

**IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

ACME LOAN SERVICING LLC,

Plaintiff,

vs.

CASE NO: 07CA1234

JOHN SMITH,
JANE SMITH

Defendants.

**DEFENDANT'S EMERGENCY MOTION TO VACATE FINAL SUMMARY
JUDGMENT**

Comes now the defendants, JOHN and JANE SMITH, and hereby files their Motion to Vacate Final Summary Judgment, pursuant to Rules 1.540(b) Fla. R. Civ. P. state:

- 1) Plaintiff scheduled Summary Judgment Hearing without consultation with Defendants.
- 2) Defendants work and live in Ocala and could not take off to attend the hearing in such a short notice.
- 3) Defendants filed an answer to plaintiff complaint on May 04, 2009.
- 4) Plaintiff did not respond to Defendants' affirmative defenses.
- 5) Defendants filed Qualified Written Request on June 8, 2009.
- 6) Plaintiff has not answered the Qualified Written Request.

- 7) **PLAINTIFF LACKS STANDING:** ACME LOAN SERVICING is not the true owner of the claim sued upon, is not the real party in interest and is not shown to be authorized to bring this foreclosure action.
- 8) Recent mortgage assignment to Plaintiff is suspicious, and raise many questions.
- 9) With many issues outstanding, a summary judgment is inappropriate in this instance.

WHEREFORE, Defendants request this court grant Defendants' Motion to Vacate Final Summary Judgment and for all other relief to which these defendants prove themselves entitled.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was sent on June _____, 2009 via

U.S. Mail to:

PLAINTIFF ATTORNEY
1234 Main Blvd.
Clear Beach, FL 34567
Phone: (212) 555-1212

JOHN & JANE SMITH
12345 Mountain Way
Ocala, FL 33534
Defendants