

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

**U.S. BANK NATIONAL ASSOCIATION,
BUT NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE
FOR THE RMAC TRUST, SERIES 2013-
IT,**

Plaintiff

vs.

**ERIC WALL, ET AL.,
Defendants**

Case No. 2011-CA-3117-ES-J4

**MOTION TO VACATE JUDGMENT AND SET MATTER FOR
A NEW NON JURY TRIAL**

Come now the Plaintiff, **WELLS FARGO BANK, N.A., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC REMIC TRUST SERIES 2013-IT**, by and through its under signed counsel and state as follows:

1. By way of history this file received a Final Judgment of Foreclosure and a Supplement to Judgment were entered in this case on November 12, 2014 by the Honorable Judge Cobb. A copy of the same are attached hereto as **Exhibit "A"**.

2. Since the entry of the judgment this matter has been mired in litigation and allegations of misconduct.

3. This matter is presently pending appeal with the entry of an order from Second District Court of Appeals that has relinquished jurisdiction to consider the Defendant's 1.540 Motion for relief from Judgment.

4. The undersigned counsel has been attempting to resolve the matter with counsel for Defendant **ERIC WALL** for the last several months without success.

5. On August 5, 2015 the undersigned provided to attorney for the Defendant written confirmation that Plaintiff would agree to vacate its judgment and allow the matter to be re-tried.

6. Since August 5, 2015 no overt steps have been taken to resolve the pending post judgment motions and have the final judgment vacated.

7. Pursuant to Florida Statute 702.07 this Court may set aside a final judgment of foreclosure at any time prior to the occurrence of judicial as follows:

702.07 Power of courts and judges to set aside foreclosure decrees at any time before sale.—The circuit courts of this state, and the judges thereof at chambers, shall have jurisdiction, power, and authority to rescind, vacate, and set aside a decree of foreclosure of a mortgage of property at any time before the sale thereof has been actually made pursuant to the terms of such decree, and to dismiss the foreclosure proceeding upon the payment of all court costs.

8. This matter has proceed to appoint in time that judicial economy is being wasted and Plaintiff believes that best course of action is to vacate the Final Judgment and Supplemental order which is what Defendant has been seeking since November 12, 2014 and Plaintiff would then seek that the matter be reset for a non jury trial to give sufficient time for the issuance of trial subpoenas and preparation of the same.

WHEREFORE Plaintiff prays that the Court vacate the Final Judgment, Supplemental Order deny all other pending motions as moot and once the appeal is dismissed reset the matter for a non jury trial.

LAW OFFICE OF GARY GASSEL, P.A.
2191 Ringling Boulevard
Sarasota, Florida 34237
Primary email: Pleadings@Gassellaw.com
Secondary email: Efiling@Gassellaw.com
(941) 952-9322
Fax: (941) 365-0907
Attorneys for Plaintiff

By: 

GARY I. GASSEL, ESQUIRE

Florida Bar No. 500690

WILLIAM NUSSBAUM III, ESQUIRE

Florida Bar No. 066479

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been duly furnished First Class U.S. Mail to :

Eric Wall
c/o Matthew D. Weidner, Esquire
250 Mirror Lake Drive North
St. Petersburg, Florida 33701
service@mattweidnerlaw.com

JULIANA GAITA, P.A.
c/o Juliana Gaita, Esq.
Counsel for Plaintiff
2701 NW 2nd Avenue, Suite 107
Boca Raton, FL 33431
Eservice@gllawcenter.com

INDIAN LAKES PROPERTY ASSOCIATION,
INC c/o FRANCIS E FRISCIA, ESQ.
MEIROSE & FRISCIA P A
5550 WEST EXECUTIVE DRIVE, SUITE 250
TAMPA, FL 33609
ffriscia@meirosefriscia.com

WELLS FARGO BANK, N.A
C/O DAN MURPHY, OFFICER
101 N. PHILLIPSAVENUE
SIOUX FALLS, SD 32301

this 25 day of SEPT, 2015.



GARY L. GASSEL, ESQUIRE

Exhibit A

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

US BANK, NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY,
BUT SOLELY AS TRUSTEE FOR THE
RMAC TRUST, SERIES 2013-1T
Plaintiff

Case No.: 51-2011-CA-003117-ES
Section: J4

vs.

