

1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN  
AND FOR COLLIER COUNTY, FLORIDA CIVIL ACTION

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3 21st MORTGAGE CORPORATION,  
4 Plaintiff,

Case No. 2015-CA-001170

5 vs.

6 MARY JEAN ZISKA, et al.,  
7 Defendants.

\_\_\_\_\_ /

8  
9 HEARING BEFORE: The Honorable Hugh D. Hayes

10 DATE: January 12, 2017

11 TIME: 10:24 a.m. to 10:39 a.m.

12 LOCATION: Collier County Courthouse  
3315 Tamiami Trail East  
13 Naples, Florida 34112

14 REPORTER: Darla R. Costello  
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APPEARANCES:

For the Plaintiff: NICOLE P. PLANELL, ESQ.  
Quintairos, Prieto,  
Wood & Boyer, P.A.  
9300 South Dadeland Boulevard  
Fourth Floor  
Miami, Florida 33156

For the Defendant: MARY JEAN ZISKA, PRO SE  
5632 Whisperwood Boulevard  
#1601  
Naples, Florida 34110

Also Present: Marion Gregory

1 THE JUDGE: Okay. You're ready to proceed?

2 MS. PLANELL: Yes. Good morning, Your Honor.

3 This is Nicole Planell on behalf of the Plaintiff 21st  
4 Mortgage Corporation. We are here on Defendants'  
5 objection to foreclosure sale and to the magistrate's  
6 recommendation and reconsideration of the objection to  
7 foreclosure sale.

8 THE JUDGE: Okay.

9 MS. ZISKA: Your Honor, we had Ice Legal, who is  
10 the legal firm hired, who was supposed to represent us  
11 today. And they sent us an e-mail -- and are  
12 refunding our money and didn't show up today --  
13 yesterday. So we are not prepared to do anything.

14 I submitted a request for a continuance pro se  
15 yesterday at the admissions on the fifth floor and to  
16 your box -- mailbox, and also last night filed it  
17 through the E-filing portal. It would be an injustice  
18 to have either myself, Mary Jean Ziska, as the ward,  
19 or Marion Gregory trying to speak on our behalf when  
20 we were planning on having an attorney.

21 THE JUDGE: When did Ice Legal make that -- file  
22 a notice of representation in the court file?

23 MS. ZISKA: They hadn't. They just -- on the  
24 1st -- sorry, on the 4th of January, I paid them a  
25 \$500 deposit and have been e-mailing them. I

1 contacted them originally on December 16th for  
2 representation and have been sending them  
3 documentation.

4 They said that once I signed a contract and a  
5 deposit was made, that then they were representing me.  
6 But then the e-mail that was sent from an iPad on the  
7 11th at 7:07 a.m., on Wednesday, mentions that they --  
8 they decided not to take our case.

9 THE JUDGE: Okay.

10 MS. PLANELL: Your Honor, if I may, just for  
11 clarity of the record, the Defendants were represented  
12 by counsel from the beginning of this case through the  
13 date the certificate of sale was issued. They were  
14 represented by Ms. Linda Yerger, who was before Your  
15 Honor at the trial with myself and the 21st Mortgage  
16 witness. We conducted a heavily contested trial  
17 before Your Honor.

18 They were represented by Ms. Yerger at the time  
19 of the trial on August 5th. The sale occurred on  
20 September 1st, 2016, and Your Honor entered an order  
21 granting Ms. Yerger's motion to withdrawal on December  
22 17th of 2016.

23 The issue of whether the Defendants are  
24 represented by counsel at this hearing is not before  
25 the Court. What is before the Court today is the

1 Defendants' objection to the report and  
2 recommendations of the order denying Defendants'  
3 objection to the foreclosure sale that occurred on  
4 September 1st, 2016.

5 MS. ZISKA: With or without representation. We  
6 were without representation. Linda Yerger had started  
7 her withdrawal process. And through the magistrate's  
8 cross-hearing, she -- which was one of the errors that  
9 I cited in the magistrate's -- the objection to the  
10 magistrate's recommendations.

11 They had two cross-hearings that was piggybacked,  
12 for -- her withdrawal and for discussing the  
13 objections to the objection to foreclosure sale were  
14 put together and piggybacked, which is against even  
15 this Court's ruling and policy for court procedures.  
16 I cited it in the actual document.

17 I'm not a lawyer. So I'm not comfortable  
18 speaking in front of this court and defending myself  
19 when a lawyer can and should be present to state legal  
20 cases and to be able to defend both the objection to  
21 the foreclosure sale that Linda did not write because  
22 she believed that she had been -- her job was  
23 finished.

24 I think she mentioned that she said her job was  
25 done was a quote/unquote in the actual transcript that

1 I'm having transcribed. I started doing that  
2 yesterday.

3 She believed that her job was done, so she did  
4 not tell us any remedies concerning filing an  
5 objection to the foreclosure sale, did not tell us any  
6 remedies on being able to purchase back the  
7 condominium from the foreclosure sale, did not tell us  
8 that if Marion Gregory could not hear that we could  
9 have hearing assistance at even a cross-hearing.

