

USPS CERTIFIED MAIL NO: 7009 2250 0000 9133 6047  
FEDEX AIRBIL NO: 8737 7353 0671

: IN THE CIRCUIT COURT OF THE  
NINETEENTH JUDICIAL CIRCUIT IN  
AND FOR ST. LUCIE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION  
CASE NUMBER: 56-2008-CA-000066  
JUDGE: LARRY SCHACK

EMC MORTGAGE CORPORATION

:

Plaintiff

VS:

KAREN A. KRONDES, ET AL

Defendants(S).

: October 14, 2010

**MOTION FOR ENTRY OF ORDER PROHIBITING PLAINTIFF FROM ASSIGNING,  
US TRANSFERRING, AND/OR SELLING ALLEGED LOST NOTE AND MORTGAGE**

**COME NOW**, the Defendants, Karen A. Krondes and John J. Krondes, in the above-entitled action, respectfully file this motion and move the Court for issuance of a special order of protection barring the alleged Plaintiff, EMC Mortgage Corporation, from Assigning, Transferring, and/or selling the alleged Note and Mortgage. The alleged Plaintiff has recently attempted a fraudulent transfer and/or sale of the subject alleged lost Note and Mortgage, causing further harm on the Defendants, Karen A. Krondes and John J. Krondes. The more particular grounds in support of this motion are set forth in the following paragraphs and Memorandum of Law.

1. Following the issuance of Defendants' *Motion To Dismiss With Prejudice* to the alleged Plaintiff, and its counsel, Law Offices Of David J. Stern, on July 29, 2010, the Defendants received from EMC Mortgage Corp by non-certified mail, "notice" from EMC that the alleged servicing and or other ownership rights in our property in Jensen Beach, Florida has been transferred and or sold to Marix Servicing, alleged effective date, August, 16, 2010. The Defendants immediately served EMC Mortgage and Marix Servicing on August 17, 2010 by FedEx (Airbill No. 8737 7353 0649) and USPS Certified Mail (Cert. Mail No. 7009 2250

0000 9133 5972) with a *Notice of Fraudulent Transfer*. A subsequent *Notice of Fraudulent Transfer*, sent September 7, 2010, via FedEx (Airbill No. 8726 4617 0627), U.S.P.S Certified Mail (Cert. Mail No. 7010 0290 0001 5181 8148) and other notices and warnings to Cease and Desist Collection Activity have been additionally served upon Marix Servicing.

2. The Defendant's served EMC Mortgage and Law Offices Of David J. Stern on July 30, 2010 with their *Motion In Limine*. Plaintiff and Law Offices Of David J Stern received said motion on August 2, 2010 , first by FedEx (Airbill No. 8726 5096 5519) and following by USPS Certified Mail (Cert. Mail No. 7010 0780 0001 8548 2474). In said associated motion, Defendant's asked that alleged Plaintiff EMC Mortgage be prohibited from introducing into evidence the alleged Promissory Note and Mortgage. It was further sought that an Order be established precluding "EMC" from impetuously finding the alleged *lost* promissory note and mortgage.

### **EMC CANNOT SELL A NOTE AND MORTGAGE WHICH IS LOST OR DESTROYED**

3. The alleged Plaintiff, EMC Mortgage Corporation, and Law Offices Of David J. Stern plead in their undated Complaint filed January 3, 2008, that the alleged Note and Mortgage were "lost, destroyed or stolen." Plaintiff further represented that at time of construction of its Complaint that it was not in possession of the original alleged Note and Mortgage, and that their whereabouts could not be determined. The stated parties never disclosed which particular account and story it was factually asserting, or any proof that it ever had physical possession.
4. According to the portrayal of these multiple offered scenarios by Law Offices Of David J. Stern and "EMC", it was stated in paragraph 22 of COUNT II that it is also feasible that another entity or person(s) may claim alleged ownership and attempt to enforce the same alleged lost, destroyed, and/or stolen Note and Mortgage. Such highly possible events would be devastating to the Defendants. In the midst of the recent discovery by U.S. courts of rampant foreclosure fraud, cases have been documented, relevantly in Florida, where multiple lawsuits

have been filed by different Plaintiff Banks, seeking to foreclose on the very same alleged Note and Mortgage. In Court Hearing on April 7, 2010, Honorable Anthony Rondolino, in the matter of GMAC Mortgage, LLC vs. Debbie Visicaro, et al (Case No. 07013084CI), 6<sup>th</sup> Judicial Circuit Court in Pinellas County, Florida, described how he personally experienced and presided over a matter where he found there was a different plaintiff pursuing a foreclosure proceeding on the same note and mortgage as the one that was being proceeded on by Judge Rondolino. Both of the complaints in the separate cases contained allegations that the disunited plaintiffs were the owners and holders of the same alleged note.

5. EMC Mortgage Corp, by and through its counsel, Law Offices Of David J Stern, it is alleged, deceptively placed another homeowner's Note and Mortgage in the court file for this case. Defendants have previously described in pleadings how during physical inspection of the court file, shortly after entry of the original default judgment in this matter, Civil Clerk Supervisor Nancy Bennett and Defendant John Krondes discovered distinctly different and non-related Note and Mortgage documents in the post-judgment file. The alleged lost, destroyed, and/or stolen original documents, nor any other version of said records were in the court file upon physical inspection by Nancy Bennett and John Krondes. Court Clerk Nancy Bennett had no explanation how or why the wrong Note and Mortgage was in the Krondes case file.
6. The Defendants, as part of this application for protection, request that an Order be established by the Court precluding the alleged Plaintiff, EMC Mortgage Corporation, and/or Law Offices Of David J. Stern, from impetuously finding the alleged lost promissory note and mortgage. The stated parties have at all times maintained their position and declaration that said original documents are not in their possession, are still unaccounted for, and are either lost, destroyed, or stolen.
7. EMC Mortgage Corp, and Law Offices Of David J Stern have failed to prove that the alleged Plaintiff was ever the holder, and in possession of the alleged note.

**The Four Corners Rule**

8. The Court is Bound by the Four Corners Rule, and should find that Plaintiff, EMC Mortgage Corporation, is tied to the allegations in its Complaint and therefore be prohibited from introducing; and subsequently Assigning, transferring, and/or selling a promissory Note that it has at all times maintained was lost and not in its possession.
9. In Opinion filed September 8, 2010, the Third District Court Of Appeal of the State Of Florida upheld the concrete foundation of the **Four Corners Rule**. In the matter of Halsey Minor and Save Hialeah Racing, Inc. vs. John J. Brunetti, Hialeah, Inc., Bal Bay Realty, Ltd, and the City of Hialeah, Florida, an Appeal from the Circuit Court for Miami-Dade County, the appellate court reversed the trial court's Final Judgment of Dismissal With Prejudice. The Third District Court Of Appeal ordered, "We reverse because the trial court failed to confine itself to the four corners of the complaint when it dismissed the cause, as the court is required to do..." The appellate court continued, "Here, the trial court considered factual material beyond the facts alleged within the four corners of the complaint."