ERIC WALL; JOHN DOE; MARY DOE;
WELLS FARGO BANK, N.A., SUCCESSOR
BY MERGER TO WACHOVIA BANK, N.A.;
INDIAN LAKES PROPERTY
ASSOCIATION, INC.
Defendant(s)

FILED FOR RECORD
PASCO COUNTY, FLORIDA
11/13/14
Paula S. O'Neil
Clerk & Comptroller
Pasco County, FL

SUPPLEMENTAL TO FINAL JUDGMENT OF FORECLOSURE

This is a contested foreclosure action involving real property in Pasco County, Florida. It was tried before the court on September 17, 2014. The court has entered a separate Final Judgment of Foreclosure to which the findings contained herein are intended to be supplemental. After considering the evidence and argument of counsel for both parties, the court finds as follows.

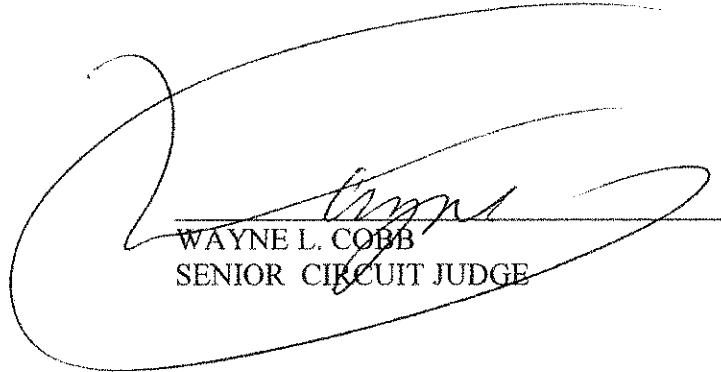
- (1) The promissory note and mortgage entered into evidence or filed in this action were signed and agreed to by the defendant. He received the benefit of the agreements; i.e., the loan of money promised by the note. By the note and mortgage, the defendant promised to pay the sum of \$913.56 monthly until December 1, 2010, when the interest rate was to be adjusted.
- (2) The defendant failed to pay the payment due in May of 2009. He was offered a temporary loan modification but although he made some temporary payments he refused to cooperate with lender and, consequently, was not offered a permanent modification. Defendant's testimony to the contrary was impeachable and not believable.
- (3) The loan is still in default. The default now includes not only principal and interest, but also taxes and insurance premiums paid by the lender to protect its security in the property and other necessary costs to protect its security and attorney's fees and other litigation costs necessitated in prosecuting this

Supplemental to Final Judgment of Foreclosure
Page -2-
51-2011-CA-003117-ES/J4
US Bank vs. Wall

foreclosure action. The terms of the promissory note and mortgage make the defendant responsible for these items.

- (4) Contrary to the arguments of defendant, the court finds that the lender fully complied with all pre-suit notice required by law and the mortgage. The lender mailed several demand letters to the defendant in compliance with paragraph 22 of the mortgage. Contrary to argument of the defendant, the Florida Consumer Collection Practices Act (Section 559.715, Fla.Stat.) does not apply to real estate mortgage foreclosures. Furthermore, the Act itself does not provide for a "condition precedent" to filing foreclosure actions.

DONE AND ORDERED in Dade City, Pasco County, Florida this 12th day of November, 2014.



WAYNE L. COBB
SENIOR CIRCUIT JUDGE

cc:

US Bank, NA
c/o Juliana Gaita, P.A.
2701 NW 2nd Avenue, Suite 107
Boca Raton, FL 33431

Eric Wall
c/o Jason M. Kral, Esq.
Matthew D Weidner, P.A.
1229 Central Avenue
Saint Petersburg, FL 33705

Indian Lakes Property Association, Inc.
c/o Francis E. Friscia, Esq.
Meirose & Friscia, PA
5550 W Executive Dr, Suite 250
Tampa, FL 33609

6

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

US BANK, NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY,
BUT SOLELY AS TRUSTEE FOR THE
RMAC TRUST, SERIES 2013-1T,
Plaintiff,

CASE No. 2011-CA-003117-ES/14

PAULA S. O'NEIL, Ph.D. PASCO CLERK & COMPTROLLER
11/25/14 10:18 AM 1 of 6
OR BK 9115 PG 2702

Vs.

