

U.S. District Court
Northern District of New York - Main Office (Syracuse) [LIVE - Version 5.0.3] (Binghamton)
CIVIL DOCKET FOR CASE #: 3:12-cv-00540-GLS-DEP

Fidelity National Title Insurance Company v. JP Morgan Chase Bank, N.A.
Assigned to: Chief Judge Gary L. Sharpe
Referred to: Magistrate Judge David E. Peebles
Case in other court: Florida Middle, 3:10-cv-01153
Cause: 28:1441 Petition For Removal--Other Contract

Date Filed: 03/27/2012
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Fidelity National Title Insurance Company

V.

Defendant

JP Morgan Chase Bank, N.A.

as Indenture Trustee on behalf of the Noteholders and Note Insurer of ABFS Mortgage Loan Trust 2001-3, Mortgage Backed Notes, c/o Ocwen Loan Servicing, LLC

| Date Filed | # | Docket Text |
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| 12/16/2010 | 1 | NOTICE OF REMOVAL from Fourth Judicial Circuit in and for Duval County, Florida, case number 16-2010-CA-13302 filed in State Court on 10/22/2010. Filing fee \$ 350, receipt number J1103 filed by JP Morgan Chase Bank, N.A.. (Attachments: # 1 Exhibit) (Counsel notified re: cd/civil cover sheet)(TL) [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/17/2010) |
| 12/16/2010 | 2 | COMPLAINT against JP Morgan Chase Bank, N.A. with Jury Demand filed by Fidelity National Title Insurance Company.(TL) (Filed in State Court, modified on 12/17/2010) (TL). [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/17/2010) |
| 12/16/2010 | 3 | CERTIFICATE of interested persons and corporate disclosure statement by JP Morgan Chase Bank, N.A.. (TL) [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/17/2010) |
| 12/17/2010 | 4 | AMENDED STANDING ORDER: Filing of documents that exceed twenty-five pages. Signed by All Jacksonville Divisional Judges on 5/25/05. (TL) [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/17/2010) |
| 12/22/2010 | 5 | ORDERED: Defendant shall have until January 7, 2011, to provide the Court with sufficient information so that it can determine whether it has jurisdiction over this action. See Order for details. Signed by Judge Marcia Morales Howard on 12/21/2010. (MEH) [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/22/2010) |
| 12/22/2010 | 6 | NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 12/22/2010. (Attachments: # 1 Case Management Report Form, # 2 Consent Letter and Form)(JW) [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/22/2010) |
| 01/07/2011 | 7 | MEMORANDUM in support re 1 Notice of removal, 5 Order <i>Requiring Sufficient Information to Establish Jurisdiction</i> filed by JP Morgan Chase Bank, N.A.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Tran, Steve) [Transferred from Florida Middle on |