**Law Offices Of David J. Stern and EMC Swore Everything In The Complaint Was True**

10. In its undated *Affidavit In Support Of Plaintiff's Motion For Summary Judgment*, Law Offices Of David J. Stern by Cheryl Samons, a paralegal purporting to be acting on behalf of EMC Mortgage Corporation, swore "that each and every allegation in the Complaint is true." According to the alleged sworn testimony of EMC Mortgage, Law Offices Of David J. Stern, and Cheryl Samons, the Court, being bound to the *Four Corners Rule*, must find as a matter of law that it should rely on the representations made, that in fact the alleged Note and Mortgage are either lost, destroyed, and/or stolen. Cheryl Samons, on behalf of EMC Mortgage, by its admissions, further swore that the alleged Plaintiff was not in possession of the alleged Note and Mortgage at the time of filing, and by such unwavering testimony filed February 13, 2009,

13 months after commencement of this action, re-affirmed that such original documents were still lost, and the true alleged holder, if any, unknown.

11. Law Offices Of David J. Stern, Cheryl Samons, and EMC Mortgage Corporation, have never relinquished its representations and alleged version of truth. Therefore, as a matter of law, this Honorable Court has no reason or jurisdiction to find that the alleged original Note and Mortgage have ever been located, proven to be owned or held by EMC Mortgage Corporation, and importantly a part of this subject lawsuit and case file.

12. Defendant John Krondes has filed sworn affidavits; attesting after several times, and different occasions, that he personally viewed and inspected the Post-Judgment file, and found no such original documents. The alleged original documents which much later magically appeared without proper "notice" and legal disclosure and introduction to the court are alleged to be fraudulently manufactured.

13. The alleged Plaintiff, EMC Mortgage Corporation, and its counsel Law Offices Of David J. Stern never served the Defendants with any legal notice in this matter that the alleged Note and Mortgage have ever been found, or that such parties had gained possession of such documents. Furthermore, said parties failed, and at no time ever lawfully provided proper "notice" to the Court, by way of any pleading, per *Florida Rules Of Civil Procedure*, that such original documentation was ever found, and/or being subsequently filed.

**Plaintiff Repeatedly Ignored and/or Refused Compliance With Rules Of Discovery**

14. The alleged Plaintiff, EMC Mortgage Corporation, and Law Offices Of David J. Stern have been in enduring multiple violation of Court Rules and particularly Florida Discovery Rules, which pursuant to F.R. C. P. Rule 1.350, provide every party and litigant a period of Thirty (30) Days to respond to served discovery. EMC and its counsel iniquitously failed for Thirteen (13) Months to produce any valid response to the Defendant's First (1<sup>st</sup>) Set of *Requests For*

*Production* served March 5, 2009, and to date, said parties have additionally failed to file any response to the Defendants' Second (2<sup>nd</sup>) Set of *Requests For Production*, served by USPS Certified Mail (Cert. Mail # 7009 2250 0002 3686 4374) on March 19, 2010. Now Seven (7) Months after service of Defendants' 2<sup>nd</sup> *Request For Production*, Plaintiff is legally barred from attempting an unlawful and unauthorized response per stipulation of Florida Rule 1.350 to either the First or Second served set of discovery requests.

15. The Defendants, Karen and John Krondes, particularly requested in their 2<sup>nd</sup> *Request For Production* (dated March 17, 2010) EMC Mortgage Corp and its counsel Law Offices Of David J Stern produce documented proof that the alleged Lost and/or Stolen Note was reported as such at the alleged time of loss to a proper authorized State or Federal Agency. It was further requested that the specific date and authority of which report was filed be produced.

**Ex-Stern Employee Tammie Lou Kapusta Admits Fraudulent Stern Practices**

16. In Deposition of Tammie Lou Kapusta, on September 22, 2010, by the Office of the Attorney General of the State Of Florida, in RE: Investigation Of Law Offices Of David J. Stern, P.A., Ex-David J. Stern employee Tammie Lou Kapusta details the numerous known illegal practices conducted by Law Offices Of David J. Stern.

17. Ms. Kapusta explained that Cheryl Samons (David J. Stern Paralegal) apparently signed thousands of Affidavits on behalf of lenders, although there was no record of any valid "power of attorney".

18. Affidavits and assignments on behalf of lenders were being prepared by workers offshore in Guam and the Philippines, although such persons were not involved in any of the subject transactions, and had no personal knowledge of the facts as alleged or the records of the homeowners being foreclosed upon {deposition of Tammie Lou Kapusta, 9/22/10, pgs. 9-11}.

19. Smiling, Tamie Lou Kapusta describes how *Assignments of Mortgage* were fraudulently manufactured after date of filing of the foreclosure action, and many times after entry of judgment in violation of Florida Law. Ms. Kapusta stated, "Assignments were done sometimes after the final judgment was entered." Q Do you know why that is? A "Because that's what we were directed to do by Cheryl (Cheryl Samons)" {deposition of Tammie Lou Kapusta, 9/22/10, pg. 19, lines 1-13}. Stern's Law Firm would file *lis pendens* in the land records although no assignment existed. Importantly, Florida Law requires all instruments, documents, contracts, agreements, relevant and material to the pleadings be attached to the complaint, F.R.C.P. Rule 1.130(a).
20. **Execution Of Assignments Was Illegal:** Ms. Kapusta recounts how Cheryl Samons would sign stacks of Assignments (created overseas) on a round table once a day. Although Florida Law requires the signor to sign documents in front of a notary, it was standard practice at Law Offices Of David J. Stern to execute *Assignments Of Mortgage* and *Affidavits* out of the view and presence of a State Notary. Q Would these notaries be there watching her as she signed? A No. In fact, the fraudulent practices at the Stern Law Firm seemed to root much deeper; unlicensed employees commonly used other Florida State Notary Stamps to complete the execution of legal documents. Tamie Lou Kapusta represents, "As far as notaries go in the firm I don't think any notary actually used their own notary stamp. The team used them." Ms. Kapusta shockingly reveals further that not only did she witness such unlawful practices, she states, "I was part of that." Tamie Kapusta was asked, Q You did it? Are you a notary? A "No, I'm not" {deposition of Tammie Lou Kapusta, 9/22/10, pg. 21, lines 19-25, pg. 22, lines 7-20}.
21. Tamie Lou Kapusta further divulges in deposition, that even the witnesses were part of the larger conspiracy at the Stern Law Firm. Q What about the witnesses? A Those would be

signed by juniors who were-- Q Standing there? A Here, sign this. It has to go to Cheryl, sign it. Then it would go and sit at the desk where Cheryl would sign everything. Q Out of view of the notary and out of view of the witnesses? A Correct {deposition of Tammie Lou Kapusta, 9/22/10, pg. 23, lines 17-25}.

