

IN THE 20TH JUDICIAL CIRCUIT COURT
OF COLLIER COUNTY
STATE OF FLORIDA

21ST MORTGAGE CORPORATION
Nicole P. Planell Fl (Bar # 072325)
QUINTARIROS, PRIETO, WOOD & BOYER PA.
9300 South Dadeland Blvd., 4th Floor, Miami Florida, 33156
Email: SERVICECOPIES2@QPWBLAW.COM
Email: NICOLE.PLANELL@QPWBLAW.COM
(Plaintiff)

V.

CIVIL ACTION NO. 2015-CA-001170

Mary Jean Ziska (Defendant)
5632 Whisperwood Blvd. Unit # 1601
Naples, Florida 34110
Email: RESCUEMARYJEANZISKACONDO@GMAIL.COM
Marion Gregory (Defendant's Limited Guardian and Interested Party)
9202 Vanderbilt Drive, Naples, Florida 34108
Email: NAPLESMARION@AOL.COM
(Defendant)

DEFENDANTS MOTION AND REQUEST FOR CONTINUANCE
DEFENDANTS MOTION FOR REHEARING RECONSIDERATION

Comes Now the Defendants before the 20th Judicial Circuit Court of Collier County, (Defendant), Mary Jean Ziska with Marion Gregory, (Defendant's Limited Guardian and Interested Party). Limited Guardianship encompasses only two areas: 1. To assist in defense of law suits 2. To contract. Marion Gregory (Defendant's Limited Guardian and Interested Party) comes before the court also representing as an Interested Party for the purpose of assisting in filing the proper paperwork necessary for defense purposes. Defendant's respectfully come before the court to continue the hearing by submitting this Defendants Motion and Request for a Continuance, Defendants Motion for Rehearing Reconsideration. from the court date of January 12th 2017 at 2:30PM to be heard before Honorable Judge Huge Hayes and be continued to a future date (March 2nd 2016) and beyond, based on the supporting declarations and grounds contained within this Continuance.

BACKGROUND/GENERAL/PRO SE FILING

Defendants currently submitting this Motion for Continuance PRO SE. Defendants were previously represented by: Attorney Linda Yerger of Yerger/Tyler PA. 1570 Shadowlawn Drive Naples, Florida 34104-4321. Linda Yerger notified Defendants of her intent to withdraw on October 3rd 2016 E-Filing # 47199191 10/03/2016 @2:38PM. The Honorable Magistrate Friedman heard the Cross-Hearing on October 25th @ 10:30AM concerning the Withdraw Petition and Motion to Withdraw as Counsel of Record for Defendant. Linda Yerger. The order was granted and Attorney Linda Yerger officially withdrew as counsel on November 16th 2016 with the original signed and stamped

1 OF 7

DEFENDANT MARY JEAN ZISKA AND DEFENDANT'S LIMITED GUARDIAN AND INTERESTED PARTY MARION GREGORY: MOTION AND REQUEST FOR CONTINUANCE & MOTION FOR REHEARING RECONSIDERATION.

documentation by Honorable Hugh D. Hayes. Attorney Linda Yeager is no longer the Attorney of Record for Defendant, Mary Jean Ziska and Marion Gregory (Defendant's Limited Guardian and Interested Party).

As per January 11, 2017, @ 1:27PM Defendant Mary Jean Ziska and Marion Gregory (Limited Guardian and Party of Interest) had believed they had hired Ice legal law firm located in West Palm Beach, however, as per an email written by Cortney.Scott @ icelegal.com as per Ariane Ice the law firm decided to return the \$500.00 deposit and signed contract for assistance and not represent Mary Jean Ziska (Defendant) and Marion Gregory (Limited Guardian and Party of Interest in this case) thereby once again leaving Defendants without proper legal representation. We request that this Motion t for a Continuance be honored in the search for justice. Marion Gregory is a 78 year old woman with no legal background who is the Limited Guardian and as per the Magistrates comments is not allowed to act as an attorney but is allowed to hire an attorney. At the last hearing in front of Magistrate Friedman, the magistrate, left the Ward/Defendant: Mary Jean Ziska to defend the Objection to the Foreclosure Sale unsuccessfully due to the lack of legal representation. Attorney Linda Yerger had withdrawn from the case moments before the hearing of the Objection to the Foreclosure Sale leaving the defendants without legal counsel and the defendants Mary Jean Ziska and Marion Gregory (Defendant's Limited Guardian and party of interest) to answer questions that neither were prepared to answer nor were qualified to answer. For the sake of justice, the Defendants petition Judge Hayes to acknowledge this Motion for a Continuance and reschedule the court Date.

