

IN THE CIRCUIT COURT FOR THE SIXTH CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

Case No.: 2010-CA3249-ES (J4)

NATIONSTAR MORTGAGE LLC
Plaintiff

v.

LYNN E. MENKE,
et al.
Defendants.

**ORDER GRANTING HOMEOWNER'S MOTION TO STRIKE
UNVERIFIED COMPLAINT**

This cause came before the court upon the Defendant's Motion to Strike the complaint for failure to verify. The court heard arguments by counsel for both the Plaintiff Bank and Defendant Homeowner and now finds,

1. Effective on February 11, 2010, the Florida Supreme Court amended the Rules of Civil Procedure to require that all complaints in foreclosure actions be verified. *In Re: AMENDMENTS TO THE RULES OF CIVIL PROCEDURE*, 2010 WL 455295 (Fla. 2010) [35 Fla. L. Weekly S317a]. Plaintiff has supplied the Court with a document purporting to verify the complaint. That document is a separate document from the complaint and contains language that the verification is to the best of the signer's knowledge and belief.
2. This court finds that such a "knowledge and belief" verification fails to meet the purpose and letter of the amended rule. The Florida Supreme Court stated the primary purposes of the amendment:

The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

A verification upon information and belief frustrates these purposes.

3. In addition, the undersigned concludes that any verification of a foreclosure complaint must be in conformity with Fla. Stat. § 92.525 as construed by *Muss v. Lennar Florida Partners*, 673 So.2d 84 (Fla. 4th DCA 1996)(verification of foreclosure pleadings may not be upon "information and belief." Because of this the court will reject verifications based on "information and belief" or using language indicating the declaration is only true and correct "to the best of my knowledge and belief".
4. The requirements of Fla. Stat. § 92.525 (2) also state that a verification "shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration." Providing a separate sheet of paper does not comply with this requirement.

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5. For the foregoing reasons, the Defendant's Motion to Strike is GRANTED without prejudice. Plaintiff may, within ~~thirty~~ days of this date, submit an amended complaint. Any complaint or amended complaint filed in this cause shall be verified as required by, F.S. 92.525 and *Muss v. Lennar Florida Partners*, 673 So.2d 84 (Fla. 4th DCA 1996).
 6. If Plaintiff fails to submit an amended complaint within the time required by this order, Defendant shall be entitled to entry of judgment in favor of Defendant upon properly-verified motion to this Court.

DONE AND ORDERED in chambers at Dade City, Pasco County, Florida, this 13th day of December, 2010.

Done and Ordered
at Dade City,
Pasco County, Florida

DEC 13 2010

Hon. Lynn Tepper, Circuit Court Judge
Lynn Tepper,
Circuit Judge

Copies to:
Eduardo Fonseca, Jr., Esq., Ben-Ezra & Katz, P.A. for Plaintiff
Michael Alex Wasylik, Esq., Ricardo Wasylik & Kaniuk, PL for Defendant