10 There's been a lack of legal representation from  
11 the time period when Linda Yerger decided that she was  
12 finished and that she had lost the case, and the  
13 condominium was sold in the foreclosure sale.

14 So I'm pleading with the judge to please allow us  
15 to have legal counsel that can adequately and  
16 competently represent us for both the objection to  
17 foreclosure sale and even today. Which we were  
18 supposed to be speaking on behalf of the objection to  
19 the magistrate, which paperwork was filed for the  
20 objection to the magistrate, and then also objection  
21 to the magistrate's recommendations.

22 I'm not a lawyer, so both of those documents were  
23 filed pro se but through a portal -- E-portal created  
24 for Marion Gregory as a limited guardian to submit  
25 paperwork on her behalf. Magistrate Friedman said

1 that that couldn't be done. And that until the  
2 attorney of record was withdrawn officially that then  
3 I was allowed to do paperwork pro se or have legal  
4 counsel hired to file paperwork.

5 So we're in -- yeah. We've tried a couple  
6 different times of legal representatives to hire.  
7 We've gone -- I contacted Neil Garfield. He said he  
8 would do a verbal conversation and consultation over  
9 the phone. He was listed in a chain of title book.  
10 Ice Legal claimed that they were going to be  
11 representing us today. They're, of course, not here.

12 There was legal aid that we've contacted and gone  
13 to and submitted paperwork. I've contacted the  
14 Florida Bar. I've contacted and paid Jason Ricardo,  
15 who was a representative who fought against David J.  
16 Stern in the past. I'm trying to get legal counsel on  
17 my side.

18 THE JUDGE: Is there a message in there  
19 somewhere?

20 MS. ZISKA: I'm just asking for a continuance.

21 THE JUDGE: I know. But there may be a message  
22 there that -- from those people that you've contacted  
23 and who refused to represent you.

24 MS. ZISKA: But they haven't seen -- as far as,  
25 like, Ice Legal, they have -- they were bored with

1 finding fault in Quintairos and robo-witnesses that  
2 were contested --

3 THE JUDGE: See, but the problem is -- what  
4 you've got -- I'll give you a continuance for a couple  
5 weeks to get another attorney, but --

6 MS. ZISKA: Thank you.

7 THE JUDGE: -- my guess is you've already gotten  
8 the message. I mean, you've already contacted "X"  
9 number of attorneys, and they've told you that they  
10 don't want to represent you. And I think that there's  
11 a reason for that.

12 The problem with the case is it's already gone to  
13 judgment. You had legal representation. It was  
14 resolved. You filed an objection after the judgment  
15 was entered and the sale occurred. That was in the  
16 magistrate -- you did file an objection to the  
17 magistrate's --

18 MS. ZISKA: Correct.

19 THE JUDGE: -- report and recommendation.

20 The only issue before the Court aside from  
21 whether you are going to just have to go forward on  
22 your own -- and there is a more than unique twist to  
23 this because you're the ward.

24 MS. ZISKA: Correct.

25 THE JUDGE: So -- I mean, the question really is



1 do you -- I mean, if, in fact, you're a ward and you  
2 have a guardian, then that just makes the twist and  
3 turn a little more interesting.

4 And the transcript of the record reflects that if  
5 you're a ward, then, you know, quite frankly, I'm  
6 wondering why that case even exists. Your ability to  
7 argue your position is --

8 MS. GREGORY: The guardianship, Your Honor, is  
9 very limited. It's just for contracts or --

10 MS. ZISKA: Assistance.

11 MS. GREGORY: -- assistance.

12 THE JUDGE: Right. Right.

13 MS. ZISKA: So that's --

14 THE JUDGE: So I have great questions as to why  
15 there's a guardianship.

16 MS. ZISKA: Right.

17 THE JUDGE: After listening to you talk, I mean,  
18 it's anything but limited, shall we say. But anyway,  
19 I will move on. I'm going to grant your motion to  
20 continue it for two reasons. One is there's a really  
21 weird twist in this in that you're the ward and you  
22 are making a very good presentation. And there is  
23 some question in my mind as to why you're even under a  
24 guardianship.

25 And, number two, the fact is you've tried to get

1 attorneys to represent you, and you can't. I'll give  
2 you one more opportunity, but that's it. Because the  
3 question at this point is -- and you did file an  
4 objection to the magistrate's reconsideration  
5 argument.

6 And so at this point the question is, does the  
7 Court affirm the decision of the magistrate and  
8 overrule your objection, and then let you take the  
9 next step, whatever that may be. Interestingly, that  
10 still begs the question of whether you have a legal  
11 capability or capacity to do that. Practically  
12 speaking, it seems you do. Legally, there's an  
13 interesting twist to this.

14 But nevertheless, this is it. I'm not going to  
15 entertain any more requests. I mean, if you've talked  
16 to now three -- two or three lawyers since and called  
17 them and talked to them -- in other words, that's why  
18 I say maybe there is a message there.

