical that I asked you, where a mortgagor has a conversation with a loan specialist or work-out specialist, or whatever their title is, and reaches some sort of payment plan. Okay?

A. Okay.

Q. How is the system set up to confirm, number one, that that conversation is entered that day, for example, versus an employee taking a note and entering it a week later when they come back from vacation; and now is it set up to confirm that the data is entered accurately, that the employee has the payment numbers and times of payment and method of payment entered accurately?

A. I wouldn't be able to answer that because that's not in my unit.

Q. As part of your unit, have you ever gone back to confirm how you can swear to the truth of this sentence?

A. There are times when I might have to review a loan as far as conversations, if a borrower was disputing something. There would be those times that I would review the notes and the account at that point.

But in – in this particular affidavit, I had no reason to go back to review anything.

Deposition of Margie Kwiatanowski, taken January 31, 2006 (p. 34 line 13 - p. 36 line 20)

The record in the instant case demonstrates why some minimal scrutiny (as otherwise sworn to in the subject Affidavits, but never actually completed by the Affiant) would be necessary:

Q. And is it fair to say that as of November 25, 2003, the Jacksons were completely paid up with GMAC, according to that entry?

A. I would – I would have to confirm that by looking at the payment history.

Q. Well, tell me what else that entry would mean; in other words, why would that entry be made in the comment history if the payment history didn't reflect it as true?

A. Well, as it should, it should agree. I don't – I'm not disputing that. But my feeling would be I would look to see how the payments were applied, to see if they were applied correctly, if I had a reason to review this account.

Q. Which you did not?

A. That's correct.

Q. Well, isn't it fair to say that your affidavit indicates that the payment due February 1, 2004, is the one that placed this loan in default, correct?

A. That's correct.

Q. And that would be a payment due for December, a payment due for January, and a payment due for February of '04, correct?

A. That's correct.

Q. Did you ever go back to confirm whether those were the payments that threw this loan into default?

A. I would only know what the due date is in the system.

Q. Just based on what the foreclosure work screen says?

A. That's correct.

Q. Would you know who the person – because I want to be fair, now that I have an understanding of your role in this.

Would you know who the person would be who would be most familiar with the entries on the comment history that we're going over right now?

A. I don't think I could give you a specific person, no.

Q. Okay. If I told you that Mr. and Mrs. Jackson have canceled checks showing payments cashed by GMAC on January 5th of '04 and February 14, of '04, you have no explanation for that; that's not your role in reviewing this?

A. That's correct. That's something payment research would handle.

Q. Okay. With regard to whether the payments were accurately allotted to principal and interest as opposed to paid from suspense or pay to suspense, that would not be your role?

A. That's correct.

Q. Allotting the payments accurately is not your role?

A. That's correct.

Deposition of Margie Kwiatanowski, taken January 31, 2006 (p. 49 line 10 - p. 51 line 21)

Unfortunately, while the Affidavit reflecting sworn testimony to the Court indicates the Affiant has conducted a complete review of the file, GMAC's system is designed so that other departments within GMAC are responsible for reviewing the data:

Q. All right. Ms. Kwiatanowski, let me ask you this: Is there any reason or any way in the system that is set up within GMAC for the foreclosure work screen to indicate any problems or issues or disputes prior to the day you review it?

A. No.

Q. If there are comments in the – I forget what we called them – the comment history, if there are comments here that note, for example, that the borrower is having problems trying to get someone to resolve escrow and payment applications issues, if there are comments that say Account escrow payment may not be correct, sent for explanation, that type of thing, are any of those – or do any of those result in any sort of flags that get to the foreclosure work screen?

A. If there were any reason, if there was a dispute prior to a loan being referred, they would put what we call a CIT on the loan; that would prevent it from being referred while it was being researched.

Q. Okay. And I do see that, the listing for CIT, throughout this history.

What then, stops that CIT trigger and sends it on to your department, or stops the CIT hold and then sends it on to your department?