Defendant Mary Jean Ziska and Marion Gregory (Defendant's Limited Guardian and Interested Party) Petitioners respectfully requests this Court take the following Mandatory Judicial Notices concerning the filing **Pro Se** of this document:

1. Jenkins v McKeithen, 395 U.S. 411,421 (1959);Picking v. Pennsylvania R. Co., 151 Fed 2nd 240;Pucket v. Cox, 456 2nd233.Pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.
2. Brotherhood of Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 355;Argersinger v. Hamlin, Sheriff 407 U.S. 425 said that Litigants can be assisted by unlicensed laymen during judicial proceedings.
3. Conley v. Gibson 355 U.S. 41 at 48 (1957), "Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice..." The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." The Rule 8(f) FRCP, which holds that all pleadings shall be construed to do substantial justice.
4. Puckett v. Cox 456 F. 2nd 233 (1972) (6th Cir. USCA). It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson(see case listed above Pro Se Rights Section).
5. In the case of Haines v. Kerner 404 U.S 519 (1972) The U.S Supreme Court has ruled that procedural rules should be relaxed for pro se litigants.

Defendants are herby submitting "Defendant's Motion and Request for Continuance" (Pro Se), currently set for trial in the Judicial 20th Court Of Collier County. Hearing set in front of Judge Hugh Hayes on January 12th 2017 at 2:30 PM. Defendant Mary Jean Ziska and Defendant's Limited Guardian Marion Gregory, are seeking a new trial court date of March 2nd 2017 based on supporting declarations outlined in this Motion. These Pro Se Documents are E-Filed and Defendant Mary Jean Ziska, and Marion Gregory (Defendants Limited Guardian and Interested Party) fulfilled all requirements as per the Florida Courts E-Filing Portal (Self-Represented Litigants E-Filer manual version 2014.02 pg. 115 Document submission standards: "The following guidelines should be followed in preparing documents that will be attached to E-Portal filings:

- a. Documents should be standard size of 8 1/2 inches as defined in RJA 2.520
- b. Document should be computer generated whenever possible with the electronic signature typed in and converted to a searchable PDF document
- c. Document should leave blank a 3x3 inch space at the top right- and corner on the first page, and a 1x3 inch space at the top right –hand corner on each subsequent page to accommodate statewide standard date/time stamps as

defined in RJA 2.520

- d. Where possible documents should be electronically signed as defined in AO 09-30, Standards for Electronic Access to the Courts.
- e. Black and white non-colored documents are preferred
- f. Scanned documents should be at a resolution of 300 DPI as defined in the State of Florida Electronic Records and Records Management Practices and scan as little as possible
- g. Multiple pleadings, motions, etc. Should not be combined into one single file; each individual document should be uploaded via the E-Portal document submission process
- h. A deviation from these guidelines may result in the submitted filing being moved to a pending queue with the filer being notified via email and requested to correct the issue(s) with the documents and resubmit the filing.

