

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
Newnan Division**

**G,
Plaintiff**

v.

**BANK OF AMERICA,
Defendants**

CIVIL ACTION

FILE NO: 3:09-cv-00124-JTC

**PLAINTIFF’S OBJECTIONS TO MAGISTRATE JUDGE’S
SEPTEMBER 02, 2010 RULING ON DEFENDANT’S
MOTION TO COMPEL DISCOVERY,
and
PLAINTIFF’S REQUEST FOR THE US DISTRICT COURT JUDGE
TO PERFORM A DE NONO REVIEW THE RULING
and
MOTION TO STAY (PROTECTIVE ORDER) ALL DISCOVERY
PENDING DE NOVO REVIEW BY THE DISTRICT COURT JUDGE**

COMES NOW, Plaintiff, who, pursuant to Fed.R.Civ.P. Rule 72; LR72.1, NDGa., Fed.R.Civ.P. 6(d), and timely files *Plaintiff’s Objections to Magistrate Judge’s September 02, 2010¹ Ruling on Defendant’s Motion to Compel*

¹ Fed.R.Civ.P. Rule 72(a) “Within 14 days after being served with a copy of the magistrate judge’s order, a party may serve and file objections to the order”; Fed.R.Civ.P. Rule 6(d) “Additional Time...When a party ... act within a specified

Discovery, and Plaintiff's Request for the US District Court Judge to Perform a De Novo Review the Ruling, and Motion to Stay (Protective Order) all Discovery Pending De Novo Review by The District Court Judge.

A Plaintiff's May 12, 2010 Objection of April 30th Ruling

Plaintiff, on May 12, 2010 timely Objected (Doc.17) to the magistrate judge's ruling of April 30th 2010 Order (Doc.13), Denying Plaintiff's Motion to Remand and Motion to Stay Discovery (Doc.9), in which the magistrate judge also granted defendant's motion to extend discovery period (Doc.11).

At the time Plaintiff filed his Objection/Reconsideration (Doc.17), he Moved to have the District Court Judge review the Ruling (Doc.17), but the magistrate judge, barely mentioning the request for review, then ignored the fact. "Plaintiff asks for de novo review by the District Court Judge and remand of this case to Superior Court. (Id.)" (Doc.20,pg.2). Plaintiff has found nowhere in the Rules, statutes, caselaw that the magistrate judge is allowed to jut ignore requests for the District Court Judge to perform a review.

time after service...under Rule 5(b)(2)(C),(D),(E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a)".

The Case/Date Stamp on the Order, shows September 02, 2010; Plaintiff received the Order September 07, 2010 **after** the long, Labor Day Weekend, with Labor Day being on Monday September 06, 2010.

B **Federal Rules of Civil Procedure, Rule 72(a)**

According to Fed.R.Civ.P. Rule 72(a), ignoring a request for review, cannot just be ignored:

“When a pretrial matter ... is referred to a magistrate judge ..., the magistrate judge **must** ²..., issue a written order ... A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge ...**must** consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.”

Plaintiff moved for Recusal, which too was ignored. Obviously, if the Court is not going to adhere to “unmistakably mandatory” procedures, there is bias/prejudice of an extent that the magistrate judge is obligated to recuse.

C **Plaintiff’s Current, Timely Request for the US District Court Judge to Perform a de novo review.**

Plaintiff again, moves the court for a Do Novo Review by the District Court Judge. Plaintiff has filed several meritorious Motions, Responses to Motions, and Objections to this Court, all of which are either ignored, denied, or both. Nevertheless, nothing Plaintiff has filed, has ever been ruled on favorably,

² The words **must**, **shall**, and **will** are unmistakably mandatory character words, requiring that certain procedures “**shall**”, “**will**”, or “**must**” be employed **Hewitt v. Helms**, 459 US 460 – Supreme Court 1983; “mandatory language words ‘shall’, ‘must’, or ‘will’”. “In sum, the use of ‘explicitly mandatory language,’...establishment of ‘specified substantive predicates’ to limit discretion...” **Hewitt v. Helms**, 459 U.S. at 472.

Plaintiff's Civil and Constitutional Rights have been violated. When mandatory procedure is ignored, due process of law is violated. Rulings made in violation of due process of law are void.

D **Void Judgments**

A judgment "is void..., or if the court acted in a manner inconsistent with due process of law." See 11 C. Wright & A. Miller, Federal Practice and Procedure § 2862 at 198-200 (1973) and cases cited therein.

