

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR CIVIL ACTION, COLLIER COUNTY FLORIDA

21<sup>ST</sup> MORTGAGE COPORATION

QUINTARRIROS,PRIETO,WOOD & BOYER, PA.

Nichole P. Planell (Fl. Bar # 072325)

9300 South Dadeland Blvd., 4<sup>th</sup> Floor, Miami, Florida 33156

Email: [servicecopies@QPWBLAW.com](mailto:servicecopies@QPWBLAW.com)

Email: [Nicole.planell@QPWBLAW.com](mailto:Nicole.planell@QPWBLAW.com)

(Plaintiff)

CIVIL ACTION CASE NO: 15-CA-01170

v.

DIVISION: CIVIL FORECLOSURE

MARION J. GREGORY ( Limited Guardian )

9202 Vanderbilt Beach Drive,

Naples, Florida 34108

Email: [Naplesmarion@aol.com](mailto:Naplesmarion@aol.com)

Mary Jean Ziska

(Defendant)

OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE

Comes Now before this court, Defendant Marion Gregory (from this time forth known to be representing Mary Jean Ziska as her Limited Guardian). Marion Gregory ( Defendant ) was previously represented by defending counsel, Attorney Linda Yerger Fl Bar# 4645893 of Yerger/Tyler PA. Attorney at law firm : Yerger/Tyler PA Attorneys at Law, 1570 Shadowlawn Drive Naples Florida 34104-4321. Attorney Linda Yerger withdrew from the foreclosure case (10/03/16) as per the e-filing #47199191. This motion to withdraw as counsel for defendant was submitted on 10/03/2016 @ 02:38:04PM on the basis of irreconcilable differences between Marion Gregory (Defendant) and Linda Yerger (Attorney for the Defendant). Marion Gregory (Defendant) is therefore currently without counsel.

Pursuant to the Florida Rules of Civil Procedure, Rule 1.490(c) and current Administrative Orders of the Court, (Defendant, Marion Gregory), is left without counsel and hereby OBJECTS TO THE ORDER OF REFERRAL TO THE MAGISTRTE (MAGISTRATE DAVID C. FRIEDMAN) FOR ANY PORTION OF THESE PROCEEDINGS TO BE HEARD OR DECIDED BY A GENERAL MAGISTRATE FOR CASE NO. 15-CA-01170. As per the AMENDMENTS TO FLORIDA RULE OF CIVIL PROCEDURE 1.490 ( May 9th 2013): "Rule 1.490 provides for the appointment of General and Special Magistrates, describes the powers and duties of Magistrates, and states under what circumstances referrals to Magistrates may be made." " The amendment to the rule, which was adopted as proposed by the Commission, expands the use of General Magistrates in residential mortgage foreclosure cases by authorizing referral of those cases to General Magistrates based on implied consent of the

parties, while providing an opportunity for objection by the parties.” RULE 1.490.(d) “GENERAL POWERS AND DUTIES: Every Magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and under the direction of the court. Process issued by a Magistrate shall be directed as provided by law. Hearings before any Magistrate, Examiner, or Commissioner shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to meet the convenience of the witnesses or the parties. All grounds of disqualification of a Judge shall also apply to Magistrates.”

Marion Gregory (Defendant) and Limited Guardian of Mary Jean Ziska, is not equipped with the legal knowledge, legal expertise or legal experience in the practice, procedures, and applications of the law. Based on this lack of knowledge of the law, Marion Gregory (Defendant) would like to OBJECT PRO SE to the ORDER OF REFERRAL TO THE MAGISTRATE for these reasons:

1. Marion Gregory (Defendant) requires the assistance of a new Attorney before proceeding and as per the submitted MOTION FOR EXTENSION OF HEARING ((e-filed 10/13-14/2016 reference #: (47606521)) requests the opportunity to adequately consult with a new Attorney and have the OBJECTION TO THE FORECLOSURE SALE be heard before a Judge with new counsel, new evidence and new defense strategies.
2. Marion Gregory (Defendant) received in the mail a copy of: (E-filing #47584368, E-Filed 10/13/2016 @ 3:08:16PM) for CROSS –NOTICE OF HEARING based on the withdrawal of Attorney Linda Yerger . Marion Gregory (Defendant), is not opposed to the withdrawal of Linda Yerger but feels that having both the withdrawal of Linda Yerger and THE OBJECTION TO THE FORECLOSURE SALE heard before the Magistrate within the 15 minute time slot is definitely not enough time to present each matter, and consider and or decide each matter. Marion Gregory (Defendant) especially feels that the matter of the OBJECTION TO THE FORECLOSURE SALE, which is based on the omission of a strong defense by attorney Linda Yerger in the foreclosure defense of Case No: 15-CA-1170 needs to be heard by a Judge.
3. Marion Gregory (Defendant) submits this OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE and requests a Judge hear the evidence that was previously not heard by Honorable Magistrate David Friedman. Marion Gregory (Defendant) believes as per Linda Yerger’s (previous Attorney) email correspondence (Monday November 30<sup>th</sup> 2015 @ 9:32am) that Honorable Magistrate David Friedman did not dismiss the foreclosure case while the Lewis Bartram, Patricia Bartram & The Plantation at Pointe Verdra Inc. Petitioners v. U.S. Bank National Association is still being appealed in the Supreme Court of Florida. As per this correspondence and conversations with previous Attorney Linda Yerger, it is Marion Gregory’s (Defendant) strong belief and fear that Magistrate David Friedman would not be impartial. This fear that Magistrate David Friedman would be biased in his decisions based on this pending Supreme Court Case. This Supreme Court Case decision would have an impact on all pending cases including the foreclosure case of Mary Jean Ziska Case No. 15-CA-01170. As per Linda Yerger, (previous Attorney) mentioned that the same argument concerning the decision of the Bartram case could be then raised if contained in a MOTION FOR SUMMARY JUDGEMENT. It is our belief Magistrate David Friedman, would be biased by his previous decisions thereby uphold his previous on this same case. Marion Gregory (Defendant) feels that perhaps Magistrate David would not be impartial to the new evidence provided by a new Attorney.

Marion Gregory (Defendant) is entitled to OBJECT TO THE ORDER OF REFERRAL TO THE MAGISTRATE and therefore requests to have this matter heard by a Judge pursuant to Rule 1.490(c) of the Florida Rules of Civil Procedure:

As per the AMENDMENTS TO FLORIDA RULE OF CIVIL PROCEDURE 1.490 (May 9th 2013): “Rule 1.490 provides for the appointment of General and Special Magistrates describes the powers and duties of Magistrates, and states under what circumstances referrals to Magistrates may be made. The amendments to the rule, which we adopt as proposed by the Commission, expand the use of General Magistrates in residential mortgage foreclosure cases by authorizing referral of those cases to General Magistrates based on implied consent of the parties, while providing an opportunity for objection by the parties.”

Marion Gregory (Defendant) is submitting this written OBJECTION TO THE ORDER OF REFERRAL TO BE HEARD BY MAGISTRATE DAVID FRIEDMAN HEREBY REQUESTING THAT THE OBJECTION TO THE FORECLOSURE SALE IS HEARD BY A JUDGE INSTEAD OF MAGISTRATE DAVID FRIEDMAN. Marion Gregory is submitting this OBJECTION in writing with submissions through [www.myfloridaaccess.com](http://www.myfloridaaccess.com) via e-filing and mailing copies to all parties involved in the foreclosure case 11-2015-CA-001170-0001-xx . Marion Gregory (Defendant) is submitting this document in a timely manner before October 25<sup>th</sup> 2016 at 10:30am. The Notice of Hearing was filed via e-filing #47046914 e-filed and mailed to Marion Gregory (Defendant) by Linda Yerger before her withdrawal as counsel.

Marion Gregory (Defendant) also requests an exception be made (if necessary) as per the date for this document to be submitted. She is not familiar with the policy and procedures and dates required for filing this document due to the fact that the Defendants’