DECLARATIONS AND GROUNDS FOR CONTINUANCE

NECESSITY OF PROPER QUALIFIED LEGAL REPRESENTATION TO CONTINUE:

A. Attorney Linda admitted that she believed her services were concluded when the condo (5632 Whisperwood Blvd. unit 1601 Naples, Florida 34110) she was hired to defend from foreclosure was sold at action (September 1st 2016). She believed her job as per her comments contained in the electronic court reporting CD for the Cross- Hearing 10/25/16, was finished when the condo was sold on September 1st 2016. Her initial withdraw paperwork was submitted on October 03, 2016 and finalized on November 16, 2016 . Neither Marion Gregory (Defendants Limited Guardian and Interested Party) nor Mary Jean Ziska (Defendant) were made aware from Attorney Linda Yerger that there was a foreclosure defense called Right of Redemption to remedy the sale, or a 10 day time period to buy back the condo, or even that these remedies such as the Objection to the Foreclosure Sale would need to be filed within a 10 day period after the sale. These grievous omissions by Defense Attorney Linda Yerger abandoned her clients to do investigative research and be made aware of information most Attorneys learned in law school or know such information from the practice of law. The paperwork for the initial Objection to the Foreclosure Sale was filed without any assistance from the “Attorney of Record”, Attorney Linda Yerger, and subsequent paperwork has been investigated, researched, written, and submitted, without any assistance of Attorney Linda Yerger who was until November 16th 2016 still considered the official Attorney of record.

B. Neither Marion Gregory (Defendant’s Limited Guardian and Party of Interest) or Mary Jean Ziska (Defendant) are qualified with complete legal knowledge or legal schooling, with the ability to know, respond and practice law as a lawyer in open court and present pleadings similar to the manner a true lawyer would who passed the Bar in the State of Florida. Neither Defendants have complete knowledge, as a lawyer would, of all the Florida Statutes, Florida Court Procedures, Fla. Rules of Civil Procedure, Collier County Court House Rules and Procedures. Neither Defendants have access or knowledge of specific law cases, laws, or rulings to be able to cite them in open court pertaining to defense strategies that would be acceptable and relevant to defend this foreclosure case and remedy the lack of participation by Defendant’s prior defense Attorney Linda Yerger .

- Conley v. Gibson 355 U.S. 41 at 48 (1957), “Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice...” The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” The Rule 8(f) FRCP, which holds that all pleadings shall be construed to do substantial justice.

C. Defendant's have been seeking a substitution for Attorney Linda Yerger since she first acknowledged to us her desire to withdraw as counsel. To date, Defendants have sought access to legal information, legal advice, contacted, inquired and hired legal advisors, and have also sought proper, qualified, permanent legal representation to proceed.

- Defendants have sought legal advice from attorneys: (Jason Ricardo and Larry Piviach) This included a payment to Jason Ricardo for a Docket Review prior to the Objection of the Foreclosure Sale filed by Defendant Mary Jean Ziska on September 12th 2016.
- Defendants have applied to Legal Aid of Collier County (11/22/16) still waiting on a reply concerning application. As of current court date 12/02/16, no reply has been made by Legal Aid.
- Defendants have sought legal counsel representation from Pro Bono Award recipient and have not received reply back from correspondence.
- Defendants have called and left numerous messages with Collier County Bar Association and have not received any reply back from their organization for retaining legal services.
- Defendants have contacted the Florida Bar Association for assistance and have accessed the Member Search for all of Naples and almost all of Florida Attorneys to send emails for request of assistance.
- Defendants had signed contract and paid initial \$500.00 to the Legal firm of Ice Legal located in West Palm Beach Florida. Defendants continued with the belief that Ice Legal would be available and would be representing Defendants in the court hearing scheduled for January 12th 2017 in front of Judge Hayes. Correspondence in email and by Fax for E-filed documents were sent to Ice Legal to assist in the representation of Defendants. The email that was sent was a surprise to Defendants concerning the representation of the foreclosure defense and appearance for January 12th, 2017.