Further, "[a] party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf; he is entitled to have the judgment treated for what it is, a legal nullity." 7 J. Moore & J. Lucas, Moore's Federal Practice, ¶ 60.25[2], at 60-224 (1985); see also **Schwarz v. Thomas**, 95 U.S.App.D.C. 365, 369, 222 F.2d 305, 309 (1955) ("[n]o showing of merits is necessary in support of a motion to vacate a void judgment") (quoting **Wise v. Herzog**, 72 U.S.App.D.C. 335, 341, 114 F.2d 486, 494 (1940)); **Gold Kist, Inc. v. Laurinburg Oil Co.**, 756 F.2d 14, 19 (3d Cir.1985); **Hicklin v. Edwards**, supra note 29, 226 F.2d at 413.

The rulings by this Court to date, have been in violation of the **Due Process Clause**, are thereby are void. The mere fact, that this Court has refused to allow a timely filed **de novo** review, then the Court refused to recuse while violating

Plaintiff's rights, renders the Rulings Void.

E **Non-Disclosure/fraudulent concealment**

The matter removed to this Court by the defendants, is not a Federal matter. Nevertheless, Plaintiff has worked diligently attempting to understand the Federal Rules, and Local Court Rules.

A Superior Court Judge, finding defendants in bad faith, Ordered that within ten days, defendants would produce a list of documents that Plaintiff had been trying to get for a year. The fact that defendants, in their bad faith, refused to produce documents that are necessary for the Plaintiff to show that defendants (1) lack to standing to perform an unlawful Sale Under Power; (2) that defendants have breached their alleged contract; (3) any and all other claims that Plaintiff has against them.

The documents requested, and Ordered to produce, are of such a nature that not one, but several different Federal Government Agencies have said that the Homeowner is not only entitled to, but some of the documents, are mandatory to provide. This Court has, without setting aside the Superior Court's Order, for which violation of, defendants are in **contempt of court**, has ruled that defendants do not have to provide to the Plaintiff. There is obvious bias/prejudice and favoritism to the point, that the magistrate judge, would have necessarily stepped

aside.

F Fraud

A "close[] relat[ionship]" between nondisclosure and concealment, numerous decisions expressly distinguish between passive concealment — mere nondisclosure or silence — and active concealment, which involves the requisite intent to mislead by creating a false impression or representation, and which is sufficient to constitute fraud even without a duty to speak. See, e.g., ***Hitachi Credit Am. Corp. v. Signet Bank***, 166 F.3d 614, 629 (4th Cir.1999) (interpreting Virginia law); ***Mudd v. Lanier***, 247 Ala. 363, 24 So.2d 550, 562-63 (1945); ***Farm Bureau Policy Holders & Members v. Farm Bureau Mut. Ins. Co.***, 335 Ark. 285, 984 S.W.2d 6, 14-15 (1998); ***Younan v. Equifax Inc.***, 111 Cal.App.3d 498, 169 Cal.Rptr. 478, 487 (1980); ***Franklin v. Brown***, 159 So.2d 893, 898 (Fla.App.1964); ***H.E.P. Dev. Group, Inc. v. Nelson***, 606 A.2d 774, 775 (Me.1992); ***Scharf v. Tiegerman***, 166 A.D.2d 697, 561 N.Y.S.2d 271, 272 (1990) (quoting ***Haberman v. Greenspan***, 82 Misc.2d 263, 368 N.Y.S.2d 717, 720-21 (1975)); ***Crabbe v. Freeman***, 160 N.E.2d 583, 585-86 (1959); ***Paul v. Kelley***, 42 Or.App. 61, 599 P.2d 1236, 1238-39 (1979); ***Kase v. French***, 325 N.W.2d 678, 683-84 (S.D. 1982).

In short, at common law, no fiduciary relationship, no statute, no other

independent legal duty to disclose is necessary to make active concealment actionable fraud, there is still an obligation not to purposefully conceal material facts with intent to deceive. **Strong v. Repide**, 213 U.S. 419, 430, 29 S.Ct. 521, 53 L.Ed. 853 (1909); **Tyler v. Savage**, 143 U.S. 79, 98, 12 S.Ct. 340, 36 L.Ed. 82 (1892); **Stewart**, 128 U.S. at 388, 9 S.Ct. 101. A duty to disclose may arise from the circumstances surrounding nondisclosure, such as when a defendant engages in some conduct, beyond mere silence, that rises to the level of active concealment. See, e.g., **United States v. Benny**, 786 F.2d 1410, 1418 (9th Cir.1986); **Bethka v. Jensen**, 250 A.D.2d 887, 672 N.Y.S.2d 494, 495 (1998); cf. **Meade v. Cedarapids, Inc.**, 164 F.3d 1218, 1222 (9th Cir.1999) ("[O]ne who makes a representation that is misleading because it is in the nature of a 'half-truth' assumes the obligation to make a full and fair disclosure of the whole truth." (quoting **Gregory v. Novak**, 121 Or. App. 651, 855 P.2d 1142, 1144 (1993))).

