

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

BAC HOME LOANS SERVICING,
LP F/K/A COUNTRYWIDE HOME
LOANS SERVICING, L.P.,

Petitioner,

vs.

DCA Case No. 2D11-_____
L.T. Case No. 51-2009-CA-7656-ES

BILL R. STENTZ AKA
WILLIAM R. STENTZ, et al.,

Respondents.

MOTION TO TAKE JUDICIAL NOTICE

Petitioner, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P. ("BAC"), requests this Court to take judicial notice of the two attached trial court orders issued by trial judges within this district—(1) Order Denying Without Prejudice Motion to Amend Complaint issued November 2, 2010 by Pasco County Circuit Judge Lynn Tepper (the same trial judge as in the instant case) in *Wells Fargo Bank, N.A. v. Jose A. Ramos*, Case No. 2010-CA-6008-ES and (2) Order Dismissing First Amended Complaint issued October 21, 2010, by Pinellas County Circuit Judge Anthony Rondolino in *Deutsche Bank National Trust Company f/k/a Bankers Trust Company of California, N.A. v. Donnie J. Decker*, Case No. 09-20548-CI-13—because these documents give additional

information necessary to the resolution of BAC's petition for writ of *certiorari*. This is not a request for judicial notice for the purpose of presenting facts to this Court that were not considered by the trial court. This is a request for judicial notice for the purpose of providing this Court with information as to why granting jurisdiction to hear this petition is critical—because the orders for which judicial notice is sought reflect that the ruling in this case potentially impacts thousands of foreclosure cases within this district.

BAC seeks a writ of *certiorari* quashing the trial court's December 1, 2010 order (the "Order") granting in part and denying in part Respondents, Bill R. Stentz and Jacklyn L. Stentz's (the "Stentzes") Motions Directed to Complaint and Notice of Intent to Dismiss under Florida Statutes Section 57.011. The Order directs BAC to amend its foreclosure complaint against the Stentzes and include allegations in the amended complaint that are not required under Florida law. The Order also directs that the amended complaint be verified but mandates verification language contrary to the foreclosure complaint verification language required by the Florida Supreme Court under Florida Rule of Civil Procedure 1.110(b). Indeed, the Order makes no mention at all of rule 1.110(b) or its requirements. Therefore, BAC's petition for writ of *certiorari* argues that the Order departs from the essential requirements of law and will cause material injury to BAC for which no adequate remedy on appeal exists.

BAC requests this Court to take judicial notice of the two attached orders referenced above because these orders show that granting jurisdiction in this case is of utmost importance. The error in the Order from which BAC seeks *certiorari* review is not unique to this case and potentially impacts thousands of foreclosure cases because the trial judge in this case and other trial judges within this district are repeatedly mandating verification language in foreclosure complaints in direct contravention of the Florida Supreme Court rule. Section 90.202(6), Florida Statutes, provides that a court may take judicial notice of "[r]ecords of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States." Thus, this Court may take judicial notice of orders issued by the circuit courts of this state.

BAC stresses that this is not a case where judicial notice is sought for the purpose of presenting facts to this Court that were not considered by the trial court. *See, e.g., Hillsborough County Board of County Commissioners v. Public Employees Relations Commission*, 424 So. 2d 132, 134 (Fla. 1st DCA 1982) (holding that the Florida Evidence Code does not apply to appellate proceedings because "[a]n appellate court will not consider evidence that was not presented to the lower tribunal because the function of the appellate court is to determine whether the lower tribunal committed error based on the issues and evidence before it"). Rather, judicial notice is sought for the sole purpose of providing this

Court with information as to why granting jurisdiction to hear BAC's petition is critical—to prevent continued error in thousands of of foreclosure cases within this district. Moreover, even if the First District's decision in *Hillsborough County* were analogous to this case, and it is not, that decision conflicts with a Third District Court of Appeal decision and is disputed by several authorities on evidence. In *City of Miami v. F.O.P., Miami Lodge 20*, 571 So. 2d 1309, 1318 n. 10 (Fla. 3d DCA 1989), the Third District concluded:

We recognize that the First District has stated that the Florida Evidence Code does not apply to appellate proceedings, [*see Hillsborough County*, 424 So. 2d at 134], but the correctness of this statement is debatable. *See* 1. C. Ehrhardt, [*Florida Evidence*] § 207.2, at 58 n. 7 ("The decision is unwise and should not be followed as precedent."); M. Graham, [*Handbook of Florida Evidence*] § 207.1, at 81 n. 4 ("The court's statement that the Florida Evidence Code does not apply to appellate proceedings is dictum that should not be followed.").

