IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI DADE COUNTY, FLORIDA

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FR FREMONT HOME LOAN TRUST 2005-B,MORTGAGE-BACKED CERTIFICATES, SERIES 2005-B,	GENERAL JURISDICTION DIVISION CASE NO.: 12-38811 CA 01 JUDGE: BEATRICE BUTCHKO

Plaintiff,

vs.

JOSEPH T. BUSET A/K/A JOSEPH THOMAS BUSET AND MARGARET BUSET A/K/A MARGARET JEAN BUSET, *et. al.,*

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR INVOLUNTARY DISMISSAL FOR UNCLEAN HANDS AND LACK OF SUBSTANTIAL COMPETENT EVIDENCE

AND

ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE SANCTIONED FOR FRAUD UPON THE COURT UNDER THE COURT'S INHERENT CONTEMPT POWERS

THIS CAUSE having come before the Court for Trial on March 17 and 18, 2016, and the Court having reviewed Defendant's Motion for Sanctions Under the Court's Inherent Contempt Powers for Fraud Upon the Court, and being otherwise advised in the premises, it is hereupon:

ORDERED AND ADJUDGED that Defendant's Motion for Involuntary Dismissal after Trial is GRANTED for the following reasons:

I. **The Court Finds Unclean Hands In Plaintiff's Prosecution of This Action That Bars the Equitable Relief of Foreclosure**

1. The Florida Supreme Court has long recognized the maxim that in equitable actions such as this foreclosure, "he who comes into equity must come with clean hands." *Bush v. Baker,* 83 So. 704 (Fla. 1920).

2. In *Bush*, the Florida Supreme Court instructed that the "principal or policy of the law in withholding relief from a complaint because of 'unclean hands' is punitive in nature."

3. The Court finds several examples of Plaintiff's unclean hands that mandate punitive action that affirmatively bars plaintiff's entitlement to the equitable relief of foreclosure.

A. **Unclean Hands Involving the Specific Endorsement and Assignment of Mortgage That Both Reflect a Transaction that Never Happened**

4. Plaintiff's trial witness, Sherry Keeley, an Ocwen employee, gave extensive testimony regarding the Assignment of Mortgage (AOM) that Ocwen prepared in June of 2012 and recorded in the Public Records of Miami-Dade County in July of 2012.

5. On its face, this AOM purports to document a sale of Defendant's loan from Mortgage Electronic Registration Systems, Inc ("MERS") as nominee for the originator, Freemont Investment and Loan, directly to the securitized trust identified as the plaintiff.

6. Ms. Keeley testified that Ocwen prepared this assignment in preparation for filing the foreclosure complaint. The Ocwen employee identified the originator of the promissory note and prepared the AOM to reflect a transfer from MERS, as Nominee of that originator to the same party as Ocwen intended to name as Plaintiff in the foreclosure action.

7. The Court takes judicial notice that on July 25, 2008, Freemont Investment and Loan ("Freemont") entered into a voluntary liquidation and closing which did not result in a new institution. https://www5.fdic.gov/idasp/confirmation_outside.asp?inCert1=25653. As such, the status of MERS as nominee for Freemont ended when Freemont closed on July 25, 2008, which renders the AOM created in 2012 *void ab initio*.

8. Ms. Keeley further testified the Pooling and Servicing Agreement for this securitized trust backed up the veracity of the AOM. However, Ms. Keeley later conceded that, according to the PSA, the chain of title for any loan within this trust went as follows:

Originator

FREEMONT INVESTMENT AND LOAN

Depositor

FREEMONT MORTGAGE SECURITIES CORPORATION

Trust

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FR FREMONT HOME LOAN TRUST 2005-B, MORTGAGE-BACKED CERTIFICATES, SERIES 2005-B

9. This Court finds the AOM created in 2012 does not document a transaction that occurred in 2005, as Plaintiff suggests. The transaction described in the AOM never legally occurred. There was never a transaction between MERS and/or Freemont Investment and Loan that sold Defendant's loan directly to the Trust. Not in 2012, not in 2005, not ever.

10. The AOM is missing a key party in the chain of ownership, the Depositor, Freemont Mortgage Securities Corporation.

11. Similarly, the undated, specific endorsement affixed to the back of the promissory note reflects the same defective transfer from the originator to the Plaintiff, without reference to the depositor.

