

THE DISTRICT COURT OF APPEALS
IN AND FOR THE SECOND DISTRICT OF FLORIDA

BAC FUNDING CONSORTIUM, INC.	)	CASE NO.: 2D08-3553
	)	L.T. No.: 2007 CA 015534 SC
Appellant,	)	
	)	
vs.	)	
	)	
GINELLE JEAN-JACQUES, U.S. BANK	)	
NATIONAL ASSOCIATION, AS TRUSTEE	)	
FOR THE C-BASS MORTGAGE LOAN	)	
ASSET BACKED CERTIFICATES,	)	
SERIES 2006-CB5	)	
	)	
Appellee.	)	
	/	

INITIAL BRIEF OF BAC FUNDING CONSORTIUM, INC.

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Statement of Facts

On or about December 21, 2007, Appellee U.S. Bank National Association, as Trustee for C-Bass Mortgage Loan Asset-Backed Certificate Series 2006-CB5 ("U.S. Bank") served its Mortgage Foreclosure Complaint (the "Complaint") on Appellant BAC Funding Consortium, Inc. ("BAC"), alleging actions to foreclose a mortgage on property located in Sarasota, Florida and re-establish a note. R-1-29. U.S. Bank does not even have a copy of Mortgage Note it seeks to re-establish. Complaint at ¶17; R-3. U.S. Bank named BAC as a party to the foreclosure to foreclose out the mortgage lien that BAC asserts on the same property.

On or about January 2, 2008, BAC filed its motion to dismiss, asserting that the exhibits to the Complaint contravened the argument that U.S. Bank had standing to foreclose the mortgage appended to the Complaint (the "Mortgage"). R-32-34. While U.S. Bank alleged that it is the holder of the Mortgage and Mortgage Note [Complaint at ¶ 4], it also alleged that the Mortgage Note is not in its possession nor does it even have a copy of it. Complaint at ¶17; R-3. U.S. Bank nonetheless alleges that it was in possession of the Mortgage Note and was "entitled to enforce it when the loss of possession occurred." *Id.* The Mortgage appended to the Complaint, however, reflects that "Lender" is "FREMONT INVESTMENT & LOAN" and that the "mortgagee" is "MERS," i.e.,

Mortgage Electronic Registration Systems, Inc. R-9. The Mortgage states that MERS "is acting solely as a nominee for Lender and Lender's successors and assigns." *Id.* The Complaint nowhere recites the assignment or conveyance of any interest from Lender to the trust titled "C-Bass Mortgage Loan Asset-Backed Certificate Series 2006-CB5" or to U.S. Bank. The Complaint also fails to allege the assignment or conveyance of any legal interest (as "mortgagee" to act as "nominee for Lender and Lender's successors and assigns") from MERS to U.S. Bank.

Thus, the Mortgage, attached as an exhibit to and incorporated by reference into the Complaint, specifies that the party having the equitable interest in the Mortgage as "Lender" is Fremont Investment & Loan, not U.S. Bank. The Mortgage further identifies the party with the legal title or the other interest affording standing to foreclose the Mortgage as the "nominee" of "Lender" and its "successors and assigns" is MERS, not U.S. Bank. BAC's motion to dismiss argued that the Complaint was defective in that it fails to allege the basis of U.S. Bank's standing as trustee or the right of the alleged trust, C-Bass Mortgage Loan Asset-Backed Certificate Series 2006-CB5, to foreclose on the Mortgage. BAC reasoned that as the allegations of the Mortgage control over the allegations of the Complaint, the pleading is rendered fatally defective, and thus subject to dismissal.

U.S. Bank responded to the motion to dismiss by memorandum arguing that U.S. Bank had standing to bring the action and that defenses alleged in BAC's motion to dismiss were insufficient. R-38-70. Before the trial court heard the motion to dismiss, however, U.S. Bank moved for final summary judgment. See Motion for Summary Judgment Including a Hearing to Tax Attorneys' Fees and Costs; R-76-83.

