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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL ACTION

TAYLOR, BEAN AND WHITAKER                      CASE NO. 09-007756-CI  
MORTGAGE CORPORATION,                      DIVISION: 08

Plaintiff,

vs.

ANDREW H. PREBLE, et al,

Defendants.

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PROCEEDINGS: Plaintiff's Motion for Summary Judgment

BEFORE:                      The Honorable Robert E. Beach  
Senior Judge of the Circuit Court

DATE:                      August 24, 2010

PLACE:                      St. Petersburg Judicial Building  
545 1st Avenue North  
St. Petersburg, Florida 33701

REPORTED BY:              Cathleen Tveten, Court Reporter

APPEARANCES:              Allyson L. Smith, Esq.  
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1 (EN MASSE CALENDAR CALL;  
2 UNRELATED PENDING CASES HAD AND NOT TRANSCRIBED HEREIN)

3 THE COURT: You wanted to say something?

4 MR. WEIDNER: Yes, your Honor, if I may provide  
5 a general statement to answer your questions about  
6 the state of affairs in this industry right now.

7 I want to tell you that in your courtroom you  
8 will start to see a lot of pro se folks come in  
9 here. What I'm seeing in some cases, perhaps many  
10 cases, is that the pro se folks are in active and  
11 ongoing communication with the servicer.

12 I have cases where they are actually paying  
13 money directly to the servicer. They are under  
14 representations, direct specific representations of  
15 the servicer, or whoever's collecting the money,  
16 that as long as you're in communication with us, as,  
17 long as you're making payments to us, you don't need  
18 to worry about this process on the other side.

19 And with all due respect to my colleagues over  
20 there, who I know are working very hard, I know it's  
21 very difficult for them to communicate with their  
22 clients. Because frequently what we hear from the  
23 other side of the table is, You call the 800 number,  
24 because we have difficulty getting in contact with  
25 our clients --

1 MS. SMITH: Your Honor, that's not true.

2 THE COURT: Well, my experience has been -- and  
3 I agree with him as to what he says with respect to  
4 pro se people coming in and trying to save their  
5 house and they've been in touch with the mortgage  
6 company, and, in fact, the lending institution would  
7 like to work something out with them and is pretty  
8 amenable to all kinds of new deals, but the problem  
9 is that the pro se person can't reach the person in  
10 charge of their mortgage.

11 MR. WEIDNER: The attorneys can't, your Honor.

12 THE COURT: And the attorneys can't, and even  
13 the lawyers for the mortgage company can't, and  
14 that, to me, seems to be the big problem and people  
15 trying to resolve these cases without going through  
16 foreclosure.

17 And I think what's happening -- and I've talked  
18 to people in the business: One, they're inundated  
19 with mortgage foreclosures; two, the same people  
20 never work on that case more than two weeks and then  
21 they're off to something else; and when you call, if  
22 you're able to get anybody, they don't know anything  
23 about the case, they'll get back to you, which they  
24 never do.

25 So it's a problem within the industry, as far

1 as not being equipped to address the problem. I'm  
2 not blaming them that they're intentionally doing  
3 this, I just think that they're overwhelmed with the  
4 amount of foreclosures coming through and are not  
5 doing what they'd like to do, and that's work out a  
6 lot of these cases.

7 So I know the problem, but I -- but that's one  
8 reason we set up the mediation program.

9 MR. WEIDNER: I have one more fear, your Honor.

10 THE COURT: Well, let me just finish. The  
11 mediation program -- if the people indicate that  
12 they want to work it out with the bank and they've  
13 been having trouble with it, we send it down there  
14 requiring them to have a representative appear to  
15 work out a new deal, if one can be worked out.

16 MR. WEIDNER: Your Honor, another fear, given  
17 what you just described there, are the number of  
18 quote, unquote, uncontested files for which summary  
19 judgment is granted and when the borrowers are in  
20 work-out modification programs with the lenders. I  
21 fear that there's much of that going on out there.

22 I also fear -- we're seeing this in other  
23 circuits; and Lord knows our circuit is far and  
24 ahead from what we hear elsewhere -- but we have  
25 situations where final judgment is granted pending

1 pleading and those mediations don't occur.

