

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

CASE NO: **502010CA013833XXXXMBAW**

BAC HOME LOANS SERVICING, LP
PLAINTIFF,

v.

FRED DAWSON ET AL
DEFENDANTS.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that a hearing has been set before the Honorable Meenu Sasser at the Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, Florida, as follows:

Motion: **Defendant's Motion to Dismiss Complaint For Failure to Comply with Florida Supreme Court Order, and To Award Attorneys Fees**

Date: June 14, 2010 at 8:45 A.M.

Location: Room 4A, Palm Beach County Courthouse,
205 N. Dixie Highway, West Palm Beach, FL 33401-4522

Pursuant to local rules, the undersigned certifies that a good faith effort has been made to resolve the matter.

In accordance with the AMERICANS WITH DISABILITY ACT, if you are a person with a disability who needs any accommodation to participate in this hearing, you are entitled at no cost to you to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, 205 North Dixie Highway, Room 5.2500, W.P.B., FL 33401 telephone (561) 355-4380 within two (2) working days of your receipt of this order; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was transmitted by first class mail this

5th day of June, 2010 to Margaret E Kepler, LAW OFFICES OF DAVID J. STERN, P.A., 900 S. Pine Island Rd., Suite 400, Plantation, FL 33324-3903; Unknown heirs of Fred Dawson at 12001 Poinciana Blvd. #204, Royal Palm Beach, FL 33411.

By:



Jean A. Winters

Florida Bar No: 24698

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June 5, 2010

The Honorable Meeru Sasser
Palm Beach County Courthouse, Main Branch
205 N. Dixie Highway
West Palm Beach, FL 33401-4522

RE: BAC HOME LOANS SERVICING, LP v. FRED DAWSON ET AL
CASE # 2007CC012917XXXX SB

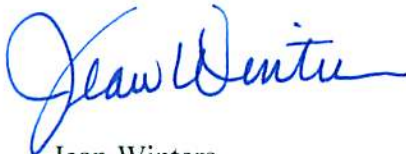
Dear Judge Sasser:

Enclosed please find a copy of Defendant GREENWAY VILLAGE SOUTH ASSOCIATION NO. 1, INC.'s Motion to Dismiss Complaint for Failure to Comply with Florida Supreme Court Order, and to Award Attorney's Fees, as well as a copy of the Notice of Hearing on same.

The hearing is scheduled to be heard on May 14, 2010 at 8:45 A.M. before your Honor. The original Notice of Hearing has been filed with the Clerk. Pursuant to the division requirements, a copy of both the motion and the notice was also emailed to your Honor (as well as opposing counsel).

Should you have any questions, or require additional information, please do not hesitate to contact this office at 561-516-0922.

Respectfully,



Jean Winters

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

CASE NO: **502010CA013833XXXXMBAW**

BAC HOME LOANS SERVICING, LP

PLAINTIFF,

v.

FRED DAWSON ET AL

DEFENDANTS.

**DEFENDANT'S MOTION TO DISMISS COMPLAINT
FOR FAILURE TO COMPLY WITH FLORIDA SUPREME COURT ORDER
AND
TO AWARD ATTORNEYS FEES**

DEFENDANT GREENWAY VILLAGE SOUTH ASSOCIATION NO. 1, INC., by and through undersigned counsel, and pursuant to Fl. R. Civ P. Rule 1.420 (b), moves this Honorable Court to dismiss Plaintiff's complaint filed in this cause on May 25, 2010 and to award attorney's fees and as grounds states:

1. Plaintiff's Complaint was not verified in violation of Rule 1.110(b) Fl. R. Civ P. which states in relevant part:

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement: "Under Penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

2. The Supreme Court of Florida, in case number SC09-1460, on February 11, 2010, amended Rule 1.110(b) Fl. R. Civ. P. to require verification of all residential mortgage foreclosure complaints.

3. On June 3, 2010, the Supreme Court of Florida affirmed this determination by denying a

rehearing of its February 11, 2010 order.

4. Because Plaintiff failed to comply with the Florida Supreme Court order and Rule 1.110(b) Fl. R. Civ P., Plaintiff's complaint must be dismissed. *See Kinzel v. City of North Miami*, 212 So.2d 327 (Fla. 3rd DCA 1968)(Failure to file verified complaint pursuant to statutory requirement warranted dismissal).

5. Plaintiff's counsel is one of the largest foreclosure law firms in the state., and is aware of the Florida Supreme Court's order and the rules of civil procedure. Plaintiff's willful failure to verify the complaint has wasted the time of this Court and the time of the undersigned.

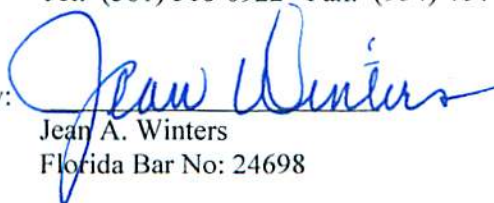
WHEREFORE, Defendant Greenway Village South Association No. 1, Inc. respectfully requests that this Court dismiss Plaintiff's Complaint and award Defendant attorneys fees for having to file a paper responding to the unverified complaint.

CERTIFICATE OF SERVICE

I certify that a true and correct copy hereof has been furnished by mail on June 5, 2010 to Margaret E Kepler , Esq., Attorney for Plaintiff, Law Offices Of David J. Stern, P.A., 900 S. Pine Island Road, Suite 400 Plantation, Florida 33324-3920 ; Unknown Heirs of Fred Dawson at 12001 Poinciana Blvd #204, Royal Palm Beach, FL 33411.

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By:


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