

For easier reading, I've prepared a copy of the text of 3/19/13 bad-faith order without exhibits (as redacted below) in my case involving defense in NYS of a foreclosure action brought by a major bank:

[Order or "Directive" dated 3/19/13] A Settlement Conference, having been held on 3-19-13 and other dates, and the plaintiff appearing, and the defendant appearing, it is hereby DIRECTED, that:

This case meets the criteria of the Residential Foreclosure Program;

This case has not been settled and is referred to Part * * * for all purposes.

The parties shall appear before IAS on 6/14/13 for a bad faith conference/hearing (see attached report).

/s/ Special Referee

Page 1: This is the 4th conference before this Referee after this case was transferred from Referee xxxxxx in 5/12. According to Referee xxxxxx's notes, defense has been submitting modification applications since at least 1/12. Because the application was not complete on 8/14/12, I directed defendant to appear with his counsel with evidence of residence at the property and updated financial documents. (see 8/14/12 directive). At the 10/10/12 conference, defense reported that documents were only submitted (1) day before the conference because he had payment issues with tenants. At the 11/27/12 conference, defendant appeared with a full application for submission and an affidavit of residence with exhibits.

Page 2: The modification application reflected that defendant's income increased to \$7,000/month. The application was reviewed for completeness and handed to a per diem attorney who appeared for Plaintiff. At the 1/29/13 conference, I was advised that there was no review although defendant's modification package was complete. The bank claimed that it required a "walk through" appraisal in order to run the Net Present Value (NPV) test under HAMP. This is very unusual, since the servicers typically use an AVM (Automated Valuation Method, like Zillow) to run HAMP. Also, per diem counsel xxxxx xxxxx, Esq. claimed that updated financials were required because the servicer allowed the submission to go stale. Plaintiff's counsel confirmed that there was no residence issue based on the evidence submitted by defense.. While defendant took time to complete his application over the course of months, his Plaintiff failed to timely conduct a modification review and allowed defendant's submission to go stale. I thus directed

Page 3: an appearance by a servicing representative with personal knowledge of the review and delays and a lawyer who is not per diem. By email dated 3/7/13 xxxx xxxx of xxxxxx advised that the interior BPO was conducted by Plaintiff and that more documents are required "to cure proof of rental income". Ms. xxx requested that I excuse the in-person appearance of xxxxx, which I declined to do "unless a settlement is reached." I advised xxxx by responsive email that her law firm regularly appears by per diem counsel with limited information about the case. I told Ms. xxxx that the final conference would be more productive if "Plaintiff actually appears and participates in the conference by someone with personal knowledge and settlement authority." (see email). Today, Ms. xxxx appeared with xxxx xxxx, a mediation specialist with

xxxxx bank. Although I directed ... someone with personal knowledge of the long history of this review, xxx xxx advised that she was just assigned to

Page 4: the loan file one week ago. When I asked how many underwriters have been on this loan file during 3408, she admitted that she didn't know because she did not review xxxxx's business records regarding this loan for the past year of loan servicing. She explained that she was just here to discuss documents that were needed to confirm the \$5,000 in rental income that defendant receives. Ms. xxxx could not even explain what happened with defendant's repeated submissions. Ms. xxxx prevented the [bank's] representative from answering many of my questions, particularly with respect to the documents that she reviewed before flying in from an outside office (in xxxx) Ms. xxxx said that her only knowledge of this loan was derived from her recent review of [the bank's] LPS System (Lending Portal System). Ms. xxx admitted that she only read the LPS notes that went back to 12/12. Plaintiff and its counsel thus failed to comply with this Referee's directive requiring a personal appearance by a representative

Page 5: with personal knowledge of the review. Pursuant to CPLR 3408(e), plaintiff produced an Assignment of Mortgage from MERS to [the bank] which was executed on 3/9/11 by Maria Laurence as "Assistant Secretary" of MERS. The assignment reflects that it was prepared by xxxx xxxx (see attached Assignment). Although the Mortgage states that xxxxx was the originator, it was recorded by MES "as nominee". A copy of the Note was also produced with a blank endorsement from xxxxx on page 3. (see copy of Note attached). When I asked Ms. xxxx why the need for an endorsement and Assignment of Mortgage if xxxx always had the Note, she became very rude and said that she attended a plaintiff's bar meeting with A J Knepel yesterday, who advised bank counsel that standing is not a proper issue for these conferences. Contrary to Ms. xxxx's understanding, CPLR 3408 specifically states that one of the purposes of 3408 is to

Page 6 (last page of 3/19/13 Directive): determine the rights and obligations of the parties under the loan documents, hence the requirements for production of title documents under 3408(e). This Freddie Mac note was issued on 3/10/08 --- just months before Freddie Mac was placed into conservatorship and its assets were taken by FDIC. If this pre-conservatorship loan was in Freddie Mac's private portfolio, how did Plaintiff acquire the right to foreclose?