2 THE COURT: Well, then if they don't, the  
3 mortgage goes forth. And we don't know why  
4 mediation didn't occur. I don't think we've been in  
5 it long enough to really know why. Maybe the people  
6 don't show up; maybe the mortgage company for some  
7 reason can't offer a deal that they can agree to, I  
8 don't know.

9 MR. WEIDNER: Maybe the mediation doesn't even  
10 occur, but we have no way of tracking that when the  
11 sale is set.

12 THE COURT: Well, do you know why it doesn't  
13 occur?

14 MR. WEIDNER: I know in some jurisdictions --  
15 and I'll wait to get into specifics to bring this to  
16 the Court, but I'm telling you that it is occurring,  
17 and I will present specifics.

18 THE COURT: No, but do you know why it does not  
19 occur?

20 MR. WEIDNER: I will give you specifics later,  
21 but part of the reason is they're not scheduling --

22 THE COURT: And the question is, if our  
23 procedure is not working and people are not getting  
24 hearings when they should be, then let's correct the  
25 procedure.

1 MR. WEIDNER: Right.

2 THE COURT: And if it's our fault, we'll remedy  
3 it. If it's the fault of the bank by not complying  
4 with the procedure and showing up when they're  
5 supposed to, because they're required to show up, we  
6 can hold them in contempt. If people are just  
7 requesting these hearings, pro se people or people  
8 being foreclosed, simply as another step in delay,  
9 then we just don't take that into consideration as  
10 far as when we enter the judgment; that's it. I  
11 mean, if you're not going to help yourself, we're  
12 not going to help, either, so -- but I'm not sure, I  
13 don't know how the mediation procedure has been  
14 working, because we just put it into effect.

15 Can any of the court staff enlighten me on  
16 that?

17 THE CLERK: You can recommend it to mediation.

18 THE COURT: No, I know I can recommend. But is  
19 it happening? That's the question.

20 THE CLERK: Yes.

21 THE COURT: It is happening.

22 Do you know the instances when we've ordered it  
23 and for some reason it didn't go through without the  
24 fault of the mortgagee -- mortgagor?

25 MR. WEIDNER: I'm not aware in this circuit

1 yet.

2 THE COURT: Okay. Anybody in here?

3 No.

4 MS. SMITH: Your Honor, I can attest on ones  
5 where it does actually go to sale, and we do file a  
6 motion and order to vacate the sale so that we can  
7 comply with the court's order to mediation, so we  
8 have been doing that.

9 THE COURT: Yeah, I mean, we're willing and  
10 we're trying to set up a procedure whereby people  
11 that want to keep their houses have the ability to  
12 make an attempt at saving their houses, and we've  
13 ordered the lending institution to be there and to  
14 cooperate, and I don't know much more we can do  
15 beyond that.

16 On the other hand, if the property should be  
17 foreclosed and there's no question the money is owed  
18 and all the t's are crossed and the i's are dotted,  
19 then the lending institution is entitled to their  
20 judgment.

21 (UNRELATED PENDING CASE CONTINUED AND NOT TRANSCRIBED  
22 HEREIN)

23 THE COURT: My instructions in this job are if  
24 there are any contested motions that they go back to  
25 the assigned judge.

1           Now, we go over the file, that is, our staff,  
2           to see that everything's in order before the matter  
3           is set for hearing, and I assume that's been done in  
4           these cases. And we send out -- and I'm sure you  
5           received it -- a check list of those things that we  
6           need to have completed in this case. I'm not sure  
7           our check list includes -- and some of the judges in  
8           this circuit have been requiring it, some have not  
9           -- a copy of the assignment of the mortgage or an  
10          instrument showing an endorsement of the mortgage  
11          over to the new owner.

12           Are we doing that now? Are we requiring a copy  
13          of the assignment of the mortgage to the real party  
14          in interest or not?

15           THE CLERK: No, we are not.

16           THE COURT: Well, we talked about that in the  
17          beginning, and I don't think we're requiring it, but  
18          some of the judges do -- Judge Campbell does and  
19          Judge Rondolino does, in the south circuit. I don't  
20          know about the north circuit. But I think we should  
21          require that to show the chain of ownership on these  
22          cases, because I think the defendants have a right  
23          to know who in fact is foreclosing on their  
24          mortgage. They say they want to protect their  
25          client from a default judgment. In 42 years on the

1 bench -- 43 now -- I've signed maybe two defaults in  
2 the whole time I've been here, so those are a thing  
3 of the past. Nobody ever seeks those unless there's  
4 an ability to collect, which there is not in these  
5 cases.

