

**IN THE CIRCUIT COURT FOR THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CHASE HOME FINANCE LLC,

Plaintiff,

vs.

GENERAL JURISDICTION
DIVISION

CASE NO.
50 2008 CA 016857XXXX MB

Division: AW

JUDITH KOREN; THE UNKNOWN SPOUSE OF JUDITH KOREN ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES, OR OTHER CLAIMANTS; THE EDGE CONDOMINIUM NO. ONE ASSOCIATION, INC.; TENANT #1, TENANT #2, TENANT #3, and TENANT #4 the names being fictitious to account for parties in possession,

Defendants.

**MOTION FOR SANCTION OF
DISMISSAL WITH
PREJUDICE**

This is a foreclosure case in which the Plaintiff, CHASE HOME FINANCE LLC (“CHASE”), seeks to take the home of Defendants, JUDITH KOREN and GIL KOREN (“the KORENS”). The KORENS move to dismiss this case with prejudice as a sanction for committing fraud upon the Court.

I. Introduction

In support of its Motion for Summary Judgment, CHASE submitted an Affidavit of Amounts Due and Owing. This key part of CHASE’s case sought to lay the evidentiary foundation for the amounts allegedly to CHASE from the KORENS. The affidavit was signed by Beth Cottrell (“COTTRELL”), an “Assistant Secretary” of CHASE. The KORENS deposed

COTTRELL to examine the veracity of the affidavit. Upon deposition, COTTRELL's answers regarding the preparation and submission of the affidavit brought to light troubling practices, and, in some instances, outright fraud and deceit. The KORENS move to dismiss this case with prejudice as a sanction to CHASES's for submitting this fraudulent affidavit to the Court.

II. COTTRELL Made Innumerable False Statements on The Affidavit

All of COTTRELL's fraudulent and deceitful statements on the Affidavit of Amounts Due and Owing can be summed up in one striking question and answer regarding COTTRELL's statement that she signed the affidavit "upon oath, depose[d] on personal knowledge."¹

Q. Well, just I'll ask you in regards to the entire affidavit. This was an introductory paragraph I believe referring to the entire affidavit. It stated you depose on personal knowledge. As to everything in the affidavit, did you have personal knowledge?

A. My own personal knowledge, no.²

This was, perhaps, an understatement. Virtually no issue on the affidavit was personally known to the affiant. The deposition reads as if it were a textbook on fraudulent submission of affidavits.

A. Affidavit: "There is no genuine issue as to any material fact."³

Q. And did you do anything to verify that there was no genuine issue as to any material fact in this case?

A. No.

Q. Did you look at anything to enable you to that there was no issue as to material fact?

A. I'm sorry. I don't understand the question.

¹ Pl.'s Affid. of Amounts Due and Owing, June 15, 2009.

² Dep. Of Beth Cottrell, May 17, 2010, p. 10.

³ *Id.*

Q. Sure. Outside of this affidavit, did you look at anything to enable you to say that there is no genuine issue –

A. No.

Q. -- of material fact?

A. No.⁴

B. Affidavit: “Plaintiff is entitled to enforce the note and mortgage.”⁵

Q. Also in paragraph 1 you stated "That plaintiff is entitled to enforce the note and mortgage." Again, did you have personal knowledge of that?

A. No knowledge.

Q. Did you do anything to verify that statement?

A. No.⁶

COTTRELL also admitted she had not looked at a note or mortgage when she signed the affidavit.⁷

C. Affidavit: “Affiant has personal knowledge of the matters contained in the books, records, and documents kept by CHASE HOME FINANCE LLC.”⁸

Q. Going back to the affidavit of the amounts due and owing, please. In paragraph 2 you state that you had personal knowledge of the matters contained in the books, records, and documents kept by Chase. What books, records, and documents were you referring to there?

A. History on the loan.

Q. And what sort of history?

A. Payment and where the amounts came from.

Q. And tell me what documents you looked at concerning the payment history.

⁴ *Id.*, pp. 10-11.

⁵ Pl.’s Affid. of Amounts Due and Owing, June 15, 2009, ¶ 1.

⁶ Dep. Of Beth Cottrell, May 17, 2010, p. 6

⁷ *Id.*, p. 13-14.

