IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: CA08-2124
DIVISION: 55

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR WFMBS 2006-AR12,
Plaintiff,

vs.

WILLIAM SHANE MCLEOD,
LAUREN MARY MCLEOD, et al.,
Defendants.
_____/

ORDER ON DEFENDANTS' MOTION TO VACATE ORDER TO SUBSTITUTE PARTY PLAINTIFF AND MOTION TO DISMISS ACTION WITH PREJUDICE

THIS CAUSE came before the Court on Defendants' Motion to Vacate Order to Substitute Party Plaintiff and Motion to Dismiss Action with Prejudice filed pursuant to Rule 1.540(b), Florida Rules of Civil Procedure. The Court has reviewed and considered the Motion, and has heard the argument of counsel, and being otherwise fully advised in the premises finds as follows:

The instant action was filed by Hollan M. Fintel, Esquire of the Florida Default Law Group, P.L. on behalf of the Plaintiff, U.S. Bank National Association, as trustee for WFMBS 2006-AR12 (hereinafter "U.S. Bank N.A."), on September 24, 2008. On December 17, 2008, the Defendants, William Shane McLeod and Lauren Mary McLeod, moved to dismiss the Complaint because, among other reasons, a person other than the Plaintiff was the true owner of the claim sued upon at the time this action was filed. Plaintiff responded to the Motion arguing that it had proper standing to bring the instant action because it was currently in possession of the original Mortgage Note and Assignment of Mortgage. Thereafter, Defendants agreed to

withdraw their motion to dismiss, and on November 16, 2009, a consent order was entered. Thereafter, Defendants filed an answer and affirmative defenses. In their affirmative defenses, Defendants state that U.S. Bank N.A. is not the Trustee designated by the Pooling and Servicing Agreement (hereinafter "PSA"), and is not the true owner and holder of the mortgage note.

On November 23, 2009, a Motion to Substitute Party Plaintiff was filed by Jacqueline F. Kuyk, Esquire, of the Florida Default Law Group, P.L., on behalf of the Plaintiff. In the Motion it was alleged that since the date this action was initiated a successor trustee was appointed, and as a result of that change, HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR12 (hereinafter "HSBC") is now the correct Plaintiff and holds the loan documents sued upon in this action. Upon the representations made in the motion, the Court granted the motion and substituted HSBC as the plaintiff in this action by order rendered November 24, 2009. On December 1, 2009, Defendants filed an Objection to Entry of *Ex Parte* Order to Substitute Party Plaintiff Without Hearing claiming that Plaintiff's counsel submitted the motion and proposed order without consent of the Defendants, violating the prohibition against *ex parte* communications with the Court, and claiming that U.S. Bank N.A. has never been the real party in interest in this case. Defendants followed the objection with the motion that is presently before the Court.

Upon review of Defendants' motion and the documents attached thereto, the Court finds that HSBC was in fact the Trustee named in the PSA dated August 30, 2006, and was the proper Plaintiff from the date of commencement of this action. The Court was misled by the Plaintiff's Motion to Substitute Party Plaintiff in which Plaintiff stated that HSBC was appointed as the successor trustee *since* the commencement of this action. The Court relied on the representations

of Plaintiff's attorney in granting the order to substitute parties, but now sees that HSBC could not have been a successor trustee to U.S. Bank N.A. *since* the commencement of this action because U.S. Bank N.A. never had standing as the owner and holder of the mortgage note during the pendency of this action. HSBC should have been named as a party plaintiff in the original complaint, and instead of informing the court that a mistake was made in the original filing, the Plaintiff sought to mislead the court into believing HSBC acquired standing to be a party plaintiff after the commencement of this action. Accordingly, the Order Substituting Party Plaintiff rendered November 24, 2009, will be vacated, and this action will be dismissed with prejudice as to U.S. Bank National Association.

Rule 4-3.3(a)(1) of the Rules Regulating The Florida Bar provides that "[a] lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." To have a hearing on every single motion that comes before the Court in every foreclosure case would create an enormous burden on an already overburdened court system. Judges should be able to confidently rely on the statements made by counsel in motions pertaining to ministerial matters and render orders, if appropriate, on such motions without the necessity of a hearing. As officers of the Court, attorneys should ensure that the facts they represent as true and which are contained in their motions filed in the court are correct and accurate, especially when seeking an *ex parte* order and claiming no prejudice to any party. The Court has not yet had an evidentiary hearing to determine whether the error in this case was the result of sloppy legal work or an intentional effort to misdirect the court, and therefore, the Court cannot yet determine whether sanctions should be imposed. The Court prefers to believe it was the result of inadvertent inattentiveness

and not the result of deliberate deceptiveness, but that issue will be ferreted out at the evidentiary hearing where the Court will receive cognitive clarity regarding this issue. Accordingly, it is:

ORDERED AND ADJUDGED that:

1. The Order Substituting Party Plaintiff is and the same is hereby VACATED.

2. The instant cause of action, *U.S. Bank National Association, as Trustee for WFMBS 2006-AR12 v. William Shane McLeod, et al.*, St. Johns County case number CA08-2124 is and the same is hereby DISMISSED WITH PREJUDICE. (However, this order shall not prevent a proper plaintiff from bringing a new action on the mortgage and note should it so desire.)

3. The Court reserves jurisdiction to determine the amount of fees and costs, if any, to which Defendants are entitled, upon the filing of a motion and a hearing on the matter.

4. An evidentiary hearing is hereby scheduled for Monday, August 2, 2010, at 9:30 a.m. in Room 305 of the Richard O. Watson Judicial Center, 4010 Lewis Speedway, St. Augustine, Florida 32084, to determine whether sanctions should be imposed against the Plaintiff and/or Plaintiff's counsel in this action, and the Court specifically reserves jurisdiction to consider this matter.

DONE AND ORDERED in Chambers, in St. Johns County, St. Augustine, Florida, this ___day of May, 2010.

Conformed Copy

MAY 07 2010

J. MICHAEL TRAYNOR
Circuit Court Judge

J. Michael Traynor
Circuit Court Judge

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