

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

US BANK NATIONAL ASSOCIATION,
AS TRUSTEE OF THE BANC OF AMERICA
FUNDING 2007-D,

Plaintiff,

Case No. 09-13768CI-11

v.

PAUL C. HOFFMANN, *et. al.*

Defendants,

MOTION TO DISQUALIFY JUDGE

Defendants, PAUL C. HOFFMANN & STEPHANIE T. HOFFMAN, by and through their undersigned counsel and pursuant to Fla.R.Jud.Admin. 2.330, move this Court for entry of an Order disqualifying the Honorable Pamela Campbell, and would show:

BACKGROUND

1. For many months, Defendant, PAUL HOFFMANN (“Mr. Hoffmann”), did not retain counsel to defend this mortgage foreclosure case because the bank had repeatedly assured him that the case was “on hold” pending a decision on a loan modification. However, when Plaintiff set a hearing on its Motion for Summary Judgment, to take place on a mass-motion calendar on August 19, 2010 at 9:30 a.m., Mr. Hoffmann realized he needed to take action. As such, he retained Mark P. Stopa, Esq. and the Stopa Law Firm, which appeared as counsel on or about August 16, 2010.

2. In the days prior to the summary judgment hearing, Mr. Stopa filed many papers on Mr. Hoffmann’s behalf, including an Affidavit in Opposition to Summary Judgment, an objection to Plaintiff’s affidavit in support of summary judgment, a Motion to Dismiss, a

Verified Motion to Vacate Default, a Motion to Continue, and some basic discovery requests. The nature of the case, particularly in light of these filings, was that it was not possible for the Judge to lawfully enter summary judgment.

3. The papers that Mr. Stopa filed on Mr. Hoffmann's behalf were timely served, but as of the morning of August 19, 2010, the Clerk had not yet put them in the Court file. As such, as of the early morning hours of August 19, 2010, the Judge believed Mr. Hoffman to be *pro se*.

ANALYSIS

4. On August 19, 2010 at approximately 8:15 a.m. (a little more than an hour before the scheduled summary judgment hearing), Philip J. Healy, Esq., an associate with Stopa Law Firm, went to the courthouse in an attempt to look at the court file in this case. Upon doing so, he was shocked to see, in the Court file, conformed copies of a Final Judgment of foreclosure. Mr. Healy photographed (with his cellphone) the first and last pages of this document, which reflect that the Judge had entered a Final Judgment of foreclosure on August 19, 2010.¹ See Exhibit "A" hereto. Significantly, these conformed copies were entered at least an hour before the hearing on the Motion for Summary Judgment was even scheduled to begin. In other words, **the Judge entered conformed copies of a Final Judgment of foreclosure in this case at least an hour before the scheduled summary judgment hearing.**

5. Upon learning of this news, Mr. Stopa was disturbed. He had believed the Judge to be a fair judge, but it seemed clear, at least with respect to this case, that the Judge had prejudged the case, including the motion for summary judgment, as she had already entered the Final Judgment before the hearing had even begun.

6. On August 19, 2010, at 9:30 a.m., as the hearing began, Mr. Stopa, Mr. Healy, Mr. Hoffmann, the Judge, and Plaintiff's counsel, Eric Del 'Etoile, Esq. ("Mr. Del Etoile") were

¹ The court file is a matter of public record, so clearly there was nothing wrong with this.

all present in the Judge's chambers.

7. As the hearing began, it was uncomfortable from the start. The Judge, very oddly, volunteered that Mr. Del 'Etoile had been her intern, apparently just recently (since Mr. Del Etoile is a very young attorney), and spoke of him glowingly. It was as if the Judge was introducing Mr. Del Etoile to Mr. Stopa, Mr. Healy, and Mr. Hoffmann (an experience which Mr. Stopa can never recall seeing before in ten years of practicing law). The relationship and introduction was so odd that Mr. Hoffmann would indicate, after the hearing, he felt the hearing was "doomed" from that point forward.

8. As the hearing began, Mr. Stopa informed the Judge that Mr. Healy had found the conformed copy of the Final Judgment, in the Court file, that morning. Mr. Stopa advised the Judge that he was troubled by this and requested an explanation (of why there was a conformed Final Judgment in the court file before the hearing had begun).

