



Foreclosure Defense

FRCP 1_540 and Default and SJ

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On a Motion to Set aside a Default and Summary Judgment pursuant to 1.540 based on:

1. Judgment void b/c
 - a. Lack of Standing either at filing suit or at SJ
 - b. Complaint fails to state a cause of action
 - c. **Insufficient admissible evidence to support SJ**
 - i. Quick Facts:

(F/c and Lost Note) exhibits are Mtg and Note (w/ no endorsements to Plaintiff) (conflicting exhibits to allegation of "own and hold" by Plaintiff)

2. Plaintiff files MSJ

and "Aff'd of indebtedness", aside from typical amounts due allegations, affidavit merely says Plaintiff owns and holds the note and mortgage

3. At SJ hearing

Plaintiff files Default and files Notice of Filing

- a. Mtg
- b. Original

Note w/ No Endorsements to Plaintiff (note is NOT endorsed still in name of original payee)

- c. Post dated

Assignment of Mortgage from Mers to Plaintiff

4. Court enters SJ

Question:

1. Does defendant "waive lack of standing for failure to raise standing as an affirmative defense"?
2. Is SJ "void" or is it "voidable" for
 - a. Failure to state a COA, and/or
 - b. Lack of Standing, and/or
 - c. Insufficient admissible evidence to

support SJ.

3. Does Plaintiff showing up with the original NOTE at SJ with no endorsement trump all the above arguments? Or are the arguments to late since Defendant defaulted and did not oppose SJ?

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File your motion and allege that the court reviewed materials improperly before it. On a MSJ evidence must be in the record 5 days before the hearing. Also, you should show some excusable neglect as to why the Defendant never responded to the Complaint. Finally you have to show a meritorious defense which would be improper party. Happy hunting.

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