12. This endorsement is contrary to the unequivocal terms of the PSA, in evidence over Plaintiff's objection, which required all intervening endorsements be affixed to the face of the note because there was ample room for endorsements on the face of the note. There is also no evidence the endorsement was affixed before the originator went out of business in 2008.

13. The Court finds unclean hands in the AOM and undated endorsement reflect a transaction that never happened, and could never happen for a securitized trust.

14. The Court accepts the testimony of Defendant's well qualified expert witness, Kathleen Cully, who explained the securitization model which required the protection of assets from future bankruptcy clawbacks. There could be no direct sale from the originator to the trust directly.

15. The Court accepts Ms. Cully's testimony that Securitization always required a sale from the Depositor acting as a "middleman" between the originator and the Trust to provide bankruptcy remoteness in the event the originator went bankrupt.

B. **Unclean Hands For Violating the Court's Discovery Order Despite Plaintiff's Representations That It Fully Complied With That Order**

16. The Court also finds unclean hands in Plaintiff's failure to comply with the Court's Discovery Order of April 27, 2015.

17. In that order, the Court overruled plaintiff's blanket objections and found no basis for Plaintiff to object to providing any discovery under Fla. Stat. 655.059.

18. The Court then ordered Plaintiff to provide (1) the final executed documents evidencing the chain of title for the subject loan; (2) all records of any custodian related to the chain of custody of the note; and (3) all records showing how and when the specific endorsement on the promissory note was created.

19. On January 14, 2016, the Court's Order on Defendant's Motion for Sanctions for Deposition Abuses and Violations of the Court's Order Compelling Discovery reflected: "Plaintiff submits it has fully complied with the Court's Order of April 27, 2015."

20. At trial and deposition, Ms. Keeley admitted that Ocwen, Plaintiff's servicer, received the Order compelling discovery. However, Ms. Keeley could not testify to any action taken by Ocwen to obtain responsive documents admittedly under Plaintiff's care, custody, and control. Defendant clearly established that Plaintiff did not comply with the discovery order.

21. The Court fails to comprehend why Plaintiff would not fully comply with the Court's Order compelling discovery when the evidence sought by the Defendant would actually assist Plaintiff in establishing the missing link in the chain of ownership in the endorsement and assignment of mortgage.

22. **The Court hereby enters an Order to Show Cause why Plaintiff should not be Sanctioned for violating the Court's order on April 27, 2015, after representing that it fully complied on or before January 14, 2016.**

23. **Moreover, the Court hereby enters an Order to Show Cause why Plaintiff should not be sanctioned for the reasons set forth in Defendant's Motion for Sanctions Under the Court's Inherent Contempt Powers for Fraud Upon the Court filed on March 16, 2016.**

24. **Defendant is hereby ordered to conduct further discovery in support of these orders to show cause and set an evidentiary hearing on them at the Court's earliest convenience.**

II. Defendant's Motion For Involuntary Dismissal Is Also Granted For Plaintiff's Failure to Prove Damages, Conditions Precedent, and Standing

25. At trial, Plaintiff produced Ms. Keeley as an "other qualified witness" to introduce Ocwen's business records in accordance with Fla. Stat. §90.803(6).

26. During her testimony, Ms. Keeley attempted to lay a predicate to introduce the business records from Litton Loan Servicing, a prior servicer.

27. This Court fully understands and abides by analysis regarding prior servicer's records set forth in the Fourth DCA's opinion in *Bank of New York v. Calloway*, 2015 WL 71816, 40 Fla. L. Weekly D173 (Fla. 4th DCA 2015)). In *Calloway,* the Fourth DCA held a trial court could exercise discretion to deem the prior servicer's records trustworthy if there were evidence that during the loan boarding process, records were reviewed for accuracy. *Id. at* *8.

28. Notwithstanding the holding of the Fourth DCA, the Defendant challenges *Calloway* citing to Professor Charles Ehrhardt, who warns against allowing the poor evidentiary practices in foreclosure courts to "erode the requirement of reliability upon which section 90.803

(6) and the other hearsay exceptions are premised." 1 Fla. Prac., Evidence § 803.6 (2015 ed.). Professor Ehrhardt further argues:

> While the decision seems to focus on records in the mortgage servicing industry, **which are plagued by inaccuracies**, its rationale extends to all records offered under 90.803(6) which are records of a prior business and are presently located in the records of the current business…. The [Calloway] decision is a significant change in Florida law and inconsistent with many other Florida decisions." 1 Fla. Prac., Evidence § 803.6 (2015 ed.)(emphasis added).