Indeed, this Court has relied on the Florida Evidence Code in taking judicial notice. *See, e.g., Lagarde v. Outdoor Resorts of America, Inc.*, 428 So. 2d 669, 670 (Fla. 2d DCA 1982) (noting that the Court issued an order pursuant to section 90.202(6) that it would take judicial notice of the records of the prior appeal); *see also, Macnamara v. Kissimmee River Valley Sportsmans' Ass'n*, 648 So. 2d 155, 163 (Fla. 2d DCA 1994) (taking judicial notice of brief filed in Florida Supreme Court to help the Court interpret the Supreme Court's decision). Further, the judicial notice provisions of the Florida Evidence Code do not distinguish between

trial or appellate courts because they refer to "a court," *see* FLA. STAT. §§ 90.201-90.205, and specifically contemplate "subsequent proceedings," *see* FLA. STAT. § 90.207.

Although the two attached orders were issued in cases other than the instant case, they bear direct relevance to the allegations in the petition for writ of *certiorari* and highlight why it is of critical importance that this Court grant jurisdiction in this case. *See Falls v. National Envir. Products*, 665 So. 2d 320 (Fla. 4th DCA 1995) ("it is fitting and proper that a court should take judicial notice of other actions filed which bear a relationship to the case at bar"); *Gulf Coast Home Health Services of Florida, Inc. v. Department of Health and Rehabilitative Services*, 503 So. 2d 415 (Fla. 1st DCA 1987) (an appellate court can take judicial notice of proceedings in the trial court that bear a direct relationship to the case before it because, to do otherwise "would handicap the court with a tunnel vision that could lead to inconsistent results in some instances and would simply waste judicial resources in others"). The attached orders show that the trial judge in the instant case, and other trial judges within this district, are improperly prohibiting verification of foreclosure complaints on "best information and belief" when this language is required by the Florida Supreme Court rule. In the first attached order, issued by Judge Lynn Tepper in *Wells Fargo Bank, N.A. v. Jose A. Ramos*, Pasco County Circuit Court Case No. 2010-CA-6008-ES, the judge

mistakenly concludes that rule 1.110(b) does not permit foreclosure complaints to be verified "to the best of my knowledge and belief" and mandates different language under section 92.525, Florida Statutes, which she simply does not have the authority to do. Pinellas County Circuit Court Judge Anthony Rondolino reached a similar erroneous conclusion in the second attached order in which he concluded because of section 92.525, "the court will reject verifications based on 'information and belief' or using language indicating the declaration is only true and correct 'to the best of my knowledge and belief.'" (Att. 2, at 2). Like Judge Tepper's orders in this case and the *Ramos* case, this conclusion directly contravenes rule 1.110(b). In this case, the orders at issue are *exactly* the type of information the court needs to fully adjudicate the issues under review so that it is not deciding the issues in a vacuum and understands that this petition impacts far more foreclosure cases than just this action.

WHEREFORE, BAC requests that this Court take judicial notice of the two attached orders—(1) Order Denying Without Prejudice Motion to Amend Complaint issued November 2, 2010 by Pasco County Circuit Judge Lynn Tepper (the same trial judge as in the instant case) in *Wells Fargo Bank, N.A. v. Jose A. Ramos*, Case No. 2010-CA-6008-ES and (2) Order Dismissing First Amended Complaint issued October 21, 2010, by Pinellas County Circuit Judge Anthony Rondolino in *Deutsche Bank National Trust Company f/k/a Bankers Trust*

Company of California, N.A. v. Donnie J. Decker, Case No. 09-20548-CI-13—

because they bear directly on the allegations in BAC's petition for writ of *certiorari* and show that those allegations have far-reaching impact and implications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail to Bill R. Stentz, AKA William R. Stentz, c/o Gregory D. Clark, Esq., 1201 S. Highland Avenue, Suite 9, Clearwater, Florida 33756; Jacklyn L. Stentz, c/o Gregory D. Clark, Esq., 1201 S. Highland Avenue, Suite 9, Clearwater, Florida 33756 (Counsel for Respondents); Tierra Del Sol Homeowner's Association, Inc. c/o Rizzetta & Company, Inc., R.A., 5844 Old Pasco Road, Suite 100, Wesley Chapel, Florida 33544; and, Lindsey D. Lamb, Florida Default Law Group, P.L., P.O. Box 25018, Tampa, Florida 33622 (Trial Counsel) and the Honorable Lynn Tepper, 38053 Live Oak Avenue, Room 106B, Dade City, FL 33523 (the circuit judge who entered the order at issue), this 3rd day of January, 2011.



LESLIE UTIGER