⁸ Pl.’s Affid. of Amounts Due and Owing, June 15, 2009, ¶ 2.

A. That's a system called MSP, and it's a history screen that gives me a breakdown.

Q. And you personally looked at that prior to signing this affidavit?

A. No.

Q. Did you look at anything else besides -- well, I should say did you look at any books, records, and/or documents before you signed this affidavit?

A. No.⁹

D. Affidavit: "[I] have examined all books, records, and documents kept by CHASE HOME FINANCE LLC concerning the transactions alleged in the Complaint."¹⁰

Q. Also in paragraph 2 is -- you stated that you're familiar with the books of account and have examined all books, records, and documents kept by Chase Home Finance concerning the transactions alleged in the complaint. What specifically did you review?

A. I did not review.

Q. So you did not review anything?

A. No.¹¹

Not only did COTTRELL not review any documents referred to, she did not even know which transactions referred to in the Complaint she was testifying about:

Q. When we talk about the transactions alleged in the complaint, what specifically were you speaking about?

A. You're still on paragraph 2?

Q. Yeah.

A. The foreclosure complaint.

Q. Did you read that complaint prior to signing this affidavit?

A. No.¹²

⁹ Dep. Of Beth Cottrell, May 17, 2010, pp. 28-9.

¹⁰ Pl.'s Affid. of Amounts Due and Owing, June 15, 2009, ¶ 1.

¹¹ Dep. Of Beth Cottrell, May 17, 2010, pp. 29.

E. Affidavit: "The books, records, and documents are made from information transmitted by persons with personal knowledge."¹³

Q. "The books, records, and documents are made from information transmitted by persons with personal knowledge." Can you name the people who made those records who had personal knowledge?

A. Made the records? No.¹⁴

F. Affidavit: "The books, records, and documents which Affiant has examined are managed by employees or agents whose duty it is to keep the books accurately and completely."¹⁵

Q. Can you name the employees or agents whose duty it is to keep -- pardon me -- who manage the folks whose duty it is to keep the books accurately and completely?

A. No.

Q. What in this sentence that you testified to, what does managed mean?

A. Oversee.

Q. Do you know -- so, again, you said you can't identify any one of these employees or agents. Can you name any person who does managing?

A. No.

Q. So you have no personal knowledge of whose duty it is to keep the books accurately and completely.

A. No.¹⁶

G. Affidavit: "Plaintiff, CHASE HOME FINANCE LLC, is owed the following sums of money as of 08/01/09."¹⁷

While COTTRELL testified that certain sums were due and owing, she admitted that she did not prepare the amounts or verify the amounts against any other records:

¹² *Id.*, pp. 31-2.

¹³ Pl.'s Affid. of Amounts Due and Owing, June 15, 2009, ¶2.

¹⁴ Dep. Of Beth Cottrell, May 17, 2010, p. 33.

¹⁵ Pl.'s Affid. of Amounts Due and Owing, June 15, 2009, ¶2.

¹⁶ Dep. Of Beth Cottrell, May 17, 2010, p. 36.

¹⁷ Pl.'s Affid. of Amounts Due and Owing, June 15, 2009, ¶4.

Q. And back to your affidavit again, the numbers, who put those in? Pardon me, paragraph 4 of your affidavit.

A. Karen Belcher.

Q. Did you personally check these numbers against something in the computer system?

A. No, I did not.

Q. Did you check any of these numbers against anything else to verify them?

A. No.

Q. Did you make any computations yourself?

A. Yes.

Q. And what computations did you make?

A. Based on the escrow and the amounts and where they came from.

Q. What calculations did you do?

A. I actually went through, see the escrow, based on what the payment was here and gave a – got a printout.

Q. And you did that before you signed the affidavit.

A. No.¹⁸

III. The Filing and Submission of Such a Fraudulent Affidavit is Grounds for Dismissal With Prejudice

Filing and submitting to the Court such a blatantly fraudulent affidavit is grounds for the sanction of dismissal with prejudice. Trial courts have "the right and obligation to deter fraudulent claims from proceeding in court." *Savino v. Fla. Drive In Theatre Mgmt., Inc.*, 697 So.2d 1011, 1012 (Fla. 4th DCA 1997). Florida courts have stated:

¹⁸ Dep. Of Beth Cottrell, May 17, 2010, pp. 56-7.