22. ***Cheryl Samons Ordered Others To Sign Her Name:*** Deponent Tamie Lou Kapusta unmasks the fraudulence known at Law Offices Of David J. Stern as the *name game*. Ms. Kapusta attests, "There were people that were responsible for signing Cheryl's name. Cheryl, Tammie Sweat, and Beth Cerni. Those were the only three people that could sign Cheryl's name. If you ever look at assignments you'll see that they are not all the same"....Q Did you see somebody sign Cheryl's name? A Yes.....Q Was it at her direction? A Yes....Q Was David Stern aware of this as far as you know? A Yes {deposition of Tammie Lou Kapusta, 9/22/10, pg. 24, lines 9-13 & 24-25, pg. 25, lines 5-6, and pg. 26, lines 1-3}.

23. **Assignments And Affidavits Never Read By Cheryl Samons:** Tamie Lou Kapusta details in deposition of 9/22/10, that Cheryl Samons of Law Offices Of David J. Stern, who claims under oath to have "personal knowledge" on behalf of foreclosing banks, does not read anything she signs. Q Do you know when these assignments were executed if Cheryl one, two, or three ever read them? A No, they were never read. Q They were just signed? A Correct {deposition of Tammie Lou Kapusta, 9/22/10, pg. 26, line 25, & pg. 27, lines 1-4}.

24. **Affidavits Of Indebtedness Known To Be Incorrect Filed Anyway:** Deponent Tamie Lou Kapusta elucidates how Cheryl Samons, and Law Offices Of David J. Stern would create and file with the Courts known incorrect and false *Affidavits Of Debt* to ensure final judgments would enter. Worse yet, multiple signors would affix the Cheryl Samons name. Q All signing Cheryl's name? A Correct. Q Were they ever read or just signed? A They were just signed. Q Did you ever see them just being signed? A Yes {deposition of Tammie Lou Kapusta, 9/22/10, pg. 38, lines 17-25, & pg. 39, lines 1-25}.



25. **Lost Notes Are Common Practice At David J. Stern:** Tammie Lou Kapusta evidences, "Some of the things that were done there just were not on the up and up"... "We had lost notes. That was another common practice." Ms. Kapusta testifies that the alleged lost notes were never found again. She elaborates by saying, "The Practice of the documents like mortgages and notes was really very disarray"... "Mortgages would get placed in different files. They would get thrown out" {deposition of Tammie Lou Kapusta, 9/22/10, pg. 42, lines 21-22, pg. 43, lines 4-5, 22-25, & pg. 44, lines 8-9}.

26. **50% Of Daily Calls Received By Deponent At Stern Law Offices Complained Of**

**Defective Service:** Deponent Tammie Lou Kapusta reports how colossal amounts of people protested not being served. "Those were most of my calls during a day. Any given day I'd probably have a hundred different calls and most of it was service" Cheryl Samons "would call a business decision on whether the service was completed or not. We were directed to do whatever she said" Q Didn't the process server deliver a return of service? A Yes Q And would they say that it was served? A Yes Q And oftentimes they weren't? Is that what you're saying? A Correct {deposition of Tammie Lou Kapusta, 9/22/10, pg. 18, lines 21-23, pg. 14, lines 16-19, 20-25, pg. 15, lines 1-2}.

**Fraudulent Affidavits Of Service Enabled Plaintiff To Win Judgment In Krondes Case**

27. Alleged Plaintiff, EMC Mortgage Corporation, together with its Counsel Law Offices Of David J. Stern and Provest LLC, caused to be filed in this action fraudulent and fallacious Returns Of Service, paving the way for this court to earlier award Plaintiff a default judgment. Judge F. Shields McMannus innocently relied upon false affidavits to find jurisdiction to enter judgment against Defendants. Provest LLC swore in such Affidavits that Karen A. Krondes was personally served and identified; served at her home in Manhattan, located at 360 West 34<sup>th</sup> Street, Apartment 5H, New York, NY 10001 even though Plaintiff and Law Offices Of David J. Stern had express knowledge that Ms. Krondes did not live in New York at all. Karen

A. Krondes moved to Connecticut in 2006, two (2) years prior to the filing of this action. Provest LLC in association with Plaintiff and Stern Law Offices filed a Second (2<sup>nd</sup>) False Affidavit Of Service swearing that defendant John Krondes was served at his home and usual place of abode at 491 White Oak Shade Rd. New Canaan, CT 06840, despite the fact that Mr. Krondes never lived in New Canaan, and Plaintiff and Law Offices Of David J Stern particularly knew that John Krondes lived in Stamford, Connecticut. The stated parties attached an Exhibit "A" to their Complaint which clearly evidenced the true address of the defendants in the State Of Connecticut. The Defendants in May of 2009, moved Judge McMannus to overturn the Default Judgment on convincing evidence that neither Defendant was served at all with a Complaint, nor at the addresses which EMC Mortgage Corporation, Law Offices Of David J. Stern and Provest LLC knew to be incorrect. The Defendants maintain, that the stated parties employed the use of perjury and calculated fraud to rush the Court to award a Default Judgment in their favor, purposely providing service of all pleadings to incorrect addresses.

**Alleged Plaintiff Lacked Standing To Bring This Action In Florida**

28. EMC Mortgage Corporation, along with its counsel Law Offices Of David J. Stern, failed to provide any proof at time of filing that it was the "Real Party In Interest."
29. Although the alleged Plaintiff and the David J. Stern Law Firm purport in the Complaint that EMC Mortgage Corporation is the owner and holder of the alleged Note and Mortgage by virtue of an assignment to be recorded; no such evidence existed validating such claims when its complaint was filed on January 3, 2008.
30. Florida Law required that all such necessary proof of standing be attached to the Plaintiff's Complaint. There was no valid assignment affixed to EMC Mortgage Corp's Complaint as required by Florida Rules Of Civil Procedure, Rule 1.130(a). Thus, as a matter of law in the State Of Florida, EMC Mortgage Corporation ("EMC"), the alleged Plaintiff, had no "standing"

and its fatally defective complaint lacked legal sufficiency to invoke the Jurisdiction of the Court.