A. I believe there's -- I believe there's two different CITs for different lengths of time to keep it on hold. I believe – and also it would fall into someone's queue to see whether or not that should be removed prior to removing it; to see, for example, to see if the research has been completed. And if it has been and they find no error of GMAC's, then they would remove that CIT and that would move forward to foreclosure.

Q. Okay. Which department conducts that analysis –

A. It would –

Q. – is it done before it gets to your department or your unit?

A. Yes.

Q. Okay. How's that get done?

A. It would be through customer service. It would really depend on what the issue was as to what unit would be handling it.

Q. Okay. Well, for example, here we have – and I'm just summarizing this, and just because I think it is accurate – but there are entries here throughout with regard to a dispute in how the payments are being applied; you know, one notation here made by a GMAC individual that the account escrow payment may not be correct, sent for explanation.

How can you – or can you tell from that which unit is handling the review?

A. No, I cannot.

Q. What are the names of the units that do the reviews; you said there were two?

A. Well, there's a payment – there's payment research. There's an escrow unit if it were a dispute with taxes or insurance, they would need to review it. For an MI issue, that area would review it. It would all depend on the issue –

Q. Okay.

A. – who would be researching it.

Q. Is there a way to tell from the comment histories which units resolve the dispute?

A. It would show by that teller number on there who the associate was.

Q. Okay.

A. And then you would know from there what unit they would come from.

Q. And again, that gets done on the DocTrac – I'm sorry.

A. The XNet.

Q. XNet?

A. Preconversion, on the XNet.

Q. Okay.

A. Postconversion, we can do it right on our system.

Q. Is there a review process to make sure that the conclusion is accurate?

A. I wouldn't be able to answer that.

Deposition of Margie Kwiatanowski, taken January 31, 2006 (p. 58 line 7 - p. 61 line 24)

(d) swore and subscribed to the statements before a Notary.

Finally, Ms. Kwiatanowski admitted at the deposition she did not sign the Affidavits in front of a notary, but that it was "our" regular practice for the Affidavits to be placed in a folder and sent across the building to be signed by the notary, sometimes on another day:

Q. On Ms. Holmes' notary section, do you see there that she does not fill out the name of the person who is taking the oath?

A. I see that now, yes.

Q. And do you see that she also does not have a notary stamp?

A. I see that also, yes.

Q. Are you familiar with Pennsylvania's notary statute?

A. I realize that they have to have a stamp to notarize.

Q. And that both of those are violations of Pennsylvania's notary statute?

A. I would think so, yes.

Q. How is it that you and Ms. Holmes ended up in the same place at the same time for completion of the affidavit, how does that physically work?

A. Well, all documents that we sign already sworn in, she would hand me personally. So she would just sign off – she would notarize it after I signed off.

Q. Are you two in the same room when that's done?

A. Yes.

Q. Okay. How is that physically done, is what I am asking?

A. We would – anything that I would sign over to – anything I would sign off, I would give to her to notarize.

Q. Okay. And how – again, how is that physically done; do you and she meet in the same room, at the same time in the same place?

A. She is in the same building. I – I would leave – it could be more than just one affidavit in a folder and I waited for her to notarize.

Q. Okay. But by then, I'm taking it that she notarizes it at a different time than you sign it?

A. That's correct.

Q. Okay. Is that also true for the signature on Jackson 00008?

A. Yes, that's correct.

Q. And that appears to be a Brenda Staehle?

A. Brenda Staehle.

Q. Staerle, S-T-A-E-R-L-E.

A. Actually it's S-T-A-E-H-L-E.

Q. Okay. Thank you.

And she does indicate that you are the person swearing, and she does have her notary stamp here. But what you're indicating is you signed the document –

For example, the Amended Affidavit of Indebtedness, which is 6 through 8 on our Bates stamp, you sign the document, you put it in a folder, it gets routed to Ms. Staehle and then she signs it at a later time?