29. In addition, Defendant further suggested the Court should follow another Fourth DCA opinion dealing with business records from a prior company which does not verify for accuracy. *Landmark Am. Ins. Co. v. Pin-Pon Corp.*, 155 So. 3d 432, 435-43 (Fla. 4th DCA 2015), where the Fourth DCA held:

> [W]e find that Pin–Pon did not establish that the architect was either in charge of the activity constituting the usual business practice or was well enough acquainted with the activity to give the testimony. Although the documents in Exhibit 98 might have qualified as the general contractor's business records, the mere fact that these documents were incorporated into the architect's file did not bring those documents within the business records exception. In short, Pin–Pon failed to lay the necessary foundation for the admission of Exhibit 98 as a business record. *Id.*

Hence, in this case, the Court cannot exercise its discretion to admit the prior servicer's records into evidence as Plaintiff's witness failed to satisfactorily establish a foundation to warrant finding those records are trustworthy.

A. **The Legal Fiction That Ocwen's Loan Boarding Process In This Case Verifies The Accuracy, Reliability of Correctness of the Prior Servicer's Records**

30. At trial, Ms. Keeley explained that she received training on Ocwen's loan boarding process which qualified her to give testimony to lay the foundation for the prior servicer's records under the business records exception.

31. Ms. Keeley testified the loan boarding process involved two steps. First, Ocwen confirmed that the categories for each column of financial data from the prior servicer matched or corresponded to the same name Ocwen used for that same column of financial data. Second,

Ocwen confirmed the figures from the prior servicer transferred over such that the top figure from Litton became the bottom figure for Ocwen. The court notes that when testifying about Ocwen's boarding process, Ms. Keeley appeared to be merely repeating a mantra or parroting what she learned the so called boarding process is without being able to give specific details regarding the procedure itself. [1] Her demeanor at trial although professional, was hesitant and lacking in confidence in this court's estimation as the trier of fact.

32. Ms. Keeley admitted there was absolutely no math done to check the accuracy of the prior servicer's records or numbers. The loan boarding process' verification to ensure the trustworthiness of the prior servicer's records is therefore a legal fiction. In this case, Ocwen simply accepted the prior servicer's numbers as true without any effort to audit or confirm their accuracy. The only confirmation appears to have been the check a carryover of figures from one servicer's columns to the columns of another.

33. Moreover, Ms. Keeley testified loans with "red flags" would never be allowed to board onto Ocwen's system until the prior servicer resolved them. However, Ms. Keeley also admitted she has witnessed loans that went through the boarding process that had misapplied payments and substantially incomplete loan payment histories from the prior servicer.

34. The existence of misapplied payments and incomplete payment histories in loans that went through the loan boarding process contradicts any suggestion that the boarding process identifies red flags and/or clears them, such that Courts can trust the reliability of their records.

35. To support the court's concern regarding the lack of foundation of the so called boarded records in this case, the Court takes Judicial Notice of the Consent Order entered in the matter of Ocwen Financial Corporation, Ocwen Loan Servicing, LLC by the New York State Department of Financial Services dated December 22, 2014. This Consent Order documents

[1] This Court estimates that it has presided over hundreds of foreclosure bench trials since being assigned to the Civil Division in 2011. The court has accordingly heard hundreds of bank witnesses testify regarding their company's boarding process and has accepted thousands of documents into evidence pursuant to same. The boarding process and training of personnel regarding the boarding of documents varies greatly from one institution to another.

Ocwen's practice of backdating business records that it failed to fully resolve "more than a year after its initial discovery."

36. Therefore, the Court finds Plaintiff failed to inquire into the accuracy, reliability or trustworthiness of the prior servicer's payment history. Ocwen's own payment history merely accepts the prior servicer's records as accurate without question unless the numbers were challenged at some point after the loan boarding process. That is simply not enough to for this court to accept the prior servicer's records as trustworthy and admit them into evidence here. A mere reliance by a successor business on records created by others, although an important part of establishing trustworthiness, without more is insufficient. Bank of New York v. Calloway, 157 So.3d 1064, 1071 (Fla. 4th DCA 2015). As such, this Court exercised its discretion to sustain Defendant's objections to both payment histories as inadmissible hearsay. Therefore Plaintiff lacked evidence of an essential element of proof, damages, warranting an involuntary dismissal.