31. ***Alleged Assignment Is Legally Insufficient and An Instrument Of Fraud:*** The alleged "Assignment" in this matter, is chillingly true to the identical illustration provided by deponent Tammie Lou Kapusta of the standard Assignment Fraud practice at the David J. Stern Law Offices. EMC Mortgage Corporation, together with its counsel Law Offices Of David J. Stern filed in the land records on 12/30/2008, a legally void *Assignment Of Mortgage*, a year after the commencement of this foreclosure action. Ex-Stern employee and deponent Tammie Lou Kapusta, has confirmed in sworn testimony, that such *Fraudulent Assignments Of Mortgage* were even created sometimes after entry of final judgment, for obvious purposes of deceiving the Florida Courts to show an appearance of prior standing; under the order and direction of Cheryl Samons, with full knowledge and endorsement of chief foreclosure boss David J. Stern {deposition of Tammie Lou Kapusta, 9/22/10, pg. 19, lines 1-13}.

32. ***No Chain Of Title Linking EMC Mortgage Corp To Wells Fargo Bank:*** The alleged Plaintiff deceptively tried to bamboozle the Court and Defendants into believing that "EMC" was the owner of the alleged Note and Mortgage because of the attached Exhibit "A" in its Complaint. The alleged mortgage between Karen A. Krondes, John J. Krondes and Wells Fargo Bank, N.A., annexed to EMC Mortgage Corp's Complaint as Exhibit "A" provides no establishment of any legal connection and chain of title linking Wells Fargo Bank, N.A. to EMC Mortgage Corporation. If anything at all could be possibly established through such exhibit, is that Wells Fargo Bank may have had some prior relationship with the Defendants, which further offers proof that EMC Mortgage Corporation is not the "Real Party In Interest."

33. ***Alleged Note Is Not Assigned To EMC Mortgage Corporation:*** The alleged Promissory Note, professed to be owned by the alleged Plaintiff was not specifically assigned and endorsed from Wells Fargo Bank to EMC Mortgage Corporation. Without valid evidence of

such proper legal endorsement, and chain of title of the alleged "note", EMC Mortgage Corporation has no legal authority to represent and make claim that they are the owner of the subject alleged "Promissory Note."

34. ***EMC Mortgage Has No Authority To Foreclose:*** Under the terms of the alleged mortgage ("Security Instrument"), paragraph 22 – *Acceleration; Remedies*, it states that it is stipulated and agreed, that only the Lender may bring foreclosure. EMC Mortgage Corporation at no time executed any agreement with Karen A. Krondes or John J. Krondes, in where it was agreed and understood that "EMC" was a Lender. EMC Mortgage never gave, gifted, and/or otherwise lent any money to the defendants. The alleged mortgage and its offered Exhibit "A" in the alleged Plaintiff's Complaint clearly states that "Lender" is Wells Fargo Bank, N.A.

**EMC Lacks Authority To Sell or Assign The Alleged Note and Mortgage**

35. EMC Mortgage, the alleged Plaintiff, failed and or otherwise refused to comply with the terms of the Defendants' *Request For Validation Of Alleged Debt*, received by "EMC" on January 4, 2010 by USPS Certified Mail (No. 7009 2250 0000 2192 4016). EMC Mortgage Corporation again failed to cure and perform, after receiving the *Notice Of Fault* on March 15, 2010 by USPS Certified Mail (No. 7009 2250 0000 9133 5897) and final *Notice Of Termination Of Rights* on August 2, 2010, USPS Certified Mail (No. 7009 2250 0000 9133 5910).
36. ***Alleged Mortgage Governed By Federal Law:*** Paragraph 16 of the alleged Security Instrument (Mortgage) particularly states that said instrument shall be governed by federal law. The obligation and penalties for failure to comply with Requests For Validation Of Alleged Debt are outlined under United States Federal Law, written in the Fair Debt Collection Practices Act (FDCPA). As a matter of federal law, EMC Mortgage Corporation is legally stopped from maintaining the original collection action pursuant to, but not limited to, 15 USC §1692g(b); inclusive of attempted Sale, Assignment, and/or transfer of the alleged Note and Mortgage.

37. ***EMC Mortgage Cannot Sell Or Assign What It Does Not Own:*** EMC has failed in this lawsuit to provide any valid evidence under Florida Law, that it has “standing” and is the owner of the alleged Note and Mortgage; and thus has no authority to sell or assign something it has no real interest in.
38. ***EMC Mortgage Corp’s Attempted Sale and/or Transfer To Marix Is A Further Fraud:*** The alleged Plaintiff, “EMC”, together with its counsel Law Offices Of David J. Stern, have recently added Marix Servicing to its large list of conspirators attempting unlawful foreclosure on the Defendants Karen A. Krondes and John J. Krondes. After multitudinous failures or refusals to comply with Florida Discovery Rules, and to plead within legal timeframes, knowingly ignoring and violating numerous court rules and the Florida Rules Of Civil Procedure; the alleged rights of the stated parties are legally halted. Unconscionably, in place of coming clean and washing its “Dirty Hands” and letting the current pending action come to a final legal conclusion; EMC Mortgage Corporation assisted by Law Offices Of David J. Stern, have chosen to try to avoid further legal consequences associated with the instant foreclosure matter and hoped to illegally profit from an unlawful sale, assignment, and/or other transfer of the alleged lost, destroyed, or stolen note and mortgage to Marix Servicing of Arizona. The conspiring parties EMC Mortgage Corporation, Law Offices Of David J. Stern, and Marix Servicing have recently in August of 2010 attempted to consummate a sale of an alleged note and mortgage which has never been proven to be owned by EMC Mortgage Corp, and has at all times been claimed to have been lost, destroyed and/or stolen. This highly unfair and predatory lending practice, it is alleged, has been designed for the stated parties to rise above the law and attempt to have Marix Servicing, the new “pretender lender”, try to assume and find a void, non-existent, and permanently unverifiable alleged debt and obligation to be valid; all in deceptive and unlawful hopes that the new conspirator may have better luck at bringing the next illegal foreclosure action on defendants Karen A. Krondes and John J. Krondes.

