

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

CASE NO.: 10-1103-CA

AMAURY DOMINGUEZ; RIVERCAMPS  
ON CROOKED CREEK COMMUNITY  
ASSOCIATION; ELENA N. DOMINGUEZ;  
et al.,

Defendants.

HEARING

ORE TENUS MOTION TO TRANSFER

DEFENDANT'S MOTION TO DISMISS COMPLAINT

Taken in the above styled matter pursuant to  
Notice on the 20th day of October, 2010, commencing at  
approximately 1:45 p.m. CDT before the Honorable Judge  
Thomas Ellinor, 3rd Floor Conference Room, 300 E. 4th  
Street, Panama City, Florida.

Reported by:

SHARON M. McALLISTER, Court Reporter

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APPEARANCES

DANIEL W. UHLFELDER, Attorney at Law, 124  
East County Highway 30-A, Grayton Beach, Florida 32459;  
appeared on the behalf of Defendants.

KAREN THOMPSON, Attorney at Law, LAW OFFICES  
OF MARSHALL C. WATSON, P.A., 1800 N.W. 49th Street, Suite  
120, Fort Lauderdale, Florida 33309; appeared on the behalf  
of the Plaintiff.

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1 HEARING

2 THE COURT:

3 Is this Mr. Uhlfelder?

4 HON. THOMPSON:

5 Good afternoon, Your Honor, Karen Thompson on  
6 behalf of the Plaintiff in the matter of Bank of America  
7 versus Dominguez and Counsel for Mr. Dominguez is also  
8 conferenced in.

9 THE COURT:

10 Okay.

11 HON. UHLFELDER:

12 Hi, how are you?

13 THE COURT:

14 Good afternoon.

15 HON. UHLFELDER:

16 Good afternoon?

17 THE COURT:

18 Is this Mr. Uhlfelder?

19 HON. UHLFELDER:

20 Yes, sir.

21 THE COURT:

22 Okay, I have a Court Reporter. We're here on  
23 Motion To Dismiss; is that correct?

24 HON. UHLFELDER:

25 Yes, sir.

1 THE COURT:

2 Whose Motion is it?

3 HON. UHLFELDER:

4 It's my Motion.

5 THE COURT:

6 Go ahead.

7

8 DEFENDANT'S ORE TENUS MOTION TO TRANSFER

9 BY HON. UHLFELDER:

10 Judge, I was there Monday on another Hearing  
11 where you... we had filed a Motion To Transfer and because  
12 of it being our... you know, our assertion that it was not  
13 proper to be having to be set before the Senior Judge and  
14 you transferred that case, I don't know if you recall, on  
15 Monday.

16 THE COURT:

17 Yes, I do.

18 BY HON. UHLFELDER:

19 Okay. We would reaffirm our, you know,  
20 position that that should take place in this case, I believe  
21 its the same basis for the request.

22 HON. THOMPSON:

23 I'm not aware of the basis, because I don't  
24 have that Motion here. What's the basis?

25 BY HON. UHLFELDER:

1                   We filed a Motion For Transfer; it's our  
2 position that the creation of the Division in this Circuit  
3 and throughout the State, where it is not a proper manner in  
4 which it created the Division, it should have come through  
5 the Local Rules approved by the Florida Supreme Court and  
6 that in doing so it violates the Supreme Court's General  
7 Procedures for assignment to Senior Judges for several  
8 different reasons.

9                   One, that it wasn't established through Local  
10 Rules and it would violate my client's right to vote for  
11 Judges hearing their cases, it would be... it's our position  
12 that it's a permanent type assignment, that it's not  
13 permitted and that it constitutes a complex Division that  
14 would... was not permitted in this format.

15                   That the way it which it was done, there's  
16 no, you know, disrespect towards this Court, but the way  
17 that it's done throughout the State, it appears to have been  
18 an attempt by the Legislature to appropriate monies to push  
19 through foreclosure cases on some sort of undetermined  
20 amount of time to clear out the back log.