Attorney withdrew before submitting this OBJECTION THE ORDER OF REFERRAL TO THE MAGISTRATE. Marion Gregory is submitting this OBJECTION TO THE ORDER OF REFFERAL TO THE MAGISTRTE in a timely fashion to promote courtesy and avoid unnecessary inconvenience to the court and the opposing party. As per subsection: (C) REFERENCE: (A) "A written objection to the referral to a Magistrate handling residential mortgage foreclosures must be filed within 10 days of the service of the order of referral." (B) States: " If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing." Marion Gregory (Defendant) requests that if necessary an exception/extension to the 10 day of service rule required to submit this objection be made on her behalf. She has no legal counsel to advise, and has already mentioned the filing of this "OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE" in the documents submitted with the "REQUEST FOR EXTENSION" via e-filing 10/13-14/2016 @ 12:14 am with reference # (47606521). Marion Gregory (Defendant) is unclear as per the dates/times that are required for the submission of the OBJECTION TO THE ORDER OF REFERRAL TO THE GENERAL MAGISTRATE. In previous paperwork received, (THE ORDER OF THE REFERRAL TO THE MAGISTRATE) mention to dates and times of submission was stated as (ONLY) before the hearing (10/25/16). Opposing and contrary information as to a ten day submission requirement,( located on line without the assistance of legal advice or legal counsel) was found within legal information online. To further complicate the matter, the withdrawal of Attorney Linda Yerger (10/03/16) filing # 47199191 E-Filed @2:38PM and then most recently a filing for the Cross -Notice Of Hearing (10/13/16) has left Marion Gregory ( Defendant) not sure of what date to use when submitting this OPPOSITION TO ORDER OF THE REFERRAL TO A MAGISTRATE. Marion Gregory (Defendant) is NOT a lawyer, a paralegal, or does not have knowledge of the process, the procedures, and the rules of the court, she therefore requests that this submission for the OBJECTION TO THE REFERRAL OF THE MAGISTRATE be honored as per dates and times according to the information on instructions found on the: ORDER OF THE REFERRAL OF THE MAGISTRATE. As per the ORDER OF THE REFERRAL TO A MAGISTRAE this submission will be before and made within the scheduled date of the hearing October 25<sup>th</sup> 2016.

Marion Gregory (Defendant) is still in the process of obtaining new legal representation for the assistance in such legal matters concerning time and date requirements when contingent on unforeseen changes in legal representation, and for the actual defense of the foreclosure suit: Case No.: 15-CA-1170. Marion Gregory (Defendant) is complying with the statement located on the ORDER OF REFERRAL TO THE MAGISTRATE (1): "YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITH THE CLERFK OF COURT PRIOR TO COMMENCEMENT OF THE HEARING." The scheduled hearing before the magistrate is currently scheduled for October 25<sup>th</sup>, 2016. Marion Gregory (Defendant) will be submitting this OBJECTION within the deadline for this submission.

Defendant Marion Gregory makes this request in writing and files it with the Clerk of Court in the Circuit Court of the Twentieth Judicial Circuit in and for Civil Action of Collier County. Marion Gregory (Defendant) provides copies of this written objection to the Circuit Judge: ( Honorable Judge Hugh Hayes ), to Magistrate David Friedman, and to 21<sup>st</sup> Mortgage Corporation (Attorney: Nicole P. Planell Fl. Bar # 072325) Ouintairos, Prieto, Wood and Boyer, PA. 9300 South Dadeland Blvd. 4thFloor, Miami, Florida 33156 Tel. # 855-287-0240).

WHEREFORE, upon hearing from the undersigned prays this Court enter and approve this this OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE and approves the appointment of a Judge to preside over Case No.: 15-CA-1170.

#### CERFIFICATE OF SERVICE

Respectfully submitted, By: \_\_\_\_\_ Marion J. Gregory ( 9202 Vanderbilt Beach Road, Naples Florida 34108 (239) 598-1515 IN THE CITY OF NAPLES, STTE OF FLORIDA, COLLIER COUNTY.

Marion J. Gregory (Defendant) I hereby certify that I served the OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE to plaintiff ( Nicole P. Planell, ) via First Class U.S. Mail & E-Filed to the following Attorney of record: (Nicole P. Planell, Attorney for Plaintiff Florida Bar# ( 072325), Quintaros, Prieto, Wood & Boyer, PA. 9300 South Dadeland Blvd. 4<sup>th</sup> Floor Miami Florida 33156 Tel.: (855) 287-0240. Email: [servicecopies@QPWBLAW.com](mailto:servicecopies@QPWBLAW.com) and Email: [Nicole.planell@QPWLAW.com](mailto:Nicole.planell@QPWLAW.com) this 17<sup>th</sup> day of October, 2016.

Respectfully submitted, by \_\_\_\_\_ Marion J. Gregory ( 9202 Vanderbilt Drive, Naples Florida 34108 (239) 598-1515.