

IN THE 20<sup>TH</sup> JUDICIAL CIRCUIT COURT  
OF COLLIER COUNTY  
STATE OF FLORIDA

21<sup>ST</sup> MORTGAGE CORPORATION  
NICOLE P. PLANELL Fl Bar # 072325  
QUINTARIROS, PRIETO, WOOD & BOYER PA.  
(PLAINTIFF)

V.

Civil Action No. 2015-CA-001170

MARION GREGORY  
(LIMITED GUARDIAN OF MARY JEAN ZISKA)  
9202 VANDERBILT DRIVE 34108  
(DEFENDANT)

DEFENDANT'S OBJECTIONS TO MAGISTRATE RECOMMENDATIONS  
MOTION FOR REHEARING RECONSIDERATION

Comes Now Defendant Marion Gregory (from this time forth known to be representing Mary Jean Ziska as her Limited Guardian, who was previously represented by defending lawyer Linda Yerger Fl. Bar #645893 of Yerger/Tyler PA Attorneys at Lawfirm: Yerger Tyler PA Attorneys at Law 1570 Shadowlawn Drive Naples Florida 34104-4321 ) Defendant Marion Gregory Objects to the Magistrates findings and recommendations as relayed in the 15 minute notice of hearing held 10/25/16 at 10:30 am in court room 3-1 heard before Magistrate David Friedman.

Pursuant to documentation as to the referral to General Magistrate: " A referral to a Magistrate for a Residential Mortgage Foreclosure matter requires the consent of all parties. You are entitled to have this matter heard before a Magistrate. If you do not want this matter heard before a magistrate, you must file a written objection to the referral within 10 days of the time of service of this order, or within the time to respond to the initial pleading whichever is later. If the time set for the hearing is less than 10 days after the service of this order then objection must be made before the hearing. Failure to file a written objection within the applicable time period is deemed to be consent to the referral. "

An "OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE" was both E-Filed (# 47728472 on 10/17/16 at 9:19PM and mailed to Magistrate David Friedman and to Judge Hugh Hayes on 10/18/16.

- The magistrate erred in recommending that the court deny the request for the plaintiffs OBJECTION TO THE REFERRAL OF THE MAGISTRATE(#47728474 E-FILED: 10/17/16@ 9:19PM) heard by a Judge.

As per documentation: " If an objection to the ORDER OF REFERRAL TO GENERAL MAGISTRATE is filed, the Clerk shall immediately assign the matter back to the Associated General Jurisdiction Division." "All orders stemming from the Magistrate's recommendations and all final judgements shall be forwarded by the Magistrate to the Judge of the Associated General Jurisdiction Division."

- The Magistrate erred in denying the defendants request to have the OBJECTION TO THE FORECLOSURE SALE (FILED AT THE CLERK OF COURTS ON 09/12/16) HEARD BY A JUDGE WITH NEW LEGAL COUNSEL.

"As the Magistrate does not have the authority to enter substantive orders, all routine motions (such as motions to substitute counsel and motions to extend time) and expedited motions such as motions to cancel sale and motions

for stay of execution shall be forwarded by the Magistrate to the Judge of the Associated General Jurisdiction Division.

- The magistrate erred in allowing the cross-hearing (#47584368) of both the withdraw of the defendants attorney (Attorney Linda Yerger) and then immediately afterward hearing the OBJECTION TO THE FORECLOSURE SALE when defendant was then legally left without counsel

“If an attorney withdraws other than under subdivision B., dies, is suspended from the practice of law, is disbarred or is removed from the case by the court, the opposing party shall serve a notice to appear or appoint counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the notice to appear or appoint counsel must be filed with the court. No further proceedings shall be held in the case until 21 days after filing the notice to appear or appoint counsel unless the unrepresented party waves the time requirement or unless otherwise ordered by the court”

- The Magistrate erred in not acknowledging or referring to the MOTION FOR EXTENSION OF HEARING (#47606521 E-FILED: 10/14/16 @12:14AM) to a Judge.

