

FLORIDA COMPLAINT CERTIFICATION NOT MANDATORY

A second attempt to dismiss a foreclosure with a writ of mandamus for an alleged faulty complaint and missing certification fizzled before the Fourth District Court of Appeal.

Homeowners Lorraine Campbell and Charles Lamm have been fighting to throw out loan servicer Wells Fargo Bank N.A.'s case for alleged failure to comply with certification requirements governing promissory notes. They filed a petition asking the state appellate court to order Broward Circuit Judge Joel Lazarus to quash the bank's complaint after an earlier interlocutory appeal failed.

"The trial court denied the motion to dismiss, and petitioners have returned to this court, now seeking a writ of mandamus," read an unsigned opinion issued Wednesday by Fourth DCA Judges Martha Warner, Dorian Damoorgian and Mark Klingensmith.

The homeowners argued the bank claimed to hold the original promissory note, yet allegedly failed to file a certification detailing the note's location and other information, as required under rules governing foreclosure complaints and civil procedure. They hinged their pleadings on that alleged misstep, claiming the bank failed to adhere to a mandatory rule. They also challenged Wells Fargo's standing to bring the suit, arguing the note and mortgage belonged to lender Mortgage Network Inc.

"They did not comply with the rules," said defense attorney Peter Snyder of Boca Raton.

But the Fourth DCA sided with Lazarus, who it said had judicial discretion in granting or denying the narrow, extraordinary writ.

"The certification requirement of the statute was not intended to be a prerequisite to suit, but was instead intended to expedite the foreclosure process," it ruled. "In fact, (the statute) states that the court may sanction a plaintiff for failure to comply, which contradicts any argument that these are mandatory conditions precedent to suit or that the complaint must be dismissed for failure to comply, thus creating a mandatory non-discretionary duty."

The judicial panel found the rules did not create "a mandatory pre-suit requirement such that a trial court has only a ministerial duty to dismiss the complaint if a certification is not included."

"We deny the petition and conclude that a plaintiff's failure to meet the certification requirements is not a mandatory prerequisite to the filing of suit which can be enforced by mandamus," the appellate court ruled. "The record does not reflect the trial court's refusal to perform a strictly ministerial duty."

Snyder said he was considering a motion for rehearing.