ERIC WALL; JOHN DOE; MARY DOE;
WELLS FARGO BANK, N.A, SUCCESSOR
BY MERGER TO WACHOVIA BANK, N.A.;
INDIAN LAKES PROPERTY
ASSOCIATION, INC.,
Defendants.

NOTE TO CLERK
Please docket as follows
10029

2014 NOV 13 13:54M 11 59
PASCO COUNTY, FLORIDA
Clerk of Court
Paula S. O'Neil

UNIFORM FINAL JUDGMENT OF FORECLOSURE

This ACTION was tried on September 17, 2014 for Final Judgment of Foreclosure in favor for the Plaintiff, US Bank, National Association, not in its Individual Capacity, but Solely as Trustee for the RMAC Trust, Series 2013-1T. On the evidence presented, this Court rules as follows:

IT IS ORDERED AND ADJUDGED that:

1. Plaintiff has submitted a Certificate of Compliance with Foreclosure Procedures in compliance with Administrative Order 2013-026 and 2014-049 or any subsequent Administrative Order.
2. VALUE OF CLAIM: At the initiation of this action, in accordance with section 28.241(1)(a)2.b., Florida Statutes, Plaintiff estimated the amount in controversy of the claim to be \$186,193.46. In accordance with section 28.241(1)(a)2.c., Florida Statutes, the Court identifies the actual value of the claim to be \$247,747.28, as set forth below. For any difference between the estimated amount in controversy and the actual value of the claim that requires the filing fee to be adjusted, the Clerk shall adjust the filing fee. In determining whether the filing fee needs to be adjusted, the following graduated filing fee scale in section 28.241(1)(a)2.d., Florida Statutes, controls:

\$400	Value of claim less than or equal to \$50,000 with 5 defendants or less
\$905	Value of claim greater than \$50,000 but less than \$250,000 with 5 defendants or less
\$1,905	Value of claim \$250,000 or greater with 5 defendants or less

If an excess filing fee was paid, the Clerk shall provide a refund of the excess fee. If an additional filing fee is owed, the Plaintiff shall pay the additional fee at least 24 hours prior to the judicial sale. If any additional filing fee owed is not paid prior to the judicial sale, the Clerk shall cancel the judicial sale without further order of the Court.

C4

Case No. 5-2011-CA-000795WSJ2

3. The following amounts are due and owed to the Plaintiff:

Principal due on the note secured by the mortgage foreclosed:	\$186,193.46
Interest on the note and mortgage from 12/21/2009 to 12/1/2013 @ 3.125% interest rate	\$28,161.72
Interest on the note and mortgage from 12/01/2013 to 09/17/2014 @ 3.125% interest rate	\$4,249.46
Late charges	\$708.12
Appraisals/BPO'S	\$105.00
Property Inspections	\$428.05
Title search expenses	\$
Taxes for the year(s) of 2012; 2013	\$2,659.66
Insurance premiums	\$9,720.66
Foreclosure Fees	\$7,833.58
SUBTOTAL	\$240,059.71
Additional costs	\$1,160.00
SUBTOTAL	\$
Attorney's fees based upon 36.9 hours at \$175 per hour	\$6,982.00
Less: Miscellaneous deductions or credits (Suspense Balance)	\$-454.43
TOTAL SUM	\$247,747.28

4. The total sum in paragraph 3 will bear interest at the prevailing statutory interest rate of 4.75 percent per year from this date through December 31 of this current year. Thereafter, on January 1 of each succeeding year until the judgment is paid, the interest rate will adjust annually in accordance with section 55.03(3), Florida Statutes.