9. The Judge was clearly and visibly annoyed at being "called out" like this, and told Mr. Stopa that he did not understand "procedures." The Judge indicated she was "not hiding anything," as seen by her willingness to provide the file, including her "notes," to Mr. Healy, but that "next time," she would refrain from showing Mr. Healy her "notes." (Apparently, the Judge was referring to the conformed copies of the Final Judgment as her "notes, even though there were no "notes" on that document.) The Judge then attempted to show Mr. Stopa an unsigned Final Judgment, taking the position that she had not signed a Final Judgment, as if she had done nothing wrong.

10. Unfortunately, despite Mr. Stopa's request, the Judge was unwilling or unable to explain why there were conformed copies of the Final Judgment in the court file, as if the Final Judgment had already been entered, before the hearing had begun. Mr. Stopa was hoping for an

innocent explanation, but none was forthcoming. In retrospect, and under the circumstances, the explanation seems clear. The Judge did not realize that Mr. Hoffmann had retained counsel (given that Mr. Stopa appeared in the case just before the summary judgment hearing and his filings had not yet appeared in the Court file), thought he was *pro se* (like many of the other defendants on the mass-motion calendar that morning), and had predetermined that Final Judgment would be entered, so she made conformed copies of the Final Judgment before the hearing even began. Whether the Judge predetermined the case because of her relationship with Mr. Del Etoile is unclear, but it was clear that the Judge had predetermined the outcome.

11. Worse yet, it seems that this is a routine practice of the Judge – to prepare conformed copies of Final Judgments in cases where the Defendants are *pro se*. This sounds harsh, but there seems to be no other explanation (particularly in light of the Judge’s inability or unwillingness to provide one).

12. Notably, the Final Judgment of foreclosure was many pages long, yet the Judge made multiple conformed copies to mail to the parties before the hearing. It was clearly a fair amount of work to prepare those conformed copies, and the envelopes that went with them, which of course begs the question – why did the Judge make these copies before the hearing rather than after? Was she so determined to get this case (and other foreclosure cases) off her desk that she predetermined the outcome of the case before the hearing even began? Respectfully, it certainly appears that way. Again, that sounds harsh, but if the Judge was willing to give the parties a “fair shake,” why not wait until after the hearing to make the conformed copies? What was the rush?

13. These actions cause reasonable people to ask hard questions. For instance, if the Judge thought the hearing was a “close call,” would she be more likely to grant summary

judgment simply because she had already prepared conformed copies of the Final Judgment? Would she have thought it “easier” to simply grant summary judgment rather than deny it? Would she be unwilling to fully consider a *pro se* defendant’s argument because she had already prepared conformed copies of the Final Judgment? Unfortunately, it certainly appears that way. After all, if the Judge was willing to give the parties a “fair shake,” why not wait until after the hearing to make conformed copies of the Final Judgment?

14. Perhaps most troubling of all, did the Judge make conformed copies of the Final Judgment in *this case* merely because her former intern, Mr. Del Etoile, was the opposing attorney? Was the Judge in a rush to push this case because of the nature of her relationship with Mr. Del Etoile? Is this what the Judge meant when she said Mr. Del Etoile is good at “cleaning up” cases? It may be hard to believe that the Judge would prejudge this case based on her relationship with opposing counsel, but Mr. Hoffmann’s concerns in that regard are not unsubstantiated given the facts at bar.

15. As the hearing proceeded, Mr. Del Etoile appropriately conceded that summary judgment was inappropriate on the facts of this case. As such, the Final Judgment was not entered (and, apparently, the conformed copies of the Final Judgment were discarded). However, before the hearing ended, the Judge continued making more comments about her former intern, Mr. Del Etoile, that causes these parties to reasonably question her impartiality.

16. Most troubling, the Judge said that Florida Default Law Group (the law firm with which Mr. Del Etoile practices) used to be “the worst” foreclosure firm, but now, with Mr. Del Etoile, it is “the best.” The Judge also said other, similar statements vouching for Mr. Del Etoile, in open court, in front of Mr. Stopa, Mr. Healy, and Mr. Hoffmann.

17. Feeling awkward, but attempting to not be rude, Mr. Stopa said that Mr. Del

Etoile should switch to foreclosure defense, to which the Judge immediately responded with something to the effect of “no, you want Mr. Del Etoile on the bank’s side – he’s really good at cleaning up these cases.” Again, the Judge was vouching for Mr. Del Etoile in open court.