“A trial judge has the inherent authority to dismiss actions based on fraud and collusion.” *Young v. Curgil*, 358 So.2d 58, 59 (Fla. 3d DCA 1978). However, this power of dismissal should be used “cautiously and sparingly,” and “only upon the most blatant showing of fraud, pretense, collusion, or other similar wrongdoing.” *Id.* (citations omitted); *Morgan v. Campbell*, 816 So.2d 251, 253 (Fla. 2d DCA 2002). The party alleging fraudulent behavior must prove such by clear and convincing evidence. *Century Props., Inc. v. Machtinger*, 448 So.2d 570, 573 (Fla. 2d DCA 1984) (citation omitted). Fraud occurs when it can be demonstrated, “clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” *Cox v. Burke*, 706 So.2d 43, 46 (Fla. 5th DCA 1998) (quoting *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir.1989)). When a party lies about matters bearing directly on the issue of damages, dismissal is an appropriate sanction. *Desimone v. Old Dominion Ins. Co.*, 740 So.2d 1233, 1234 (Fla. 4th DCA 1999).

Distefano v. State Farm Mutual Automobile Ins. Co., 846 So.2d 572, 574 (Fla. 1st DCA 2003). Defendants submit that all of the applicable standards for dismissing a case for fraud have been met in this case.

First, this would be “a most blatant showing of fraud.” Plaintiff’s affidavit refers to the affiant having personal knowledge four times. Yet COTTRELL admitted, without reservation, that she did not have personal knowledge of the matters in the affidavit.

Second, clear and convincing evidence abounds that the substance and submission of the affidavit were fraudulent. COTTRELL’s own words from her deposition prove without any doubt that she testified to things in the affidavit which simply were not true.

Third, Plaintiff and Plaintiff’s law firm have undoubtedly set in motion this process of trying to influence the finder of fact. This is not the first time that fraudulent affidavits filed by Florida Default Law Group, P.L. have been brought to this Court’s attention.¹⁹ Furthermore, the

¹⁹ *Cf. IndyMac Federal Bank FSB v. Machado*, Case No. 50 2008 CA 037322 XXXX MB AW (Palm Beach County) (Judge Meenu T. Sasser dismissed case as a sanction for fraudulent affidavit); *OneWest Bank, F.S.B. v. DeBenedetti*, Case No. 50 2008 CA 036505 XXXX MB AW (Palm Beach County).

Court cannot assume that this is an isolated incident whereby Plaintiff accidentally failed to live up to its own words in an affidavit. Rather, COTTRELL testified that her office signs over 18,000 documents a week between 8 people.²⁰ COTTRELL further testified that “My review [of documents] is more or less signing the document unless it’s questionable.”²¹ Accordingly, the Court can be assured that the subject affidavit is not the only document filed by Plaintiff or its counsel that is without any verification or truth behind the facts asserted.

Finally, the fraudulent affidavit goes directly to damages and the amount purportedly owed by Defendants. As such, dismissal is a proper sanction. Therefore, the fraudulent affidavit in this case meets all the relevant tests that Florida courts have applied to determine if dismissal with prejudice is an appropriate remedy.

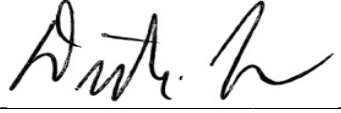
WHEREFORE, Defendants ask the Court to dismiss this action with prejudice as a sanction for submitting a blatantly fraudulent affidavit. Defendants ask for any additional sanctions the Court deems appropriate, including but not limited to, attorneys’ fees and costs for having to uncover Plaintiff’s conduct.

²⁰ Dep. Of Beth Cottrell, May 17, 2010, p.6.

²¹ *Id.*, p. 6.

Dated: July 6, 2010.

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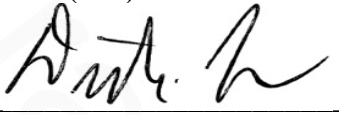
By: 

DUSTIN A. ZACKS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail this July 6, 2010 to all parties on the attached service list.

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