

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

FIRST FRANKLIN FINANCIAL
CORPORATION,

Plaintiff,

v.

CASE NO. 2009-CA-5271-NC

RICHARD A. QUINLAN, et al.,
Defendants.

ORDER ADOPTING RECOMMENDED ORDER

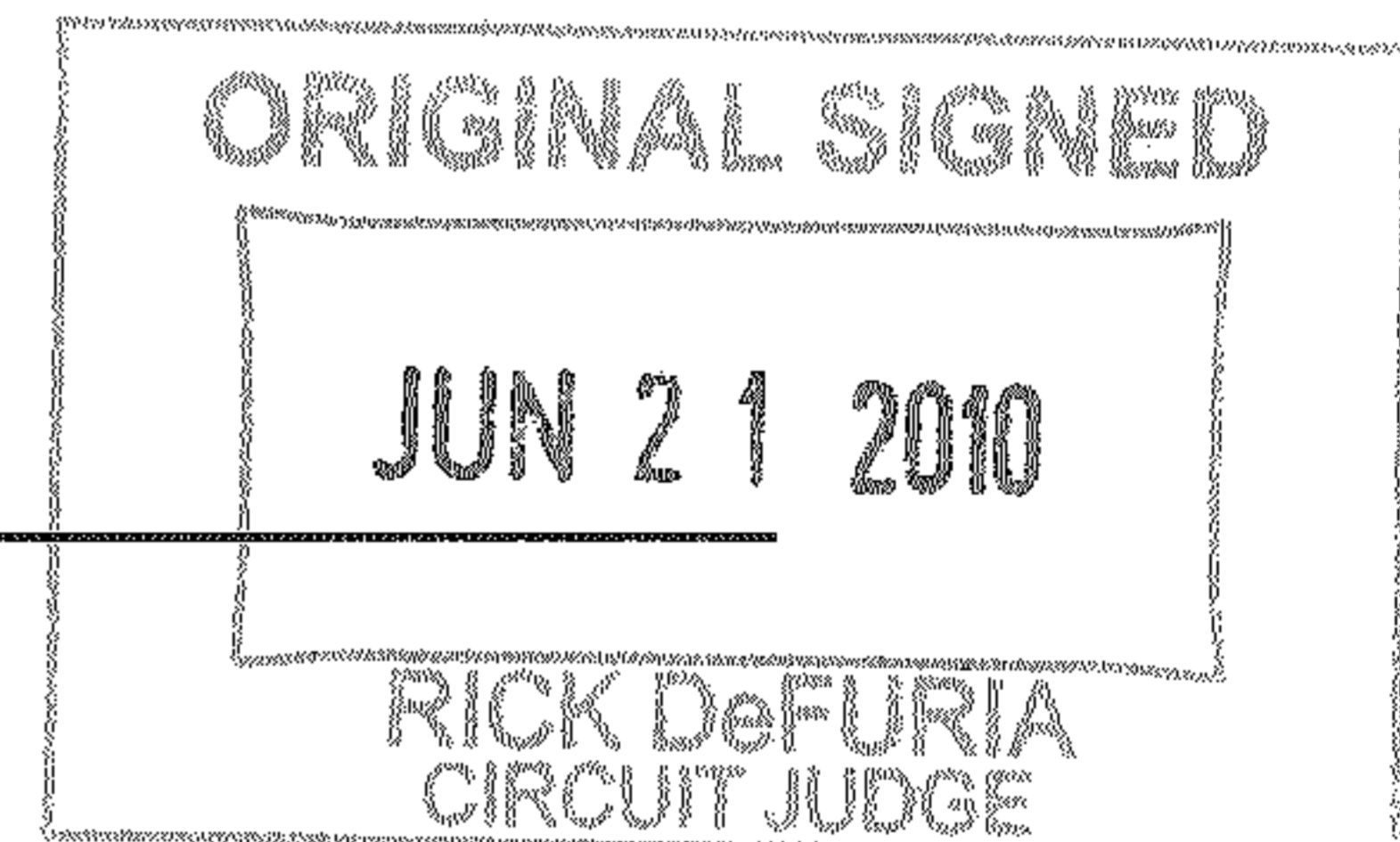
THIS CAUSE came before the Court on the Recommended Order of Magistrate, filed by Magistrate Deborah A. Bailey, and the undersigned, having considered the findings and recommendation contained therein, it is hereby,

ORDERED AND ADJUDGED that:

1. The Recommended Order of Magistrate, entered on JUNE 1, 2010, a copy of which is attached hereto, is ratified and approved.
2. The parties are ordered to abide by all of the findings and recommendations contained in the Recommended Order of Magistrate, and the Court hereby adopts each and every finding and recommendation therein as the Order of this Court.