No record of the summary judgment hearing is in the record as the trial court entered the order without a hearing. The trial court's procedure in addressing summary judgment motions for foreclosure is also not reflected in a uniform, written rule or other filing in the record that can be cited. The summary judgment motion was set for hearing on June 18, 2008 for five minutes. On June 17, 2008, BAC's counsel called the judicial assistant of the trial court to request to appear telephonically for the hearing set for June 18, 2008. Counsel was out of the jurisdiction, and thus was unable to appear in person. The judicial assistant informed BAC's counsel that the trial court's procedure for summary judgment hearings in foreclosures is to require the defendant to show up and state any argument in opposition to the Judge. If, and only if, the defendant appears at the hearing, then the trial court calls the plaintiff's attorney, who may appear telephonically. Under the trial court's *sui generis* procedure, undefined by any written rule

or any other document that can be filed and included in a record for an appeal to this Court, if no parties appear for the motion scheduled by the plaintiff, the motion for foreclosure is automatically granted. Moreover, while plaintiff's counsel may appear by telephone, the defendant may not. Under the trial court's unwritten, unpublished "foreclosure hearing procedure," the defendant may only contact the trial court through a telephonic conference set by the plaintiff/mortgagee's counsel. The defendant/mortgagor has no right to hearing by telephone unless plaintiff/mortgage initiates the telephonic conference. Thus, under the unique, unwritten, *sui generis* rules of the trial court in this matter, summary judgment is automatically entered, without hearing, unless the defendant can physically appear at the hearing unilaterally set by the plaintiff/mortgagor. Absent a hearing, the final summary judgment motion is automatically granted.

BAC filed its Memorandum in Opposition to U.S. Bank's Motion for Summary Judgment, advising that U.S. Bank filed its motion for summary judgment prematurely due to the fact that motion to dismiss was still pending and the answer for BAC was still due to be filed. R-120-121. BAC faxed the judicial assistant this Memorandum on June 17, 2008 and confirmed receipt with the judicial assistant for the judge to review before the hearing. The trial court was advised of the memorandum in opposition and the unavailability of

counsel. Counsel for U.S. Bank did not appear to proceed with the summary judgment. Although the summary judgment was not heard or argued by any counsel, the trial court nonetheless entered an order granting the motion for final summary judgment and setting the property for public sale on July 23, 2008. R-112-117.

SUMMARY OF ARGUMENTS

The Court should reverse the final summary judgment for U.S. Bank for three reasons: (i) the motion to dismiss should have been granted as the Complaint was defective in that the allegations regarding the party having standing to foreclose conflicted with the appended Mortgage; (ii) the motion for summary judgment was premature as BAC's motion to dismiss was still pending and BAC had not yet filed its answer and affirmative defenses; and (iii) the trial court's procedure of granting summary judgment without hearing is inconsistent with Rule 1.510, *Florida Rules of Civil Procedure*, requiring a hearing, and thus constitutes a denial of due process.

STANDARD OF REVIEW

The standard of review for granting or denying a motion to dismiss for failure to state a claim is de novo. *Blue Supply Corp. v. Novos Electro Mechanical Inc.*, 990 So. 2d 1157 (Fla. 3rd DCA 2008); *Goodall v. Whispering Woods Center, L.L.C.*, 990 So. 2d 695,

697 (Fla. 4th DCA 2008); *Charles v. Florida Foreclosure Placement Center, LLC*, 988 So. 2d 1157 (Fla. 3rd DCA 2008); *Liberty Mut. Ins. Co. v. Steadman*, 968 So. 2d 532 (Fla. 2d DCA 2007). "The standard of review of an order granting summary judgment is de novo." *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla. 2000); *Golden West Financial Corp. v. Florida Dept. of Revenue*, 975 So.2d 567, 570 (Fla 1st DCA, 2008); *Suncoast Community Church of Boca Raton, Inc. v. Travis Boating Center of Florida, Inc.*, 981 So.2d 654, 655 (Fla. 4th DCA 2008). The lower court's legal interpretation of a contract and its provisions is also a question of contract construction, subject to de novo review:

The interpretation of a written contract is a question of law to be decided by the court. An appellate court is not bound to give the trial judge's interpretation or construction of a contract any weighted presumption of correctness.

Broward County v. Brooks Builders, Inc., 908 So. 2d 536, 538 (Fla. 4th DCA 2005).

