

CASE NUMBER: 09-009463-CI-19

HSBC BANK,

PLAINTIFF,

VS.

CALVIN JOHNSON, ET AL.,

DEFENDANT(S).

**DEFENDANT'S MOTION TO PRECLUDE THE SETTING OF A HEARING
ON THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
BASED ON THE GROUNDS OF PREMATURETY AND LACK OF DISCOVERY
WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**

The Defendant, CALVIN JOHNSON ("Defendant"), by and through the undersigned counsel, and pursuant to rule 1.510 of the Florida Rules of Civil Procedure as well as the Due Process and Equal Protection Clauses of the Florida and United States Constitutions, hereby respectfully moves this Court to *preclude* the setting of a hearing on the Plaintiff's motion for summary judgment based on the grounds that the setting as well as the conduct of such hearing would be premature because the Defendant has not been provided with discovery by the Plaintiff.

In support of this motion, the Defendant would state and show, as follows.

FILED
CIVIL COURT REC DEPT
2009 JUL 29 AM 9:35
KELI BUIP
CLERK OF CIRCUIT COURT

FORECLOSECASE.COM

1.

On July 28, 2009, the Defendant filed a motion to dismiss with this Court with service upon the attorney of record for the Plaintiff disputing the Plaintiff's standing to sue him in this Court. A true and correct copy of said ^{motion} answer is attached hereto as Exhibit A.

2.

On July 28, 2009, the Defendant received a copy of the Plaintiff's motion for summary judgment along with the Plaintiff's supporting affidavit. A true and correct copies of the motion for summary judgment and affidavits are attached hereto as Composite Exhibit B.

3.

On July 28, 2009, the Defendant propounded the following discovery requests pursuant to the Florida Rules of Civil Procedure and Qualified Written Request pursuant to the Federal Real Estate Settlement Procedures Act (RESPA) upon the Plaintiff:

3.1.

The Defendant's Notice of Filing Defendant's First Discovery Request and Qualified Written Request under the RESPA, a true and correct copy of which is attached hereto as Exhibit C.

3.2.

The Defendant's First Request for Production of Documents, a true and correct copy of which is attached hereto as Exhibit D.

3.3.

The Defendant's First Request for Admissions, a true and correct copy of which is attached hereto as Exhibit E.

The Defendant's First Interrogatories, a true copy of which is attached hereto as Exhibit

F.

4.

The Defendant has propounded the foregoing discovery requests upon the Plaintiff with the intent of obtaining information that is reasonably calculated to lead to admissible evidence.

5.

The Defendant needs to engage in the discovery process with the aim of obtaining probative evidence to support his defenses against the Plaintiff's claims.

6.

The Defendant has reason to believe that the Plaintiff possesses documents and information that could lead to evidence that would support his defenses.

7.

The Defendant has not been represented by an attorney until June 29, 2009. Nevertheless, he has sought to engage in the discovery process at his earliest opportunity.

8.

The Defendant has every reason to believe that, if the Plaintiff's representatives and attorney of record cooperate, he will obtain the necessary information and documents upon which to found his defense within the next sixty (60) days.

9.

The Defendant needs a period of at least ninety (90) days within which to either prepare for trial or respond to the Plaintiff's motion for summary judgment with the Plaintiff's own admissions, the Plaintiff's answers to interrogatories and opposing affidavits.

As in the case of any other litigant, the Defendant has both procedural and substantive rights. These rights include the right to discovery in order to cross-examine witnesses and the right to a jury trial or an evidentiary hearing with respect to factual matters. (*See, e.g.*, Art. 1, §22, Fla. Constitution and Rules 1.430 and 1.280, Fla. R. Civ. P.).

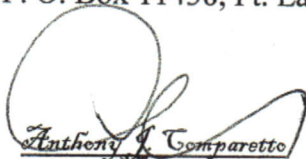
It is axiomatic that the facts of a case must be sufficiently developed in order for a court to be reasonably certain that no genuine issue of material fact exists. See Singer v. Star, 510 So. 2d 637, 639 (Fla. 4th DCA 1995). Thus, “[a]s a general rule, a court should not enter summary judgment when the opposing party has not yet completed discovery.” Brandauer v. Publix Super Markets, Inc., 657 So. 2d 932, 933 (Fla. 2d DCA 1995); Colby v. Ellis, 562 So.2d 356 (Fla. 2d DCA 1990) (general rule is that it is premature to grant motion for summary judgment when the opponent has not completed discovery and discovery motions are pending before the court), citing Singer v. Star, 510 S.2d 637 (Fla. 4th DCA 1987); A&B Pipe and Supply Co., v. Turnberry Towers Corp., 500 So.2d 261 (Fla. 3d DCA 1986); De Rosa v. Shands Teaching Hospital and Clinic, Inc. 468 So.2d 415 (Fla. 1st DCA 1985).

The Defendant wishes to exercise his rights by obtaining admissions, answers to interrogatories and relevant documents reasonably calculated to lead him to probative evidence that would support his defense to the Plaintiff's claims.

Based on the foregoing reasons, this Court should enter an order *precluding* the setting of a hearing on the Plaintiff's motion for summary judgment so as to afford the Defendant a reasonable opportunity to obtain critical admissions, answers to interrogatories and relevant documents from the Plaintiff so that he may have the opportunity to demonstrate the existence of a genuine issue of material fact, so as to preclude the entry of summary final judgment in favor of the Plaintiff.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Motion to Preclude the Setting of a Hearing on the Plaintiff's Motion for Summary Judgment With Supporting Memorandum of Points and Authorities was furnished by first-class mail and by fax on July 28, 2009, addressed to: Mr. Glenn M. Lindsay, Esquire, SMITH, HIATT & DIAZ, P.A., P. O. Box 11438, Ft. Lauderdale, FL 33339-1438, Fax: (954) 564-9252.



Anthony J. Comparetto, Esq.,
Attorney at Law, Florida Bar No.: 797510
Comparetto Law Firm
5340 Central Avenue
Saint Petersburg, Florida 33707
Telephone: (727) 328-7900
Fax: (727) 245-6781
E-Mail: ajc111@gmail.com