**39. *Myriad of Illegal Acts And Practices Of "EMC" And Stern Breach Any Alleged Contract:***

The Defendants continually deny and reject any inference or offer of any contract or agreement between EMC Mortgage Corporation and Karen A. Krondes and John J. Krondes. Being said, even in the event that it could ever be proved that such alleged mortgage between the defendants and Wells Fargo could somehow be linked in a chain of title to EMC Mortgage Corporation; then the multitudinous violations of United States Law, Florida Law, Connecticut Law, Arizona Law, and without limitation any and all other applicable state or local laws, described herein this motion, and incorporated from defendants *Motion To Dismiss With Prejudice, Motion To Strike Complaint, Motion In Limine*, and/or others previously filed, should be found by the Court to be substantial and sufficient grounds and evidence of Unconsonability; and thus reason and jurisdiction to withhold foreclosure, and prohibit a further sale and/or assignment. EMC Mortgage Corporation, in allegedly assuming the purported rights of ownership and contract, unequivocally also assumes all obligations and duties to perform in "good faith" at all times, and provide fair and honest lending practices. EMC Mortgage Corporation, thus, would be bound, equally as Wells Fargo Bank to observe and comply with the entirety of paragraph 16 – *Governing Law* of the alleged mortgage.

**40. *Personal Jurisdiction Of Defendants Never Established:*** The horrid stories and sworn testimony about fraudulent practices of *Service Of Process* by the David J. Stern Law Firm by deponent Tammie Lou Kapusta are corroborated and strengthened by the real life acts of fraud and perjury used by EMC Mortgage Corporation, Law Offices Of David J. Stern, and Provest LLC in the instant Krondes matter. As a result of the false and deceptive *Affidavits Of Service* filed by the stated parties at the onset of this case, this court is faced with a procedural nightmare. The Defendants' constitutional rights to "Due Process" have been violated, and such unconscionable acts have prevented this honorable court from having proper personal

jurisdiction over the Defendants. Neither defendant was ever served with a complaint, and thus were never legally "apprised" and "noticed" of the alleged charges being levied against them.

**WHEREFORE**, based on all the foregoing material facts and presentment, the Defendants, Karen A. Krondes and John J. Krondes, move this honorable Court to issue an order prohibiting the alleged Plaintiff, EMC Mortgage Corporation, from attempting, and/or concluding any sale, assignment, and/or transfer of the alleged lost, destroyed, and/or stolen note and mortgage pending the complete and final determination of this lawsuit. As part of this order, defendants ask that all records, documents and evidence be preserved and restricted from removal, alteration, and/or destruction from the Court file by any party or other person(s).

Judgments based on fraudulent service are void, and sufficient reason by itself to warrant dismissal of action with prejudice. This honorable Court, and Judge F. Shields McMannus, who earlier in this matter innocently relied on such fraudulent service methods to award a default judgment, is further confirmation and proof of the truth of the recent testimony of Tammie Lou Kapusta in deposition on September 22, 2010 in the Investigation Of Law Offices Of David J. Stern by the Attorney General Of Florida.

The Defendants, Karen A. Krondes and John J. Krondes, strongly maintain and allege that the highly illegal acts and practices used and implemented by EMC Mortgage Corporation, Law Offices Of David J. Stern, and Provest LLC in this matter to attempt to win a speedy and unlawful foreclosure, are not, and should never be construed as examples of honest mistake or oversight, but should be found by this Court and other applicable authorities to be very well calculated and planned, known fraudulent and/or criminal acts, the nature of which constitute an Interstate Racketeering Enterprise and conspiracy.

Both the courageous testimony of Ex-Stern employee Tammie Lou Kapusta, and the corroboration and affirmation of such heinous acts and practices as described by defendants Karen A. Krondes and

John J. Krondes, in their true life drama with the Law Offices Of David J. Stern and EMC Mortgage Corporation being played out in center stage of this Florida Court; are clear historical messages and warnings to our Courts and Legislators, that imminent change is crucial and necessary to protect our American People and families from further destruction, and the lasting foundation of our legal system and United States Constitution.

The current discovery and crises of Robo-Signors throughout the country, are in most cases, not a problem of shoddy or mistaken paperwork, but rather the intentional and well thought out operation put in place by outfits such as the Law Offices Of David J. Stern, and participating alleged unethical lender banks, to mock and destroy our system of justice and fairness in America. The sworn testimony of Tammie Lou Kapusta and that of the defendants Karen A. Krondes and John J. Krondes in this verified motion, and incorporated previous motions and affidavits in this matter, should be pellucid evidence of the seriousness of the growing rampant national foreclosure fraud crises and the looming destruction of our United States Economy.

For all the above stated reasons, the Defendants' Motion Prohibiting EMC Mortgage Corp from selling, assigning, and/or transferring the subject void and unverifiable alleged debt, note and mortgage should be granted. Lastly, in conjunction and association with the Defendants' other current pending motions, this unlawful and fraudulent foreclosure matter should be **Dismissed With Prejudice**.



**VERIFICATION CERTIFICATE**

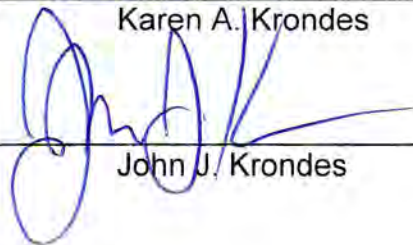
The Defendants, Karen A. Krondes and John J. Krondes, living souls and natural persons, have read the foregoing and have personal knowledge of the contents thereof. The same is true based on their own knowledge, except as to those matters which are therein upon information and belief, and as to those claims or facts, Defendants believe them to be true. We assert under the penalty of perjury of the laws of the United States Of America and the laws of the State Of Florida and Connecticut that the foregoing is true and correct. Defendants hereby certify that the instant *Motion For Entry Of Order Prohibiting Plaintiff From Assigning, Transferring, And/Or Selling Alleged Lost Note And Mortgage* was made in good faith.

*Respectfully Submitted and Without Prejudice*

**The Defendants**

By:   
Karen A. Krondes

Date: 10/14/10

By:   
John J. Krondes

Date: 10/14/10

Karen & John Krondes  
110 Woodside Green, #2A  
Stamford, CT 06905

Tel: (203) 981-1926 Cell  
(203) 322-8800 Office  
(203) 274-5277 Home

Email: [JJKrondes@yahoo.com](mailto:JJKrondes@yahoo.com)

**ORDER**

The foregoing *Motion For Entry Of Order Prohibiting Plaintiff From Assigning, Transferring, And/Or Selling Alleged Lost Note And Mortgage* having been presented to the court;

It is hereby ORDERED: **GRANTED / DENIED**

By the Court:

\_\_\_\_\_  
Clerk / Judge

Date of Order: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

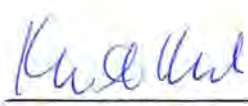
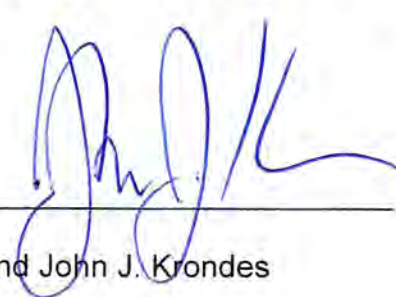
The Defendants, Karen A. Krondes and John J. Krondes, hereby certify that a true and correct copy of the foregoing *Motion For Entry Of Order Prohibiting Plaintiff From Assigning, Transferring, And/Or Selling Alleged Lost Note And Mortgage* has been furnished via FEDEX, on October 14, 2010, and subsequently by U.S. First Class Mail, and USPS Certified Mail to the office of the Plaintiff's counsel David J. Stern, P.A., Attn: Michelle Mason, at the address of 900 South Pine Island Road, Ste. 400, Plantation, FL 33324-3920-3920.