21                   And, it's our position that this has  
22 basically created a Division in this Circuit and other  
23 Circuits, that has not properly been approved through the  
24 Rules and approved by the Supreme Court.

25 HON. THOMPSON:

1 And, you filed that Motion in this particular  
2 case as well?

3 BY HON. UHLFELDER:

4 Yes, ma'am.

5 HON. THOMPSON:

6 Okay. And... okay, so I guess, Your Honor,  
7 we have to defer to you.

8 THE COURT:

9 Okay.

10 HON. THOMPSON:

11 In this instance then.

12 THE COURT:

13 I'm going to be sure, Karen, that you  
14 understand what Mr. Uhlfelder is talking about. And, Mr.  
15 Uhlfelder, I'm going to ask you before I say anything else;

16 On what basis do you feel like that this  
17 Division, let's call it the "Foreclosure Unit", is not the  
18 proper forum for this particular case?

19 BY HON. UHLFELDER:

20 Well, it's our position that the way it's  
21 been... this particular case, is there is... the way in  
22 which it was assigned and the way in which it was put in  
23 this Division or whatever you want to call it, was not done  
24 through the... approved through Local Rules approved by the  
25 Supreme Court and that allowing this type of case to be

1 heard by a Senior Judge would deprive the right to have  
2 their public Judges, you know, elected...

3           You know, we also believe that as part of  
4 this assignment it just creates a long term type assignment,  
5 there's no... it appears to be the purpose is to deal with  
6 back logged foreclosures, and the back log is going to take  
7 a long time to clear out, I think, it would be difficult to  
8 argue with that.

9           And, then also, as we discussed at the last  
10 Hearing, I think, it has the possibility of creating a  
11 complex case Division which needed to be approved by the  
12 Local Rules and the Supreme Court. You know, normally a  
13 foreclosure is, I guess in the traditional sense, a pretty  
14 straight forward process, but unfortunately because of the  
15 way these Mortgages were procured in this case and they way  
16 that they've been prosecuted, is that it creates complex  
17 issues, there's issues as to the defenses that can be  
18 raised, you know, Federal Truth and Lending Laws, whether  
19 there's proper documentation that shows this party actually  
20 owns the Notes.

21           In this case they've sued as the holder of  
22 the Note, but they don't actually show that they own the  
23 Note. Bank of America, who is actually this party, in and  
24 of itself, is unclear as to what they've frozen and haven't  
25 frozen, and that's another issue why we're even having this



1 Hearing, because they have, by their own admission, created  
2 problems with their foreclosure process that are complex  
3 issues as to whether they own the Note, whether they can  
4 prove they own the Note, whether they can prove that there's  
5 documentation to show how much is owed on the Note, expenses  
6 as to prosecuting the foreclosure, I believe raise complex  
7 Federal and State issues as to disclosures that were made.

8                   So, I think just in and of itself in this  
9 case, particularly because of the party we're dealing with  
10 even... made it even more clear that these foreclosure  
11 cases are not as simple as they may appear. We're talking  
12 about in this case a \$600,000.00 obligation that my client  
13 believes he has expenses that he was... his house was  
14 raised, that... and to conduct discovery and pursue  
15 potential Counter Claims and Third-Party Claims that take it  
16 outside of a typical straight, you know, foreclosure.

17                   And, I think as you mentioned on Monday, you  
18 asked whether that case was a... had any complex issues  
19 that... you know, and I believe you said the appointment  
20 was to move cases through, but this is... our position is  
21 this is a large Mortgage, it's a... it's a large issue that  
22 my client has the right to defend in a properly assigned  
23 Circuit Court Division and it's the way in which this  
24 particular case... in addition to the way in which the  
25 whole system has been put in, to indicate to try to run them

1 through in this process, it's our position,  
2 unconstitutional.

3 THE COURT:

4 Okay. I'm... Ms. Thompson, do you wish to  
5 respond to that in any way?

6

7 PLAINTIFF'S RESPONSE TO MOTION FOR TRANSFER

8 BY HON. THOMPSON:

9 Well, I mean I really don't see... frankly I  
10 don't... I don't agree. I mean, this is a Judge that's  
11 assigned in this Division that is qualified to hear this  
12 case and I think ultimately that's the only thing that  
13 matters.