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| | | 3/27/2012.] (Entered: 01/07/2011) |
| 01/07/2011 | 8 | DECLARATION of Jill S. David by JP Morgan Chase Bank, N.A.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/07/2011) |
| 01/07/2011 | 9 | NOTICE to the Courts to take judicial notice regarding <i>Recorded Bargain and Sale Deed</i> by JP Morgan Chase Bank, N.A.. (Attachments: # 1 Exhibit D)(Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/07/2011) |
| 01/07/2011 | 10 | NOTICE of Appearance by Beranton J. Whisenant, Jr on behalf of Fidelity National Title Insurance Company (Whisenant, Beranton) Counsel notified to refile with entire electronic signature. Modified on 1/10/2011 (DTS). [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/07/2011) |
| 01/13/2011 | 11 | DECLARATION of Thomas E. Reardon re 7 Memorandum in support by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/13/2011) |
| 03/15/2011 | 12 | ORDER TO SHOW CAUSE why this case should not be dismissed for lack of prosecution or sanctions imposed due to the parties' failure to file a Case Management Report. Show Cause Response due by 3/29/2011. Signed by Judge Marcia Morales Howard on 3/15/2011. (JW) [Transferred from Florida Middle on 3/27/2012.] (Entered: 03/15/2011) |
| 03/18/2011 | 13 | MOTION for Hearing on <i>Judicial Order Entered on December 22, 2010</i> by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 03/18/2011) |
| 03/29/2011 | 14 | RESPONSE TO ORDER TO SHOW CAUSE re 12 Order to show cause filed by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 03/29/2011) |
| 03/29/2011 | 15 | CASE MANAGEMENT REPORT. (Tran, Steve) Stricken see Court's Order Doc. #17. Modified on 4/7/2011 (DTS). [Transferred from Florida Middle on 3/27/2012.] (Entered: 03/29/2011) |
| 03/29/2011 | 16 | CASE MANAGEMENT REPORT. (Whisenant, Beranton) Stricken see Court's Order Doc. #17. Modified on 4/7/2011 (DTS). [Transferred from Florida Middle on 3/27/2012.] (Entered: 03/29/2011) |
| 04/06/2011 | 17 | ORDER granting 13 Motion for Hearing on Judge's Order Filed on December 22, 2010; Hearing set for April 21, 2011 at 10:00 AM before Judge Marcia Morales Howard in Courtroom 10B; striking 15 Case Management Report and 16 Case Management Report; See Order for details. Signed by Judge Marcia Morales Howard on 4/5/2011. (MGG) [Transferred from Florida Middle on 3/27/2012.] (Entered: 04/06/2011) |
| 04/11/2011 | 18 | MOTION to amend/correct <i>Plaintiff's Motion to Join Additional Party and to File an Amended Complaint and for Remand and Incorporated Memorandum of Law</i> by Fidelity National Title Insurance Company. (Whisenant, Beranton) [Transferred from Florida Middle on 3/27/2012.] (Entered: 04/11/2011) |
| 04/11/2011 | 19 | Motion to Join Additional Party, File an Amended Complaint to remand and incorporate memorandum of law by Fidelity National Title Insurance Company. (DTS) [Transferred from Florida Middle on 3/27/2012.] (Entered: 04/12/2011) |
| 04/19/2011 | 20 | ORDERED: Plaintiff shall confer with counsel for Defendant regarding its position on 19 Plaintiff's Motion to Join Additional Party and to File an Amended Complaint and for Remand, and file a certification pursuant to Local Rule 3.01(g) on or before April 29, 2011. The hearing set for April 21, 2011, at 10:00 a.m. is cancelled. On or before April 29, 2011, |

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| | | Plaintiff shall advise the Court of its position regarding 7 Defendant's Brief in Support of Removal. Signed by Judge Marcia Morales Howard on 4/19/2011. (JW) [Transferred from Florida Middle on 3/27/2012.] (Entered: 04/19/2011) |
| 04/25/2011 | 21 | CERTIFICATION of Good Faith by Fidelity National Title Insurance Company. (Whisenant, Beranton) (Modified on 4/27/2011 to edit text) (DSY). [Transferred from Florida Middle on 3/27/2012.] (Entered: 04/25/2011) |
| 04/25/2011 | 22 | RESPONSE in opposition re 19 MOTION to remand filed by JP Morgan Chase Bank, N.A. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 04/25/2011) |
| 04/26/2011 | 23 | RESPONSE re 1 Notice of removal <i>Plaintiff's Position Regarding Defendant's Brief in Support of Removal</i> filed by Fidelity National Title Insurance Company. (Whisenant, Beranton) [Transferred from Florida Middle on 3/27/2012.] (Entered: 04/26/2011) |
| 05/04/2011 | 24 | MOTION to transfer case <i>To The Northern District of New York</i> by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 05/04/2011) |
| 05/04/2011 | 25 | DECLARATION of Jill S. David re 24 MOTION to transfer case <i>To The Northern District of New York</i> by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 05/04/2011) |
| 05/04/2011 | 26 | NOTICE to the Courts to take judicial notice regarding <i>Certain Public Documents</i> by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 05/04/2011) |
| 05/05/2011 | 27 | ENDORSED ORDER regarding 23 Plaintiff, Fidelity National Title Insurance Company's Position Regarding Defendant's Brief in Support of Removal. The Court construes this as a motion to remand. Accordingly, Defendant shall file a response no later than May 20, 2011. Signed by Judge Marcia Morales Howard on 5/5/2011. (JW) [Transferred from Florida Middle on 3/27/2012.] (Entered: 05/05/2011) |
| 05/20/2011 | 28 | RESPONSE in opposition re 24 MOTION to transfer case <i>To The Northern District of New York</i> filed by Fidelity National Title Insurance Company. (Whisenant, Beranton) [Transferred from Florida Middle on 3/27/2012.] (Entered: 05/20/2011) |
| 05/20/2011 | 29 | RESPONSE re 27 Order, 23 Response to Plaintiff's Motion to Remand filed by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 05/20/2011) |
| 05/26/2011 | 30 | DECLARATION of Steve D. Tran, Esquire, Counsel for Defendant by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 05/26/2011) |
| 12/12/2011 | 31 | ORDER denying 19 Plaintiff's Motion to Join Additional Party and to File an Amended Complaint and for Remand and Incorporated Memorandum of Law. Signed by Magistrate Judge James R. Klindt on 12/12/2011. (JLD) [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/12/2011) |
| 12/26/2011 | 32 | MOTION to review Magistrate Judge order re 31 Order on motion to remand by Fidelity National Title Insurance Company. (Whisenant, Beranton) [Transferred from Florida Middle on 3/27/2012.] (Entered: 12/26/2011) |
| 01/08/2012 | 33 | RESPONSE to motion re 32 MOTION to review Magistrate Judge order re 31 Order on motion to remand filed by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/08/2012) |
| 01/20/2012 | 34 | MOTION to dismiss Plaintiff's Complaint by JP Morgan Chase Bank, N.A.. (Attachments: # 1 Exhibit)(Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/20/2012) |

