

IN THE 20TH JUDICIAL CIRCUIT COURT
OF COLLIER COUNTY
STATE OF FLORIDA

21ST MORTGAGE CORPORATION
NICOLE P. PLANELL Fl Bar # 072325
QUINTARIROS, PRIETO, WOOD & BOYER PA.
(PLAINTIFF)

V.

Civil Action No. 2015-CA-001170

MARION GREGORY
(LIMITED GUARDIAN OF MARY JEAN ZISKA)
9202 VANDERBILT DRIVE 34108
(DEFENDANT)

DEFENDANT'S OBJECTIONS TO MAGISTRATE RECOMMENDATIONS
MOTION FOR REHEARING RECONSIDERATION

Comes Now Defendant Marion Gregory (From this time forth known to be representing Mary Jean Ziska as her Limited Guardian, who was previously represented by defending lawyer Linda Yerger Fl. Bar #645893 of Yerger/Tyler PA Attorneys at Lawfirm: Yerger Tyler PA Attorneys at Law 1570 Shadowlawn Drive Naples Florida 34104-4321) Defendant Marion Gregory Objects to the Magistrates findings and recommendations as relayed in the 15 minute notice of hearing held 10/25/16 at 10:30 AM in Court Room 3-1 heard before Magistrate David Friedman.

Pursuant to documentation as to the referral to General Magistrate: " A referral to a Magistrate for a Residential Mortgage Foreclosure matter requires the consent of all parties. You are entitled to have this matter heard before a Magistrate. If you do not want this matter heard before a Magistrate, you must file a written OBJECTION TO THE REFERRAL OF THE MAGISTRATE within 10 days of the time of service of this order, or within the time to respond to the initial pleading whichever is later. If the time set for the hearing is less than 10 days after the service of this order then objection must be made before the hearing. Failure to file a written objection within the applicable time period is deemed to be consent to the referral. "

A FORMAL "OBJECTION TO THE ORDER OF REFERRAL TO THE MAGISTRATE" was both E-Filed (# 47728472 on 10/17/16 at 9:19PM and mailed to Magistrate David Friedman (and to Judge Hugh Hayes on 10/18/16. The OBJECTION TO THE REFERRAL OF THE MAGISTRATE WAS FILED TO PREVENT THE FOLLOWING ERRORS WHICH OCCURRED ON 10/25/2016 AS PER THE HEARING BY MAGISTRATE DAVID FRIEDMAN:

- The Magistrate erred in recommending that the court deny the request for the Defendant's OBJECTION TO THE REFERRAL OF THE MAGISTRATE (#47728474 E-FILED: 10/17/16@ 9:19PM) thus not allowing the hearing to be in front of a Judge.

As per documentation: " If an objection to the ORDER OF REFERRAL TO GENERAL MAGISTRATE is filed, the Clerk shall immediately assign the matter back to the Associated General Jurisdiction Division." "All orders

stemming from the Magistrate's recommendations and all final judgements shall be forwarded by the Magistrate to the Judge of the Associated General Jurisdiction Division."

- The Magistrate erred in denying the Defendants request to have the OBJECTION TO THE FORECLOSURE SALE (FILED AT THE CLERK OF COURTS ON 09/12/16) HEARD BY A JUDGE WITH NEW LEGAL COUNSEL.

"As the Magistrate does not have the authority to enter substantive orders, all routine motions (such as motions to substitute counsel and motions to extend time) and expedited motions such as motions to cancel sale and motions for stay of execution shall be forwarded by the Magistrate to the Judge of the Associated General Jurisdiction Division.

- The Magistrate erred in allowing the Cross-Notice of hearing (#47584368 E-Filed: 10/13/16). Thereby both the withdraw of the Defendant's Attorney (Attorney Linda Yerger) and then immediately afterward hearing the OBJECTION TO THE FORECLOSURE SALE when Defendant had been only moments before relieved of the Defendants Attorney and all the duties delegated to an Attorney and was then legally left without counsel.

"If an attorney withdraws other than under subdivision B., dies, is suspended from the practice of law, is disbarred or is removed from the case by the court, the opposing party shall serve a notice to appear or appoint counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the notice to appear or appoint counsel must be filed with the court. No further proceedings shall be held in the case until 21 days after filing the notice to appear or appoint counsel unless the unrepresented party waves the time requirement or unless otherwise ordered by the court"

As per scheduling, hearings, motion practices, submissions to the Court, for the Collier County Courthouse: (www.ca.cjs20.org/pdf/ao_2_20.pdf) "once a motion is scheduled through JACS, subsequent motions may not be "piggybacked" using the time reserved for the first motion absent prior approval of the Court."