ARGUMENT

I

Court Erred in Not Dismissing Defective Complaint

"When a party attaches exhibits to the complaint those exhibits become part of the pleading and the Court will review those exhibits." *Ginsberg v. Lennar Florida Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3rd DCA 1994). The conclusions of the

pleader, as to the meaning of the exhibits attached to the complaint, are not binding on the court. *Id.* Exhibits attached to the complaint are deemed controlling; thus, where the allegations to the complaint are contradicted by the exhibits, the plain meaning of the exhibits will control. *Id.* "Any exhibit attached to a pleading shall be considered a part thereof for all purposes." *Harry Pepper and Assocs. Inc. v. Lassiter*, 247 So. 2d 736, 737 (Fla. 3rd DCA 1971).

"Where complaint allegations are contradicted by exhibits attached to the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss." *Hunt Ridge at Tall Pines, Inc. v. Hall*, 766 So. 2d 399, 401 (Fla. 2d DCA 2000). Thus, where the terms of the contract appended to a complaint are inconsistent with the complaint's allegations, the complaint is rendered defective and subject to dismissal. See, e.g., *Florida Farm Bureau General Ins. Co. v. Insurance Co. of North America*, 763 So. 2d 429 (Fla. 5th DCA 2000) (if "an attached document negates the pleader's cause of action...the plain language of the document will control and may be the basis for a motion to dismiss.") (citing *Health Application Systems, Inc. v. Hartford Life and Accident Ins. Co.*, 381 So. 2d 294, 297 (Fla. 1st DCA 1980)); *Hillcrest Pacific Corp. v. Yamamura*, 727 So. 2d 1053 (Fla. 4th DCA

1999) (agreement at issue plainly contradicted allegations that price of property had been misrepresented as price was clearly stated in agreement).

Consistent with *Lennar, Harry Pepper, Hunt Ridge, Florida Farm Bureau, and Hillcrest Pacific*, when the allegations in a complaint as to the parties of a contract are inconsistent with a contract appended as an exhibit, the pleading is properly subject to dismissal for failure to allege parties properly. *Blue Supply Corp. v. Novos Electro Mechanical Inc.*, 990 So. 2d 1157 (Fla. 3rd DCA 2008). In *Blue Supply*, the claimant alleged that the contract had been entered into with an individual; however, the contract attached to the complaint established that the individual was not a party to the contract between the claimant and the individual's corporation. Because of this inconsistency, any claims against the individual, predicated on the existence of a contract between the individual and the claimant, were properly dismissed. *Id.* at 1159. See also *Bank of New York v. Williams*, 979 So. 2d 347 (Fla. 1st DCA 2008) (defendant was prevailing party entitled to fees after bank's "complaint and amended complaint were dismissed without prejudice on the ground that, because the Bank failed to show that it owned the mortgage and associated promissory note, the Bank lacked standing to institute foreclosure action," and bank did not file second amended complaint).

In accordance with *Blue Supply* and consistent with the ruling of the trial court in *Bank of New York*, the Complaint in this case should have been dismissed for failing to state a cause of action because the Mortgage attached as an exhibit to the Complaint conflicts with the Complaint's allegations as to the party having standing to foreclose the Mortgage. The Mortgage designates "Lender," i.e., the party presumably having an equitable interest in the Mortgage Note and Mortgage, as "Fremont Investment & Loan," contravening the Complaint's allegation that U.S. Bank or "C-Bass Mortgage Loan Asset-Backed Certificate Series 2006-CB5" (the trust for which U.S. Bank purports to serve as trustee) have any right, claim or title to the Mortgage Note or the Mortgage. The Mortgage designates MERS as "mortgagee" as "a nominee for Lender and Lender's successors and assigns." Thus, the Mortgage contravenes the Complaint's allegation that U.S. Bank has standing to foreclose the Mortgage on behalf of Lender (the original owner or the underlying note) or any subsequent assignee or successor to rights under the Mortgage Note. U.S. Bank alleges that it is "now the holder of the Mortgage Note and Mortgage." Complaint at ¶7; R-2. Nonetheless, the Mortgage still defines the "mortgagee" who would have standing to foreclose the Mortgage as being MERS. The Mortgage implicitly references the separation of the equitable title to the Mortgage Note and the Mortgage, held by "Lender," from

the legal title (affording the authority to file suit), held by MERS. Arguably, Fremont Investment & Loan, as "Lender," could potentially assert a claim to foreclose the Mortgage, but the Mortgage refutes U.S. Bank's allegation that U.S. Bank holds any legal or equitable interest giving it standing to foreclose the Mortgage. Moreover, the Mortgage designates MERS as the "mortgagee" to retain legal title and/or the authority to foreclose the Mortgage on behalf of any "successors and assigns." Thus, the Complaint's allegation of standing is contravened and defeated by the attached Mortgage.