Without the assistance of a new attorney to address each point contained in the contents of the MOTION FOR THE EXTENSION OF THE HEARING, and Magistrate Friedman’s dismissal to adequately address each point listed in the motion, the accomplishment of these listed actions contained within the document could not be addressed.

1. The defendant has not been given the opportunity to adequately consult with an alternate attorney, let alone hire one for representation. For this reason, a request for the Motion for An Extension Of Hearing (#47606521 E-FILED on 10/14/16 @ 12:14AM) to be heard before a Judge.
2. Paperwork and all information of the past proceedings need to be collected by execution of the DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS (FILED AT THE CLERK OF COURTS 09/12/16 AND MAILED TO ALL PARTIES INVOLVED). Information we haven’t received, for example paying Linda Yerger for a transcript(Sept 23<sup>rd</sup> 2015) and never receiving a copy of the transcript as per email: (Sept. 14 2015 ). To contradict another attorney’s(Nicole Plannel) information, that there was no transcript for the last hearing concerning the foreclosure sale.
3. New and additional defense materials and information not presented previously that needed to be addressed, researched, prepared, and executed for defense.
4. Expert witnesses.
5. Forensic audit.

The court in a (right to counsel case) concluded: “ The obvious truth that the average defendant does not have the professional legal skill to protect.”

- The Magistrate erred in determining without analysis of the ORDER APPOINTING SUCCESSOR INTERIM GUARDIAN the scope and boundaries for the limited guardianship herby allowing Marion Gregory to “assist in the defense and prosecution of lawsuits.”

As per the Order Appointing Successor Interim Limited Guardian (Case # 06-117-GA) In Subsection: “ 2. On or about March 16, 2014 the Collier County Public Guardian was appointed to exercise the following rights on behalf of the ward: A. To assist in the defense and prosecution of lawsuits. B. To contract”. These two statements of fact were not acknowledged by Magistrate Friedman 1. Mary Jean Ziska is not deemed incompetent. 2. Mary Jean Ziska, therefore ONLY has a limited guardianship in place to date. The two areas of assistance would include allowing Marion Gregory to file an Objection the Foreclosure Sale as the Limited Guardian thus not attempting to file as a lawyer.

Magistrate Friedman's comments about Marion Gregory not being allowed to represent Mary Jean Ziska as a lawyer, were based not on the Limited Guardianship paperwork .

- The Magistrate erred in dismissing the defendants claim for "fraud on the court" When defendant requested from former attorney additional evidence and an evidentiary hearing on the proper standing of the note and the Assignment Of Mortgage.

"In Florida the prosecution of a residential mortgage foreclosure action must be brought by the owner and holder of the mortgage and note. Plaintiff is not entitled to maintain an action if it does not own and hold the note which is purportedly secured by the subject mortgage. The plaintiff (21st Mortgage) and subsequent listed land records documents by Ocwen/Christina Trust/Residential Funding lack of ownership of the mortgage and promissory note in this case goes to the heart of its claim of standing, permeates the entire proceeding and subverts the integrity of the action. By previously dismissing any plausible evidence or new disclosures, (new request for forensic audits, or implementation of additional foreclosure defense tactics not employed by Linda Yerger the disclosure of the existence or nonexistence of the records provided not an adequate defense of the foreclosure case and subsequently the premature foreclosure sale of the condominium owned by Mary Jean Ziska. This was an error in justice and one of the reasons for retaining new counsel and having the objection heard by a judge.

- The Magistrate erred when not addressing, assisting or acknowledging the additional resources needed by Marion Gregory (age 79) in her inability to clearly hear Magistrate David Friedman, Defendant Attorney Linda Yerger, or Plaintiff's Attorney Nicole Planell's statements or arguments.

As per the NOTICE OF HEARING (# 47046914 E-FILED 09/28/16 @11:36PM) "If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you to the provision of certain assistance." Marion Gregory is not classified as disabled. On 10/25/16 she was unable to hear the proceedings and when during the court proceedings she asked her daughter to repeat what was being said, Magistrate Friedman did not acknowledge her need for additional assistance and ignored her requests to repeat what was being said. Although she was not visibly or physically disabled, she does have hearing issues and nothing was done on her behalf during the brief court hearing to remedy the situation.

