

IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CASE NO.: 41-2009-CA-9922, Division B

ONEWEST BANK, FSB, successor in
Interest to INDYMAC FEDERAL BANK, FSB,

Plaintiff,

vs.

MIKE NUCKOLS; et. al.,

Defendant(s).

ORDER ON DEFENDANT'S MOTION TO DISMISS

This cause came upon Defendant's Motion to Dismiss. This Court having reviewed Defendant's Motion and the court's file, considered case law, and being otherwise fully advised in the premises enters this order based on the following findings and conclusions:

1. Plaintiff failed to appear at the hearing, though commencement was delayed until 1:38 p.m.

2. Plaintiff's complaint fails to state a cause of action as there is no documentary link(s) or other sufficient showing of standing within its four corners (consistent with the attached exhibits) connecting the named Plaintiff to the interest it claims under the attached note and mortgage *which are in the name of and run to the benefit of other entities*. See BAC Funding Consortium, Inc. v. Jean-Jacques, 28 So. 3d 936 (Fla. 2nd DCA, Feb 2010) and Hunt Ridge at Tall Pines v. Hall, 766 So. 2d 399 (Fla. 2nd DCA, 2000).

3. Plaintiff's "post complaint" Notice of Filing of a purported assignment of mortgage did not in fact contain same. Regardless, such a separate Notice of Filing does not constitute a proper amendment to a complaint such as to bring the matter within its four corners: The proper way to bring such matters into the scope of pleading is to file an amended complaint (with leave

of court when required) and attach to it the necessary documents as exhibits. See Safeco Ins. Co. v. Ware, 401 So. 2d 1129 (Fla. 4th DCA, 1981) and Fla. R. Civ. P. 1.130(a).

4. The court file, as of the time of the hearing of this motion, showed that Plaintiff failed to post an acceptable bond required under F.S. § 57.011.

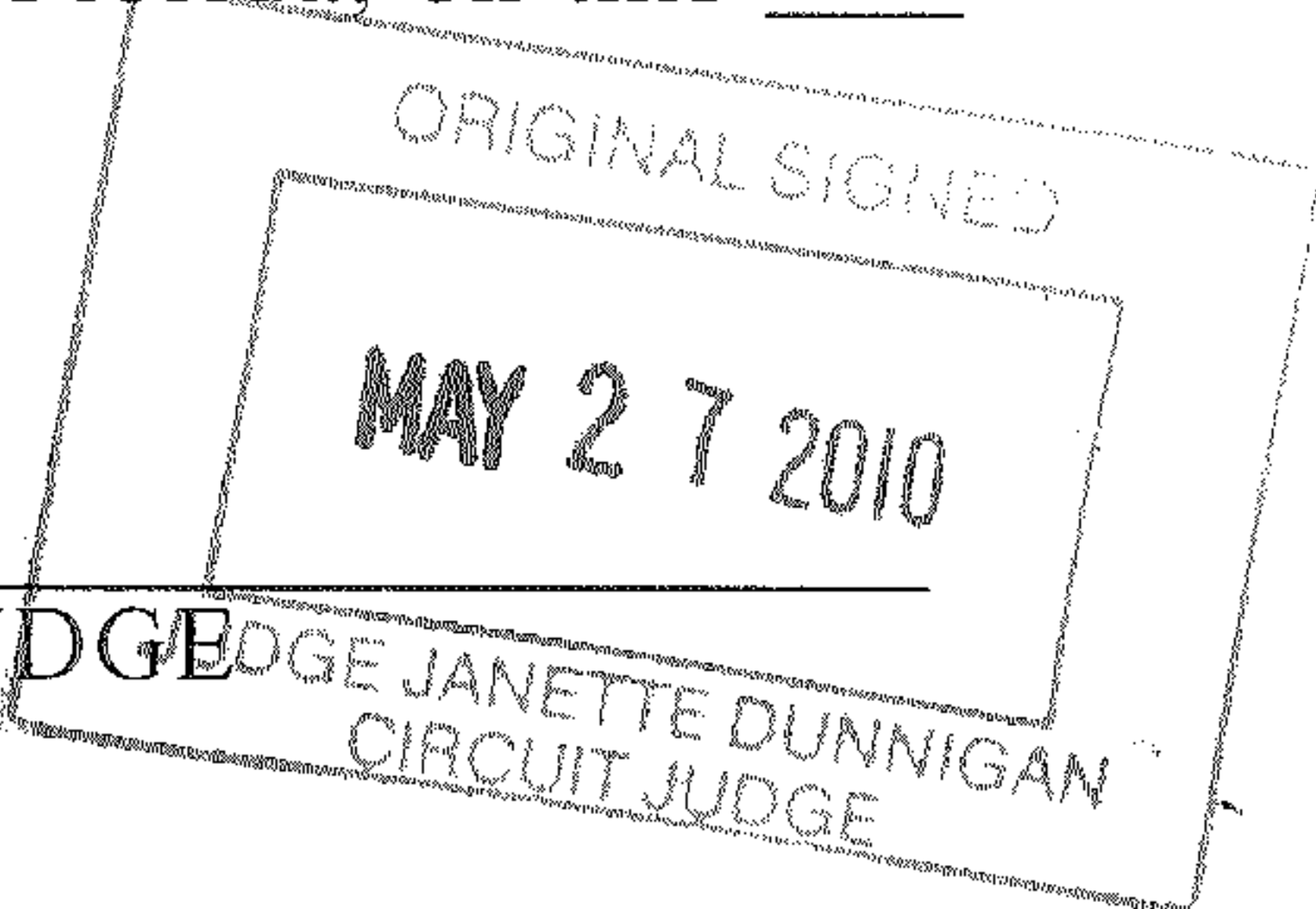
IT IS THEREFORE ORDERED AND ADJUDGED as follows:

1. Defendant's Motion to Dismiss is GRANTED and Plaintiff's complaint is dismissed, provided however, that Plaintiff shall have a period of 20 days from the entry of this order to file an amended complaint with the necessary correcting documents to establish Plaintiff's standing to enforce the note and mortgage and Defendant shall have 20 days thereafter to respond thereto.

2. Failure to timely file an amended complaint may result in dismissal of this action without further notice or hearing.

3. On or before the filing of said amended complaint Plaintiff must post an acceptable cash bond as required under F.S. § 57.011.

DONE AND ORDERED, in Chambers at Manatee County, Florida, on this _____ day of _____, 2010.

CIRCUIT JUDGE 

cc: ✓ Gregory D. Clark, Esq., attorney for Defendant
Amy McGrotty, Esq. & Michelle Garcia Gilbert, Esq., attorney for Plaintiff