A. That's correct.

Q. Do you know if she signs it on the same day that you do?

A. Generally, yes, she would.

Q. How do you know that, what's the control for that?

A. Because they would try to complete something within the same day; as we have our guidelines to follow and our time frames to get it back to the processor, to supply it back to the attorney.

Q. Okay. But there's no doubt that she doesn't notarize it – or she doesn't witness your signing?

She does not witness or did not witness you placing your signature on Bates stamp 8; is that correct?

A. That's correct.

Deposition of Margie Kwiatanowski, taken January 31, 2006 (p. 27 line 4 - p. 30 line 8) (emphasis added)

Clearly, the notary statutes of both Pennsylvania (57 P.S. 158) and Florida (Section 117.05, Florida Statutes) are violated by the process used by GMAC in the instant case (and in all other cases, given the procedure outlined by Ms. Kwiatanowski.) Violation of Florida's notary statutes in the manner described (notarizing a signature if the person whose signature is being notarized is not in the presence of the notary at the time) constitutes malfeasance and misfeasance in the conduct of official duties, pursuant to Section 117.107(9), Florida Statutes. Under Pennsylvania law, when a notary certifies a document, the notary attests that the document has been executed, that the notary *was confronted by the signor*, that the signor is the person whose name is subscribed, and that the notary is *verifying the date of execution*. In Re Fisher, 320 B.R. 52, at 63 (E.D. Penn. 2005) (emphasis added.)

5. As referenced above, the Affidavits of Indebtedness filed by GMAC in furtherance of the foreclosure constitute sworn testimony to this Court in validation of the debt and GMAC's right to collect the debt. Unfortunately, the Affidavits are rife with falsehoods and misstatements; GMAC's system does not allow the Affiant (or her entire department, for that

matter) any opportunity to review the actual history of the loan or any of the loan document, as the Affidavit otherwise maintains to the Court. Defendants assert the filing of such false sworn testimony is a fraud upon this Court.

6. It is appropriate for the trial court to dismiss an action based on fraud, provided that there is a blatant showing of "fraud, pretense, collusion, or other similar wrongdoing." Distefano v. State Farm Mutual Automobile Ins. Co., 846 So. 2d 572, 574 (Fla. 1st DCA 2003).

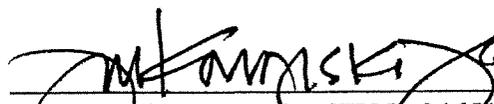
7. Misrepresentations in the Affidavit are willful fraud, interfering with the Court's "ability to impartially adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Id.*

8. This Court should dismiss the pending action with prejudice and award such other relief as the Court deems just and appropriate.

WHEREFORE, Defendants Robert and Lillian Jackson, respectfully request this Court enter sanctions against Plaintiff, including entry of a Dismissal with Prejudice and such other relief as the Court deems just and appropriate.

DATED at Jacksonville, Duval County, Florida, this 3 day of March, 2006.

**LAW OFFICES OF TROMBERG
& KOWALSKI**


Fred Tromberg, Esquire (FBN: 246514)
James A. Kowalski, Jr., Esquire (FBN: 852740)
Charlie F. Schmitt (FBN: 0012803)
4925 Beach Boulevard
Jacksonville, FL 32207
Telephone: (904) 396-5321
Facsimile: (904) 396-5730
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 3 day of March, 2006, to Diana B. Matson, Esq., 2691 East Oakland Park, Suite 303, Ft. Lauderdale, FL 33306.

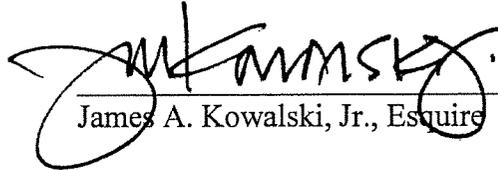

James A. Kowalski, Jr., Esquire

EXHIBIT "A"

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.

