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Miami Judge Issues Order to Show Cause Against US Bank for Flouting Discovery Order

Judge Beatrice Butchko's order floats the possibility of sanctions if the bank fails to produce discovery documents the judge ordered it to release in August 2018.

By Zach Schlein | April 16, 2019

A major bank looking to foreclose on a Miami-Dade resident's mortgage has been handed an order to show cause by a judge over a discovery dispute

Miami-Dade Circuit Judge Beatrice Butchko issued the order against U.S. Bank N.A. on Monday. Her ruling follows an Aug. 20, 2018, discovery order requesting the



U.S. Bank. Credit: Jonathan Weiss/Shutterstock.com

bank submit within 60 days documents tracing the company's internal handling of the loan to foreclosure defendant Raul Zayas in the five-year-old case.

However, the judge's order notes, "For over seven months, it appears that plaintiff has defied this court's discovery order."

Among the documents the defense had requested: screenshots showing the dates U.S. Bank had uploaded the original note and other loan documents into its system, along with loan origination documentation. The court ordered the plaintiff to turn over the information. It also ordered the plaintiff to arrange depositions with company officials.

Noncompliance could lead to a contempt finding, which could mean fines, injunctions, a finding of unclean hands, responsibility for the defense's attorney fees, and other sanctions under Rule 1.380 of Florida Rules for Civil Procedure (http://phonl.com/fl_law/rules/frcp/frcp1380.htm), according to the order.

U.S. Bank's attorney, Akerman partner Jeffrey Robin (<https://www.akerman.com/en/people/jeffrey-robin.html>), did not respond to requests for comment by deadline. But the bank's court pleadings say it's complied with discovery requests and the judge's order. One filing, in July 2018, alleged that the document request by defense attorney, Miami foreclosure litigator Bruce Jacobs (<https://www.jakelegal.com/>), was "designed solely to harass" (<https://drive.google.com/file/d/0ByGmJRV5lbovY1RCd3FlemVTQU5obFJCWFBxWm5susp=sharing>) opposing counsel. The motion also described the requests as "overbroad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the claims and defenses currently pending in this action."

Read the order:

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE, FLORIDA**

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR SPECIALTY UNDERWRITING
AND RESIDENTIAL FINANCE TRUST
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES SERIES 2006-BC2,

GENERAL JURISDICTION DIVISION
CASE NO.: 2014-032372-CA-01

Plaintiff,

vs.

RAUL ZAYAS AND UNKNOWN SPOUSE OF
RAUL ZAYAS K/N/A LUCIA ZAYAS, *et. al.*,

Defendant.

ORDER TO SHOW CAUSE

Pursuant to Fla. R. Crim. Pro. 3.840, U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED CERTIFICATES SERIES 2006-BC2, is hereby ordered to appear before this Court to show cause why the Plaintiff should not be sanctioned under the Court's Inherent Contempt Powers for defying the discovery order of August 20, 2018, and as grounds for the Order to Show Cause, this Court makes the following findings of fact:

Butchko had previously issued sanctions against U.S. Bank for not delivering the requested documents to the court.

"On January 7, 2019, this court ordered plaintiff to fully comply with that discovery order within 20 days and to pay \$300.00 per day to Jacobs Legal as a sanction with a deadline for full compliance of January 27, 2019," the order to show cause said.

Shortly after the judge granted the defense's motion for sanctions, the bank challenged it to the Third District Court of Appeal, as it also sought to stay proceedings with the lower court.

Butchko subsequently vacated the sanctions order but issued an order to show cause Monday.

Jacobs called the matter “a very unique situation to see.”

“I think she’s made a very smart procedural decision to vacate the sanctions order and do it this way,” he said of Butchko. “It’s unusual that we’re in this position, but it’s unusual that any bank would dare do what they’re doing and think they are above the law like this.”

Jacobs said the judge would now “have the discretion to fashion a remedy that takes into account the nature of the corporation defying her order.”

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