USPS CERTIFIED MAIL NO: 7009 2250 0000 9133 6047  
FEDEX AIRBIL NO: 8737 7353 0671

**Additional Service Was Made to:**

Attorney For Princess Condominium  
Attn: Robert Rydzewski, Esq.  
P.O. Box 66  
Stuart, FL 34995

***Certification Of Service by the Defendants***

---

Karen A. Krondes and John J. Krondes

**NOTARY CERTIFICATION**  
*Of Karen A. Krondes*

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD

DATE: Signature Confirmation made this 14<sup>th</sup> Day of October, 2010

*Personally appeared, Karen A. Krondes personally known to me (or proved to me on the basis of satisfactory evidence of identification) to be a person whose name is subscribed to the within instrument(s) and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed that instrument.*

*Witnessed, my hand and official seal.*

*Stephen F. Borney*

seal



STEPHEN F. BORNET  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 03/1/2012

My Commission Expires: #147793

*Under Oath and Without Prejudice*

*Karen A. Krondes*  
Karen A. Krondes

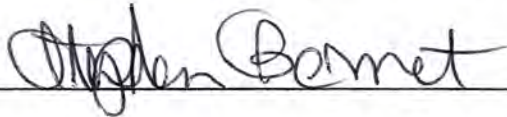
# NOTARY CERTIFICATION *Of John J. Krondes*

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD

DATE: Signature Confirmation made this 14<sup>th</sup> Day of October, 2010

*Personally appeared, John J. Krondes personally known to me (or proved to me on the basis of satisfactory evidence of identification) to be a person whose name is subscribed to the within instrument(s) and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed that instrument.*

*Witnessed, my hand and official seal.*

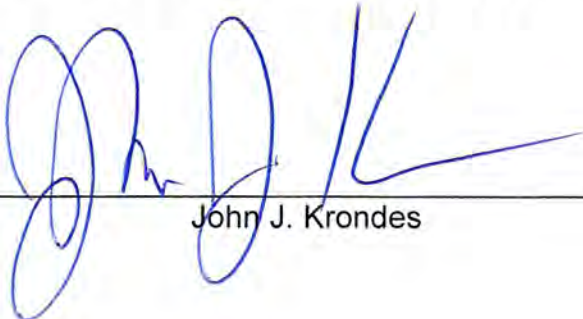
  
\_\_\_\_\_

seal



My Commission Expires: STEPHEN F. BORNEY  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 12/31/11  
#147993

*Under Oath and Without Prejudice*

  
\_\_\_\_\_  
John J. Krondes

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION**

**I. The Plaintiff's Complaint And This Action Should Be Dismissed For Numerous And Multilevel Violations Of Florida Statutes and Florida Rules Of Civil Procedure**

The unlawful acts and practices of the Plaintiff, EMC Mortgage Corporation, Its Counsel, Law Offices Of David J Stern, Agents Provest LLC, and or others, illustrated in all the prior And pending current pleadings of the Defendants, inclusive and not limited to all the factual statements provided herein and throughout this motion are incorporated and constitute conduct as such which is deemed Unconscionable, Unethical, Fraudulent, Negligent, and violates Florida Law.

**A. Legal Axioms Providing Jurisdiction To The Court:**

1. Florida Rules Of Civil Procedure 1.420(b) provides, in pertinent part, that "any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of the court."
2. The dismissal of action or claim for failure of an adverse party to comply with the Rules of Civil Procedure or any order of the Court operates as an adjudication on the merits. *Cash vs. Airport Mini-Storage*, 782 So.2d 983 (Fla. 3d DCA 2001).
3. Defendants, in seeking dismissal with prejudice, rely on *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993), where the supreme court adopted a "set of factors" for "determining whether dismissal with prejudice is warranted" for failure to comply with the rules of civil procedure. The following detailed account of the malfeasance of EMC Mortgage Corp., Law Offices Of David J. Stern, ProVest LLC, and or other agents, is clear evidence that the six factors giving rise to Dismissal With Prejudice, outlined in Kozel by the Florida Supreme Court, have been expressly met (All prior pleadings by the Defendants and such evidence as cited throughout this motion is incorporated):
  - a. The disobedience and misconduct described above, throughout this motion, illustrated through included case law, and incorporated as previously stated by Plaintiff's counsel, Law Offices Of David J Stern, was willful and deliberate. In fact, such activity complained of is not isolated to this case, nor example and possibility of mistake; contrarily, Law Offices of

David J Stern has employed many of the identical calculated fraudulent and inappropriate methods and acts in like foreclosure actions all over the State Of Florida. Recent case law previously cited within this motion stands as confirmation and justification for dismissal with prejudice.

- b. Plaintiff's counsel has very recently and within the past year had numerous judgments vacated, complaints and foreclosure actions dismissed with prejudice as a sanction for its misconduct.
- c. Defendants charge upon information and belief, that EMC Mortgage was involved in the disobedience, as it both directly and or indirectly, manifested to Law Offices Of David J Stern to avoid compliance with such laws and rules. Further, EMC Mortgage provided its counsel with much of the information for which to manufacture fraudulent tools.
- d. The stated and incorporated disobedience of Law Offices of David J Stern and EMC Mortgage has prejudiced and harmed the Defendants in many fashions. First, The Defendants and their family have been burdened with perpetual stress and emotional harm over the lengthy ongoing fraud and deception of the stated parties. Second, The Defendants have incurred mounting costs in the defense of this action and the protection of their home. Third, there has been undue delay in this action stemming from the deceit and unconscionable acts of the stated parties, and hence, the necessary steps taken to uncover the fraud and misconduct of the Plaintiff, its counsel and agents.
- e. Plaintiff's counsel, Law Offices Of David J Stern have at no time offered any valid and reasonable justification for its non-compliance. Similarly, the same unorthodox and non-compliant issues frequently appear to be a constant theme in the litigation strategy of the Stern Law Operation.