5. Plaintiff, whose address is c/o Rushmore Loan Management Services, 15480 Laguna Canyon Rd., Irvine, CA 92618 holds a lien for the total sum specified in paragraph 3 herein. The lien of the Plaintiff is superior in dignity to all rights, titles, interests, or claims of the Defendant(s) and all persons, corporations, or other entities claiming by, through, or under the Defendant(s), or any of them and the property will be sold free and clear of all claims of the Defendant(s), with the exception of any assessments that are superior pursuant to sections 718.116 and 720.3085, Florida Statutes, or _____

(describe other surviving lien). The Plaintiff lien encumbers the subject property located in Pasco County, Florida, and described as:

THE ASSESSOR'S PARCEL NUMBER (PROPERTY TAX ID#) FOR THE REAL PROPERTY IS 3226190120000000350.

LOT 35, INDIAN LAKES, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 41, PAGE 93, OF THE PUBLIC RECORDS OF PASCO COUNTY, FLORIDA

Case No. 5-2011-CA-000795WSJ2

PROPERTY ADDRESS: 23807 POW WOW DRIVE, LUTZ, FLORIDA 33559

6. If the total sum with interest at the rate described in paragraph 4 and all costs accrued subsequent to this judgment are not paid, the Clerk of Circuit Court shall sell the subject property at public sale on JAN 15 2015 to the highest bidder for cash, except as prescribed in Paragraph 7, in the following location (*mark applicable location*):

In an online sale at www.pinellas.realforeclose.com, beginning at 10 a.m. on the prescribed date (mark this box for all sales in Pinellas County)

In an online sale at www.Pasco.realforeclose.com, beginning at 10 a.m. on the prescribed date (mark this box for all sales in Pasco County)

after having first given notice as required by section 45.031, Florida Statutes. Plaintiff must arrange for publication of notice of sale in accordance with chapters 45 and 702, Florida Statutes. The Plaintiff must file the original Notice of Sale and Affidavit of Proof of Publication with the Clerk no later than 24 hours prior to the sale.

Plaintiff or Plaintiff's attorney may also cancel or reschedule the sale by filing a motion with the Court in accordance with Florida Rules of Civil Procedure, Form 1.996(b) and may seek to reschedule the sale to a later date.

7. Plaintiff shall advance all subsequent required costs of this action. Except for the fee to the Clerk as provided in §45.035, Florida Statutes, and publishing costs supported by an affidavit, reimbursement or credit for such costs shall be by court order based upon a written motion and adjudication at a hearing with notice. If a third party bidder is the purchaser, the third party bidder must pay the documentary stamps attached to the certificate of title in addition to the bid.

8. If the Plaintiff incurs additional expenses subsequent to the entry of this final judgment but prior to the sale date specified in paragraph 6, Plaintiff may, by written motion served on all parties and adjudication at a hearing with notice, seek to amend this final judgment to include said additional expenses.

9. On the filing of the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the Plaintiff's costs; second, documentary stamps affixed to the Certificate, unless the property is purchased by a third party bidder; third, Plaintiff's attorneys' fees; fourth, the total sum due to the Plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 4 from this date to the date of the sale; and by retaining any remaining amount pending further Order of this Court.

10. On filing of the Certificate of Sale, Defendant(s) and all persons claiming under or against Defendant(s) since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property except as provided in the Protecting Tenants at Foreclosure Act of 2009 Pub. L. No. 111-22, 123 Stat. 1660, or as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. On filing of the Certificate of Sale, Defendant's right of redemption as provided by section 45.0315, Florida Statutes shall be terminated.

11. The Court finds, based upon the affidavits presented and upon inquiry of counsel for the Plaintiff, that 36.9 hours were reasonably expended by Plaintiff's counsel and that and hourly

Case No. 5-2011-CA-000795WSJ2

rate of \$175/hr is appropriate. PLAINTIFF'S COUNSEL CERTIFIES THAT THE ATTORNEY FEE AWARDED DOES NOT EXCEED ITS CONTRACT FEE WITH PLAINTIFF. The Court finds that there are no reduction or enhancement factors for consideration by the Court pursuant to *Florida Patient's Compensation v. Rowe*, 427 So. 2d 1145 (Fla. 1985).

OR

The Court finds, based upon the affidavits presented and upon inquiry of counsel for the Plaintiff, that the flat fee of \$1160.00 is reasonable and appropriate for the Plaintiff's counsel's attorney's fees. The Court finds that there are no reasons for either reduction or enhancement pursuant to *Florida Patient's Compensation Funds v. Rowe*, 472 So. 2d 1145 (Fla. 1985), and the Court therefore has awarded reasonable attorney's fees in the amount indicated in paragraph 3 of this Judgment.