_____/

NOTICE OF DEPOSITION
OF MARGIE KWIATANOWSKI WITH REQUEST
TO PRODUCE DOCUMENTS AT DEPOSITION
(BY VIDEOTAPE RECORDING)

TO: Diana B. Matson, Esq.
2691 East Oakland Park Blvd.
Suite 303
Fort Lauderdale, FL 32306

PLEASE TAKE NOTICE that on **Tuesday, January 31, 2005, at 12:30 p.m. and continuing thereafter until complete**, at 500 Enterprise Road, Horsham, Pennsylvania, 19044, the Defendants, Robert Jackson and Lillian Jackson, will take the videotaped deposition of the following:

MARGIE KWIATANOWSKI

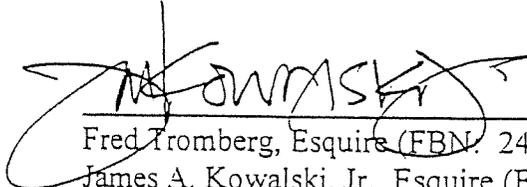
upon oral and video examination pursuant to the Florida Rules of Civil Procedure before Esquire Deposition Services, or before some other officer authorized by law to take depositions. Said deposition is being taken for the purpose of discovery, for use at trial, or both.

At the date, time and place of the deposition, the witness shall have with her the following:

1. All books, records, and documents kept or maintained by Plaintiff and or its agents or employees which relate in any way to Robert and Lillian Jackson.
2. Any and all documents, electronic memoranda, policy manuals, servicing manuals, or other items of any kind reviewed in preparation for completion of that certain Affidavit of Indebtedness dated July 15, 2004 and Amended Affidavit of Indebtedness dated October 20, 2005, copies of which are attached hereto.

DATED, at Jacksonville, Duval County, Florida, this 8 day of December, 2005.

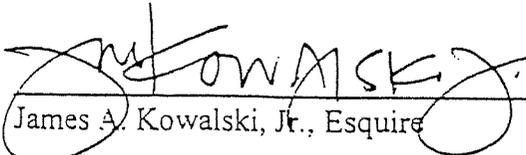
LAW OFFICES OF TROMBERG &
KOWALSKI



Fred Tromberg, Esquire (FBN: 246514)
James A. Kowalski, Jr., Esquire (FBN: 852740)
Charlie F. Schmitt, Esquire (FBN: 12803)
4925 Beach Boulevard
Jacksonville, FL 32207
Telephone: (904) 396-5321
Facsimile: (904) 396-5730
Counsel for Defendants Robert and Lillian Jackson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery, this 8 day of December, 2005, to Diana B. Matson, Esq., 2691 East Oakland Park, Suite 303, Ft. Lauderdale, FL 33306.

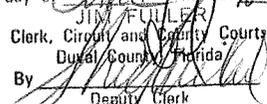


James A. Kowalski, Jr., Esquire

cc: Esquire Deposition Services
1600 JFK Boulevard, Suite 1210
Philadelphia, PA 19103

STATE OF FLORIDA
DUVAL COUNTY

I, THE UNDERSIGNED Clerk of the Circuit Court, Duval County Florida, DO HEREBY CERTIFY the within and foregoing is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit Court of Duval County, Florida. WITNESS my hand and seal of Clerk of Circuit Court at Jacksonville, Florida, this the 8 day of December, A.D. 2005

JIM FULLER
Clerk, Circuit and County Courts
Duval County, Florida
By 
Deputy Clerk

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:

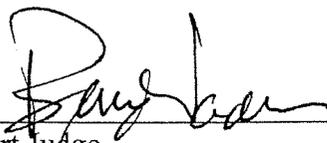
ORDERED AND ADJUDGED:

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

representations made by counsel to the Court that such modifications were being made, to confirm the affidavits filed in future foreclosure actions in Florida accurately memorialize the actions and conduct of the affiants. The written confirmation of policy changes, and an explanation for the policies now in place, shall be filed with the Court within 30 days of the date of this Order.