- f. The above and herein stated misconduct, disobedience and gross disrespect of Florida Laws and Rules of Court, by Plaintiff, Law Offices Of David J Stern, and its agents, in the current case and others throughout Florida, have greatly caused systematic problems, clogged the judicial machinery, spurred investigations, caused unusual delays, and is a hindrance and havoc on the administration of justice.

## **II. Plaintiff Meets None Of The Criteria For Standing Under Florida Law**

1. Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bringing the claim be recognized in the law as being a real party in interest entitled to bring the claim. This entitlement to prosecute a claim in Florida courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. Kumar Corp. vs. Nopal Lines, Ltd. et al, 462 So. 2d 1178, (Fla. 3d DCA 1985).
2. Under Florida Law, A separate entity cannot maintain suit on a note payable to another entity unless the requirements of Rule 1.210(a) of the Florida Rules Of Civil Procedure and applicable Florida Law are met. Corcoran vs. Brody, 347 So. 2d 689 (Fla. 4<sup>th</sup> DCA 1977).
3. Florida Rules Of Civil Procedure, Rule 1.130(a) requires a Plaintiff in a Foreclosure Action to attach copies of all bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought to its complaint. Plaintiff, EMC Mortgage Corporation, has failed to attach any document pursuant to Florida Law that supports the allegations in its Complaint and subsequent pleadings.
4. The Exhibit "A" provided and affixed to the Complaint by Plaintiff (alleged Mortgage by Karen A. Krondes and John Krondes with Wells Fargo Bank, N.A.) fails to prove standing; clearly and discordantly shows that another separate entity, if any, is the "Real Party In Interest". When exhibits are inconsistent with Plaintiff's allegations of material fact as to who the real party in interest is, such allegations cancel each other out. Fladell vs. Palm Beach County Canvassing Board, 772 So. 2d 1240 (Fla. 2000); Greenwald vs. Triple D Properties, Inc., 424 So. 2d 185,

187 (Fla. 4<sup>th</sup> DCA 1983); Costa Bella Development Corp. vs. Costa Development Corp., 441 So. 2d 1114 (Fla. 3<sup>rd</sup> DCA 1983).

5. A Plaintiff must conclusively establish that it owned the note and mortgage at the time of filing or the complaint must fail. The Plaintiff's failure to attach an assignment was condemned in Jeff-Ray Corporation vs. Jacobson, 566 So. 2d 885 (Fla. 4<sup>th</sup> DCA 1990). See also Progressive Express Insurance Company vs. McGrath Community Chiropractic, 913 So. 2d 1281 (Fla. 2d DCA 2005); and BAC Funding Consortium, Inc. vs. Jean-Jacques, et al., So. 3d, 2010 WL 476641 (Fla. 2d DCA 2010).

### **III. Assignments and Affidavits Based On Hearsay Are Not Admissible Evidence In Florida**

1. In the case of GMAC Mortgage, LLC vs. Debbie Visicaro, et al, 6<sup>th</sup> Judicial Circuit Court in Pinellas County (Case No. 50-2008-CA-028558), in Hearing of April 7, 2010, Judge Anthony Rondolino in ruling on Hearsay stated "I'm also enlightened by Jones Versus Florida Workers' Compensation, which is a 2001 2<sup>nd</sup> District case that finds that the affidavit was insufficient in that it had allegations that all the assertions and allegations in the complaint are true, that kind of an affidavit is insufficient" (Hearing before Hon. Anthony Rondolino, April 7, 2010, transcript pg. 20, lines 16-22).
2. Judge Anthony Rondolino in the above-cited case, Hearing of April 7, 2010 further stated, "I also reviewed Hurricane Boats versus Certified Industrial Fabricators and found that affidavit to be insufficient when it related to the allegations in the complaint being true" (transcript, 4/7/2010, pg. 20, lines 23-25 & pg. 21, lines 1-2).
3. Regarding the inadmissibility of false and misleading "Hearsay" affidavits in foreclosure lawsuits, Judge Anthony Rondolino, in Hearing on April 7, 2010, in the matter of GMAC Mortgage, LLC vs. Debbie Visicaro, et al, 6<sup>th</sup> Judicial Circuit Court in Pinellas County (Case No. 50-2008-CA-028558), by the Court said exactly, "You know what I'd really like to see? I'd like to see in one of these cases where a defense lawyer cross-examines, takes a deposition



of these people, and we can see whether they ought be charged with perjury for all of these affidavits" (transcript, 4/7/2010, pg. 15, lines 20-25).


4. In Florida, even statements made in official Police Reports are considered Hearsay and are deemed unsubstantiated and thus inadmissible as evidence. Information "contained in police reports is ordinarily considered hearsay and inadmissible in an adversary criminal proceeding." Burgess v. State, 831 So. 2d 137, 140 (Fla. 2002).
5. The "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Fla. R. Civ. P. 1.510(e) (emphasis added). When a supporting affidavit does not comply with these requirements, it is legally insufficient to support the entry of summary judgment in favor of the moving party. See, e.g., W. Edge II v. Kunderas, 910 So. 2d 953, 954 (Fla. 2d DCA 2005) (noting that affidavit in support of action for reformation based on mutual mistake was incompetent when it contained allegations concerning matters about which the affiant could not have personal knowledge).
6. In Florida, abundant case law has well established precedent that Affidavits which are not based upon the affiant's personal knowledge must be stricken. Defendants cite the case of Capello v. Flea Market U.S.A., Inc., 625 So. 2d 474 (Fla. 3d DCA 1993). In the Capello case, the Third District affirmed an order of summary judgment in favor of Flea Market U.S.A as Capello's affidavit in opposition was not based upon personal knowledge and therefore contained inadmissible hearsay evidence. See also Doss v. Steger & Steger, P.A., 613 So. 2d 136 (Fla. 4th DCA 1993); Mullan v. Bishop of Diocese of Orlando, 540 So. 2d 174 (Fla. 5th DCA 1989); Crosby v. Paxson Electric Company, 534 So. 2d 787 (Fla. 1st DCA 1988); Page v. Stanley, 226 So. 2d 129 (Fla. 4th DCA 1969).