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| | | 01/20/2012) |
| 01/20/2012 | 35 | DECLARATION of Jill David re 34 MOTION to dismiss Plaintiff's Complaint by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/20/2012) |
| 01/20/2012 | 36 | NOTICE to the Courts to take judicial notice regarding 34 MOTION to dismiss Plaintiff's Complaint by JP Morgan Chase Bank, N.A.. (Tran, Steve) [Transferred from Florida Middle on 3/27/2012.] (Entered: 01/20/2012) |
| 02/08/2012 | 37 | RESPONSE in opposition re 34 MOTION to dismiss Plaintiff's Complaint filed by Fidelity National Title Insurance Company. (Whisenant, Beranton) [Transferred from Florida Middle on 3/27/2012.] (Entered: 02/08/2012) |
| 03/26/2012 | 38 | ORDER overruling 32 Plaintiff's Objection to Magistrate Judge's Pretrial Order; affirming 31 Order. Signed by Judge Marcia Morales Howard on 3/23/2012. (JW) [Transferred from Florida Middle on 3/27/2012.] (Entered: 03/26/2012) |
| 03/26/2012 | 39 | ORDER granting 24 Defendant's Motion to Transfer Action to the Northern District of New York. The Clerk of the Court is directed to transfer this case to the Northern District of New York and close this file. Signed by Judge Marcia Morales Howard on 3/23/2012. (JW) [Transferred from Florida Middle on 3/27/2012.] (Entered: 03/26/2012) |
| 03/27/2012 | 40 | Case transferred in from District of Florida Middle; Case Number 3:10-cv-01153. electronically transferred when case opened (Entered: 03/27/2012) |
| 03/27/2012 | 41 | NOTICES of Admission Requirement for attorneys Beraton Whisenant, Jr., and Steve Tran, Esqs. Admissions due by 4/26/2012. (Attachments: # 1 Tran Notice re: Admission)(amt) (Entered: 03/27/2012) |
| 03/27/2012 | 42 | G.O. 25 FILING ORDER ISSUED: Initial Rule 16 Conference set for 5/18/2012 at 11:00 AM in Binghamton before Magistrate Judge David E. Peebles. Civil Case Management Plan due by 5/4/2012. (amt) [counsel served via reg. mail w/notices of admission] (Entered: 03/27/2012) |

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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

FIDELITY NATIONAL TITLE
INSURANCE COMPANY,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A., as
Indenture Trustee on Behalf of the Noteholders
and Note Insurer of ABFS MORTGAGE LOAN
TRUST 2001-3, MORTGAGE BACKED NOTES,
c/o OCWEN LOAN SERVICING, LLC,

Defendant.