14 I mean I think that Counsel is bringing...  
15 he's basically arguing his case, but I don't think it has  
16 any relevance to Judge Ellinor hearing this matter. I mean  
17 he's qualified to hear it and my understanding is that the  
18 Supreme Court is... and, I could be wrong here, is actually  
19 the Court that stated that these Divisions should be  
20 created. So, I don't see what the problem is here.

21

22 REBUTTAL ARGUMENT TO MOTION FOR TRANSFER

23 THE COURT:

24 Okay. Let me ask Mr. Uhlfelder;  
25 Have we had any Cross Claims, Counter Claims

1 or anything like that filed in this case yet?

2 BY HON. UHLFELDER:

3 No, we just filed the Motion to Dismiss.

4 And, just to be clear, I'm not calling into question Judge

5 Ellinor, it's just the manner in which this has been done

6 and I don't believe that you're... I think you're

7 completely incorrect, that the Supreme Court has not signed

8 off on these Divisions, I know that for a fact.

9 THE COURT:

10 Hang on a minute, Mr. Uhlfelder. As I

11 understand it, when they approached me about coming in to

12 hear these cases, that I would be acting as a Senior Judge

13 in all... in whatever capacity that I would be normally...

14 that I would normally handle as a Senior Judge, Senior

15 Circuit Judge.

16 What our discussion was, was that the nature

17 of the cases that I would be anticipating hearing would be

18 those which were fairly straight forward foreclosures. Now,

19 this does not mean uncontested foreclosures, but basically a

20 straight forward foreclosure, but that if there was a case

21 that came along with complicated issues, complicated...

22 multiple parties that would require a great deal of this

23 Court's time, then that would be the kind of case I would

24 refer back to the originally assigned Judge.

25 Now, I've heard a lot of Motions to Dismiss,

1 I've heard a lot of Motions to Strike, I've heard a lot of  
2 those issues and I understand what you're saying about  
3 there's going to be questioning the documents and all that.

4 Well, that's all good and well, but at some point it  
5 appears that it is going to tie this Court up in a  
6 protractedly long Hearings, then it's a... I have an  
7 agreement with the Chief Judge that I can assign the case  
8 back to the original Judge.

9 But, I don't think it was anticipated that I  
10 do so simply based on the fact that you say, okay, we're  
11 going to question that they're the holder of the Note.  
12 Well, nearly everyone that comes in here questions that.

13 HON. THOMPSON:

14 Sir, also I don't know if it's proper for  
15 Counsel to file this Motion. He can do that in every single  
16 case then that's being heard before the Senior Judge; and I  
17 think that he probably should have filed that Motion when  
18 the Division was created and it should be filed basically as  
19 a question to the Circuit Court itself, it shouldn't be to  
20 the Senior Judge that has been assigned to hear this case.

21 So, that means that every time that a Senior  
22 Judge is scheduled to hear a case that you're going to file  
23 a particular Motion?

24 BY HON. UHLFELDER:

25 Well, I positioned that the whole procedure

1 for setting up these Foreclosure Divisions is  
2 unconstitutional.

3 HON. THOMPSON:

4 Okay, so then I think that---

5 BY HON. UHLFELDER:

6 In this particular case, and I don't have to  
7 file it in every... with the Circuit... the standard to  
8 filing it is with the Judge hearing it. And, it's our  
9 position that this attempt on... you know, to put all the  
10 foreclosure cases just to ram them through by, you know,  
11 because the... there was too much heard by Circuit Judges,  
12 is... we believe that it was done through the proper  
13 procedures.

14 I'm not saying it can't be done, I'm just  
15 saying that in order to do it, I'm looking at the case, one  
16 of the Supreme Court cases that say, if you're going to set  
17 up a Senior Judge Docket as a Division, which I believe this  
18 is, that there is a procedure to do it and that that...  
19 it's our position that that has not been done. I'm not  
20 saying it's completely impossible.