DONE AND ORDERED in Chambers at Sarasota, Sarasota County, Florida on this _____ day of _____ 2010.

Rick DeFuria
Circuit Judge



COPIES MAILED TO:

Nicholas J. Vanhook, Esq.
Butler & Hosch, P.A.
3185 South Conway Road, Suite E
Orlando, FL 32812

Gregory D. Clark, Esq.
1201 S. Highland Avenue, Suite 9
Clearwater, FL 33756

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
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FIRST FRANKLIN FINANCIAL
CORPORATION,

Plaintiff,

vs.

CASE NO. 2009 CA 005271 NC

RICHARD A. QUINLAN, et al.,

Defendants.

RECOMMENDED ORDER OF MAGISTRATE

This cause came on for hearing before Magistrate Deborah A. Bailey, on June 1, 2010, on the **Defendant's Motion to Compel**. The Magistrate has jurisdiction pursuant to Rule 1.490 of the Florida Rules of Civil Procedure. Being fully advised in the premises, the Magistrate reports as follows:

1. This is a foreclosure case. On or about July 10, 2009, Defendant served a Request for Production on the Plaintiff. On or about July 22, 2009, Plaintiff responded primarily by objecting and producing minimal documentation, most of which had been previously filed in the court file. On or about August 6, 2009, Defendant served Plaintiff with a First Set of Interrogatories. Plaintiff's response to Defendant's Interrogatories was similar to its response to the Request to Produce – primarily objections and the disclosure of very little information.

2. As a result of the Plaintiff's responses and objections, on or about December 11, 2009, Defendant moved to compel the Plaintiff to provide better responses to his discovery requests. Defendant asserts that his discovery requests are directly relevant because Defendant seeks documentation and information establishing the Plaintiff's chain of ownership to the note and mortgage on which it seeks to foreclose. At the time of the hearing, Defendant's counsel indicated that he is primarily interested in compelling answers to the Interrogatories at this time. Accordingly, the Magistrate has focused her review on the Interrogatories and the Plaintiff's answers to same.

3. After review of the First Set of Interrogatories and the Plaintiff's answers, the Magistrate recommends the Court overrule the Plaintiff's objections¹ to Interrogatory Nos. 1, 2, 3, 4, 6, 8, 10, 12, 13, 14, 15, 16, 17, 18 and 19 and direct the Plaintiff to serve amended answers to these Interrogatories.

4. The Magistrate finds that the Plaintiff's responses to Interrogatory Nos. 5, 9 and 11 are either deficient or non-responsive. Accordingly, the Magistrate recommends the Court direct the Plaintiff to serve amended answers to these Interrogatories.

5. The Magistrate finds that the Plaintiff's response to Interrogatory No. 7 is complete as presently stated. Plaintiff will have to disclose its documents and exhibits in accordance with the Court's subsequent pretrial order.

6. It should be clear to the Plaintiff after the recent cases of *Verizzo v. Bank of New York*, 28 So. 3d 976 (Fla. 2d DCA 2010), and *BAC Funding Consortium v. Jean-Jacques*, 28 So. 3d 936 (Fla. 2d DCA 2010), that trial courts are going to be scrutinizing more closely the chain of documents evidencing a plaintiff's right to foreclose. The Plaintiff's consistent position in responding to Defendant's discovery requests has been that it filed an Assignment of Mortgage and that's sufficient to demonstrate its standing to foreclose.

7. Of note, the Assignment purports to be from Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for First Franklin A Division of Nat. City Bank of IN, (Assignor) to First Franklin Financial Corporation (Assignee). The Assignment purports to assign not only the Mortgage, *but also the Note*, a Note in which MERS reportedly has no legal or beneficial interest. The Assignment was purportedly executed on March 12, 2009.

8. Also, of note, the Complaint contains a "lost note" count in which the Plaintiff (First Franklin Financial Corporation) alleges in pertinent part: "The above-described Note and Mortgage have been lost and are not in the custody or control of the Plaintiff. The time and manner of the loss is that the subject Note and Mortgage were lost or disappeared under unknown circumstances *after the Plaintiff became the holder thereof.*" (Complaint at ¶ 20, emphasis supplied) The allegation in ¶ 20, however, appears to be contradicted by the Plaintiff's own Affidavit of Lost Note, filed on July 16, 2009, in which Sharon D. Maerke,² a Vice President of First Franklin a Division of Nat. City Bank of IN ("Lender"), who attests that the Lender is the lawful owner of the Note and, as of March 10, 2009, the Lender "has not cancelled, altered, assigned or hypothecated the Note" (Affidavit of Lost Note at ¶ 3) Even more interesting, the Affidavit asserts (under oath) that: "The original Note *was in the Lender's possession* and was maintained in its filed located in Pittsburgh, Pennsylvania. After a thorough and diligent search of

¹ This includes the following objections wherever stated in the Plaintiff's responses to the subject Interrogatories: overbroad, unduly burdensome, irrelevant, calls for a legal conclusion, and requests information from a third party.