Significantly, the Assignment of Mortgage from MERS to Plaintiff [bank] dated 3/9/11 is robo-signed by Maria Laurence as "Assistant Secretary" of MERS. Internet research disclosed that Ms. Laurence worked and currently still works for [the bank] and executed documents in 6/11 as Assistant Vice President of [the bank]. (see attached documents re: Maria Laurence). This document, which was obviously prepared for foreclosure constitutes a fraud on the court. Dismissal is warranted. At a minimum a standing hearing and bad faith hearing are warranted.

/s/ xxxxxxxx

[Copy of earlier Directive, dated 8/14/12] Defendant is directed to appear with his counsel at the next conference on 10/10/12 with evidence that he resides at the subject property and updated financial documents (i.e., bank statements and paystubs) or the case will be referred to the IAS Part.

/s/ xxxxxxxx

At the Foreclosure Part of the Supreme Court of the State of New York, held in and for the County of [REDACTED]

the 19 day of Mar, State of New York on 2013

[REDACTED]

SPECIAL REFEREE

PRESENT: Ref [REDACTED]

[REDACTED]	Plaintiff
-v-	
[REDACTED]	Defendant

DIRECTIVE

Index no.: [REDACTED] / 11

Calendar no.: [REDACTED]

A Settlement Conference, having been held on 3-19-13 and other dates, and the plaintiff (appearing / not appearing), and the defendant (appearing / not appearing), it is hereby DIRECTED, that:

- This case does not meet the criteria of the Residential Foreclosure Program.
- This case meets the criteria of the Residential Foreclosure Program;
- This case has been settled.
- _____
- This case has not been settled and is referred to Part [REDACTED] for all purposes.

The parties shall appear before IAS on 6/14/13 for a bad faith conference/hearing (see attached report)

ENTER:

[REDACTED]

SPECIAL REFEREE

At an I.A.S. Trial Term, Part of the Supreme Court of the State of New York, held in and for the State of New York, held at _____ State 20 13

Ref

P R E S E N T :

~~in~~

~~Justice~~

[Redacted]

Plaintiff(s)

Cal. No.

Index N

/ 11

- against -

[Redacted]

Defendant(s)

The following papers numbered 1 to read on this motion	Papers Numbered
Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed	
Answering Affidavit (Affirmation)	
Reply Affidavit (Affirmation)	
_____ Affidavit (Affirmation)	
Pleadings - Exhibits	
Stipulations - Minutes	
Filed Papers	

This is the 4th conference before this Referee after this case was transferred from Ref. [Redacted] in 5/12. According to Referee [Redacted] notes, defense has been submitting modification applications since at least 1/12. Because the application was not complete on 8/14/12, I directed defendant to appear with his counsel with evidence of residence at the property and updated financial documents. (see 8/14/12 directive).

For Clerks use only

MG

MD

Motion Seq. #

At the 10/10/12 conference, defense reported that documents were only submitted (1) day before the conference because he had payment issues with tenants.

at the 11/27/12 Conference, defendant appeared with a full application for submission and an affidavit of residence with exhibits.

EV-11-04

INDEX# [REDACTED] - 11

DATE 3-19-13

PLAINTIFF [REDACTED] vs DEFENDANT [REDACTED]

The modification application reflected that defendant's income increased to \$7K/month. The application was reviewed for completeness and handed to a per diem attorney who appeared for Plaintiff. At the 1/29/13 conference, I was advised that there was no review although defendant's modification package was complete. The bank claimed that it required a "walk through" appraisal in order to run the Net Present Value (NPV) test under Hcamp. This is very unusual, since the services typically use an AVM (Automated Valuation Method, like Zillow) to run Hcamp. Also, per diem counsel [REDACTED], Esq. claimed that updated financials were required because the services allowed the submission to go stale. Plaintiff's counsel contended that there was no residence issue based on the evidence submitted by defense. While defendant took time to complete his application over the course of months, Plaintiff failed to timely conduct a modification review and allowed defendant's submission to go stale. I thus directed

INDEX# [REDACTED] -11

DATE 3-19-13

PLAINTIFF [REDACTED] vs DEFENDANT [REDACTED]

an appearance by a servicing representative with personal knowledge of the review and delays and a lawyer who is not per diem. By email dated 3/7/13, [REDACTED]

[REDACTED] of [REDACTED] advised that the interior BPO was conducted by Plaintiff and that more documents are required "to cure proof of rental income." Ms. [REDACTED] requested that I excuse the in-person appearance of [REDACTED], which I declined to do "unless a settlement is reached."