D. Defendants are Requesting additional time through the filing of this Motion and Request for Continuance to gain additional finances to properly proceed.. If legal representation is not located through Legal Aid or Pro Bono lawyers, additional finances will be necessary to obtain legal representation and the procurement of legal materials will be necessary to assist. To date, Defendants are working on: obtaining additional finances and credit via: loans, credit cards, establishment of an A GoFundMe Account, social media posts for requests and contacting additional friends, family and organizations to utilize all resources possible that may be able to assist with the financial cost of a legal defense. These costs and additional finances would include:

Materials to assist in Legal Defense:

- West Law or Lexis Nexis Account to access cases, site cases to support defense and reduce the cost of attorney research time.
- The additional time and cost for officially and professionally transcribing the Cross-Hearing Court Case on October 25th 2016 @10:30 AM with Magistrate Friedman. Defendants have transcribed the CD purchased through the court; however, for the transcript to be admitted into the court proceedings, it needs to be professionally transcribed by qualified companies listed at the Clerk of Court Collier County.
- Requesting additional time to locate and hire forensic auditor and for forensic audit to be completed. Forensic audit of all land records applicable to this case. Subsequent investigation into the additional fraudulent mortgages taken out in aliases and identity theft that occurred with Defendant's credit and personal information including important years and dates of concern: 2006 and 2012.
- Additional costs and time required for furthering ongoing investigations currently involving the complaint filed with the Florida Attorney General's office involving the ombudsman offices for: Ocwen, Aegis, Litton Loan, and Residential Funding.

Also, further investigation of fraudulent practices tied to mortgages on land records and corrupt mortgage companies and their fraudulent practices.

- Additional time and cost to locate, and hire expert witnesses. These expert witness costs would include: all materials, time, depositions, interviews, and the costs incurred for travel, expenses and additional time needed for access to more than the previous 21st mortgage witness.
- Additional costs and time for preparation of court room for next court dates. The ordering and paying for a court reporter (electronic court reporter) at the Defendant's expense will require additional time to secure the additional expense, and following the court reporting the transcription of the court cases for: rehearing of: **Objection to the Foreclosure Sale**, heard this time before a judge, and the **Objection to the Magistrate** and **Objection to the Magistrate's Recommendation** with new attorney who would be knowledgeable of requirements and costs incurred for utilizing an electronic court reporter and their subsequent transcription cost.

E. Defendants are requesting additional time and cost that would be required to receive all the defense and plaintiff information and materials outlined in Defendant's Request for Production of Documents. This request was formally requested of Attorney Linda Yerger and Attorney Nicole P. Planell (Originally through Marion Gregory's E-Filed : #47606521 @12:14AM on 10/14/16 .) These same documents were again E-Filed #49351644 on 11/28/16 @ 6:56PM through Defendant Mary Jean Ziska's E-Filing Portal.

- Defendant's new attorney will need all information and materials and the time necessary for new attorney to be familiarized with all materials. It was Defendant's original belief that the Defendant's Request for the Production of Documents had been submitted in enough time for Defendant Mary Jean Ziska and Defendant's Limited Guardian and Interest Party Marion Gregory, to be a part of the defense team and make additional copies of materials for both Defendant and for Defendant's new attorney. The additional cost for copies and time involved in order that all parties be familiarized with the content and materials involved as well as the new attorney is crucial.
- No materials have yet been provided or any contact for establishing appointments to copy or have access to the information and materials involved have ever been provided by either Attorney. As both Attorneys may not see the need to adhere to Defendant Mary Jean Ziska or Defendant's Limited Guardian and Interested Party Marion Gregory's authority to file and request documents from a pro se litigant, additional time may be necessary to also file Motions to Compel or have the new attorney file the necessary paperwork to provide the court authorized production of documents. Defendants still need to receive copies of all materials from both Attorneys who were on record during the entire court proceedings.