21 THE COURT:

22 All right.

23 BY HON. UHLFELDER:

24 But, I'm saying that... it's our position  
25 that there was not a procedure, but it was basically the

1 Legislature felt, for whatever reason, that they wanted to  
2 appropriate money and I don't know why it wasn't... wasn't  
3 clear that we don't have enough Judges to hear these things,  
4 other than it has an appearance of that you're just trying  
5 to move them through and my clients have a right to have it  
6 heard by a Judge that is... that is an elected Judge, and I  
7 think that it also talks about the length of the  
8 appointment.

9 We have no problem with it being heard by the  
10 Circuit Judge who it was assigned to, but we just don't  
11 believe that the way in which the procedure for just kicking  
12 it out of elected Judges' hands, hundred of thousands of  
13 foreclosures and then assigning them to a Senior Judge, in  
14 this case, is a bit...

15 THE COURT:

16 Okay.

17 BY HON. UHLFELDER:

18 ...is inconsistent with due process, I mean,  
19 you know...

20 THE COURT:

21 All right.

22 BY HON. UHLFELDER:

23 And, the complication of this, I can tell  
24 this is going to be complicated, we're going to take  
25 depositions, you know---

1 THE COURT:

2 Okay.

3 BY HON. UHLFELDER:

4 ---Bank of America, first of all, I don't  
5 even know why they're entitled to have this Hearing, I  
6 thought they were freezing all foreclosures. I guess they  
7 aren't, but this has been complicated, not by my client, but  
8 by the way in which these documents were put together and  
9 these Banks have lost everything and don't know how much is  
10 owed and in this case, they don't even have the Note, but,  
11 you know, they've got...

12 We've got all sorts of evidence that people  
13 were signing Affidavits that don't even review things, and  
14 which we anticipate will happen in this case.

15  
16 COURT'S RULING

17 THE COURT:

18 Okay. Mr. Uhlfelder, I understand exactly  
19 where you're coming from. Here's what I'm going to do; I'm  
20 going to consider this as an Ore Tenus Motion for me to  
21 Disqualify myself and Transfer the case to the original  
22 Judge.

23 I'm going to deny that Motion. Now, this  
24 will give you an opportunity to take up the issues that  
25 you're talking about in a forum different from mine, that is

1 challenging the whole process of assigning Senior Judges to  
2 Foreclosure cases, and that's what you're saying that you  
3 object to.

4 So, I'm going to deny your Ore Tenus Motion  
5 to Disqualify myself and to refer the case back to the  
6 original Judge. So, with that done I will go ahead with  
7 your Motion to Dismiss, if that's what you want to do.

8

9 HON. UHLFELDER:

10 Okay, well, I don't want to waive any rights,  
11 I guess, associated with that. I understand, but I just  
12 want to make it clear, this is... my clients... there's no  
13 disrespect to you, I don't have any---

14 THE COURT:

15 Listen, I mean no problem, I understand where  
16 you're coming from.

17 HON. UHLFELDER:

18 Okay.

19 THE COURT:

20 You're not bothering me a bit.

21 HON. UHLFELDER:

22 Okay. Well, I just want to make that clear,  
23 this is just that, you know, it needs to be done the normal  
24 way.

25 THE COURT:



1 Hey, I hear you.

2 HON. UHLFELDER:

3 So, okay, well, besides... since you denied  
4 it, I don't want to... I don't know what we plan to do with  
5 that Ruling, but I mean if the Motion To Dismiss... if you  
6 want to not have to hear the Motion To Dismiss that would be  
7 fine with us, if you want to have that set for another time.

8 THE COURT:

9 That's strictly up to you.

10 HON. UHLFELDER:

11 I didn't set the Hearing, so that would be  
12 fine with us.

13 THE COURT:

14 Who set it up?

15 HON. UHLFELDER:

16 The Plaintiff.

17 HON. THOMPSON:

18 We set it up, Your Honor.

19 THE COURT:

20 Oh, Karen, y'all set it up, okay.

21 HON. THOMPSON:

22 Yeah, we did set it up, but if Your Honor has  
23 denied his Motion, then I don't see any reason why the Court  
24 can't hear his Motion To Dismiss.