DONE AND ORDERED, in Chambers, at Jacksonville, Duval County, Florida, this 18th day of May, 2006.



Circuit Court Judge

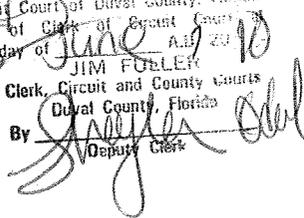
Copies to: James A. Kowalski, Jr., Esquire
Roy A. Diaz, Esquire

STATE OF FLORIDA
DUVAL COUNTY

I, THE UNDERSIGNED Clerk of the Circuit Court, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit Court of Duval County, Florida.

WITNESS my hand and seal of Clerk of Circuit Court of Duval County, Florida, this the 18th day of June, A.D. 2006

JIM FULLEY
Clerk, Circuit and County Courts
Duval County, Florida

By 
Deputy Clerk

IN THE CIRCUIT COURT FOR DUVAL
COUNTY, FLORIDA. CIVIL DIVISION

CASE NO. 162004CA004835XXXXMA

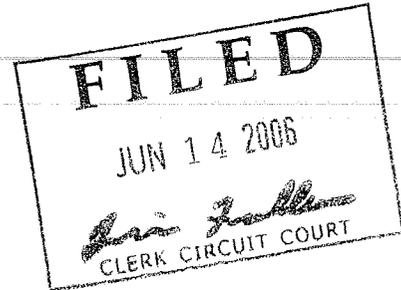
TCIF REO2, LLC,

Plaintiff,

vs.

MARTIN L. LEIBOWITZ, AS TRUSTEE UNDER THE
JACKSON FAMILY LAND TRUST DATED NOVEMBER
18, 2002; ROBERT L. JACKSON; LILLIAN M. JACKSON;
WILLIAM W. MASSEY, III; STATE OF FLORIDA
DEPARTMENT OF REVENUE; UNKNOWN TENANT
NO. 1; UNKNOWN TENANT NO. 2, et. al.,

Defendants.



CV-E

THIS INSTRUMENT
IN COMPUTER
J.T.

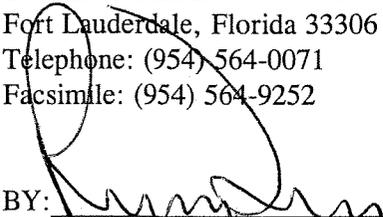
**PLAINTIFF'S NOTICE OF COMPLIANCE WITH THIS COURT'S
ORDER DATED MAY 1, 2006**

COMES NOW, the Plaintiff, TCIF REO2, LLC., by and through its undersigned counsel, and files this Notice of Compliance with this Court's Order dated May 1, 2006, and states that the Plaintiff has forwarded a check to opposing counsel as required pursuant to paragraph 3 of said Order, and has simultaneously herewith submitted the Directive to the Court, as required pursuant to paragraph 4 .

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Compliance has been sent via U.S. Mail this 12th day of June, 2006 to all parties on the attached Service List.

SMITH, HIATT & DIAZ, P.A.
Attorneys for Plaintiff
2691 East Oakland Park Boulevard, Suite 303
Fort Lauderdale, Florida 33306
Telephone: (954) 564-0071
Facsimile: (954) 564-9252

BY: 
ROY A. DIAZ
Florida Bar No. 767700

SERVICE LIST

Case No. 162004CA004835XXXXMA

Martin L. Leibowitz, as Trustee under
the Jackson Family Land Trust

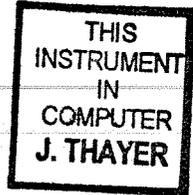
2120 Oak Street
Jacksonville, FL 32204

Fred Tromberg, Esq.
4925 Beach Blvd.
Jacksonville, FL 32207
Attorney For Robert L. Jackson
And Lillian M. Jackson