(a). E-FILING through Defendant's Limited Guardian and Interested Party Marion Gregory's Portal: #47606521 E-FILED: 10/14/16 @12:14AM DEFENDANTS REQUEST FOR PRODUCTION OF

DOCUMENTS/ATTORNEY NICOLE P. PLANELL

(b) E-FILING through Defendant Mary Jean Ziska's Portal: #49351644 E-FILED: 11/28/16 @06:56PM
DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS/ATTORNEY NICOLE P. PLANELL

(c). E-FILING through Defendant's Limited Guardian and Interested Party Marion Gregory's Portal: #47606521
E-FILED: 10/14/16 @12:14AM DEFENDANT'S REQUEST FOR PRODUCTION OF
DOCUMENTS/ATTORNEY LINDA YERGER

(d). E-FILING through Defendant Mary Jean Ziska's Portal: #49351644 E-FILED: 11/28/16 @06:56:35PM
DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS/ATTORNEY LINDA YERGER

F. Requesting additional time allowed through the filing of the Motion for Continuance which would allow for next court date to be well past the Holiday Season. From November (with Thanksgiving), December (with Christmas, Hanukah, and the New Year) there are multiple and lengthy school breaks, official holidays and dates where work is not performed and establishments are officially closed. This time of year, has been a time where many attorneys cannot be reached for initial consultations and to accept new cases or clients. It is often difficult if not impossible to continue with work on cases while attorneys are on holiday and vacations. Therefore, requesting that additional time be included for establishing next court date to make allowances for these calendar events.

G. Additional time needed before hearing with new attorney to make sure that proper equipment for hearing enhancement is at court house and in court room for Marion Gregory (Defendant's Limited Guardian and Interested Party). This will ensure that the error made by Magistrate Friedman concerning the Defendant's Limited Guardian and Interested Party inability to hear the proceedings will not happen again when new attorney is able to hire or order such equipment.

H. Defendant's Limited Guardian still requests additional time to settle a matter of obtaining the materials that are still owed Marion Gregory (Defendant's Limited Guardian and Interested Party) from Linda Yerger. When Attorney Linda Yerger, stopped answering Defendant's Limited Guardian and Interested Party, Marion Gregory's questions, she also never gave Defendant's Limited Guardian and Interested Party, Marion Gregory the transcript from a court hearing they both attended and Marion paid \$240.00 for that transcript.

I. Defendants Limited Guardian, and Interested Party, Marion Gregory, and Defendant, Mary Jean Ziska, require the time, legal representation, and proper information concerning the rewriting, refile (if necessary) all the paperwork including the motions and objections currently filed Pro se. Defendants need additional time to remedy the situation created by Attorney Linda Yerger's negligence and obtain justice for her misconduct as a lawyer. The paperwork filed from the initial Objection to the Foreclosure Sale was filed without any assistance from the "Attorney of Record". This attorney was paid to use her legal knowledge to create a defense strategy and inform, file and defend the foreclosure. The lack of information given to her clients concerning the remedy that was allowed by the courts and should have been initiated and filed by her as attorney of record is unacceptable. The lack of instruction given by Lind Yerger to her client as to the defense strategy is a disgrace to the legal profession as well as the mis-steps in the entire process that led to such a lack of justice in the case of the foreclosure for the condo owned by Defendant Mary Jean Ziska and it should be construed as negligence. This will be reported to the Florid Bar through the ACAP department so no future client will be so misinformed and neglected as to believe that the faulty defense of a foreclosure is the end of the attempt to rectify and remedy a negligent defense of a foreclosure.

J. Additional time and finances are needed if Guardianship is challenged and all rights from Limited Guardianship are restored to Mary Jean Ziska. These rights include: 1. Assist in defense of law suits, 2.