² This is the Magistrate's best guess at the spelling of this name, the quality of the Affidavit filed by the Plaintiff containing very small type and being of exceptionally poor quality.

the mortgage loan file and of all mortgage loan files in the Lender's Pittsburgh, Pennsylvania office, the original Note cannot be found." (Affidavit of Lost Note at ¶ 4)

9. Faced with the contradictory statements the Plaintiff itself has placed of record, the information sought by the Defendant through his Interrogatories is directly relevant to the Plaintiff's standing to foreclose on his property and is discoverable.

Based upon the above-stated findings, the Magistrate submits the following Recommended Order for approval by the Court:

Recommended Order

1. Defendant's Motion to Compel is **GRANTED** in part.
2. Within 15 days of the date the Court adopts this Recommended Order as final, the Plaintiff shall provide Defendant with supplemental answers to the Interrogatories noted in ¶'s 3 and 4 of the Magistrate's findings.

Please take notice that pursuant to Rule 1.490(h), the parties to this cause have ten (10) days from the date of service of this Recommended Order to serve exceptions to its contents. The party filing exceptions is required to send copies of the exceptions directly to the Judge assigned to this case, as well as to undersigned Magistrate. The party filing exceptions will be required to provide the Court with a record sufficient to support their exceptions or the exceptions will be denied. A record ordinarily includes a written transcript of all relevant proceedings. The party filing the exceptions must have the transcript prepared for the court's review. If exceptions are timely filed, they shall be heard on reasonable notice by either party or the court. If no exceptions are filed within ten (10) days from the date of service, the Court shall take appropriate action on the report.

BY: _____


Deborah A. Bailey, Magistrate
Twelfth Judicial Circuit

cc: Nicholas J. Vanhook, Esq.
Butler & Hosch, P.A.
3185 South Conway Road, Suite E
Orlando, FL 32812

Gregory D. Clark, Esq.
1201 S. Highland Avenue, Suite 9
Clearwater, FL 33756

Sent to Clerk for filing on _____

Mailed to parties on _____

2009-CA-005271-NC
FIRST FRANKLIN FINANCIAL V QUINLAN

COPIES FURNISHED BY MAIL TO:

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FIRST FRANKLIN FINANCIAL
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CASE NO. 2009-CA-5271-NC

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Defendants.

ORDER ADOPTING RECOMMENDED ORDER

THIS CAUSE came before the Court on the Recommended Order of Magistrate, filed by Magistrate Deborah A. Bailey, and the undersigned, having considered the findings and recommendation contained therein, it is hereby,