B. **Plaintiff's Failure To Lay A Predicate For Prior Servicer Litton's Breach or Default Letter**

37. Plaintiff made the unusual effort of seeking to introduce over an inch thick stack of default letters generated by Litton prior to filing this action.

38. Plaintiff failed to lay a proper business record foundation for these default letters and the Court exercised its discretion to sustain Defendant's hearsay objection to their admission.

39. Ms. Keeley testified there was no attempt during Ocwen's loan boarding process to check the accuracy of the breach letters. The loan boarding process merely verified that all the prior servicer's PDF documents for the subject loan were uploaded to Ocwen's system.

40. At the onset, the Court noted that the first two default letters in the inch thick stack which Plaintiff sought to admit into evidence were inexplicably dated a week apart and had a $1,900 difference in the amount required to cure the default. The Court rejects Plaintiff's mere

suggestion that the difference is explained by the fact that the loan has an adjustable rate mortgage. Plaintiff produced no reasonable explanation for the $1,900 difference.

41. Moreover, Ms. Keeley testified that in the training she received about Ocwen's loan boarding process, she learned that Litton, the prior servicer used an outside vendor to actually mail out the default letters. Therefore, without more, the admission of the default letters mailed by an outside entity not testifying in court creates a double hearsay problem as there is no evidence of a boarding process of that third party vendor's mailing practices and procedures. Nor did the Ocwen representative testify that she had received training regarding the procedure used by the third party vendor in mailing the default letters.

42. Furthermore, to compound the double hearsay hurdle, Defendant's counsel impeached Ms. Keeley's testimony at trial with her deposition taken in December of 2015, wherein she testified she did not know how the prior servicer mailed the default letters. The Court cannot reconcile Ms. Keeley's deposition testimony and her trial testimony where she testified she learned about the third party vendor's mailing procedure during her Ocwen boarding process training. This inconsistent testimony calls into question the veracity of her testimony and further undercut's Plaintiff's evidentiary foundation for the proposed documents.

C. **Plaintiff Failed To Prove Standing By Virtue of an Endorsement and an Assignment of Mortgage Created For Purposes of Litigation That Both Miss a Key Line in the Title of Ownership, namely the Depositor**

43. Plaintiff, HSBC Bank USAS, National Association, as trustee for Freemont Home Loan Trust 2005-B mortgage Backed Certificates, Series 2005-B, failed to prove it is the proper owner and holder of the Defendant's loan by virtue of the endorsement on the note or the assignment of mortgage.

44. Both the endorsement and the assignment omit the Depositor, Freemont Mortgage Securities Corporation, from the transaction which constitutes a fatal break in the chain of title.

45. The Defendant presented the testimony of their expert witness, Ms. Cully, who testified that the endorsement on the note is contrary to the instructions in §2.01 of the PSA that required a complete chain of endorsements, which would include the Depositor, to be placed on the face of the note so long as space allowed.

46. The Court notes there is ample space on the face of the note for endorsements. Therefore, the Court finds that the undated specific endorsement from the originator directly to the trust found on the back of the note is inherently untrustworthy.

47. The Court further questions the validity of the endorsement in that Plaintiff violated the Court's order to produce the custodian's records or documents showing when and how the endorsement was affixed to the original note.

48. In addition, the Court accepts Ms. Cully's testimony that the form of the endorsement and assignment would be grounds for the Trust to reject this loan pursuant to the PSA. There is not a complete chain of endorsements on the face of the note. The PSA required no assignment of mortgage, only that the Trust appear in the MERS system as the loan owner.

49. For these reasons, the Court finds Plaintiff failed to prove its standing to foreclose the note and mortgage in this action.

III. **The Promissory Note Is Not A Negotiable Instrument**

50. The Court gives great weight as the trier of fact to the testimony of Defendant's expert witness, Kathleen Cully. Ms. Cully is a Yale Law School graduate that worked her entire career in structured finance transactions since 1985. She was extremely well versed in the Uniform Commercial Code. Among many other tasks and accomplishments, Ms. Cully testified that she led the Citigroup team that created the first pooling and servicing agreement ever. She led Citigroup's Global Securitization strategy. The Court finds Ms. Cully eminently qualified as an expert witness in the area of securitized transactions and their interplay with the Model Uniform Commercial Code.