#### IV. A Foreclosure Action Wrought With Fraud Is Void And Must Be Dismissed

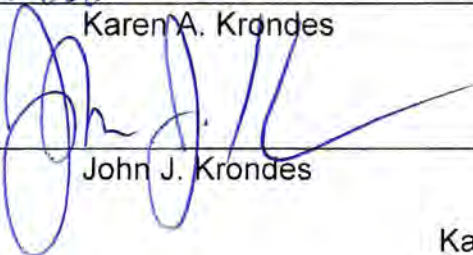
1. Landmark National Bank v. Kesler, 289 Kan. 528, 216 P.3d 158 (2009). "Kan. Stat. Ann. § 60-260(b) allows relief from a judgment based on mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence that could not have been timely discovered with due diligence; **fraud or misrepresentation; a void judgment**; a judgment that has been satisfied, released, discharged, or is no longer equitable; or any other reason justifying relief from the operation of the judgment. The relationship that the registry had to the bank was more akin to that of a straw man than to a party possessing all the rights given a buyer." Also In September of 2008, A California Judge ruling against MERS concluded, "There is no evidence before the court as to who is the present owner of the Note. The holder of the Note must join in the motion."
2. Sufficient "Good Cause" to permanently vacate a judgment and dismiss action with prejudice is the showing of fraud to the Court (See Fla.R.C.P., Rule 1.540). The presentment in a court of False testimony either orally and or by submission of known fallacious statements of fact in Affidavits or Assignments of Mortgage constitute Intrinsic Fraud. See DeClaire v. Yohaman, 453 So. 2d 375, 377 (Fla. 1984).
3. Pursuant to Florida Rule 1.540, a Florida Court has the absolute intrinsic power and jurisdiction to vacate and dismiss an action due to fraud and unconscionability. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void.
4. The trial court is confined to the facts alleged within the four corners of the complaint. See Chodorow, 954 So. 2d at 1242

5. The integrity of the civil litigation process depends on "truthful disclosure" of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed for failure. Cox v. Burke, 706 So.2d 43, 47 (Fla. 5th DCA 1998).
6. Numerous Judges throughout the State of Florida have lamented the minority of lawyers and parties that abuse the discovery process and litigation; See The Fla. Bar vs. Miller, 863 So.2d 231 (Fla. 2003).
7. In the State Of Florida, Honesty in filing and prosecuting of Foreclosure Lawsuits is paramount. Defendants cite the case of Baker vs. Myers Tractor Services in stressing the view of Florida Courts on the importance of Honest and Ethical Conduct; "honesty is not a luxury to be invoked at the convenience of a litigant, but rather, complete candor must be demanded in order to preserve the ability of this court to effectively administer justice." Baker v. Myers Tractor Services, Inc., 765 So.2d 149, 150 (Fla. 1st DCA 2000).
8. The court's power to impose an involuntary dismissal exists because no litigant has the right to trifle with the courts. Morgan v. Campbell, 816 So.2d 251, 252 (Fla. 2nd DCA 2002).
9. The decision and power to dismiss a Plaintiff's Foreclosure Action in Florida lies in the discretion and hands of the Court. The right to dismiss an action is also an obligation of the court to deter fraudulent claims from proceeding in court. Savino v. Fla. Drive In Theatre, 697 So.2d 1011, 1012 (Fla. 4th DCA 1997).

**The Defendants**

By:   
Karen A. Krondes

Date: 10/14/10

By:   
John J. Krondes

Date: 10/14/10

Karen & John Krondes  
110 Woodside Green, #2A  
Stamford, CT 06905

# Third District Court of Appeal

State of Florida, July Term, A.D. 2010

Opinion filed September 8, 2010.  
Not final until disposition of timely filed motion for rehearing.

---

No. 3D09-2388  
Lower Tribunal No. 09-10196

---

**Halsey Minor and Save Hialeah Racing, Inc.,**  
Appellants,

vs.

**John J. Brunetti, Hialeah, Inc., Bal Bay Realty, Ltd, and the City of  
Hialeah, Florida**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Thomas Wilson, Jr., Judge.

Shook, Hardy & Bacon and Stephen J. Darmody, Daniel B. Rogers, Jennifer A. McLoone and Mark A. Schweikert, for appellants.

Hall, Lamb and Hall and Andrew Hall, Matthew P. Leto and Raymie E. Walsh, for appellees.

Before RAMIREZ, C.J., and WELLS and CORTIÑAS, JJ.

PER CURIAM.

Halsey Minor and Save Hialeah Racing, Inc. appeal the trial court's order in which the court dismissed the cause with prejudice and entered a final judgment of

dismissal. We reverse because the trial court failed to confine itself to the four corners of the complaint when it dismissed the cause, as the court is required to do on the review of a motion to dismiss.

Minor and Save Hialeah Racing commenced the underlying declaratory judgment action seeking clarification of Hialeah Park Racetrack's ownership. They alleged, among other things, that appellee City of Hialeah failed to hold a voter referendum prior to deeding the Racetrack property to appellee Hialeah, Inc. in 2004. Accordingly, Minor and Save Hialeah Racing allege that the conveyance is void. In response, the appellees filed a motion to dismiss, a verified motion to strike as a sham pleading, and a motion for summary judgment. Following a hearing on July 21, 2009, the trial court entered an order granting appellees' motion to dismiss with prejudice and held that appellees' remaining two motions were moot.

In support of its order granting the motion to dismiss, the trial court found that Hialeah, Inc. v. Dade County, 490 So. 2d 998 (Fla. 3d DCA 1986), was controlling precedent. Minor and Save Hialeah Racing contend that this argument required the trial court to look beyond the four corners of the complaint. We agree.

"A motion to dismiss is designed to test the legal sufficiency of the complaint, not to determine factual issues." See The Fla. Bar v. Greene, 926 So. 2d 1195, 1199 (Fla. 2006). See also Chodorow v. Porto Vita, Ltd., 954 So. 2d

1240, 1242 (Fla. 3d DCA 2007). The trial court may not rely on facts offered in depositions, affidavits, or other proofs. See Jordan v. Griley, 667 So. 2d 493 (Fla. 3d DCA 1996); Lewis v. Barnett Bank of S. Fla. N.A., 604 So. 2d 937 (Fla. 3d DCA 1992). Rather, the trial court is confined to the facts alleged within the four corners of the complaint. See Chodorow, 954 So. 2d at 1242. All such allegations must be taken as true and any reasonable inferences drawn from the complaint must be construed in favor of the non-moving party. Id.

Here, the trial court considered factual material beyond the facts alleged within the four corners of the complaint. The complaint does not set forth allegations regarding whether appellee City of Hialeah is the equitable or legal title holder of the Racetrack, as the holding in Hialeah, Inc. may or may not have decided. See generally Hialeah, Inc., 490 So. 2d at 998. Rather, the complaint contains an allegation that the 2004 transaction occurred in the absence of a voter referendum and is therefore void. Additionally, this issue would be better addressed on a summary judgment motion or at trial, not on a motion to dismiss. We therefore reverse the order granting the motion to dismiss with prejudice, and remand this cause to the trial court for further proceedings consistent with this opinion.

Reversed and remanded.