Just as in *Blue Supply*, the trial court should have reviewed the Mortgage incorporated by reference into the Complaint to determine the appropriate parties to the contract. Just as the *Blue Supply* court reviewed the construction contract appended to the complaint to conclude that the individual principal of the corporation was not a party to the construction contract, so the trial court in this case should have reviewed the Mortgage appended to the Complaint and recognized that U. S. Bank is not a party to the Mortgage nor is it designated as the mortgagee or the nominee having authority to bring suit on the Mortgage. By designating Fremont Investment & Loan as "Lender," the Mortgage identifies Fremont Investment & Loan as the real party in interest. By designating MERS as "mortgagee," the Mortgage identifies MERS as

holding legal title for the benefit of Lender and/or as otherwise having legal authority to bring suit on the Mortgage. Thus, the Mortgage contravenes the allegation that U.S. Bank is the mortgagee or a real party in interest that would have standing to bring this action. Accordingly, consistent with *Ginsberg*, *Hillcrest Pacific* and *Blue Supply*, the trial court should have dismissed the Complaint because the provisions of the Mortgage, which control over the allegations of the pleading, refute the allegation that U.S. Bank has any interest in or standing under the Mortgage to foreclose it.

Parties that do not hold an interest in a mortgage note can still, nonetheless, have standing to foreclose the underlying mortgage. See *Mortgage Electronic Registration Sys., Inc. v. Azize*, 965 So. 2d 151 (Fla. 2d DCA 2007).¹ A party that is not named as a payee on a note and/or the mortgagee on the mortgage does not have standing to foreclose on the mortgage unless this plaintiff is designated to act as a collection or litigation agent for the owner of the note and mortgage. See, e.g., *Mortgage*

¹The *Azize* court recognized that MERS could have standing to foreclose based on its status as holder of the note. The complaint did not alleged how MERS came to be owner and holder of the note, but because the trial court's dismissal was not based on that deficit, the *Azize* court declined to offer any "opinion as to whether the complaint fails to properly plead a cause of action without this information being alleged." *Id.* at 154, n. 2

Electronic Registration Sys., Inc. v. Revoredo, 955 So. 2d 33 (Fla. 3rd DCA 2007). Unlike the mortgage in *Revoredo*, the Mortgage does not identify U.S. Bank as having a status as a collection or litigation agent for the true owner of the Mortgage Note. To the contrary, by defining MERS as "mortgagee," the Mortgage designates MERS as the *de facto* collection or litigation agent, not only for the "Lender," who was the original Mortgage Note owner/holder, but also Lender's successors and assignees. Thus, assuming *arguendo* that ownership of the Mortgage Note was assigned to C-Bass Mortgage Loan Asset-Backed Certificate Series 2006-CB5 (a necessary allegation **not** alleged in the Complaint), the Mortgage still designates MERS as the collection or litigation agent for any successor or assignee by naming MERS the "mortgagee." Thus, the Complaint must be dismissed due to two material contradictions with the Mortgage: (i) the Mortgage defines the real party in interest ("Lender") to be Fremont Investment & Loan, not C-Bass Mortgage Loan Asset-Backed Certificate Series 2006-CB5; and (ii) the Mortgage designated the collection or litigation agent ("mortgagee") to be MERS, not U.S. Bank.

II

Summary Judgment Before Answer Is Premature

The final judgment of foreclosure must also be reversed as it was entered prematurely, without having afforded BAC discovery, or

even an opportunity to interpose any affirmative defenses. "Although a plaintiff may move for summary judgment before the defendant has answered, the motion should not be granted unless it is clear that an issue of material fact cannot be raised." *Settecasí v. Board of Public Instruction of Pinellas County*, 156 So. 2d 652, 654 (Fla. 2d DCA 1963). In those circumstances, "the burden is upon the plaintiff to prove to a *certainty* that no answer which the defendant might properly serve could present a genuine issue of fact." *Id.* (*emphasis added*).

Likewise, the mortgagee that moves for summary judgment before the defendant answers has "an 'unusually heavy' burden to conclusively negate every defense that might be presented in the answer." *Green v. Lifestyle Builders of Orlando, Inc.*, 985 So. 2d 588 (Fla. 5th DCA 2008). In *Green*, the plaintiff sought summary judgment in a foreclosure action before the answer was due. In reversing the summary judgment, the *Greene* court cited the "unusually heavy" burden to conclusively negate every potential defense standard from *Rodriguez v. Tri-Square Constr., Inc.*, 635 So. 2d 125, 126 (Fla. 3d DCA 1994); *Vahalla, Inc. v. Carbo*, 487 So.2d 1125, 1126 (Fla. 4th DCA 1986); *Madison v. Haynes*, 220 So.2d. 44, 46 (Fla. 4th DCA 1969). *Id.* at 589. When the court had granted summary judgment, "it did not have the benefit of Appellant's

answer." *Id.* Because all defenses were not conclusively negated in the record, the *Green* court was "constrained to reverse."

U.S. Bank has failed to satisfy the "unusually heavy" burden dictated in *Settecase* and *Greene*. The inconsistencies between the allegations of the Complaint and the provisions of the Mortgage raise fact issues as to who is the mortgagee with the right to foreclose the Mortgage. BAC holds an interest in the property at issue by virtue of a legally enforceable mortgage and note that it possesses and holds. U.S. Bank claims to "hold" the Mortgage Note, but it did not even append a copy of it to the Complaint. U.S. Bank alleges that it has the right to foreclose the Mortgage; yet, the Mortgage identifies MERS as "mortgagee." U.S. Bank alleges that it serves as trustee for "C-Bass Mortgage Loan Asset-Backed Certificate Series 2006-CB5," the real party in interest under the Mortgage; yet, the Mortgage identifies Freemont Investment & Loan as "Lender."

In an attempt to cure the pleading deficiencies in the Complaint, U.S. Bank appended as Exhibit "A" to "Plaintiff's Response to Defendant Ginelle M. Jean-Jacques' Motion to Dismiss"² (the "Response") an alleged assignment. R-41. This "Assignment of Mortgage" served on BAC as Exhibit "A" to the Response does not,

²This response appears to be mis-titled insofar as it appears to try to respond to BAC's motion to dismiss.

however, have the name of the "Assignee" filled in; this alleged assignment is blank. *Id.* The signature line, witnesses lines and notary are also all blank on the document served to BAC. R-42 and 43.³ Thus, rather than resolve the legal issues raised by BAC's motion to dismiss or "conclusively negate every defense that might be presented in [BAC's] answer," the Response casts doubt on U.S. Bank's claim to hold the Mortgage Note and Mortgage.

Because the universe of BAC's potential defenses have not and cannot be conclusively negated in the record, U.S. Bank was not entitled to summary judgment against BAC before it was afforded the opportunity to answer and conduct such discovery as may be required to support its defenses. Thus, the Court should reverse the final judgment of foreclosure, consistent with the rationale of *Settecasi* and *Greene*.

III

Trial Court's Procedure Inconsistent with Rule 1.510

A trial court is required to hold a hearing before ruling on a summary judgment motion because the denial of a hearing violates the requirements of the applicable procedural rule, Rule 1.510, *Florida Rules of Civil Procedure*, as well as due process rights of

³BAC presumes that the copies of the trial court filings served by U.S. Bank on BAC are true and correct copies of the documents filed with the trial court. Thus, BAC presumes that these documents in the record are also blank.

the parties. *Kozich v. Hartford Ins. Co. of Mid-West*, 609 So. 2d 147 (Fla. 4th DCA 1992). In *Kozich*, the trial court implemented a procedure whereby the court would rule on summary judgment motions upon the expiration of 20 days from the date of its order to respond or upon receipt of the response, whichever was first. *Id.* at 147. The trial court would then "advise the parties in the event that a hearing was required." *Id.* (emphasis in original). Consistent with this procedure, the trial court entered a final order that granted appellee's motion for summary judgment and dismissed appellant's claim with prejudice without a hearing. In reversing the trial court, the *Kozich* court began its analysis with Rule 1.510(c), which provides for a hearing and specifies the time periods for filing and responding to a motion for summary judgment based upon the date fixed for the hearing. *Id.* The *Kozich* court noted that the "rule does not provide the trial court with discretion to decide whether 'a hearing is required.'" *Id.* Thus, the *Kozich* court concluded that the trial court's procedure did not comply with Rule 1.510(c) and rejected the procedure of disposing of summary judgment motions without hearing. As a summary judgment order determines a party's right to relief, the denial of a hearing to either party also constituted a denial of due process. *Id.* See also *Travelers Ins. Co. v. Florida Medical Center, Inc.*, 621 So.

2d, 581 (Fla. 4th DCA 1992) (trial court erred in failing to conduct motion hearing pursuant to Rule 1.510(c)); *Greene v. Seigle*, 745 So.2d 411 (Fla. 4th DCA 1999) (granting defendants' motion for summary judgment without hearing or notice to plaintiff violated summary judgment rule and plaintiff's due process rights and thus required reversal).

"The basic due process guarantee of the Florida Constitution provides that '[n]o person shall be deprived of life, liberty or property without due process of law.' Art. I, § 9, Fla. Const." *Dep't of Law Enforcement v. Real Prop.* 588 So.2d 957, 960 (Fla. 1991). Thus, a party against whom a motion for summary judgment is filed is entitled to notice and a meaningful opportunity to be heard. *Mondestin v. Duval Fed. Sav. & Loan Ass'n*, 500 So.2d 580 (Fla. 4th DCA 1986); see also *Burch v. City of Lakeland*, 891 So.2d 654 (Fla. 2005) (trial court's refusal to allow prison inmate to appear or be heard prior to granting City's motion for summary judgment for forfeiture of inmate's vehicle constituted violation of inmate's right of due process).

The trial court's procedure of granting summary judgment unless the defendant physically appears at the hearing is inconsistent with the procedure set forth in Rule 1.510(c). The trial court's procedure automatically grants summary judgment absent a hearing. Rule 1.510(c) requires the movant to set a

hearing for the relief sought. In the instant case, the trial court's procedure foreclosed any opportunity for BAC to be heard because the trial court would not allow counsel to appear by telephone; under the trial court's unwritten protocols, only the plaintiff's counsel can appear by telephone. Any communication by defense counsel has to be through plaintiff's telephone. The procedure uniformly adopted with regard to opposed motions is that if the movant does not proceed, the relief sought is not granted. The trial court's protocol turns that commonly understood rule of practice on its head. If no one appears for a summary judgment motion, the trial court *automatically grants it*. In accordance with *Kozich, Greene and Mondestin*, the final summary judgment order that was entered as a result of no hearing must be vacated.

The trial court's procedure not only violates Rule 1.510, but also the basic due process guarantee of the Florida Constitution as BAC was never afforded a meaningful opportunity to be heard. BAC was advised by U.S. Bank's counsel that U.S. Bank would not appear at the hearing on its summary judgment motion. The movant's decision not to proceed with hearing the movant's motion would obviate the need of the opponent to attend a hearing that will not be heard. Not so in this case. The trial court's procedure requires the defendant to defend arguments that the plaintiff is not proceeding with. BAC's counsel attempted to appear by

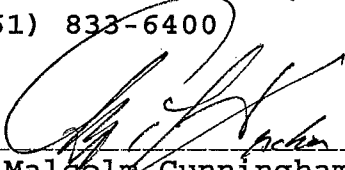
telephone, an accommodation granted to plaintiffs, but not defendants, and thus BAC was denied the opportunity to have a meaningful opportunity to be heard. Thus, the final summary judgment motion, entered in the absence of hearing afforded BAC, should be reversed consistent with the holdings in *Mondestin* and *Burch*.

Conclusion

The Court should reverse the final judgment of foreclosure because the allegations in the Complaint are inconsistent with the Mortgage as to the mortgagee or other party having standing to foreclose, and thus the Complaint should have been dismissed. The judgment was also premature insofar as BAC had not yet answered the Complaint to assert its defenses, and the procedure by which the judgment was entered was fundamentally flawed as it violated the hearing requirements of Rule 1.510 and denied BAC's due process rights.

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Certificate of Compliance

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2), *Florida Rules of Appellate Procedure*.



Attorney

Certificate of Service

I HEREBY CERTIFY that a true and correct this brief was served to by U.S. Mail to Cindy Runyan, Esq. and Andrea D. Pidala, Esq.; Florida Default Law Group, P.L.; 9119 Corporate Lake Drive, 3rd Floor; Tampa, Florida 33634 by U.S. Mail this 19th day of December, 2008.



Attorney