6 OF 7

Contract. The removal of these rights have been misused to violate Defendant's rights throughout the Guardianship including the due process rights concerning the foreclosure case. With the Restoration of all rights back to Defendant Mary Jean Ziska, various other injustices need to be acknowledged and remedied. Allowances for Defendant Mary Jean Ziska to be considered as one of the Defendants in the case and as such, Motions or Objections that had been previously filed by either Marion Gregory as Defendant's Limited Guardian and Interested Party or past and current paperwork filed by Defendant Mary Jean Ziska to be considered, acknowledged, and validated as legitimate Pro Se documents. If currently, Defendant Mary Jean Ziska, is considered to be a Defendant and a (Ward), her ability to file Motions and Objections, her ability and right to speak in court in order to assist in the defense of lawsuits, or many other rights held by litigants are ambiguous. Her legal rights establishing whether she is allowed to be included and a part of the due process of law and to be included in the decisions of the case and the defense strategies were violated by previous Defense Attorney Linda Yerger and such injustices need to be remedied by careful decisions made by this court

RELIEF REQUESTED

By submitting this Motion for Continuance to the court, the petitioners: Defendant, Mary Jean Ziska, and Defendant's Limited Guardian and Interested Party Marion Gregory, requests the court enter an order granting this Continuance and move these hearings to a future date of March 2, 2016 and beyond. This Motion for Continuance, will give Petitioner time to seek and retain proper, qualified legal counsel. It will give new Attorney the time needed to completely review and be familiar with the case. It will give the new Attorney the time necessary time to properly prepare and respond on behalf of Defendants. It will allow for procurement of necessary finances to assist in the remedy of the issues in this case. It will allow time to cure, and complete all the supporting declarations outlined in this Motion.

- "Under CCCP 1054 and FRCP Rule 6(b)(1) and Sibrun, 18 I&N Dec. 354 (BIA 1983), the Petitioner may obtain a continuance of hearing for "cause" shown.

CONCLUSION

WHEREFORE, upon hearing from the petitioner, Defendant prays this court enter and approve this DEFENDANTS MOTION AND REQUEST FOR CONTINUANCE AND DEFENDANTS MOTION FOR REHEARING RECONSIDERATION. Defendants, respectfully requests the court to enter an order granting these hearings to be continued on March 2nd 2016 and beyond. In addition, requested in this motion other and further relief which may be just and proper. Defendant Mary Jean Ziska and Defendant's Limited Guardian and Interested Party Marion Gregory is hereby requesting a 90 day minimum continuance from the December 2nd 2016 3:00PM to be moved to March 2nd 2016 and beyond. Both Defendant Mary Jean Ziska, and Defendant's Limited Guardian and Interested Party Marion Gregory, make this request in writing before the court hearing of January 12th 2017 at 2:30PM and E-Filed it through both Defendant's E-Portals created on the www.myflacourtaccess.com. Defendant Mary Jean Ziska and Defendant's Limited Guardian and Interested Party Marion Gregory filed and faxed and hand delivered this Defendant's Motion and Request for Continuance and Defendants Motion for Rehearing Reconsideration in the

Circuit Court of the Twentieth Judicial Circuit in and for Civil Action of Collier County to Honorable Judge Hugh Hayes and to the attorney of record for 21st Mortgage Nicole P. Planell.

Defendant Mary Jean Ziska and Marion Gregory (Defendant's Limited Guardian and Interested Party), certify a copy of the forgoing document has been furnished and served copies of this Defendant's Motion and Request for Continuance and Defendant's Motion for rehearing reconsideration to the Circuit Judge (Honorable Judge Hugh Hayes) and to the Plaintiff's Attorney Of Record for 21st Mortgage Corporation (Attorney Nicole P. Plannel Fl Bar # 072325) of Quintairos, Prieto, Wood and Boyer, PA. 9300 South Dadeland Blvd., 4th Floor, Miami, Florida 33156. Tel # 855-287-0240. Email: Servicecopies@QPWLAW.com and Email: Nicole.planell@QPWLAW.com December 2, 2016.

Respectfully submitted by _____ Defendant Mary Jean Ziska (5632 Whisperwood Blvd. Unit #1601, Naples, Florida 34110. Email: RESCUEMARYJEANZISKACONDO@GMAIL.COM

Respectfully submitted by _____ Defendant' Limited Guardian and Interested Party Marion Gregory. (9202 Vanderbilt Drive, Naples Florida 34108. Email: NAPLESMARION@AOL.COM Telephone: (239) 598-1515.