25 THE COURT:

1                                   Okay. If you want to go forward with it, Mr.  
2 Uhlfelder.

3

4 BY HON. UHLFELDER:

5                                   Well, we would not want to go forward with  
6 it, in light of where we're at today.

7 THE COURT:

8                                   Okay. Then I will simply cancel this... I  
9 will simply cancel... we'll just cancel this Hearing and  
10 I'll enter the Order that I discussed earlier, and that in  
11 light of the denial of your Motion for Referral back, you do  
12 not wish to go ahead with the... that the Motion To Dismiss  
13 will be rescheduled, okay, something like that?

14 HON. THOMPSON:

15                                   And, then I guess I will reschedule it before  
16 the Circuit Judge then, this---

17 THE COURT:

18                                   Well, it's not... it's not going back.  
19 Who...

20 HON. THOMPSON:

21                                   Okay. I mean---

22 THE COURT:

23                                   This is your---

24 HON. THOMPSON:

25                                   It's his Motion To Dismiss---

1 THE COURT:

2 Right.

3 HON. THOMPSON:

4 We did set it, yes, but he has asked the  
5 Court to refer it back---

6 THE COURT:

7 Right.

8 HON. THOMPSON:

9 ---to the Circuit Judge.

10 THE COURT:

11 Right.

12 HON. THOMPSON:

13 Basically you're denying that Motion.

14 THE COURT:

15 That's correct.

16 HON. THOMPSON:

17 And, so then his... then I don't see why his  
18 Motion To Dismiss should not be heard, I mean it's  
19 scheduled.

20 HON. UHLFELDER:

21 I think because he said that there was... he  
22 was more intent than I, that we could seek, you know, relief  
23 based on that Ruling and if we believe there's an  
24 appropriate forum to do that.

25 HON. THOMPSON:

1                   Okay. And, how... I don't know, is there a  
2 time period for that? Because then basically this whole...  
3 this Motion To Dismiss is holding up my case until you  
4 decide what you're going to do with the Judge's Ruling  
5 today.

6                   Well, okay, it's fine, I know... I know what  
7 I'll do. Okay. So, I will reschedule it then.

8 THE COURT:

9                   All right.

10 HON. THOMPSON:

11                   And, if you don't have an issue... okay.

12 THE COURT:

13                   I will... I'm just going to draw a... it's  
14 a very simple Order Denying Mr. Uhlfelder's Ore Tenus Motion  
15 to Transfer.

16 HON. THOMPSON:

17                   I also think that Motion is... I think he...  
18 did you also file the Motion, Mr. Uhlfelder?

19 HON. UHLFELDER:

20                   Yes.

21 THE COURT:

22                   So, it has been filed?

23 HON. UHLFELDER:

24                   Yes, sir.

25 THE COURT:

1                   Okay. So... all right, so we can consider  
2 that Motion being heard right now.

3 HON. THOMPSON:

4                   Right.

5 THE COURT:

6                   Okay. I'll just word it that... okay, so  
7 I'm denying your Motion, Mr. Uhlfelder, do you want to draw  
8 up the Order or do you want Ms. Thompson to draw up the  
9 Order?

10 HON. UHLFELDER:

11                   I can draw it and have her review it. And,  
12 the reason I brought it up, like this was at the other  
13 Hearing that you had mentioned this issue---

14 THE COURT:

15                   Okay. But, I did not fully understand your  
16 position Monday, because I did not understand that this was  
17 a general objection to all of these cases being heard by  
18 Senior Judges, and that's what I hear today. I had the  
19 impression Monday that that particular case was going to be  
20 complex because of issues raised.

21 HON. UHLFELDER:

22                   Well,---

23 THE COURT:

24                   But, as I hear your argument today, you're  
25 going to... you could raise the same argument, as Ms.