- The Magistrate erred by dismissing the requests for additional evidence. This included continual requests made by Marion Gregory for answers to 5 specific inquiries made to Linda Yerger. These 5 points that were not addressed in the defense strategy by Attorney Linda Yerger were critical.
  1. The Bartram Case was never presented in court
  2. A large file marked "Residential Funding" and set on the Defendants court room table was never referred to or consulted by Attorney Linda Yerger. This included information of the fraudulent practices and paperwork by David J. Stern.
  3. A complete explanation of what Linda Yerger was referring to when she stated to the Plaintiff that 21<sup>st</sup> mortgage did not reply in the required time ( 30 day period ). Defendant, Marion Gregory believed this technicality would have affected the foreclosure case and Linda Yerger neglected to follow through on this issue.
  4. During in the course of the foreclosure case, U.S.P.S. mail arrived at Marion Gregory's address, with Mary Jean Ziska's name, requiring a signature. Attorney Linda Yerger did not advice Marion Gregory properly as per the legal ramifications, duty of the Limited Guardian's responsibilities or the contents nvolved for the limited guardian's signature for this foreclosure case .

Mail was sent to mary jean zisk at marion gregory's address. Marion signed for this envelope without legal consult regarding the contents might be and the resposibility involved for th limited guardian's signature. When it want necessary for her to sign for it.

s the contents were signed for without knowledge of the contents and without legal counsel regarding the contents and the responsibility involved for the Limited Guardians' signature

5. At one point during the hearing a comment was made concerning a last page of a contract that did not have signatures and when asked about the contract no response was given about the date or what was contained in the contract.

- The Magistrate erred in the hearing of 10/25/16 in not allowing testimony concerning the existence of aggrievous errors and major violations of Due Process Of Law. These violations occurred over the entire course of the foreclosure Civil Action Case # 15-CA-01170.

These errors of due process began in the fall of 2015. Linda Yerger, on multiple occasions advised Marion Gregory (Defendant) against attending various hearings or allowed her to participate at the hearings. Marion Gregory (Defendant), was told specifically NOT to notify Mary Jean Ziska of the foreclosure case. Linda Yerger advised Marion Gregory (Defendant) to NOT involve the home owner of the foreclosure case. She legally advised Marion Gregory (Defendant) against notifying the condominium/property owner, Mary Jean Ziska of any or the legal proceedings. Linda Yerger, did not allow Mary Jean Ziska to be involved by not notifying Mary Jean Ziska of any hearings, by not allowing Mary Jean Ziska to attend any of the hearings, or by not allowing Mary Jean Ziska to assist, in any defense of any hearings, or in any aspect and throughout the entire foreclosure case. The Due Process Rights of the condominium owner were violated throughout the entire process of the foreclosure case.

Linda Yerger violated the due process rights of the condominium/property owner ( Mary Jean Ziska). Mary Jean Ziska the owner of the property was not given any notice of the proceedings by Attorney Linda Yerger. Though Marion Gregory (Defendant) was the Limited Guardian at the time of the foreclosure, upon advice of counsel, she was not allowed to give notice to Mary Jean Ziska or allowed to have Mary Jean Ziska participate in the assistance or defense of this lawsuit that included the deprivation of her personal residence which was her primary residence and Homestead. These violations were allowed, encouraged and executed by the attorney on record Linda Yerger as an Attorney who is obligated to personally and professionally comply with the highest standards of conduct imposed on members of the Florida Bar. She was entrusted and legally obligated to inform, Defendant Marion Gregory, to follow the law and adhere to her oath in executing the law as an Attorney. This error of DUE PROCESS was mentioned in the OBJECTION TO THE FORECLOSURE SALE submitted and filed with the Clerk of Courts on 9/12/16.

The Due Process Of Law is a fundamental constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property. Due Process of law is also a constitutional guarantee that a law shall not be unreasonable. The constitutional guarantee of due process of law, found in the 5th and 14<sup>th</sup> Amendments to the U.S. Constitution prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty and property.

- Magistrate Friedman erred in enforcing any sanctions or in creating any remedy to the violations throughout the entire course of the foreclosure case. He did not allow the proceedings to be heard before a Judge as per the Defendants OBJECTION TO THE REFERRAL OF THE MAGISTRATE ( # 47728472 E-FILED: 10/17/16 @ 9:19PM). Therefore, the Referral To A Magistrate heard on 10/25/16 @ 10:30AM:
  1. Limited the time frame allotted for the hearing
  2. Limited the scope of information allowed

3. Did not provide any sanctions or remedy to any violations of "DUE PROCESS" in adhering to: The Florida Civil Court Procedures/ Rules and Regulations of the Court/ Rules and Regulations involved in the Practice of Law in the County of Naples, Florida the 20<sup>th</sup> Judicial Circuit Court of Collier County

**IN CONCLUSION:**

**DEFENDANT MARION GREGORY, OBJECTS TO THE MAGISTRATE'S RECOMMENDATIONS.**

**DEFENDANT MARION GREGORY, OBJECTS TO THE TRANSFER OF TITLE/DEED TO 21<sup>ST</sup> MORTGAGE.**

**DEFENDANT MARION GREGORY, OBJECTS TO THIS FORECLOSURE CASE BEING CONSIDERED FINANLIZED OR CLOSED.**

Numerous errors occurred during the Magistrate's hearing of Civil Action Case # 2015-CA-001170. The accumulation of all these errors contribute to the grave injustice that occurred on 10/25/16 @10:30AM, where the hearing before Magistrate David Friedman occurred in court room 3-1. Due to these obvious errors, and infractions, Defendant Marion Gregory submits this motion to object to the recommendations made by the Magistrate and requests his recommendations be Vacated and Dismissed. Marion Gregory (Defendant) requests an Appeal be allowed to reopen the case and be heard by a Judge with new counsel.

Respectively submitted by \_\_\_\_\_ Marion Gregory (9202 Vanderbilt Drive, Naples Florida 34108, Tel. (239) 598-1515. In the city of Naples, State of Florida, Collier County. I, Marion Gregory (Defendant), hereby certify that I served the "DEFENDANT'S OBJECTION TO THE MAGISTRATE RECOMMENDATIONS". This 26<sup>th</sup> day of October 26, 2016. Respectfully submitted By:

\_\_\_\_\_ Marion Gregory.

To:

1. COLLIER CIRCUIT JUDGE HUGH D. HAYES,  
COLLIER COUNTY GOVERNMENT COMPLEX  
3315 TAMiami TRAIL EAST, SUITE 403  
NAPLES, FLORIDA 34112
2. MAGISTRATE DAVID FRIEDMAN  
COLLIER COUNTY GOVERNMENT COMPLEX  
3315 TAMiami TRAIL EAST, SUITE 509  
NAPLES, FLORIDA 34112
3. (NICOLE P. PLANELL): ATTORNEY OF PLAINTIFF, FLORIDA BAR (#072325) via E-FILING TO:  
QUINTAROS, PRIETO, WOOD & BOYER PA., 9300 SOUTH DADELAND BLVD. 4<sup>TH</sup> FLOOR,  
MIAMI, FLORIDA 33156, THE ATTORNEY ON RECORD FOR 21<sup>st</sup> MORTGAGE.,

4. (LINDA YERGER): FORMER ATTORNEY, FLORIDA BAR (# 4645893) OF YERGER/TYLER PA, ATTORNEY AT LAW FIRM, YERGER/TYLER PA., ATTORNIES AT LAW, 1570 SHADOWLAWN DR. NAPLES, FLORIDA 34104-4321.

IN THE CIRCUIT COURT OF THE  
21<sup>ST</sup> JUDICIAL CIRCUIT IN AND FOR  
COLLIER COUNTY, FLORIDA

21<sup>ST</sup> MORTGAGE CORPORATION  
PLAINTIFF

UNIFORM CASE NO. 112015 CA 11700000XX  
CLERKS CASE NUMBER: 1501170CA

VS.

