

Online Reference: FLWSUPP 1802WHIT

Mortgages -- Foreclosure -- Standing -- Complaint, which alleged that plaintiff was successor trustee of certain trust, should be amended to describe basis for this allegation -- Further, unverified complaint must be amended to comply with verification requirement of current version of rule 1.110

THE BANK OF NEW YORK TRUST COMPANY, N.A., AS SUCCESSOR TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE, RESIDENTIAL FUNDING COMPANY, LLC, FKA RESIDENTIAL FUNDING CORPORATION, ATTORNEY IN FACT FOR ASSET BACKED SECURITIES CORPORATION HOME EQUITY LOAN TRUST 1999-LB1, Plaintiff, v. CHRISTIANNA WHITE, et al., Defendants. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2009-CA-2742-XXXX, Division CV-H. August 18, 2010. Honorable Waddell A. Wallace, III, Judge. Counsel: Katherine Renninger, Florida Default Law Group, P.L., Tampa, for Plaintiff. Terry D. Bork, Law Office of Terry D. Bork, Jacksonville, for Defendant.

ORDER GRANTING MOTION TO DISMISS

This case came before the Court for hearing on the Motion to Dismiss the Mortgage Foreclosure Complaint or Motion for More Definite Statement, filed on behalf of Defendant Christianna White.

The complaint seeks to foreclose a mortgage. Attached as exhibits to the complaint are copies of the subject mortgage and promissory note. The note is payable to Long Beach Mortgage Company, but contains a stamped endorsement in blank signed reportedly by vice presidents of Long Beach Mortgage Company. The complaint further alleges that Plaintiff is the owner and holder of the mortgage note and mortgage. Ordinarily, attachment of the mortgage note endorsed in blank, coupled by the allegation that the Plaintiff is the owner and holder of the note and mortgage, is sufficient for pleading purposes. Further, the Court finds that the note is a negotiable instrument and that the endorsement, if established, is sufficient to allow the bearer of the note to enforce the instrument and accompanying mortgage. In this action, the complaint raises a different standing issue. That is, the complaint alleges that the Plaintiff is the Bank of New York Trust Company, N.A., as successor to JPMorgan Chase Bank, N.A., as a trustee of a certain trust. **Defendant has raised the point that the allegation "successor" is vague and ambiguous and is not sufficient enough to permit Defendant to challenge the validity of the complaint's conclusory allegations concerning the status of Plaintiff as a successor trustee. The Court finds this point to be well taken and that the complaint should be amended to describe the manner in which Plaintiff claims to be and has become a successor trustee.**

On February 11, 2010, the Supreme Court amended Rule 1.110(b), Florida Rules of Civil Procedure, to require that a complaint to foreclose a mortgage on residential real property be verified. The Supreme Court's order further provided that the amendment was effective as of February 11, 2010. In this action, the complaint seeks to foreclose a mortgage on residential real property and is not verified. The complaint therefore does not comply with the current version of Rule 1.110 and must therefore be amended to contain the required verification.

Accordingly, for the reasons stated, it is ORDERED:

1. Plaintiff's Motion to Dismiss the complaint is GRANTED.

2. Plaintiff has leave to file an amended complaint within 20 days of the date of entry of this order.

3. Defendants shall respond to the amended complaint as required by the applicable Florida Rules of Civil Procedure.

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