6 But in any event, certainly they are entitled  
7 to make sure that the lawsuit against them is  
8 correctly resolved by crossing t's and dotting i's.

9 (UNRELATED PENDING CASES HAD AND NOT TRANSCRIBED HEREIN)

10 THE COURT: The next case is Bean vs. Preble.

11 MS. SMITH: Victoria Jones, your Honor, for the  
12 plaintiff.

13 MR. WEIDNER: Good morning, your Honor, Matthew  
14 Weidner for the defendant, Mr. Preble.

15 THE COURT: Okay. Is there any issues in this  
16 case?

17 MR. WEIDNER: Oh, you betcha, your Honor.

18 MS. SMITH: Your Honor, there's an affidavit in  
19 opposition that was untimely filed, and pursuant to  
20 Rule 1.510, there's no answers to outstanding  
21 motions or discovery at this time and default's been  
22 entered.

23 THE COURT: Default's been entered?

24 MS. SMITH: Yes.

25 THE COURT: Okay. Why haven't these things

1           been done before this hearing today?

2           MR. WEIDNER: Thank you, your Honor. My client  
3           just came into my office in a panic a couple days  
4           ago. This individual had been working directly with  
5           the agent for the plaintiff in this case. I have  
6           right here a multitude of payments that he has been  
7           making, the most recent one was July. He was  
8           under --

9           THE COURT: Of this year?

10          MR. WEIDNER: Yes, sir, your Honor. He was  
11          under a specific work-out arrangement with the  
12          servicer in this case. If I may approach the bench,  
13          I'd like to present to you the affidavit.

14          THE COURT: That's all right, you just tell me  
15          what it is.

16          MR. WEIDNER: Thank you, your Honor. The  
17          affidavit in here specifically states that he has  
18          been in communication with Crystal, phone number's  
19          there; Al Shirley, phone number's there; and a  
20          variety of other individuals.

21          And this affidavit states, and my client's  
22          right here to testify to the same thing, that he's  
23          been in active, regular and frequent communication  
24          with this lender; and that based on that active  
25          communication and specific representations made by

1 this servicer, this case was not to proceed forward.

2 Now, there's another very significant issue  
3 that I want this Court to consider about this case,  
4 and that is the indictment that I'm holding in my  
5 hand right. It was filed in the United States  
6 District Court for the Eastern District of Virginia  
7 June 15, 2010.

8 Taylor, Bean and Whitaker Mortgage and the  
9 chief executive were under indictment by the federal  
10 government for a variety of practices that are  
11 directly related to the activities that are before  
12 this Court.

13 And so the question I ask this Court to  
14 consider is -- take our specific factual issues in  
15 this case, where this gentleman right here is in  
16 active, good-faith communication with the servicer,  
17 he's making payments to them, he's getting specific  
18 representations from them that this case won't  
19 continue, and then I want to ask the Court to  
20 consider, Is it even proper for this plaintiff to  
21 continue in this case?

22 From what I understand -- I don't know the  
23 specifics -- Taylor, Bean and Whitaker is seized or  
24 defunct or whatever. But the bottom line is I don't  
25 believe they have a capacity or authority to

1 continue as a plaintiff in this case.

2 But, more importantly, I want the Court to  
3 consider, Do you feel comfortable throwing your  
4 neighbor out onto the street when there are these  
5 allegations about the company that's here trying to  
6 do that to him, when at the same time he, in good  
7 faith, is showing all of this activity?

8 MS. SMITH: Your Honor, the default dates on  
9 this loan was December 2008. The defendant has had  
10 ample time to work with the bank on loss mitigation.  
11 Just because the defendant doesn't qualify for any  
12 loss mitigation options does not preclude the bank  
13 from foreclosing on this property.

14 I also would like to point out an inconsistency  
15 in the affidavit. It says that the defendant  
16 approached Attorney Weidner on August 20th and  
17 et cetera; this affidavit is dated August 19th.