Of course, the "fraud statutes do not cover all behavior which strays from the ideal," **United States v. Brown**, 79 F.3d 1550, 1562 (11th Cir.1996), and "[n]ot all conduct that strikes a court as sharp dealing or unethical conduct is a 'scheme or artifice to defraud.'" **Reynolds v. East Dyer Dev. Co.**, 882 F.2d 1249, 1252 (7th Cir.1989). However, "active or elaborate steps to conceal" information can constitute such a scheme. *Id.* at 1253; see also **Keplinger**, 776 F.2d at 697-98

("Obviously, we do not imply that all or even most instances of non-disclosure of information that someone might find relevant come within the purview of the mail fraud statute; nevertheless, under some circumstances concealment of material information is fraudulent."). Concealment often is accompanied by an affirmative misrepresentation or a violation of an independent statutory or fiduciary disclosure duty, but neither is "essential" for actionable fraud. **Allen**, 554 F.2d at 410. What is essential is proof of a "scheme or artifice to defraud," which can be shown by deceptive acts or contrivances intended to hide information, mislead, avoid suspicion, or avert further inquiry into a material matter. **US v. Colton**, 231 F. 3d 890 - Court of Appeals, 4th Circuit 2000.

G **Full Faith and Credit**

Full Faith and Credit demands that Rulings by the Fayette County Superior Court, a Court of competent jurisdiction, be recognized. Fayette County Superior Court found that the defendants had acted in **bad faith**, and **Ordered** defendants to produce certain documents. Defendants had ten days to produce the documents; and refused to do so. They have been in contempt of a direct Court Order since last year. This Court does nothing about it. This Court, instead, Orders the only document that defendants have to produce is: "Promissory Note" (Doc.29,pg2@2)), and @5: "Plaintiff's request for production of any other

documents not listed herein is **DENIED.**”

“As one of its first acts, Congress directed that all United States courts afford the same full faith and credit to state court judgments that would apply in the State's own courts.” *Kremer v. Chemical Constr. Corp.*, 456 US 461 - Supreme Court 1982. “Federal courts must ‘give the same preclusive effect to state court judgments that those judgments would be given in the courts of the state from which the judgments emerged.’ *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 466, 102 S.Ct. 1883, 1889, 72 L.Ed.2d 262 (1982).

This Court has ignored the Superior Court’s Rulings, and has neither affirmed, nor overturned those Rulings. The rulings could only be overturned for a small number of reasons, one of which would be that the Ruling was in violation of The United States Constitution, or another reason of such type great importance.

CONCLUSION

Plaintiff has shown meritorious grounds for Plaintiff’s Objection to the Rulings, meritorious grounds for the District Court Judge to perform a *de novo* review of the Rulings of the magistrate judge. Plaintiff’s request must not be ignored.

Due to the circumstances, and grounds for which Plaintiff has Objected to the Rulings, and the past request for review, having been ignored, it would be fair

and just to Stay All Discovery while the review is pending.

Respectfully submitted, this 16th day of September, 2010,

By: _____
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Plaintiff**

V.

**BANK OF AMERICA,
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CERTIFICATE OF SERVICE

I, Gaellen Fabre, Certify that I have this 16th day of September, 2010 served the foregoing *Plaintiff's Objections to Magistrate Judge's September 02, 2010 Ruling on Defendant's Motion to Compel Discovery, and Plaintiff's Request for the US District Court Judge to Perform a De Novo Review the Ruling, and Motion to Stay (Protective Order) all Discovery Pending De Novo Review by The District Court Judge.*

upon the Defendants, through their attorney on file, by causing a true and correct copy to be deposited with USPS first class mail, proper postage affixed and addressed as follows:

Howell A. Hall
115 Perimeter Center Place
South Terraces, Suite 1000
Atlanta, GA 30346

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