12. IMPORTANT INFORMATION PROVIDED pursuant to section 45.031, Florida Statutes:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

If the property has qualified for the homestead tax exemption in the most recent approved tax roll, also include the following two paragraphs:

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH EITHER THE PINELLAS CLERK OF CIRCUIT COURT AT 315 COURT STREET, CLEARWATER, FL 33756, (727) 464-7000, OR THE PASCO CLERK OF CIRCUIT COURT AT 38053 LIVE OAK AVENUE, DADE CITY, FL 33523, (352) 521-4517 OR 7530 LITTLE ROAD, NEW PORT RICHEY, FL 34654, (727) 847-8176 WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU

Case No. 5-2011-CA-000795WSJ2

ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION.

IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT A LEGAL SERVICES OFFICE, SUCH AS: GULFCOAST LEGAL SERVICES, INC., 314 S. MISSOURI AVE., SUITE 109, CLEARWATER, FL 33756, (727) 443-0657 / COMMUNITY LAW PROGRAM, 501 FIRST AVE N., ROOM 519, ST. PETERSBURG, FL 33701, (727) 582-7480 / BAY AREA LEGAL SERVICE, INC., 4948 CENTRAL AVE., ST. PETERSBURG, FL 33707, (800) 625-2257 / BAY AREA LEGAL SERVICE, INC., 37718 MERIDIAN AVENUE, DADE CITY, FL 33532 (800) 625-2257 / BAY AREA LEGAL SERVICE, INC., 8406 MASSACHUSETTS AVE, STE B-2, NEW PORT RICHEY, FL 34653, (800) 625-2257 TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST ANOTHER OPTION. IF YOU CHOOSE TO CONTACT ONE OF THESE SERVICES FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

13. Only the judgment owner will be allowed to credit bid. An assignment of the final judgment of foreclosure filed with the Clerk of the Circuit Court prior to the public sale will effectively transfer with it the right to credit bid at the sale. Court approval of the assignment of the final judgment is not required.

The filing of a Certificate of Sale by the Clerk gives certain property rights to the highest bidder. In order to assign those rights and have the Certificate of Title issued to a third party, the highest bidder must file a written conveyance made in accordance with §689.01 or §692.01, Fla. Stat., governing real estate transfers. Such conveyance must be filed with the Clerk prior to the issuance of the Certificate of Title. Neither the Court nor the Clerk will change a Certificate of Title based upon a conveyance filed after the Certificate of Title has been issued.

14. The Court retains jurisdiction of this action to enter further Orders that are proper, including without limitation, Orders authorizing writs of possession and an award of attorney's fees, and to enter a deficiency judgment if the Defendant has not been discharged in bankruptcy. *(ANY ADDITIONAL PROVISIONS OR MODIFICATIONS TO THIS FINAL JUDGMENT SHOULD BE SET FORTH IN BOLD TYPE AND CONSECUTIVELY NUMBERED PARAGRAPHS).*

~~15. (Optional) The Mortgage Note is hereby re-established pursuant to section 673.3091, Florida Statutes.~~ *W*

W **DONE AND ORDERED** in Dade City, Pasco County, Florida, on this 12 day of Nov, 2014

[Signature]

CIRCUIT JUDGE **WAYNE L. COBB**

Copies furnished to:
All parties in attached Service List

Case No. 5-2011-CA-000795WSJ2

SERVICE LIST

JULIANA GAITA, P.A.
2701 NW 2ND AVE, SUITE 107
BOCA RATON, FL 33431
jgaita@julianagaitapa.com

ERIC WALL
JASON M. KRAL, ESQ.
MATTHEW D. WEIDNER, PA
1229 CENTRAL AVENUE
ST. PETERSBURG, FL 33705
service@mattweidnerlaw.com

INDIAN LAKES PROPERTY ASSOCIATION, INC
C/O FRANCIS E FRISCIA, ESQ.
MEIROSE & FRISCIA P A
5550 WEST EXECUTIVE DRIVE, SUITE 250
TAMPA, FL 33609
ffriscia@meirosefriscia.com