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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA
CIVIL ACTION

PHH MORTGAGE CORPORATION,
Plaintiff,

vs.

JEFFREY B. STARMER, et al,
Defendant(s).

CASE NO.: 2011 CA 004182
DIVISION: FC-E

FILED

MAR 16 2012

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
INCLUDING A HEARING
TO TAX ATTORNEYS' FEES AND COSTS
AND REFORMATION OF MORTGAGE

Plaintiff, PHH MORTGAGE CORPORATION, files this Motion for Summary Judgment Including a Hearing to Tax Attorneys' Fees and Costs and Reformation of Mortgage and says:

1. This Motion is filed pursuant to Fla. R. Civ. P. 1.510. The particular grounds on which the Plaintiff's Motion for Summary Judgment Including a Hearing to Tax Attorneys' Fees and Costs and Reformation of Mortgage is based are set forth below.

2. Plaintiff filed its Complaint to reform a Mortgage and Foreclose a Mortgage on real property located in DUVAL County, Florida, the legal description of which is set forth in the Complaint.

3. Defendants were duly and regularly served with process.

4. In the Complaint PHH MORTGAGE CORPORATION sought reformation of the Mortgage on the grounds of an error in the legal description so that the legal description can be corrected to conform with the intention of the parties at the time of execution.

5. All of PHH MORTGAGE CORPORATION's allegations in this regard are in compliance with Florida law. Spear vs. MacDonald, 67 So.2d 630 (Fla. 1953); Malt v. R.J. Mueller Enterprises, Inc., (Fla. 4th DCA 1981.)

6. On the basis of the above grounds, PHH MORTGAGE CORPORATION is entitled to a final

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judgment granting reformation of the Mortgage as a matter of law.

7. The Mortgage sued upon by Plaintiff constitutes a valid lien on the property sought to be foreclosed, is in default and is superior to any right, title, interest or claim of all Defendants and all persons or entities claiming, by through or under them.

8. On the basis of the above grounds, the Plaintiff is entitled to a Final Judgment as a matter of law. The substantial matters of law to be argued are as follows:

- (a) The interest of the owner of record for the property described herein is inferior and subordinate to the interest of Plaintiff. Jordan v. Sayre, 24 Fla. 1, 3 So. 329 (1888); Int'l Kaolin Co. v. Vause, 46 So. 3 (Fla. 1908).
- (b) The lien of Plaintiff's mortgage takes priority over any other subsequent claims or liens attaching to the property through the mortgagors, their successors, assigns and tenants. Lee v. Slemons, 112 Fla. 675, 150 So. 792 (1933); Bullard v. Fender, 140 Fla. 448, 192 So. 167 (1939); County of Pinellas v. Clearwater Fed. Sav. & L. Assn, 214 So.2d 525 (Fla. 2d DCA 1968); Bancflorida v. Hayward, 689 So.2d 1052 (Fla. 1997).
- (c) As a matter of law the entire indebtedness secured by the mortgage held by Plaintiff is due and collectible. VanHuss v. Prudential Ins. Co. of America, 123 Fla. 20, 165 So. 896 (1936); Baader v. Walker, 153 So.2d 51 (Fla. 2d DCA), cert. denied, 156 So. 2d 858 (Fla. 1963); Harmony Homes, Inc. v. U.S., 936 F. Supp 907 (Fla. MD 1996).
- (d) As a matter of law and pursuant to the mortgage instrument securing the mortgage note, Plaintiff is entitled to collect costs and attorney's fees incident to the collection of its indebtedness and any sums advanced to prevent the impairment of its security. Ritch v. Eichelberger, 13 Fla. 169 (1869-71); American Securities Co. v. Goldsberry, 69 Fla. 104, 67 So. 862 (1911); Raskin v. Otten, 273 So.2d 433 (Fla. 3rd DCA 1973); Reilly v. Barrera, 620 So. 2d 1116 (Fla. 5th DCA 1993).
- (e) Florida and other law related to notice, notes and mortgages, foreclosure, evidence, and substantive and procedural law regarding summary judgments.

9. The Note and Mortgage are in default. Moreover, Plaintiff is entitled to recover its principal, interest, late charges, costs, attorney's fees, and other expenses, all of which will be substantiated via subsequently filed affidavits.

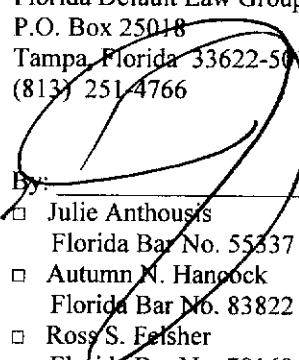
10. Attorney for Plaintiff will offer the original Note and the original Mortgage to the Court upon the hearing of this Motion.

11. The pleading and admissions of file, together with the Affidavits attached hereto and those which may be filed hereinafter, along with any and all depositions which may be hereinafter taken, if any, show that there are no genuine issues as to any material facts. Accordingly, Plaintiff is entitled to Final Summary Judgment as a matter of law upon its Complaint.

WHEREFORE, Plaintiff prays for entry of Final Summary Judgment in its favor against all Defendants for the relief set forth in its Complaint.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all parties listed on the attached service list on this 15 day of March, 2012.

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