18. As the hearing ended, Mr. Stopa, Mr. Healy, and Mr. Hoffmann left the Judge’s chambers, but Mr. Del Etoile remained in chambers, alone, with the Judge (apparently since Mr. Del Etoile was counsel in the next hearing).

19. When Mr. Hoffmann left chambers with Mr. Stopa, Mr. Hoffman immediately expressed his concerns about the Judge’s partiality, as set forth therein. These concerns were heightened even more, after the hearing, when Mr. Del Etoile confirmed to Mr. Healy that the Judge had engaged in *ex parte* communications with Mr. Del Etoile after the hearing and said “bad things” to Mr. Del Etoile about Mr. Stopa and Mr. Healy.

20. The fact that the Judge said “bad things” (in Mr. Del Etoile’s words) about Mr. Stopa and Mr. Healy, behind their backs, merely because they were concerned about the fact that the Judge had entered conformed copies of a Final Judgment before the hearing even began, says all that needs to be said about the Judge’s partiality.

21. Further, it is troubling to Mr. Hoffmann that Mr. Del Etoile was not even the assigned attorney on the case, but Florida Default Law Group sent him to the hearing because of his relationship with the Judge. In fact, this is a routine practice of Florida Default Law Group – to send Mr. Del Etoile to hearings before the Judge, even if he is not the assigned attorney on those files, because of his close personal relationship with the Judge. The fact that Mr. Del Etoile and Florida Default Law Group perceive some advantage by sending Mr. Del Etoile to hearings before the Judge, rather than the attorney assigned to the case, reflect the Judge’s bias.

22. These facts, individually and collectively, give Mr. Hoffman a well-reasoned fear

the Judge cannot be neutral and detached.

23. The fact that the Judge prejudged the case, so much so that she entered conformed copies of a Final Judgment before the hearing even began, requires disqualification. Quite simply, the Judge cannot be permitted to remain as judge on this case when she has so obviously prejudged the case. See Marvin v. State, 804 So. 2d 360 (Fla. 4th DCA 2001); Barnett v. Barnett, 727 So. 2d 311 (Fla. 2d DCA 1999); Wargo v. Wargo, 669 So. 2d 1123 (Fla. 4th DCA 1996).

24. The Judge's relationship with Mr. Del Etoile, the fact that he was recently her intern, her willingness to speak so glowingly about him and his law firm in open court, in front of Mr. Hoffmann, coupled with the general tone of these remarks require the Judge's disqualification.

25. The Judge's *ex parte* communications with Mr. Del Etoile, particularly the fact that she said "bad things" about Mr. Stopa and Mr. Healy merely because they inquired about the conformed copies of the Final Judgment, require disqualification. As the Florida Supreme Court has explained:

Canon 3B(7) of the Code of Judicial Conduct provides that "[a] judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding." Based on this principle, this Court has repeatedly stated that there is nothing "more dangerous and destructive of the impartiality of the judiciary than a one-sided communication between a judge and a single litigant." ...

We are not concerned with whether an *ex parte* communication actually prejudices one party at the expense of the other. The most insidious result of *ex parte* communications is their effect on the appearance of the impartiality of the tribunal. The impartiality of the trial judge must be beyond question.

State v. Riechmann, 777 So. 2d 342 (Fla. 2000); see also Smith v. State, 708 So. 2d 253 (Fla. 1998); Pearson v. Pearson, 870 So. 2d 248 (Fla. 2d DCA 2004) ("Petitioner's allegation of an ex

parte communication alone established a reasonable basis to fear she would not receive a fair hearing in subsequent proceedings.”).

26. In light of the foregoing, Mr. Hoffmann has a well-reasoned fear that the Judge will not be a neutral and detached judge at further hearings in this case. Disqualification is required.

WHEREFORE Defendants respectfully request an Order disqualifying the Honorable Pamela Campbell from presiding in this cause.

CERTIFICATE OF GOOD FAITH

Defendants’ counsel, Mark P. Stopa, Esquire, hereby certifies that the instant motion and the statements set forth herein are made in good faith.

Mark P. Stopa

VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Paul C. Hoffman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Pamela Campbell, 545 First Ave. N., Room 302, St. Petersburg, FL 33703 and Eric Del Etoile, Florida Default Law Group, P.L., P.O. Box 25018, Tampa, FL 33622-5018 on this ____ day of August, 2010.

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