William W. Massey, III
2254 Riverside Ave
Jacksonville, FL 32204

State of Florida Department of Revenue
c/o Dr. Dr. James A. Zingale, Executive Director
501 South Calhoun Street, Carlton Building, Room 104
Tallahassee, FL 32399

Smith,
Hiatt &
Diaz, P.A.
ATTORNEYS



2691 E. Oakland Park Blvd.
Suite 303
Fort Lauderdale, Florida 33306
(954) 564-0071 Tele phone
(954) 564-9252 Facsimile

Mailing Address:
PO Box 11438
Fort Lauderdale, Florida 33339-1438

June 12, 2006

RECEIVED
JUN 13 2006

Via Overnight UPS

BERNARD NACHMAN

The Honorable Bernard Nachman
Duval County Courthouse
330 E. Bay Street, Room 202
Jacksonville, FL 32202-

File in

RE: TCIF REO2, LLC v. MARTIN LEIBOWITZ, as Trustee, et al.
Case No. 162004CA004835XXXXMA

CV-E

Dear Judge Nachman:

Enclosed with this correspondence is a courtesy copy of the Plaintiff's Notice of Compliance with this Court's Order dated May 1, 2006, and the original signed Directive from GMAC regarding its policies on Affidavits being filed with the court in connection with mortgage foreclosure cases.

Thank you for your consideration.

Respectfully submitted,
SMITH, HIATT & DIAZ, P.A.

Roy A. Diaz
For the Firm

Enclosures

cc: James A. Kowalski, Jr., Esq

FILED 061406PM 0245JIM FULLER

A POLICY DIRECTIVE FROM THE LEGAL STAFF

DOCUMENT SIGNATURE PRACTICES

The Legal Staff and its retained outside counsel present evidence to the courts in probably all jurisdictions. This evidence takes the form of written documentation signed by authorized corporate representatives. Some of these documents are notarized either as a simple notarial certificate and others notarized as sworn instruments before the notary. The following directives make not only good business sense but are commanded by statute. Thus, besides financial impact in the cases we handle, the signing process may invoke sanctions by a court. It is the integrity of our cases that is at stake and we cannot afford anything less than full accuracy.

1. Any signatory in behalf of the corporation must read and fully understand the instrument that is being signed. Do not sign unless you have that comfort level.
2. Any signatory in behalf of the corporation must be properly authorized by the corporation. When in doubt, consult with your manager or the Legal Staff for guidance.
3. Do not sign verifications on court pleading documents unless you have independently reviewed and checked the facts.
4. Sign instruments ***only in the presence of*** the witnessing notary public.
5. If the text of the notarial certificate contains an oath (e.g. "Subscribed and sworn to before me. . ." or similar words) the notary must affirmatively say to the signer, "Do you so swear?".
6. Pre-signing notarial certificates before the signer are prohibited by law everywhere.

CERTIFICATION

The undersigned certifies that as of June 1, 2006, the attached Policy Directive on Document Signature Procedure has been distributed to the associate general counsel and associate counsel of the respective business units of GMAC Mortgage Corporation for distribution to authorized signatories within the enterprise. This Policy Directive is a reaffirmation of existing procedures incorporating the statutory mandates to notaries public of the respective residence states of such notaries public.

June 6, 2006

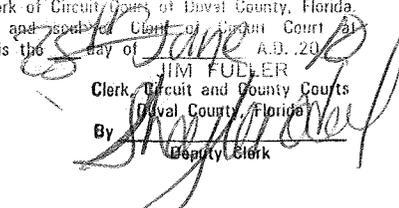


James J. Barden
Associate Counsel – Legal Staff

STATE OF FLORIDA
DUVAL COUNTY

I, THE UNDERSIGNED, Clerk of the Circuit Court, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit Court of Duval County, Florida.

WITNESS my hand and official Seal of Circuit Court of Jacksonville, Florida, this the 6th day of June, A.D. 2006


JIM FULLER
Clerk, Circuit and County Courts
Duval County, Florida
By [Signature]
Deputy Clerk