MARY JEAN ZISKA  
DEFENDANT

**DEFENDANT MARY JEAN ZISKA OBJECTION TO FORECLOSURE SALE**

Defendant Mary Jean Ziska pursuant to 45.301, Florida Statutes, hereby file this Objection to Foreclosure Sale, and as grounds therefore state as follows:

1. Defendant Mary Jean Ziska is the owner of the real property located at 5632 Whisperwood Blvd. unit #1601 Naples Florida 34110, as described as:

Unit 1601, Building 16, Phase 16, CYPRESS COVE AT PELICAN STRAND, a condominium, according to the declaration thereof as recorded in Official Records Book 2394, Page2599, of the Public Records of Collier County, Florida, as amended.

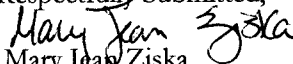
2. A foreclosure sale was held on September 1<sup>st</sup> 2016, for the above described property.
3. Mary Jean Ziska, Defendant, objects to the sale in that the foreclosing lender did not have an assignment of the mortgage based on fraudulent practices started and executed by Residential Funding David J Stern / Ocwen/ Option One Mortgage / Christina Trust /21<sup>st</sup> Mortgage Cortoration.
4. This case highlights the problems with the chain of title that are inherent in the current foreclosure system due to the following facts and circumstances.
5. Prior to the sale date, through the law practice of David J Stern, a foreclosure attempt was made and dismissed and vacated. The document presented by Mathew Kahl stated Residential Funding:
  - a. "the plaintiff is not in possession of original note and mortgage" 2/22/2008 LP 4131433 4332 777
  - b. Residential Funding did not possess the original promissory note ( 2008) therefore was not allowed to foreclose on the property. The lack of an original note (2008) should not have allowed Residential Funding to continue to bundle and sell such mortgage over and over when the last true mortgage was AEGIS in 1/11/2007 and Residential Funding appearing from 2006 -

2014 when he lost his law license and assigned the mortgage to Ocwen who then assigned it to Christina Trust on the same day (4/7/2014) then sold it to 21<sup>st</sup> mortgage on 10/21/2014 was all based on fraud by selling a mortgage note he never possessed nor had possession of in 2008

Wherefore, defendant Mary Jean Ziska respectfully requests that this Honorable Court sustain this objection to foreclosure sale, vacates the auction and subsequent sale of the property( 5632 Whisperwood Blvd. unit 1601 Naples Florida 34110). As per investigation of the fraudulent practices of David J Stern and the manipulation of the title transfers to obtain documentation for the sheer purpose of foreclosure upon the property listed, the defendant, (Mary Jean Ziska) respectfully requests the title remain in the rightful owners name: ( Mary Jean Ziska) with no title transfer to 21<sup>st</sup> Mortgage Corporation.

The manipulation perpetrated by David J Stern through subsequent companies exhibits a grievous example of fraud therefore the defendant, Mary Jean Ziska requests the foreclosure be dismissed and vacated along with the fraudulently contrived mortgages. A legal remedy is thus created for the fraud, by eliminating the subsequent fraudulently sold mortgages starting from AEGIS 1/3/2006. The remedy of reverting the mortgage back to Aegis should have been executed after the 1<sup>st</sup> foreclosure attempt(2008) by Residential Funding, however, Aegis went bankrupt in (2007).

The law recognizes that there will be situations where final judgments have been entered that would be wrong and unjust to leave as final judgements and recognizes that irregularities in the foreclosure process that make the sale void/ mistakes / fraud/ new evidence that bring to light this fraud. Therefore with no other legal remedy to this situation, the title should remain in defendant's name (Mary Jean Ziska) and the Ocwen mortgage/ the 21<sup>st</sup> Mortgage / Christina Trust /Option One/ be removed and cleared from mortgage history on the basis they were all created based on an original fraud by David J Stern and Residential Funding to foreclose upon the property listed as 5632 Whisperwood Blvd. Unit 1601 Naples Florida 34110.

Respectfully Submitted,  
  
Mary Jean Ziska

5632 Whisperwood Blvd. Unit 1601

Naples Florida 34110