1. As per the NOTICE OF HEARING set for October 25th 2016 at 10:30 AM for the Defendant's Objection to the Foreclosure Sale a 15 minute slot was allotted.
2. As per the CROSS-NOTICE OF HEARING E-filed by Attorney Linda Yerger (#47584368 10/13/16) for Defendant set also for October 25th 2016 at 10:00 AM for the Motion To Withdraw As Counsel for Defendant a 15 minute slot was allotted.

We believe the subsequent combining of the CROSS- NOTICE OF HEARING and the NOTICE OF HEARING was a violation of Florida Rules of Civil Procedure that ensures timely notice is served to all pro se parties and counsel of record in advance of the hearing. The original notice must be timely filed with the Clerk of Court. A hearing notice for all hearings that will be evidentiary in nature and involving presentation of evidence (affidavits, testimony, exhibits, etc.) should clearly indicate it is an evidentiary hearing on its face. It was an error of Magistrate Friedman to not acknowledge the absence of legal counsel for the Defendant in this cross hearing. Magistrate Friedman did not give adequate time for substitution and replacement counsel for defendant. After accepting Linda Yergers withdraw Magistrate Friedman, immediately went forward with his decision to include the OBJECTION OF THE FORECLOSRE SALE that was not listed under "MATTER:: Motion to Withdraw as Counsel for Defendant" as listed on the CROSS NOTICE OF HEARING. This was a fatal error as it violated the explicit procedural guidelines of the Fla Rules of Civil Procedures

- The Magistrate erred in not acknowledging or referring to the MOTION FOR EXTENSION OF HEARING (#47606521 E-FILED: 10/14/16 @12:14AM) to a Judge.

Defendant was without the assistance of a new attorney or time for substitution of a new attorney to address each point contained in the contents of the MOTION FOR THE EXTENSION OF THE HEARING. Magistrate Friedman's dismissal of counsel for the defendant without adequate ability for substitution of counsel to adequately address each point listed in the motion, or accomplish any of these listed actions contained within the motion could not be addressed.

1. The defendant has not been given the opportunity to adequately consult with an alternate attorney, let alone hire one for representation. For this reason, a request for the Motion for An Extension Of Hearing (#47606521 E-FILED on 10/14/16 @ 12:14AM) to be heard before a Judge.
2. Paperwork and all information of the past proceedings need to be collected by execution of the DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS (FILED AT THE CLERK OF COURTS 09/12/16 AND MAILED TO ALL PARTIES INVOLVED). Information we haven't received, for example paying Linda Yerger for a transcript (Sept 23rd 2015) and never receiving a copy of the transcript as per email: (Sept. 14 2015). To contradict another Attorney's (Nicole Plannel) information, that there was no transcript for the last hearing concerning the foreclosure sale.
3. New and additional defense materials and information not presented previously that needed to be addressed, researched, prepared, and executed for defense.
4. Expert witnesses.
5. Forensic audit.

The court in a (Right to Counsel Case) concluded:

"The obvious truth that the average Defendant does not have the professional legal skill to protect."

- The Magistrate erred in determining without analysis of the ORDER APPOINTING SUCCESSOR INTERIM GUARDIAN the scope and boundaries for the Limited Guardianship hereby allowing Marion Gregory to "assist in the defense and prosecution of lawsuits."

As per the Order Appointing Successor Interim Limited Guardian (Case # 06-117-GA) In Subsection: "2. On or about March 16, 2014 the Collier County Public Guardian was appointed to exercise the following rights on behalf of the ward:

A. To assist in the defense and prosecution of lawsuits.

B. To contract

These two statements of fact were not acknowledged by Magistrate Friedman as he claimed Marion Gregory was not allowed to act as a lawyer on behalf of Mary Jean Ziska. Magistrate Friedman assumed that Mary Jean Ziska was incompetent and he wasn't aware that it was a Limited Guardianship. He did not know the scope and boundaries which would have allowed Mary Jean Ziska to assist Marion Gregory in the defense and prosecution of lawsuits and that would include assisting in filing an OBJECTION TO THE FORECLOSURE SALE.

- The Magistrate erred in dismissing the Defendant's claim for "Fraud On The Court" when Defendant Marion Gregory requested additional evidence from former attorney and an evidentiary hearing on the proper standing of the note and the Assignment Of Mortgage.

