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

VS.

FRED DAWSON, ET AL  
DEFENDANT(S)

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**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS COMPLAINT AND TO AWARD ATTORNEYS FEES**

Plaintiff, BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P. by and through its undersigned counsel, files its Memorandum of Law in Opposition to Defendant's, GREENWAY VILLAGE SOUTH ASSOCIATION NO.1, INC.'s, Motion to Dismiss Complaint and to Award Attorney's Fees and states as follows:

**FACTS**

1. This is an action to foreclose a mortgage on real property located in Palm Beach County, Florida by Plaintiff against Defendants, FRED DAWSON, et al.
2. On May 25, 2010, Plaintiff filed its Complaint to Foreclose Mortgage.
3. On June 5, 2010, Defendant filed its Motion to Dismiss Complaint for Failure to Comply with Florida Supreme Court Order, and to Award Attorney Fees. Said Motion is scheduled to be heard in front of Your Honor on June 10, 2010 at 8:45 am and is subject of the instant Memorandum of Law.
4. As grounds, Defendant alleged Plaintiff failed to verify its complaint in accordance with In Re Amendments to Fla. R. Civ. P., 2010 WL 455295 (Fla. 2010) and therefore should be dismissed.

## MEMORANDUM OF LAW

### THE SUPREME COURT'S ORDER ON *IN RE AMENDMENTS* IS NOT FINAL AND THEREFORE NOT CONTROLLING

On February 11, 2010, the Supreme Court of Florida entered an Order amending Florida Rule of Civil Procedure 1.110(b) to require that a complaint to foreclose a mortgage on residential property be verified. In re Amendments, 2010 WL 455295 (Fla. 2010). This amendment was to become effective as of the date of the release of the opinion. However, a timely filed motion for rehearing acted to toll the execution of this Order and ultimately, the enactment of the amendment to Rule 1.110(b). The language of the Order itself evidences the Supreme Court's intention that it be non-final pending any motions for rehearing Id. at 10. Specifically, the Order states the Order is "NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED." See attached Exhibit "A." This language was purposefully included by the Supreme Court and therefore must be interpreted to suspend the enactment of the amendments to Rule 1.110(b) until the determination of any pending motions for rehearing.

This language is consistent with Florida Law. The finality of determination occurs after time expires to file a motion for rehearing and disposition of the motion is filed. See Wilson v. Clark, 414 So. 2d 526, 520 (Fla. 1st DCA 1982). Similarly, the filing of a timely and authorized motion for rehearing suspends or postpones the rendition of an order. See In Interest of M.L.M., 564 So.2d 1222 (Fla. 1st DCA 1990) (holding a timely motion for rehearing suspends rendition of the final order until the date the motion for rehearing was denied). See also Caufield v. Cantele, 837 So. 2d 371 (Fla. 2002) (holding motions for rehearing of final orders may delay the rendering of a final orders). Moreover, cases involving motions for rehearing bind and control the Supreme Court to dispatch and resolve the issues in rehearing before issuing a final decision.

See Mann v. Etchells, 182 So. 198, 201 (Fla. 1938).

Florida Rule of Appellate Procedure 9.330(a) establishes both the time period for filing a motion for rehearing and the requirements concerning the contents of a motion for rehearing. A motion for rehearing may be filed within 15 days of an order or within such other time set by the court. Fla. R. App. P. 9.330(a). The Court adopted the amendments on February 11, 2010 and a motion for rehearing was filed by appellant on February 26, 2010, within the 15 day time frame in which to file such motions.

As of the date Plaintiff filed its Complaint, Motions for Rehearing were still pending. Because said Motions for Rehearing were pending at the time Plaintiff filed its Complaint, the Supreme Court Order was not final, and therefore, the amendment to Fla. R. Civ. P 1.110(b) was not in effect, not binding and not controlling on Plaintiff at the time of filing. Defendant is not permitted to move this Court to dismiss Plaintiff's case for non-compliance based on a rule that Plaintiff did not legally have to comply with at the time of filing. Accordingly, Defendant's Motion to dismiss should be denied.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this

9 day of JUNE, 2010 to the following:

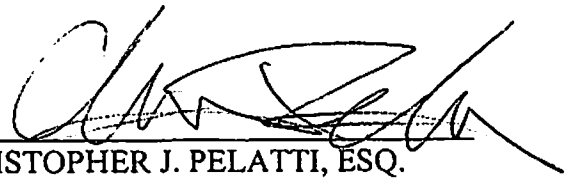
FRED DAWSON  
UNKNOWN SPOUSE OF FRED DAWSON  
12001 POINCIANA BLVD., #204  
WEST PALM BEACH, FL 33411

FRED DAWSON  
UNKNOWN SPOUSE OF FRED DAWSON  
2000 S OCEAN BLVD., APT. 107N  
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JEAN WINTERS, ESQ.  
ATTY FOR GREENWAY VILLAGE SOUTH ASSOCIATION NO.1, INC.  
PO BOX 272662  
BOCA RATON, FL 33427

GREENWAY VILLAGE RECREATION ASSOCIATION, INC.  
C/O IANNUZZI, DIANA, REGISTERED AGENT  
6 GREENWAY VLG., N105  
ROYAL PALM BEACH, FL 33411

JOHN DOE  
JANE DOE  
12001 POINCIANA BLVD., #204  
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10-27345.MEM

# Supreme Court of Florida

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No. SC09-1460

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**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE.**

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No. SC09-1579

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**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE - FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE).**

[February 11, 2010]

PER CURIAM.

In case number SC09-1460, the Task Force on Residential Mortgage Foreclosure Cases has proposed an amendment to Florida Rule of Civil Procedure 1.110 (General Rules of Pleading) and two new Forms for Use with Rules of Civil Procedure. In case number SC09-1579, the Civil Procedure Rules Committee has proposed amendments to form 1.996 (Final Judgment of Foreclosure) of the Forms for Use with Rules of Civil Procedure. We have consolidated these cases for the purposes of this opinion. We have jurisdiction. See art. V, § 2(a), Fla. Const.

release of this opinion. Because the amendments to form 1.996(a) (Final Judgment of Foreclosure) were not published by the Court for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments, on those amendments only, with the Court.<sup>4</sup>

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, LABARGA, and PERRY, JJ., concur. CANADY, J., concurs in part and dissents in part with an opinion, in which POLSTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

CANADY, J., concurring in part and dissenting in part.

Because I am concerned that requiring prior judicial approval for the cancellation of foreclosure sales may produce untoward results, I dissent from the adoption of form 1.996(b). I would have instead adopted the proposal suggested by the Real Property, Probate, and Trust Law Section for the addition of a

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4. An original and nine paper copies of all comments must be filed with the Court on or before April 12, 2010, with a certificate of service verifying that a copy has been served on the Committee Chair, Mark A. Romance, 201 S. Biscayne Blvd, Suite 1000, Miami, FL 33131-4327, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until May 3, 2010, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).