18 THE COURT: Well, let me ask this, ma'am: Is  
19 it a fact that the mortgagor has been working with  
20 the bank, making payments, trying to make a new  
21 mortgage that he can live with up to today?

22 MS. SMITH: No, your Honor, I have no  
23 documentation. There has been --

24 THE COURT: Have you checked with the bank?

25 MS. SMITH: I, personally, have not checked,

1 your Honor. This is not my file. But once a  
2 payment is received, our clients know to tell us to  
3 put our file on hold.

4 THE COURT: Okay. Well, he said there was a  
5 payment paid on July the 20th. Is that correct?

6 MR. WEIDNER: Let me make sure. I have July --  
7 yes, sir, your Honor, and I've got the --

8 THE COURT: And he said that this man has been  
9 in constant communication with the bank, to the  
10 point of where the bank has said that -- keep  
11 working with us, and we won't proceed with the  
12 foreclosure. Do you have any information that  
13 refutes that?

14 MS. SMITH: Well, your Honor, this is paid to  
15 the order of Saxon Mortgage, I'm not sure why, when  
16 Taylor, Bean and Whitaker is the servicer and the  
17 owner of the note, so this doesn't show that this is  
18 to the plaintiff in this case or with regards to the  
19 same mortgage.

20 MR. WEIDNER: If his Honor will check the  
21 docket, I just found that there is a motion to  
22 substitute party plaintiff in this case, another  
23 issue in many of these cases. Somewhere along the  
24 way, the plaintiff in this case, the person that is  
25 asking you to give them a couple hundred thousand

1 dollars, they just filed an ex parte motion to say,  
2 Your Honor, Saxon is no longer the person entitled  
3 to this couple hundred thousand dollars, this  
4 company, Taylor, Bean is now entitled to it.

5 I want to draw the Court's attention --

6 THE COURT: Let me ask the plaintiff's lawyer  
7 this: Do you have any way in which you can refute  
8 the defendant's attorney's statement that the  
9 defendant has been in constant communication with  
10 the lending institution trying to work it out and  
11 the institution has been telling him directly, Keep  
12 working with us; don't worry, we're not going to  
13 proceed with the foreclosure until we get this  
14 worked out, or words to that effect?

15 MS. SMITH: Your Honor, the fact that this has  
16 been going on since December 2008 and the fact that  
17 our client has never once told us to stop the  
18 procedures for a little bit to work on loss  
19 mitigation tells me that, no, there's no loss  
20 mitigation going on; and the inconsistencies in the  
21 affidavit I think show that there is no credibility  
22 to this affidavit.

23 THE COURT: I see. So what you're saying is  
24 that the defendant here is lying to his client -- to  
25 his lawyer?

1 MS. SMITH: No, your Honor. I'm just saying  
2 there might be some miscommunication here.

3 THE COURT: Well, I didn't hear that.

4 MS. SMITH: And just because the bank does not  
5 qualify --

6 THE COURT: Raise your right hand.

7 (WHEREUPON, THE DEFENDANT WAS DULY SWORN)

8 EXAMINATIONBY THE COURT:

9 Q Your name?

10 A Andrew Preble.

11 Q And you're the defendant in Taylor, Bean and  
12 Whitaker v. Preble?

13 A Yes, sir.

14 Q When's the last time you had any contact with  
15 the lending institution?

16 A I have a whole list here.

17 Q Pardon?

18 A I have a whole list here.

19 Q No, I didn't ask you that, sir. I asked you  
20 when.

21 A Last week, the Monday of last week.

22 Q Of 2010?

23 A Yes, sir. I talked to Al Shirley.

24 Q And who did you contact?

25 A Al Shirley.

1 Q Where?

2 A At Saxon.

3 Q And what is Saxon?

4 A Saxon is the servicing provider of my mortgage.

5 Q And where are they located?

6 A Taxes, I believe.

7 Q Where?

8 A Texas.

9 Q Texas?

10 A Yes.

11 Q And how did you communicate with them?

12 A By telephone.

13 Q Who'd you talk to?

14 A Al Shirley.

15 Q And who is that person?

16 A He's in the loss mitigation department.

17 Q And what'd they tell you?

18 A Well, he told me a variety of different things,  
19 sir.

20 Q Well, tell us what he said in 10 words or less.

21 A He said right now that this hearing was just to  
22 see what procedure we are, what step we are. And come  
23 to find out, this was actually a sale date hearing, I  
24 believe. He also told me I probably wouldn't need an  
25 attorney, and he also sent me a form for a loan

1 modification, which I just received yesterday.

