

**IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

Case No.: 50-2009-CA-038737-XXXX-MB

US BANK NATIONAL ASSOCIATION AS TRUSTEE,
Plaintiff,

vs.

TIA L. HANSON,
et al.
Defendants.

HOMEOWNERS' MOTION FOR MORE DEFINITE STATEMENT

Defendant TIA L. HANSON, (“HOMEOWNER”), by and through undersigned counsel, respectfully moves for a more definite statement of the action pursuant to rule 1.140 (e), Fla. R. Civ. Pro., because the Plaintiff’s failure to plead facts identifying itself renders the Complaint impermissibly vague and ambiguous, prejudicing Homeowner’s ability to properly defend.

ARGUMENT

I. STANDARD OF REVIEW

A. A Motion for More Definite Statement is proper where the Complaint is impermissibly vague.

Motions for More Definite Statement are governed by Rule 1.140 (e), Fla. R. Civ. P., which states:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading. The motion

shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Fla. R. Civ. P., 1.140 (e). Where a Complaint is vague or ambiguous, a motion for more definite statement is the proper avenue to seek redress. *Foerman v. Seaboard Coast Line R. Co.*, 279 So.2d 825 (1973); *Wajay Bakery, Inc. v. Carolina Freight Carriers Corp.*, 177 So.2d 544 (Fla. 3rd DCA, 1965); *Patton v. Carlson*, 132 So.2d 793 (Fla. 1st DCA, 1961).

B. Conclusory language without supporting facts fails to state a claim.

A party does not state a cause of action by merely reciting legal conclusions or tracking statutory language, but must include factual allegations. *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 501 (Fla. 3d DCA 1994); *Becerra v. Equity Imports*, 551 So.2d 486, 487-88 (Fla. 3d DCA 1989). Failure to state sufficient factual allegations therefore requires dismissal of the claim.

II. PLAINTIFF'S COMPLAINT IS IMPERMISSIBLY VAGUE BECAUSE IT FAILS TO STATE FACTS SUFFICIENT TO DETERMINE WHETHER THIS COURT HAS JURISDICTION

A. Plaintiff has failed to comply with Rule 1.120(a), Fla. R. Civ. P., requiring the pleading of capacity sufficient to show jurisdiction.

Rule 1.120 (a), Fla. R. Civ. P., requires the plaintiff to allege "capacity to sue or be sued," only "to the extent required to show the jurisdiction of the court." Rule 1.120 (a), Fla. R. Civ. P. Plaintiff has wholly failed to plead any facts that identify Plaintiff, its legal status, or its capacity.

Capacity to sue is an absence of any disability that would deprive a party of its right to come into court. 59 Am.Jur.2d *Parties* § 31 (1971). This distinguishes it from “standing,” which relates to the party’s legally sufficient interest in the outcome. *Keehn v. Joseph C. Mackey and Co.*, 420 So.2d 398 (Fla. 4th DCA 1982). *See also Asociacion de Perjudicados v. Citibank*, 770 So.2d 1267 (Fla. 3^d DCA, 2000)(dismissing case for lack of capacity as distinguished from standing)

Because Plaintiff has failed to plead any facts relating to its legal status, Homeowner is unable to determine whether Plaintiff has capacity to sue. Without such capacity, Plaintiff may not pursue this litigation. *Asociacion de Perjudicados, supra*. Accordingly the Complaint is impermissibly vague, because it does not allow Homeowner to properly formulate a response. The Court should therefore order Plaintiff to make a more definite statement as to its right to pursue this action.

CONCLUSION

This Court should require Plaintiff to replead and make a more definite statement of its claim because the Plaintiff’s failure to alleges facts to show its capacity to sue renders the Complaint impermissibly vague and ambiguous, prejudicing Homeowner’s ability to properly defend.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above pleading has been furnished, by U.S. Mail (unless otherwise indicated) to the parties or counsel indicated below, on this 7th day of January, 2010:

Douglas C. Zahm, P.A.
18820 U.S. Highway 19 North
Suite 212
Clearwater, FL 33764

Respectfully submitted,
RICARDO, WASYLIK & KANIUK PL

Michael Alex Wasylik, Esq.
Fla. Bar No. 067504
P.O. Box 2245
Dade City, Florida 33526
Tel. 352-567-3173
Fax 352-567-3193
COUNSEL FOR HOMEOWNER