51. Ms. Cully gave extensive testimony explaining that the negotiability of a promissory note is not a consideration in the securitization model. Securitization sells pools of thousands of mortgages with ever having an intention to sell each loan by individual negotiation.

52. Moreover, securitization routinely involves the sale of non-negotiable instruments such as car loans, rent receivables, even David Bowie's intellectual property rights.

53. The Court finds Ms. Cully's testimony gives a highly credible analysis of the Model Uniform Commercial Code as it related to the note and mortgage for the subject loan. Her testimony on the negotiability of the promissory note is attached as Exhibit A. The Buset Note is attached as Exhibit B and the Buset Mortgage is attached as Exhibit C.

54. The Court applies Ms. Cully's reasoned analysis as it relates to the note and mortgage for the subject loan and to Article 3 of Florida's Uniform Commercial Code. However, it is axiomatic that all promissory notes are not automatically negotiable instruments.

55. The Court recognizes that no Florida appellate court has yet to consider Ms. Cully's analysis. The Court has reviewed the recent Fourth DCA opinion in *Onewest Bank FSB v. Nunez*, (2016 WL 803542 (Fla. 4th DCA March 2, 2016)) which found the Uniform Secured Note provision contained in the promissory note does affect its negotiability because it merely references the mortgage and cites provisions governing rights in collateral and acceleration.

56. The *Nunez* opinion states the controlling UCC law on negotiability as:

> "Florida has adopted the Uniform Commercial Code, including its provision on negotiability and enforcement of negotiable instruments. Under section 673.1041(1), Florida Statutes (2013), the term "negotiable instrument" means:
>
> > [A]n unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
> > ....
> >
> > (c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money . . .
>
> Section 673.1061, Florida Statutes (2013), defines "unconditional" by stating those conditions that prevent it from being unconditional:

(1) Except as provided in this section, for the purposes of s. 673.1041(1), a promise or order is unconditional unless it states:

(a) An express condition to payment;

(b) That the promise or order is subject to or governed by another writing; or

(c) That rights or obligations with respect to the promise or order are stated in another writing.

A reference to another writing does not of itself make the promise or order conditional.

(2) A promise or order is not made conditional:

(a) By a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration. . . ." *Id.* at *1-2.

57. The Uniformed Note Provision in *Nunez* is identical to that found in the Defendant's Promissory Note herein which provides:

> **In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note.** That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows: . . . *Id.* at *1 (emphasis added).

58. This Court does not address the provision described in the Nunez opinion, instead grounding this decision on a myriad of other provisions of the Mortgage establishing the Note is subject to and governed by the Mortgage, rendering the note a non-negotiable instrument.

59. Among other things, the additional protections routinely change the "fixed amount of money" due under the promissory note and require additional undertakings and instructions for the borrower beyond the mere repayment of money.

60. First, at page 2 of the mortgage, sub-section (G) expressly provides that "'Loan' means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the note, *and all sums due under this Security Instrument, plus interest.*" (emphasis added).

61. Paragraph 3 of the Mortgage provides for the payment of taxes and interest on the property. These payments are not described in the Note, which requires payment only of principal, interest, late fees and costs and expenses of enforcement.

62. The Court finds the amounts due under the Mortgage are "other charges" that are not "described in" the Note, as required by §673.1041(1), Florida Statutes. That alone destroys negotiability.

63. Furthermore, Plaintiff's complaint seeks damages for all sums due under the Note and "such other expenses as may be permitted by the mortgage." Standard mortgage servicing industry practice treats all sums due under the note and mortgage as the "loan" payoff amount or the total amount needed to liquidate in full all monetary obligations arising under both the Note and the Mortgage—the Loan, as defined in the Mortgage—not just the Note.

64. Not only does that payoff amount include charges not described in the Note, it is much more than a mere "reference" to the Mortgage "for a statement of rights with respect to collateral, prepayment or acceleration"—it means that the Note is effectively "subject to or governed by" the Mortgage, which in turn means that it is not unconditional. See Fla. Stat. §673.1061. That also destroys negotiability of the Note.

65. This Court finds that the Note is non-negotiable as the amounts payable under the Complaint include amounts not described in the Note and as the Note does not contain an unconditional promise to pay.

66. The promise is not unconditional because the Note is subject to and/or governed by another writing, namely the Mortgage. Moreover, rights or obligations with respect to the Note itself—as opposed to the collateral, prepayment or acceleration—are stated in another writing, namely the Mortgage.

