

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR _____ COUNTY

CITIBANK, N.A.,

Case No.: 2011-CA-XXX

Plaintiff,

v.

John Doe, Jane Doe, et al,

Defendants.

**DEFENDANTS JOHN DOE AND JANE DOE'S SPECIAL APPEARANCE
FOR THE PURPOSE OF MOVING TO QUASH SERVICE OF PROCESS**

Defendants John Doe and Jane Doe by and through their undersigned attorney, enter a special appearance to move the Court to quash service of process for failure to serve the defendants with a copy of a complaint signed by an attorney. As grounds therefore, Defendants offers the following:

I
FACTS

1. On January 29, 2011, defendants John Doe and Jane Doe (hereafter, "defendants") were served with a Summons and Complaint of Citibank, N.A., bearing case number 2011CA824, a copy of which is attached hereto as exhibit "A".
2. The Summons is dated January 21, 2011 and carries a signature stamp of Kristen Burrell as Deputy Clerk for Lydia Gardner. (Exh. A, first page)

3. The end of the Complaint carries the typed name of “Kimberlee J. Otis”. Ms. Otis' signature is absent from the Complaint. In the space for Ms. Otis' signature is stamped the word “COPY”. There is no signature of an attorney anywhere on the Complaint.

II **ISSUE**

SERVICE OF PROCESS WAS NOT EFFECTIVE BECAUSE THE
DEFENDANTS WERE SERVED WITH A COPY OF A COMPLAINT THAT
WAS NOT SIGNED BY AN ATTORNEY FOR THE PLAINTIFF BUSINESS ENTITY

III **LAW AND ARGUMENT**

All pleadings, including a complaint, must be signed by a person. The word “COPY” in the place for a signature on a complaint is not the signature of a person. The defendants were entitled by law to be served with a signed copy of the complaint when service of process was being effected. A business entity, such as the Plaintiff here - Citibank, N.A. - must be represented by an attorney. The complaint in this case, which was served upon the defendants, was required to carry a copy of the signature of the attorney for the plaintiff. Serving an unsigned complaint is akin to the unauthorized practice of law by the business entity.

A “complaint” is a “pleading”. Florida Rules of Civil Procedure section 1.100 provides in part:

(a) Pleadings. There shall be a complaint or, when so designated by a statute or rule, a petition, and an answer to it; an answer to a counterclaim denominated as such; an answer to a crossclaim if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is summoned as a third-party defendant; and a third-party answer if a third-party complaint is served. If an answer or third-party answer contains an affirmative defense and the opposing party seeks to avoid it, the opposing party shall file a reply containing the avoidance. No other pleadings shall be allowed.

At the time of service of process, a copy of the initial pleading must be served on the defendant. Florida Rules of Civil Procedure section 1.070(e) states:

Copies of Initial Pleading for Persons Served. At the time of personal service of process a copy of the initial pleading shall be delivered to the party upon whom service is made. The date and hour of service shall be endorsed on the original process and all copies of it by the person making the service. The party seeking to effect personal service shall furnish the person making service with the necessary copies. When the service is made by publication, copies of the initial pleadings shall be furnished to the clerk and mailed by the clerk with the notice of action to all parties whose addresses are stated in the initial pleading or sworn statement.

Pleadings must be signed in order to be effective. Florida Rule of Judicial Administration 2.515 provides:

SIGNATURE OF ATTORNEYS AND PARTIES

(a) Attorney Signature. Every pleading and other paper of a party represented by an attorney shall be signed by at least 1 attorney of record in that attorney's individual name whose address, telephone number, including area code, and Florida Bar number shall be stated, and who shall be duly licensed to practice law in Florida or who shall have received permission to appear in the particular case as provided in rule 2.510. The attorney may be required by the court to give the address of, and to vouch for the attorney's authority to represent, the party. Except when otherwise specifically provided by an applicable rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney shall constitute a certificate by the attorney that the attorney has read the pleading or other paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or other paper had not been served.

(b) Pro Se Litigant Signature. A party who is not represented by an attorney shall sign any pleading or other paper and state the party's address and telephone number, including area code.

(c) Form of Signature.

(1) The signatures required on pleadings and papers by subdivisions (a) and (b) of this rule may be:

(A) original signatures;

(B) original signatures that have been reproduced by electronic means, such as on

electronically transmitted documents or photocopied documents; or

(C) any other signature format authorized by general law, so long as the clerk where the proceeding is pending has the capability of receiving and has obtained approval from the Supreme Court of Florida to accept pleadings and papers with that signature format.

(2) An attorney, party, or other person who files a pleading or paper by electronic transmission that does not contain the original signature of that attorney, party, or other

person shall file that identical pleading or paper in paper form containing an original signature of that attorney, party, or other person (hereinafter called the follow-up filing) immediately thereafter. The follow-up filing is not required if the Supreme Court of Florida has entered an order directing the clerk of court to discontinue accepting the follow-up filing.

Business entities must be represented by counsel in court, and their pleadings must be signed by an attorney or those pleadings are void. *Daytona Migi Corp. v. Daytona Automotive Fiberglass, Inc.*, 417 So. 2d 272 (Fla. 5th DCA 1982); *Quinn v. Housing Auth. of Orlando*, 385 So. 2d 1167 (Fla. 5th DCA 1980); *Nicholson Supply Co. v. First Fed. Sav. & Loan Assoc.*, 184 So. 2d 438 (Fla. 2nd DCA 1966). Had the complaint been signed by an attorney, but that attorney was not licensed in Florida, it would be an amendable defect. *Torrey v. Leesburg Regional Medical Center*, 769 So. 2d 1040 (Fla. 2000). That is not the case here, where we have a completely unsigned complaint.

III CONCLUSION

The plaintiff failed to effect service of process because the complaint served upon the defendants failed to carry the signature of an attorney.

WHEREFORE, Defendants request the court quash service of process.

February 12, 2011

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail, this 12th day of February, 2011, to _____.

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