2 Q Do you have that?

3 A Yes, I do.

4 Q Show it to the attorney for the plaintiff.

5 When's the last time you talked to him before  
6 that time?

7 A Probably the week following, the 11th, and they  
8 had no idea what was going on. I was dealing with a  
9 Crystal with the HAMP Program, and in June I was kicked  
10 out of that program. I made my July payment anyway.  
11 They said that they were going to transfer all my  
12 paperwork from this department to a traditional  
13 modification, and I was assigned to a Rosalinda. I  
14 called 15 times and left messages; no one called me  
15 back. Finally I got fed up with it, I spoke with Al  
16 Shirley, and I've been speaking with him ever since. I  
17 just spoke to him -- last Monday was the last time I  
18 spoke to him.

19 Q When is the last time you made a payment of any  
20 kind?

21 A It was July.

22 MS. SMITH: Was that payment returned?

23 THE COURT: Excuse me.

24 MS. SMITH: I'm sorry, your Honor.

25 Q (BY THE COURT:) July what?

1 A July 20th.

2 Q How much?

3 A Twelve -- I think it's twelve-twenty-something.

4 Q Give me --

5 A Twelve ten, sir.

6 Q Twelve ten doesn't mean anything to me. Twelve  
7 hundred and ten dollars?

8 A \$1,210.

9 Q When is the last time you made a payment before  
10 that?

11 A The following month -- the previous month.

12 Q How much?

13 A The same exact amount, sir.

14 Q And how did you make these payments, by check  
15 cash or money order?

16 A This was the only one I did by check. The rest  
17 was a moneygram from Western Union.

18 Q Okay. And they cashed them?

19 A Yes, sir.

20 Q Cashed them?

21 A Yes, sir.

22 THE COURT: Okay. Now, do you have any  
23 information to refute what he just testified to? Or  
24 you can cross examine him if you wish.

25 MS. SMITH: Well, your Honor, I'd just like to

1 say that he said that he was disqualified for the  
2 HAMP Program but he still made the subsequent  
3 payment, and I'd like -- was that check returned?

4 THE DEFENDANT: No, that check was cashed.  
5 It's right here.

6 MS. SMITH: And it has not been returned to you  
7 in any way?

8 THE DEFENDANT: No, it's been cashed. I made  
9 the payment. I paid them anyways.

10 THE COURT: Any other questions?

11 MS. SMITH: No, your Honor. The package that  
12 he said that Saxon just sent to him, that's saying  
13 for the whole loan modification he needs to submit  
14 all new financial information, which would show that  
15 he has never sent financial information.

16 THE DEFENDANT: I have it right here.

17 THE COURT: Well, what I'm going to do is deny  
18 the motion for summary judgment. I'm going to send  
19 you to mediation and get this resolved. And if  
20 there's anything that you need to file or bring this  
21 file up to date, file it.

22 MR. WEIDNER: Your Honor, based on what you've  
23 heard here today, would you grant a motion to set  
24 aside default?

25 THE COURT: No.

1 MR. WEIDNER: Okay.

2 THE COURT: No, you've got to file that  
3 yourself.

4 MR. WEIDNER: Thank you, your Honor.

5 THE COURT: I'm not just going to arbitrarily  
6 take over the case without procedures being  
7 followed.

8 MR. WEIDNER: Yes, sir, your Honor. So I'll  
9 draft the order. It will say that the motion for  
10 summary judgment --

11 THE COURT: -- is denied --

12 MR. WEIDNER: -- is denied; the case is ordered  
13 to mediation?

14 THE COURT: -- the case is ordered to  
15 mediation.

16 MR. WEIDNER: Yes, sir, your Honor. Thank you.

17 (EN MASSE CALENDAR CALL RESUMES;  
18 DEFENDANT PREBLE'S CASE CONCLUDED)

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STATE OF FLORIDA)  
COUNTY OF PINELLAS)

I, Cathleen Tveten, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 7th day of September, 2010.

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Cathleen Tveten  
Court Reporter

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