19 MS. GREGORY: Your Honor, I would just like to  
20 add, I think because both attorneys were on the other  
21 coast, I think that the cost would have been  
22 prohibitive. You know, because we don't have that  
23 kind of income to support lawyers like OJ Simpson had.  
24 We need clear and able counsel, and I believe we have  
25 a right to have it heard before a judge and also the

1 right to hire a lawyer.

2 THE JUDGE: You've had that right.

3 MS. GREGORY: We're trying.

4 THE JUDGE: You've had that right.

5 MS. ZISKA: I think you --

6 MS. PLANELL: Your Honor, just for the record,  
7 I -- this is -- would be the second continuance that  
8 this Court would be granting. This matter was  
9 originally set to be heard December 2nd. And the  
10 Defendant fell ill, and Your Honor granted that  
11 continuance. And we're here again.

12 This is incredibly prejudicial to the Plaintiff.  
13 We should be entitled to have either the property or  
14 some type of payment. The sale occurred in September  
15 of 2016. It's been almost six months where we have  
16 not been able to access the property or receive any  
17 rent or anything like that from the property.

18 Therefore, if Your Honor has granted the  
19 continuance, I would request it be as short as  
20 possible. They have had an opportunity since November  
21 17th to obtain counsel. That's been almost 60 days at  
22 this point, just shy of 60 days. Furthermore, the  
23 objection to sale has no grounds whatsoever, and it  
24 was not even timely filed.

25 MS. ZISKA: Yes, it was.

1 MS. PLANELL: Therefore, we are requesting that  
2 it be the shortest continuance possible due to the  
3 high prejudice to our client at this point.

4 THE JUDGE: Well, I think it will be a short  
5 continuance because this is temporarily -- this is an  
6 ongoing activity on the part of the defense. I mean,  
7 it's just more time to see if you can contact two or  
8 three more attorneys.

9 I mean, at this point we have a record of being  
10 represented through the trial and the sale. And now  
11 there's some testimony or evidence, not under oath,  
12 but that you've contacted two or three additional  
13 attorneys. I mean, at some point, you know, the Court  
14 has to say --

15 MS. ZISKA: Correct. But we haven't hired  
16 anyone, I mean, other than Ice Legal and paid them to  
17 represent for the purpose of --

18 THE JUDGE: Right. That's what I'm saying.  
19 Maybe you need to understand something, though,  
20 that --

21 MS. ZISKA: But from the objections to  
22 foreclosure sale --

23 THE JUDGE: There's a reason for that.

24 MS. ZISKA: -- which was -- I need to say it was  
25 filed on the 12th. And I filed two different

1 variations on the objection to foreclosure sale. One  
2 was based on no standing because 21st Mortgage, along  
3 with Ocwen and all the way back to David J. Stern,  
4 have a history of robo-witnessing and corruption.

5 But as far as being able to -- being able to --  
6 the second objection to foreclosure sale was based on  
7 the negligence of the guardianship, which did not  
8 involve me in any of this process whatsoever, which is  
9 a violation of my rights, until -- five days before  
10 the foreclosure sale I was notified that my  
11 condominium would be sold.

12 So I'm trying to make sure that no injustice is  
13 done for --

14 THE JUDGE: And that was while you had a lawyer  
15 representing you.

16 MS. PLANELL: And Ms. Gregory was present and  
17 testified at the trial.

18 MS. ZISKA: But my -- it was -- everything was  
19 not addressed to Ms. Gregory. It was addressed to me,  
20 and I was not contacted.

21 MS. PLANELL: Ma'am, don't speak to me. Speak to  
22 the court.

23 THE JUDGE: Okay.

24 MS. ZISKA: All the different documents -- I've  
25 just now recently printed out images from the

1 foreclosure docket and yesterday had access to the  
2 guardianship docket.

3 THE JUDGE: Right. And we will -- you may be  
4 able to address or seek to have the guardianship  
5 terminated, but that's another proceeding.

6 MS. ZISKA: Right.

7 MS. GREGORY: The first time she ever met Linda  
8 Yerger was at that hearing; right?

9 MS. ZISKA: At the cross-hearing.

10 THE JUDGE: Okay.

11 MS. ZISKA: Absolutely.

12 THE JUDGE: Okay. Well, I'm granting your motion  
13 for continuance.

14 MS. ZISKA: Thank you.

15 THE JUDGE: I will reset it. It will be within  
16 30 days. And so you [sic] will set it. I will tell  
17 you up front the transcript reflects you've had an  
18 opportunity to speak to at least three other lawyers  
19 since your case was resolved.

20 MS. ZISKA: Just say submit information --

21 THE JUDGE: The question is have you had an  
22 opportunity to seek counsel. The answer is yes. And  
23 if, in fact, the answer is from those counsel we don't  
24 want to represent you, then that's the answer as well.

25 MS. ZISKA: Okay.

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MS. GREGORY: Thank you, Your Honor.

THE JUDGE: All right.

(Proceedings concluded at 10:39 a.m.)

COURT CERTIFICATE

STATE OF FLORIDA

COUNTY OF COLLIER

I, Darla R. Costello, Computerized Stenotype Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 2nd day of February, 2017.

A handwritten signature in blue ink that reads "Darla R. Costello". The signature is written over a horizontal line.

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Darla R. Costello

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