"In Florida the prosecution of a Residential Mortgage Foreclosure Action must be brought by the owner and holder of the mortgage and note. Plaintiff is not entitled to maintain an action if it does not own and hold the note which is purportedly secured by the subject mortgage. The plaintiff (21st Mortgage) and subsequent listed land records documents by Ocwen/Christina Trust/Residential Funding lack of ownership of the mortgage and promissory note in this case goes to the heart of its claim of standing, permeates the entire proceeding and subverts the integrity of the action. By previously dismissing any plausible evidence or new disclosures, (new request for forensic audits, or

implementation of additional foreclosure defense tactics not employed by Attorney Linda Yerger, the disclosure of the existence or nonexistence of the records provided not an adequate defense of the foreclosure case and subsequently the premature foreclosure sale of the condominium owned by Mary Jean Ziska. This was an error in justice and one of the reasons for retaining new counsel and having the objection heard by a Judge.

- The Magistrate erred when not addressing, assisting or acknowledging the additional resources needed by Marion Gregory (age 79) in her inability to clearly hear Magistrate David Friedman, Defendant Attorney Linda Yerger, or Plaintiff's Attorney Nicole Planell's statements or arguments.

As per the NOTICE OF HEARING (# 47046914 E-FILED 09/28/16 @11:36PM) "If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you to the provision of certain assistance." Marion Gregory is not classified as disabled. On 10/25/16 she was unable to hear the proceedings and when during the court proceedings she asked her daughter to repeat what was being said, Magistrate Friedman did not acknowledge her need for additional assistance and ignored her requests to repeat what was being said. Although she was not visibly or physically disabled, she does have hearing issues and nothing was done on her behalf during the brief court hearing to remedy the situation.

- The Magistrate erred by dismissing the requests for additional evidence. This included continual requests made by Marion Gregory for answers to 5 specific inquiries made to Attorney Linda Yerger. These 5 points that were not addressed in the defense strategy by Attorney Linda Yerger were critical.
 1. The Bartram Case was never presented in court.
 2. A large file marked "Residential Funding" and set on the Defendants court room table was never referred to or consulted by Attorney Linda Yerger. This included information of the fraudulent practices and paperwork by David J. Stern.
 3. A complete explanation of what Linda Yerger was referring to when she stated to the Plaintiff that 21st mortgage did not reply in the required time (30 day period). Defendant, Marion Gregory believed this technicality would have affected the foreclosure case and Linda Yerger neglected to follow through on this issue.
 4. During the course of the foreclosure case, U.S.P.S. mail arrived at Marion Gregory's address, with Mary Jean Ziska's name, requiring a signature. Attorney Linda Yerger did not advise Marion Gregory properly as per the legal ramifications, duty of the Limited Guardian's responsibilities or the contents involved for the Limited Guardian's signature for this foreclosure case. It was not proper for her to sign for the mail.
 5. At one point during the hearing a comment was made by Attorney Linda Yerger to Attorney Nicole Planell concerning a last page of a contract that did not have a signature. When asked about the unsigned contract no response was given.
- The Magistrate erred in the hearing of 10/25/16 in not allowing testimony concerning the existence of aggrievous errors and major violations of Due Process Of Law. These violations occurred over the entire course of the foreclosure Civil Action Case # 15-CA-01170.

These errors of due process began in the fall of 2015. Linda Yerger, on multiple occasions advised Marion Gregory (Defendant) against attending various hearings or allowed her to participate at the hearings. Marion Gregory (Defendant), was told specifically NOT to notify Mary Jean Ziska of the foreclosure case. Linda Yerger advised Marion Gregory (Defendant) to NOT involve the home owner of the foreclosure case. Attorney, Linda Yerger legally advised Marion Gregory (Defendant) against notifying the condominium/property owner, Mary Jean Ziska of any or the legal proceedings. Linda Yerger, did not allow Mary Jean Ziska to be involved by not notifying Mary Jean Ziska of any hearings, by not allowing Mary Jean Ziska to attend any of the hearings, or by not allowing Mary Jean Ziska to assist, in any defense of any hearings, or in any aspect and throughout the entire foreclosure

case. The Due Process Rights of the condominium owner were violated throughout the entire process of the foreclosure case.

