

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

21ST MORTGAGE COPORATION
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(Plaintiff)

CIVIL ACTION CASE NO: 15-CA-01170

v.

MARY JEAN ZISKA (DEFENDANT)
MARION J. GREGORY (Defendant's Limited Guardian and Interested Party)
5632 WHISPERWOOD BLVD. UNIT 1601
NAPLES, FLORIDA 34110
EMAIL: RESCUEMARYJEANZISKACONDO@GMAIL.COM
MARION GREGORY (LIMITED GUARDIAN)
9202 VANDERBILT DRIVE, NAPLES, FLORIDA 34108
Email: Naplesmarion@aol.com

(Defendant)

OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE RESUBMITTED

Comes Now before this court, Defendant Mary Jean Ziska, and Marion Gregory (from this time forth known to be Defendant's Limited Guardian and Interested Party). Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) were 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 finalized on November 16th 2016 no E-Filing for document. Mary Jean Ziska(Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) are therefore without counsel.

Pursuant to the Florida Rules of Civil Procedure, Rule 1.490(c) and current Administrative Orders of the Court, (Defendant, Mary Jean Ziska) and Marion Gregory (Defendant's Limited Guardian and Interested Party), is left without counsel and hereby OBJECTS TO THE ORDER OF REFERRAL TO THE MAGISTRTE PRO SE AND BY INTERESTED PARTY OF (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.”

Mary Jean Ziska (Defendant) and Marion Gregory (Defendant’s Limited Guardian and Interested Party), are 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, Mary Jean Ziska (Defendant), and Marion Gregory (Defendant’s Limited Guardian and Interested Party) would like to OBJECT PRO SE and by INTERESTED PARTY to the ORDER OF REFERRAL TO THE MAGISTRATE for these reasons:

1. Mary Jean Ziska (Defendant), and Marion Gregory (Defendant’s Limited Guardian and Interested Party) 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. Mary Jean Ziska (Defendant), and Marion Gregory (Defendant’s Limited Guardian and Interested Party) 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 . Mary Jean Ziska (Defendant) and Marion Gregory (Defendant’s Limited Guardian and Interested Party), 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/was definitely not enough time to present each matter, and consider and or decide each matter. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant’s Limited Guardian and Interested Party) especially feel that the matter of the OBJECTION TO THE FORECLOSUR SALE, which was based two separate submissions on September 12th 2016 by the Defendant Mary Jean Ziska and one submission by Marion Gregory (Defendants Limited Guardian and Interested Party) in of Case No: 15-CA-1170 needs to be heard by a Judge when proper legal counsel for the defense is hired.
3. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant’s Limited Guardian and Interested Party) 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. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant’s Limited Guardian and Interested Party) believes as per Linda Yerger’s (previous Attorney) email correspondence (Monday November 30th 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 Mary Jean Ziska's (Defendant) and Marion Gregory's (Defendant's Limited Guardian and Interested Party) 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 and thereby uphold his previous decisions on this same case. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) feel that perhaps Magistrate David Friedman would not be impartial to the new evidence provided by a new Attorney.

Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) 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."

Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) 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. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) is submitting this OBJECTION (PRO SE and BY Interested Party) in writing with submissions through www.myfloridaaccess.com via e-filing all parties involved and mailing copies to Judge Hugh Hayes concerning foreclosure case 11-2015-CA-001170-0001-xx. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) submitted the original document in a timely manner before October 25th 2016 at 10:30am and is resubmitting the revised document 11/29/2016. The Notice of Hearing was filed via e-filing #47046914 e-filed and mailed to Marion Gregory (Defendant's Limited Guardian and Interested Party) by Linda Yerger before her withdrawal as counsel.

Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) also requests an exception be made (if necessary) as per the date for this document to be submitted. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) are 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 TO THE ORDER OF REFERRAL TO THE MAGISTRATE. Mary Jean Ziska (Defendant) and Marion Gregory (Defendants's Limited Guardian

and Interested Party) did submit the original OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE in a timely fashion to promote courtesy and avoid unnecessary inconvenience to the court and the opposing party. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) are re-submitting this OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE again in a timely fashion. 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.**" Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) requests that if necessary an exception/extension to the 10 day of service rule required to submit this objection be made on her behalf. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) have no legal counsel to advise, and had 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). Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) are 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) mentions two dates and times of submission stated as (ONLY) before the hearing (10/25/16). Opposing and contrary information as to a ten day submission requirement, were located on line without the assistance of legal advice or legal counsel. 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 Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) not sure of what date to use when submitting this OBJECTION TO THE ORDER OF THE REFERRAL TO A MAGISTRATE. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) are NOT a lawyers, a paralegals, or do not have knowledge of the process, the procedures, and the rules of the court, 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 MAGISTRATE this submission was originally made before and made within the scheduled date of the hearing of October 25th 2016.

Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) are 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. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) 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 CLERK OF COURT PRIOR TO COMMENCEMENT OF THE HEARING." The scheduled hearing before the magistrate is currently scheduled for October 25th , 2016. Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) will be submitting this OBJECTION within the deadline for this submission.

Defendant Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) 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. Mary Jean Ziska (Defendant) and

Marion Gregory (Defendant's Limited Guardian and Interested Party) provides copies of this written objection to the Circuit Judge: (Honorable Judge Hugh Hayes), to Magistrate David Friedman, and to 21st Mortgage Corporation (Attorney: Nicole P. Planell Fl. Bar # 072325) Quintairos, 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: _____ Mary Jean Ziska (Defendant) 5632
Whisperwood Blvd. Unit 1601 Naples Florida 34110, and _____ Marion Gregory
(Defendant's Limited Guardian and Interested Party) 9202 Vanderbilt Drive, Naples Florida 34108

Mary Jean Ziska (Defendant) and Marion Gregory (Defendant's Limited Guardian and Interested Party) I hereby certify that I served the OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE to plaintiff (Nicole P. Planell,) 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. 4th Floor Miami Florida 33156 Tel.: (855) 287-0240. Email: servicecopies@QPWBLAW.com and Email: Nicole.planell@QPWLAW.com this 17th day of October, 2016.