I advised [REDACTED] by response email that her law firm regularly appears by per diem counsel with limited information about the case. I told Ms. [REDACTED] that the final conference would be more productive if "Plaintiff actually appears and participates in the conference by someone with personal knowledge and settlement authority." (see email)

Today, Ms. [REDACTED] appeared with [REDACTED], a Mediation Specialist with [REDACTED]. Although I directed in someone with personal knowledge of the long history of this review, [REDACTED] advised that she was just assigned to

INDEX# [REDACTED] -11

DATE 3-19-13

PLAINTIFF [REDACTED] VS DEFENDANT [REDACTED]

the loan file one week ago. When I asked [REDACTED] how many underwriters have been on this loan file during 3408, she admitted that she didn't know because she did not review [REDACTED]'s business records regarding this loan for the past year of loan servicing. She explained that she was just here to discuss documents that were needed to confirm the \$5K in rental income that defendant receives. [REDACTED] could not even explain what happened with defendant's repeated submissions. MS [REDACTED] prevented the [REDACTED] representative from answering many of my questions, particularly with respect to the documents that she reviewed before being in from an outside office. MS [REDACTED] said that her only knowledge of this loan was derived from her recent review of [REDACTED] Bank's LPS system (Lending Portal System). MS [REDACTED] admitted that she only read the LPS notes that went back to 12/12. Plaintiff and its counsel thus failed to comply with this Referee's directive requiring a personal appearance by a representative

in [REDACTED]

INDEX# ~~0000~~ -11

DATE 3-19-13

PLAINTIFF ~~0000~~ vs DEFENDANT ~~0000~~

with personal knowledge of the review pursuant to CPLR 3408(e), plaintiff produced an Assignment of Mortgage from MERS to ~~0000~~ which was executed on 3/9/11 by Maria Courance as "Assistant Secretary" of MERS. The Assignment reflects that it was prepared by ~~0000~~. (See attached Assignment). Although the Mortgage states that ~~0000~~ was the originator, it was recorded by MERS "as nominee". A copy of the Note was also produced with a blank endorsement form ~~0000~~ on page 3. (See copy of Note attached). When I asked Ms. ~~0000~~ why the need for an endorsement and Assignment of Mortgage if ~~0000~~ always had the Note, she became very subtle and said that she attended a plaintiffs Bar meeting with A.J. Knipfel yesterday, who advised bank counsel that standing is not a proper issue for these conferences. Contrary to Ms. ~~0000~~ understanding, CPLR 3408 specifically states that one of the purposes of 3408 is to

INDEX# [REDACTED] - 11

DATE 3-19-13

PLAINTIFF [REDACTED] vs DEFENDANT [REDACTED]

determine the rights and obligations of the parties under the loan documents, hence the requirements for production of title documents under 5408(e).

This Freddie Mac Note was issued on 3/10/08 - just months before Freddie Mac was placed into conservatorship and its assets were taken by FDIC. If this pre-conservatorship loan was in Freddie Mac's private portfolio, how did Plaintiff acquire the right to foreclose?

Significantly, the Assignment of Mortgage from MERS to Plaintiff [REDACTED] dated 3/9/11 is re-signed by Maria Lawrence as "Assistant Secretary" of MERS. Internet research disclosed that Mrs. Lawrence worked and currently still works for [REDACTED] and executed documents in 6/11 as Assistant Vice President of [REDACTED].

(see attached documents re: Maria Lawrence). This document, which was obviously prepared for foreclosure constitutes a fraud on the court. Dismissal is warranted. At a minimum [REDACTED] a standing hearing and bad faith hearing are warranted. [REDACTED]

At an I.A.S. Trial Term, Part of the Supreme Court of the State of New York, held in and for the

located at
and State

6 20 12

Ref.

P R E S E N T :

~~_____~~

~~_____~~

Plaintiff(s)

Cal. No.

Index No.

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- against -

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Defendant(s)

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and Affidavits (Affirmations) Annexed

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Reply Affidavit (Affirmation)

Affidavit (Affirmation)

Pleadings - Exhibits

Stipulations - Minutes

Filed Papers

Defendant is directed to appear w/ his
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resides at the subject property and
updated financial documents (ie,
bank statements & paystubs)
or the case will be referred
to the
IAS Part.

For Clerks use only

MG _____

MD _____

Motion Seq. # _____

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ENTER
~~_____~~
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