Linda Yerger violated the due process rights of the condominium/property owner (Mary Jean Ziska). Mary Jean Ziska the owner of the property was not given any notice of the proceedings by Attorney Linda Yerger. Though Marion Gregory (Defendant) was the Limited Guardian at the time of the foreclosure, upon advice of counsel, she was not allowed to give notice to Mary Jean Ziska or allowed to have Mary Jean Ziska participate in the assistance or defense of this lawsuit that included the deprivation of her personal residence which was her primary residence and Homestead. These violations were allowed, encouraged and executed by the attorney on record Linda Yerger as an Attorney who is obligated to personally and professionally comply with the highest standards of conduct imposed on members of the Florida Bar. She was entrusted and legally obligated to inform, Defendant Marion Gregory, to follow the law and adhere to her oath in executing the law as an Attorney. This error of DUE PROCESS was mentioned in the OBJECTION TO THE FORECLOSURE SALE submitted and filed with the Clerk of Courts on 9/12/16.

The Due Process Of Law is a fundamental constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property. Due Process of law is also a constitutional guarantee that a law shall not be unreasonable. The constitutional guarantee of due process of law, found in the 5th and 14th Amendments to the U.S. Constitution prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty and property.

- Magistrate Friedman erred in enforcing any sanctions or in creating any remedy to the violations throughout the entire course of the foreclosure case. He did not allow the proceedings to be heard before a Judge as per the Defendants OBJECTION TO THE REFERRAL OF THE MAGISTRATE (# 47728472 E-FILED: 10/17/16 @ 9:19PM). Therefore, the Referral To A Magistrate heard on 10/25/16 @ 10:30AM:
 1. Limited the time frame allotted for the hearing to 15 minutes.
 2. Limited the scope of information allowed.
 3. Did not provide any sanctions or remedy to any violations of "DUE PROCESS" in adhering to: The Florida Civil Court Procedures/ Rules and Regulations of the Court/ Rules and Regulations involved in the Practice of Law in the County of Naples, Florida the 20th Judicial Circuit Court of Collier County.

IN CONCLUSION:

DEFENDANT MARION GREGORY, OBJECTS TO THE MAGISTRATE'S RECOMMENDATIONS.

DEFENDANT MARION GREGORY, OBJECTS TO THE TRANSFER OF TITLE/DEED TO 21ST MORTGAGE.

DEFENDANT MARION GREGORY, OBJECTS TO THIS FORECLOSURE CASE BEING CONSIDERED FINANLIZED OR CLOSED.

Numerous errors occurred during the Magistrate's hearing of Civil Action Case # 2015-CA-001170. The accumulations of all these errors contribute to the grave injustice that occurred on 10/25/16 @10:30AM, where the hearing before Magistrate David Friedman occurred in court room 3-1. Due to these obvious errors, and infractions, Defendant Marion Gregory submits this DEFENDANTS OBJECTION TO MAGISTRATE RECOMMENDATIONS and MOTION FOR REHEARING RECONSIDERATION. Defendant Marion Gregory requests Magistrate Freidman's recommendations be Vacated and Dismissed. Marion Gregory (Defendant) requests an Appeal be granted to remedy any injustice done, any errors committed for the purpose of obtaining this case to be reopened and reheard before a Judge with new counsel.

Respectively submitted by MARION GREGORY Marion Gregory (9202 Vanderbilt Drive, Naples Florida 34108, Tel. (239) 598-1515. In the city of Naples, State of Florida, Collier County. I, Marion Gregory (Defendant), hereby certify that I served the "DEFENDANT'S OBJECTION TO THE MAGISTRATE RECOMMENDATIONS". This 26th day of October 26, 2016. Respectfully submitted By:

Marion Gregory Marion Gregory.

To:

1. COLLIER CIRCUIT JUDGE HUGH D. HAYES,
COLLIER COUNTY GOVERNMENT COMPLEX
3315 TAMiami TRAIL EAST, SUITE 403
NAPLES, FLORIDA 34112

2. MAGISTRATE DAVID FRIEDMAN
COLLIER COUNTY GOVERNMENT COMPLEX
3315 TAMiami TRAIL EAST, SUITE 509
NAPLES, FLORIDA 34112

3. (NICOLE P. PLANELL): ATTORNEY OF PLAINTIFF, FLORIDA BAR (#072325) via E-FILING TO:
QUINTAROS, PRIETO, WOOD & BOYER PA., 9300 SOUTH DADELAND BLVD. 4TH FLOOR,
MIAMI, FLORIDA 33156, THE ATTORNEY ON RECORD FOR 21st MORTGAGE.,