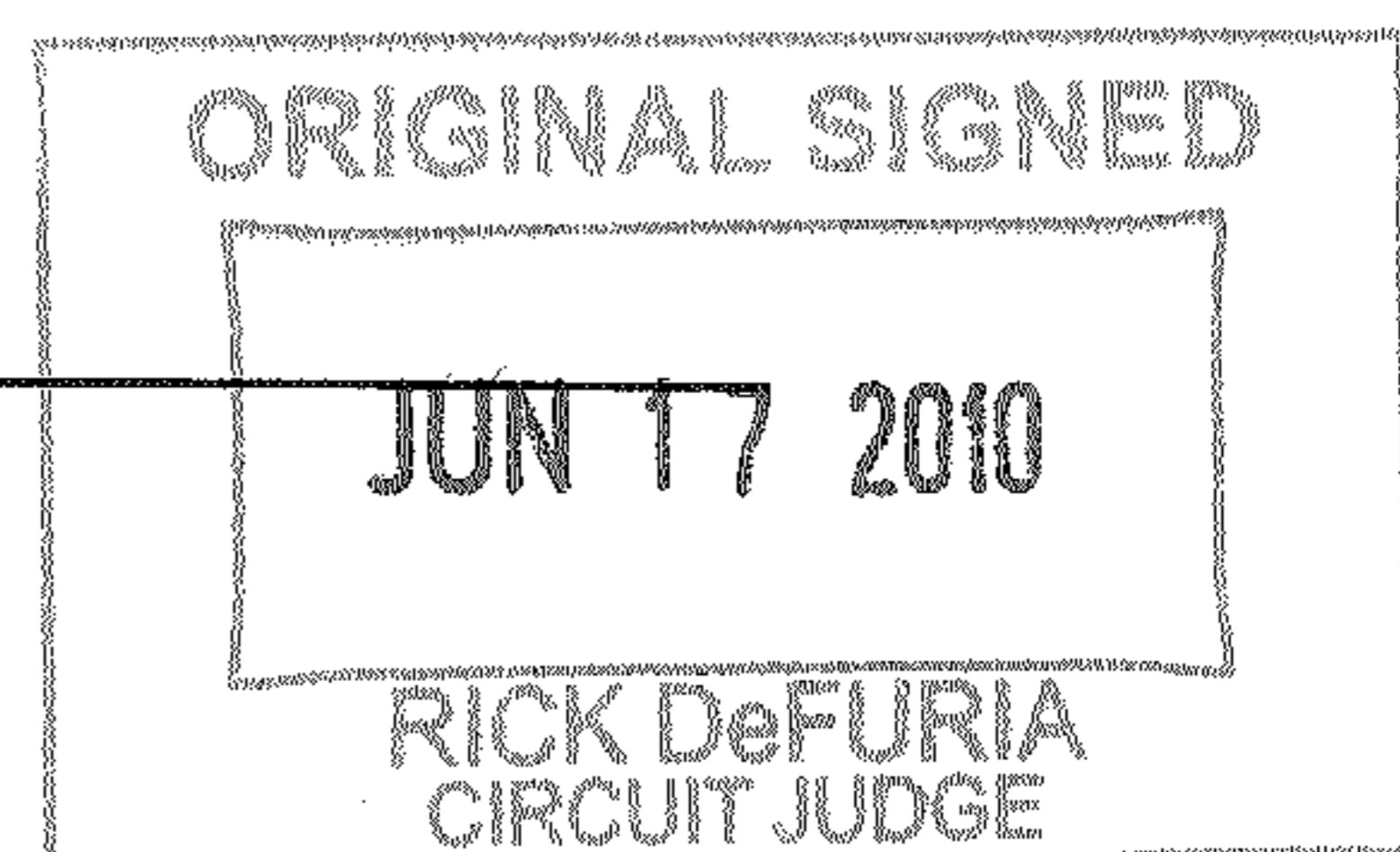
ORDERED AND ADJUDGED that:

1. The Recommended Order of Magistrate, entered on JUNE 1, 2010, a copy of which is attached hereto, is ratified and approved.

2. The parties are ordered to abide by all of the findings and recommendations contained in the Recommended Order of Magistrate, and the Court hereby adopts each and every finding and recommendation therein as the Order of this Court.

DONE AND ORDERED in Chambers at Sarasota, Sarasota County, Florida on this _____ day of _____ 2010.

Rick DeFuria
Circuit Judge



COPIES MAILED TO:

NICHOLAS J. VANHOOK, ESQ.
BUTLER & HOSCH
3185 SOUTH CONWAY ROAD, SUITE E
ORLANDO, FL 32812

GREGORY D. CLARK, ESQ.
1201 S. HIGHLAND AVENUE, SUITE 9
CLEARWATER, FL 33756

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IN AND FOR SARASOTA COUNTY, FLORIDA

FIRST FRANKLIN
FINANCIAL CORP. /Plaintiff(s)

vs.

CASE NO. 2009 CA 005271 NC

QUINLAN, ET AL., /Defendant(s)

RECOMMENDED ORDER OF MAGISTRATE

THIS CAUSE came on to be heard on ~~Plaintiff's~~ Defendant's Motion

TO AMEND RESPONSIVE PLEADING

The Magistrate has jurisdiction pursuant to Fla. R. Civ. P. 1.490. After review of the Motion, upon consideration of the arguments of counsel, and for the reasons set forth at the hearing, the Magistrate recommends the Court GRANT ~~DENY~~ the Motion.

Based on the above findings, the Magistrate submits the following Recommended Order for approval by the Court:

Motion to Amend Responsive Pleading is GRANTED. The additional affirmative defenses may be added by filing an Amended Answer within 10 days of the date the Court adopts this Recommended Order as final.

Pursuant to Rule 1.490(h), the parties to this cause have ten (10) days from the date of service of this Recommended Order to serve exceptions to its contents.

*****OR*****

 The parties are aware of their ability to serve exceptions pursuant to Fla. R. Civ. P. 1.490(h), and are waiving their right to serve exceptions.

Deborah A. Bailey 6/1/10
Deborah A. Bailey, Magistrate

Copies furnished to:

Plaintiff LOCAL COUNSEL

Defendant _____

Other _____

IN COURT

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FIRST FRANKLIN V. QUINLAN

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