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SARASOTA COUNTY, FLORIDA
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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL ACTION

INDYMAC FEDERAL BANK,
As successor,

Plaintiff,

vs. CASE NO. 2009 CA 000264 NC

DAVID B. KEYSER, et al.

Defendants.

ORDER
SETTING ASIDE FINAL JUDGMENT OF FORECLOSURE AND GRANTING LEAVE TO FILE AMENDED RESPONSE

THIS CAUSE came on for consideration pursuant to the defendants' duly noticed Second Verified Amended Motion to Set Aside Foreclosure Final Judgment and for leave to file an amended response. The Court, having considered the Motion, and being otherwise fully advised in the premises, it is therefore,

FILED IN OPEN COURT THIS 1st DAY OF June, 2010.
KAREN E. RUSHING, CLERK OF COURT
BY: _____ DEPUTY CLERK

ORDERED AND ADJUDGED as follows:

1. Defendants' verified amended Motion to Set Aside and Vacate the Final Judgment of September 25, 2009 and for leave, be and the same is hereby GRANTED based upon the following findings:
2. The Defendants and Plaintiff participated in court ordered mediation on January 19, 2010, and have entered into a loan modification which is current. It would violate the principles of equity which this court is obligated to uphold in matters of homestead foreclosures to permit foreclosure while the plaintiff is accepting monthly mortgage payments from a homeowner under and in accordance with modification agreement established by the acts of the agent of the plaintiff and/or the plaintiff itself, with the plaintiff accepting the benefits of that modification, yet at the same time seeking to deprive the homeowner of their homestead.
3. That this was a contested case and Defendants had filed a pro se answer raising the defense of payment, yet in spite of the defense having been raised, Plaintiff inappropriately set the case on the uncontested 'Rocket Docket;' which deprived the Defendants of due process of law.

Case: 2009 CA 000264 NC
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4. The record shows that there have been instances of excusable neglect by defendants occasioned by (a) plaintiff's representations to the defendants that the lender would attempt to modify the loan which representations were never realized in part because of the original lender's insolvency; (b) that the defendants were misled and victimized by a Foreclosure Rescue scam called United Capital Mortgage Assistance a group which took $1,000 from the defendants and falsely and deceptively led the defendants to believe they would provide representation for them in this lawsuit to preclude final judgment of foreclosure; (c) that, in addition to making the modification payment post lawsuit as set forth above, the defendants are both gainfully employed and have been paying their home owners' insurance premiums and real estate taxes on a timely basis, further evidencing their good faith in meeting their financial obligations to keep their home and their ability to do so.
5. Based upon these findings of fact, this Court hereby GRANTS the defendants' Keysers' motion to set aside the September 25, 2009 final judgment concerning the home and real property at 5092 Prosch Circle, North Port, Florida 34288, (Lot 12, Block 2573 51st Addition to Port Charlotte, Parcel ID No. 1142-25-7312) and the Clerk is ordered to publish this order in the official records, no further sale date shall be set until such time as the plaintiff obtains final judgment.
6. This Court also grants the defendants David and Kayleen Keyser leave to file an amended response to the Complaint within 20 days of the entry of this order.

DONE AND ORDERED in Chambers in SARASOTA County, Florida, this 1 day of June, 2010.

Rick DeFuria
CIRCUIT COURT JUDGE

Copies to:
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Clerk of the Court