67. Moreover, the UCC definition of "holder" would necessarily include a thief that takes by forcible transfer. However, a thief would never be entitled to the equitable relief of

foreclosure. Defendant correctly cites to ¶1 of the promissory note that expressly provides a different definition of "Note holder" from the definition of holder under Fla. Stat. §673.3011.

68. The promissory note defines the term "Note Holder" at ¶1 as "anyone who takes this Note by [lawful] transfer and who is entitled to receive payments under this Note."

69. By its terms, ¶1 requires that any subsequent party attempting to enforce the note prove they came into possession of the note by lawful transfer and have the right to receive payments under the Note. This provision establishes the parties' intention to contract out of the UCC definition of holder, so as to limit the right to enforce only to those who proved ownership.

70. The Court finds the amounts due under the mortgage are "additional protections" from possible losses that protect the Note Holder pursuant to the Uniform Secured Note provision. The protections necessarily affect the fixed amount of money due under the note.

71. The Court further notes Plaintiff's complaint seeks all sums due under the note and mortgage. Standard mortgage servicing industry practice treats all sums due under the note and mortgage as the "loan" payoff amount or the total amount needed to liquidate in full all monetary obligations arising under both the Note and the Mortgage.

72. At page 4 of the mortgage, Uniform Covenant 2 entitled "Application of Payments or Proceeds" provides that "payments be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; and (c) **amounts due under Section 3 [of this Security Instrument].** Any remaining amounts shall be applied first to late charges, **second to any other amounts due under this security Instrument**, and then to reduce the principal balance of the Note." (emphasis added).

73. As payments are applied to amounts due under both the note and mortgage, this Court finds the Uniform Covenant 2 in the mortgage must be read as an integrated agreement with the promissory note that will necessarily change the fixed amount of money due thereunder.

74. At the first paragraph of page 7, the mortgage provides: "Any amounts disbursed by lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment."

75. Therefore, pursuant to the Uniform Secured Note Provision of the note and Section 5 of the mortgage, forced placed insurance premiums become additional debt secured by the mortgage bearing interest at the note rate which changes the "fixed amount of money" due.

76. At page 8 of the mortgage are two provisions which involve rights or obligations with respect to the promise or order stated in another writing and constitute instructions and undertakings of the borrower to do acts in addition to the payment of money.

77. At ¶6 of the mortgage the borrower is obligated to occupy the property as a principal residence within 60 days after signing the mortgage and must continue to occupy the property as Borrower's principal residence for a least one year.

78. At ¶7, Borrower is obligated to maintain the property and permit lender to conduct inspections, including interior inspections, upon notice stating cause for the inspection.

79. At ¶8 of the mortgage, "Borrower shall be in default if" borrower gave materially false or misleading information during the loan application process or concerning Borrowers occupancy of the property as Borrower's principal residence.

80. At ¶9 of the mortgage entitled, "Protection of Lender's Interest in the Property and Rights Under this Security Instrument" the mortgage states "any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment."

81. At ¶14 of the mortgage entitled "Loan Charges" provides for refunds of such charges and states: "the Lender may choose to make this refund by reducing the principal owed

under the Note or by making a direct payment to Borrower." Again these additional protections for the Note Holder provided in the Uniform Secured Note provision in the note necessarily affect the "fixed amount of money" due under the note.

82. **The Court grants Defendants' Motion for Involuntary Dismissal and enters judgment in favor of the Defendants who shall go forth without day.**

83. **The Court reserves jurisdiction to award prevailing party attorney's fees and to impose sanctions against Plaintiff under the inherent contempt powers of the court for fraud on the court, and such other orders necessary to fully adjudicate these issues.**

84. **Plaintiff is ordered to produce a corporate representative with most knowledge regarding its efforts to comply with the discovery order dated April 27, 2015, for deposition at the offices of Defendant's counsel within 15 days from the entry of this order.**

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 04/26/16.

BEATRICE BUTCHKO
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:
Defendant's counsel: Jacobs Keeley, PLLC., 169 E. Flagler Street, Ste. 1620, Miami, FL 33131, efile@jakelegal.com

Plaintiff's counsel: Brock and Scott, 1501 NW 49th Street, Ft. Lauderdale, FL 33309, flcourtdocs@brockandscott.com