CASE NO.:

11-29-10
COMPLAINT & DEMAND FOR
JURY TRIAL

XXX-MA

3:10-cv-1153-A-34ARK

DIVISION CV-D

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Plaintiff, Fidelity National Title Insurance Company ("FNTIC"), by and through its undersigned counsel, sues JPMORGAN CHASE BANK, N.A., as Indenture Trustee on Behalf of the Noteholders and Note Insurer of ABFS MORTGAGE LOAN TRUST 2001-3, MORTGAGE BACKED NOTES, c/o OCWEN LOAN SERVICING, LLC (hereinafter "JPMorgan") and alleges as follows:

PARTIES

1. FNTIC is a Nebraska corporation with its principal place of business located in Jacksonville, Duval County, Florida.

2. Defendant JPMorgan Chase Bank, N.A. as Indenture Trustee on Behalf of the Noteholders and the Note Issuer of ABFS Mortgage Loan Trust 2001-3 Mortgage Backed Notes, c/o Ocwen Loan Servicing, LLC ("JPMorgan") is a Florida limited liability company with its principal place of business located at 1661 Worthington Road, Suite 100, West Palm Beach, Palm Beach County, Florida 33409.

FACTUAL ALLEGATIONS

3. This case involves several transactions involving real property commonly known as Box 257 Bruce Hill Road a/k/a 541 Bruce Hill Road, Harpersfield, New York 13786 (the "Property").

4. FNTIC is informed and believes and thereupon alleges that Linda Playford and Roscoe Playford ("Playford") acquired title to the Property in July 2001. The Playford's financed the acquisition of the Property with a mortgage that was assigned to JPMorgan on July 9, 2001 (the "Mortgage").

5. On August 31, 2006 JPMorgan filed a lawsuit in Delaware County, New York seeking to judicially foreclose the Mortgage.

6. FNTIC is informed and believes and thereupon alleges that on April 9, 2007 a tax sale deed was recorded in favor of Delaware County in which the Property was conveyed to Delaware County as a result of Playford's failure to pay taxes owed in 2005.

7. On April 17, 2007 JPMorgan obtained a judgment of foreclosure against Playford, which was recorded with the office of the clerk of Delaware County on April 25, 2007.

8. FNTIC is informed and believes and thereupon alleges that on July 31, 2007 Delaware County conveyed the Property to Linda Playford.

9. FNTIC is informed and believes and thereupon alleges that on October 10, 2007 JPMorgan conducted a foreclosure sale in which the Property was conveyed to it.

10. FNTIC is informed and believes and thereupon alleges that on August 11,

2008 JPMorgan purported to convey title to the Property to DT Schneider Development Corp. ("DT"). Also, FNTIC issued an owner's policy of title insurance (the "Policy") to DT insuring the validity of DT's title to the Property.

11. FNTIC is informed and believes and thereupon alleges that on December 30, 2008 Playford conveyed title to the Property to Eklund Farm Machinery, Inc. ("Eklund").

12. On February 5, 2009 Eklund filed suit against DT seeking to quiet title to the Property. On February 23, 2009 DT tendered a claim to FNTIC as a result of Eklund's service of its suit on DT.

13. On October 9, 2009 the New York State Supreme Court granted Eklund's motion for summary judgment and denied DT's cross-motion for summary judgment, ruling that Eklund had title to the Property because the execution of the tax deed to Delaware County wiped out JPMorgan's Mortgage interest in the Property and thus JPMorgan had no interest to convey to DT. The judgment was entered in favor of Eklund on January 22, 2010 and FNTIC is informed and believes and thereupon alleges that this judgment is now final.

14. On August 19, 2010 FNTIC resolved DT's claim on the Policy by paying DT \$72,000.00. This payment was made pursuant to FNTIC's obligations under the Policy, and not as a volunteer. FNTIC also incurred expenses in defending DT in Eklund's suit, totaling \$25,000.00. Given these payments, FNTIC is now DT's subrogee.

COUNT I- UNJUST ENRICHMENT

15. Plaintiff re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Defendant has been unjustly enriched in the amount of \$97,000.00.

17. FNTIC, not as a volunteer, paid a debt justly owed by defendant and, accordingly, to permit defendant to retain the money that should have paid that debt is to unjustly enrich them in that amount.

WHEREFORE, FNTIC demands relief as follows:

1. Judgment against defendant in the amount of \$97,000.00;
2. Pre and post-judgment interest on this amount;
3. Costs and disbursements incurred herein; and
4. All other relief that the court deems just and equitable.

DATED: 10/21/2010

Respectfully Submitted,

FOLEY & MANSFIELD, P.L.L.P.
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