1 Thompson said, in every case that's filed before me, and  
2 I...

3 HON. UHLFELDER:

4 I don't know if every case, but I mean I  
5 have...

6 THE COURT:

7 And, in any case that you say you're going to  
8 take a deposition, you say, okay, well, gee whiz, I don't  
9 think Judge Ellinor, I don't think their program is set up  
10 for a case that I'm going to take a deposition in. Well,  
11 that's not true. Your taking a deposition in a case that's  
12 assigned to me doesn't affect me.

13 HON. UHLFELDER:

14 Okay. Well, I guess there were other  
15 factors, but that wasn't the only factor that I outlined in  
16 my Motion.

17 THE COURT:

18 Okay. Okay, then I didn't make myself clear  
19 Monday. What I'm looking at is whether or not a particular  
20 case---

21 HON. UHLFELDER:

22 Right.

23 THE COURT:

24 On a case by case basis, is going to be a  
25 protracted litigation case. And, based on the factors other

1 than, I don't think the assignment to Senior Judges is  
2 constitutional, but that's not a valid reason that I'm going  
3 to grant the assignment... reassignment.

4 So, go ahead, Ms. Thompson, and draw the  
5 Order.

6 HON. THOMPSON:

7 Well, Mr. Uhlfelder will draw the Order.

8 HON. UHLFELDER:

9 Yeah, I'll draft it and I'll send it to her  
10 before submission. So, but if the case down the road may  
11 become... you determine---

12 THE COURT:

13 We'll look at it then.

14 HON. THOMPSON:

15 Yeah, it depends on what's filed.

16 HON. UHLFELDER:

17 Okay.

18 THE COURT:

19 We'll look at it then.

20 HON. UHLFELDER:

21 But, I do want to ask Ms. Thompson, because  
22 I'm not clear, is Bank of America freezing of foreclosures,  
23 does that not apply to this case?

24 HON. THOMPSON:

25 Well, only Judgments or Sales.

1 HON. UHLFELDER:

2 So... okay.

3 HON. THOMPSON:

4 If it's before the Judgment we're still  
5 proceeding.

6 HON. UHLFELDER:

7 So, it's not a moratorium on all  
8 foreclosures?

9 HON. THOMPSON:

10 It depends on where the foreclosure is, so  
11 it's... so we're not moving forward with Judgments and  
12 we're not moving forward with Sales. But, I mean if you  
13 read the news, although that's... you know, that's just the  
14 news, they did say that they would be lifting it next week.

15 But, anyway at any rate, the answer to your  
16 question is that was only in relation to Judgments and  
17 Sales, but nothing before that. So, we're proceeding, as we  
18 are, with this Motion to Dismiss.

19 HON. UHLFELDER:

20 But, if there were a Motion for Summary  
21 Judgment, then that would not be---

22 HON. THOMPSON:

23 Exactly, yes.

24 THE COURT:

25 Okay. Anything else, people?



1 HON. UHLFELDER:

2 No, sir, thank you very much.

3 HON. THOMPSON:

4 No. But, please don't hang up, Mr.  
5 Uhlfelder, I'd like to speak with you.

6 THE COURT:

7 Okay. I'm going to hang up if you're through  
8 with me, Ms. Thompson.

9 HON. THOMPSON:

10 Okay.

11

12 (NO FURTHER PROCEEDINGS)

13 (CONCLUDED @ 2:10 P.M. CDT)

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CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BAY

I, SHARON M. McALLISTER, Court Reporter and Notary Public in and for the State of Florida at Panama City, Florida do hereby certify as follows:

THAT I correctly reported the foregoing MOTION HEARING at the time and place therein designated in the caption hereof;

THAT I later reduced my shorthand notes to typewriting and that the foregoing pages numbered 1 through 25 contain a full, true and correct transcript of the proceedings taken on said occasion;

THAT I further am neither of kin nor of counsel to any of the parties involved in this matter, nor am I interested in the results thereof;

THIS 21st day of October, 2010.



*Sharon M. McAllister*

SHARON M. McALLISTER  
Court Reporter & Notary Public  
State of Florida at Large

My Commission Expires: