

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: _____

Plaintiff

Vs.

Defendants

_____ /

FORECLOSURE SCHEDULING ORDER

THIS CASE having been reviewed by the Court pursuant to Rule 1.200(a), Florida Rules of Civil Procedure, and Rule 2.085, Florida Rules of Judicial Administration, with regard to the Court's obligations thereunder, and the Court being fully advised in the premises, it is hereby,

ORDERED as follows:

1. Any prior order referring this case to Senior Judge Sandra Taylor is hereby VACATED.
2. **PLAINTIFF ORDERED TO SERVE SCHEDULING ORDER:** Plaintiff's attorney is hereby Ordered to serve a copy of this Scheduling Order on each Defendant once service is obtained, and further, shall serve a copy on any new party to the action, within ten days of service of pleadings on that party. Any party not timely served with the Scheduling Order who has thereby been deprived of time to complete deadline items shall discuss this with all other counsel and seek a stipulated amendment to the deadlines, failing which the aggrieved party may seek relief from the Court.
3. **FACT WITNESSES AND EXHIBITS:** All fact witnesses and exhibits must be disclosed no later than **30 days** from the date upon which all Defendants have been served, by the party bearing the burden of proof on the issue the witness will testify on; the party not bearing the burden of proof on that issue will have an additional 30 days thereafter to disclose witnesses, if any.

4. **EXPERT WITNESSES:** All expert witnesses must be disclosed no later than **60 days** from the date upon which all Defendants have been served, by the party bearing the burden of proof on the issue that the expert will testify on; the party not bearing the burden of proof on that issue shall have an additional 30 days thereafter to disclose experts, if any.
5. **DISCOVERY DEADLINE:** All discovery (including obtaining rulings on discovery motions) shall be completed **90 days** from the date upon which all Defendants have been served. “Completed” means responses have been received, discovery motions have been ruled on, and all discovery matters fully resolved. This discovery deadline shall not prevent the taking of depositions to perpetuate testimony and depositions of records custodians to establish evidentiary predicates for trial, however, depositions to perpetuate testimony and of record custodians must be completed prior to the Pretrial Conference, and no continuances will be granted as a result of failure to comply with this requirement.
6. **DISCOVERY DISPUTES:** All counsel¹ are directed to meet and confer on such disputes, as set forth below, and if no agreement is achieved, counsel may be required to personally attend any hearing on such discovery dispute.

All deadlines set forth above are subject to the trial order, and the time periods allowed for disclosure of evidence, and discovery, shall close as set forth above, or at the pretrial conference required in the trial order, whichever comes first.

7. **MOTION PRACTICE AND PROCEDURE:**
 - a. **MOTION PROCEDURE:** In light of the special circumstances in the Foreclosure Division, a new motion procedure which only applies to foreclosure cases is in effect, as follows:

Non-Evidentiary Motions and other applications will ordinarily be determined by the court on the basis of the motion papers and legal memoranda unless hearings are otherwise required by applicable rules or law,² provided further that the court may allow oral argument upon the written request of any interested party or upon the court’s own motion. Such request for oral argument will be either granted or denied by the court by written order. Each party opposing any written motion shall file and serve within ten (10) days after being served with such motion or

¹ A pro se litigant representing himself or herself shall be included in the definition of “counsel” for purposes of this order.

² See Nudel v. Flagstar Bank, FSB., 52 So.3d 692, 694, Fn. 3, (Fla. 4th DCA 2010), and Gaspar, Inc. v. Naples Federal S & L Assn., 546 So.2d 764 (Fla. 5th DCA 1989).

application, a legal memorandum in opposition to the relief requested. Each motion or response in opposition shall be accompanied by a proposed order. The moving party shall also supply pre-addressed, postage paid envelopes to the court, for each party. A courtesy copy of all motions and memoranda shall be mailed or delivered (no facsimiles) to the Judge's Chambers at the same time they are filed with the clerk, and counsel shall certify the delivery to chambers of the courtesy copy in the certificate of service filed with the court. Motions not brought to the court's attention via courtesy copy are deemed abandoned and hereby denied.

Evidentiary motions (including summary judgment) or other matters in which hearings are required by applicable rules or law may be set for hearing without prior leave of court, and must be set for hearing no more than 30 days after filing of the motion.

- b. **GENERAL MOTION FILING DEADLINE:** All motions, (excluding discovery motions which are controlled by paragraph 4, above) shall be filed no later than **10 days** after the discovery deadline. Any motion filed after that date will be deemed untimely and may be thereupon denied.
- c. **MOTIONS DIRECTED TO THE PLEADINGS:** Shall be filed and served within 20 days of the date on which the pleading subject to the motion was served on the moving party.
- d. **GENERAL MOTION HEARING DEADLINE:** Timely filed motions upon which the court allows oral argument shall be scheduled and heard no later than **30 days** after the discovery deadline. Any motions not heard by that date may be denied as untimely.
- e. **MOTION SETTING:** Motions upon which oral argument are allowed may be heard by the Circuit Judge or before a Special Magistrate. Any formal objection to hearings being set before a Special Magistrate must be filed in writing within ten days of receipt of this Order, or may be deemed waived.

To set a hearing in accordance with the requirements of this Scheduling Order please contact a Judicial Assistant at (305) 852-7165.

- f. **TELEPHONIC PROCEDURE:** All counsel or parties appearing telephonically shall utilize CourtCall (888) 882-6878, unless otherwise directed by the court.
- g. **ALL MOTIONS AND DEPOSITION DATES TO BE CLEARED:**

Counsel shall not schedule a motion hearing or a deposition on a date or time that has not been cleared on all other counsel's calendar(s). If counsel are unable to agree on dates or times for hearings or depositions, the moving party shall set the dispute for hearing by motion on a time and date provided by the Court's Judicial Assistant. All counsel may be required to personally attend such hearings with their calendars, and no telephonic appearance will be permitted, absent leave of Court.

- h. **MEET AND CONFER REQUIREMENT:** Counsel shall meet and confer regarding all disputed issues before setting a hearing to resolve those issues on motion. Failure to comply with this requirement may result in removal of motions from the docket, rescheduling of motions by the Court, denial of motions, or sanctions, as appropriate.
- i. **EMERGENCY MOTIONS:** An emergency motion is based on an immediate threat to life, limb or property. The Court will set aside all other pending matters to address bona fide emergencies. Scheduling conflicts between counsel, last minute attempts to modify deadlines, and similar issues are not "emergencies" and may not be styled as such to obtain expedited relief from the Court. Counsel are directed to meet and confer regarding such issues and either submit a stipulation and agreed order, or to schedule such matters for hearing on the Court's regular motion calendar.
- j. **EMERGENCY MOTION PROCEDURE:** Any request for relief on an emergency basis will be reviewed by the court for facts showing an immediate threat to life, limb, property. If the request is found to be a bona fide emergency, the court may either enter a temporary ex parte order, or alternatively issue an order to show cause, to allow the opposing party to file a written opposition to the emergency motion, with copy to Chambers, within twenty-four hours, or such other time as the court designates. Thereafter, the court will either rule on the matter, or if necessary, schedule an emergency hearing on the motion.
- k. **MOTIONS TO RESCHEDULE OR DELAY FORECLOSURE SALES:** Such motions will not routinely be granted absent a showing, in the motion, of "good cause." "Good cause" does not include matters for which adequate time has already been allotted, e.g., "ongoing negotiations." Negotiations should normally be concluded before judgment, and attempts to negotiate after judgment will only be considered for good cause shown, not simply to postpone or delay the sale.

- I. **EX-PARTE COMMUNICATIONS:** All motions must be filed with the clerk and proof of service of a copy of each motion on opposing parties, shall be included in the motion. Motions without such certification of service will not be considered by the court.

8. **MEDIATION REQUIREMENT:** The Court requires mediation in all Foreclosure cases, unless otherwise ordered. This order shall constitute a referral to mediation by the Court pursuant to Fl.R.Civ.Pro. 1.700(1), and the rules, procedures and other requirements set forth in Rules 1.700-1.730, are applicable, including the imposition of sanctions, which includes attorney's fees and costs, inter alia, regarding all mediations conducted in or regarding this case. The parties will complete mediation of this case after the Motion Hearing Deadline and before the Pre-trial Conference. Previous, unsuccessful attempts at mediation may not be deemed a sufficient basis to be excused from this mediation requirement. Plaintiff's counsel is directed to coordinate the mediation with all other counsel.

RULES FOR FORECLOSURE MEDIATION: The general rules governing the mediation conference are:

- a. **The appearance of all parties is mandatory. No telephonic appearances will be allowed.** A representative for the Plaintiff with full and complete authority to settle AND counsel shall be present.

- b. The mediation conference cannot be cancelled or rescheduled without further Order from the Court.

- c. The hourly rate shall be set by the chosen mediator. The Plaintiff shall pay for the first two (2) hours in advance of the scheduled mediation. Failure by the Plaintiff to advance the sum required shall result in a violation of this Order and subject the Plaintiff to sanctions. If mediation exceeds 2 hours then any additional fees owed shall be borne equally by the parties. If the matter does not resolve at mediation, the mediation fee may be taxed by the court as a cost of litigation in the Final Judgment of Foreclosure.

- d. If a settlement is reached prior to the scheduled mediation it must be filed in writing with the Clerk of Court, and **the Mediator must be notified immediately.** All settlement paperwork must be filed with the Clerk of Court five (5) days prior to the scheduled mediation. The Plaintiff will be liable to the mediator for a cancellation fee of \$300 if the mediation is cancelled less than five (5) working days of the scheduled date.

- e. If a settlement is reached in mediation, it shall be reduced to writing in the presence of the mediator, signed by all parties or their counsel, and promptly submitted to the clerk's office and the undersigned judge. If an agreement is not reached, the mediator shall also **immediately** report, in writing to the undersigned judge and the clerk's office that no agreement has been reached.
- f. If the Defendant(s) fail to appear at a properly noticed mediation or if the matter impasses after mediation, the matter may be promptly noticed for Final or Summary Judgment, provided all requirements of F.R.C.P. 1.510 have been met.

If no mediation report showing compliance herewith is in the Court file at the Pretrial Conference, the Court may impose appropriate sanctions, including case dismissal or striking of pleadings.

- 9. **MOTIONS IN LIMINE:** These motions must typically be filed and heard as set forth above. The Court will hear motions in limine after these deadlines only upon a showing that the factual basis for the motion could not have been reasonably known by counsel before the general motion deadline.
- 10. **TRIAL SETTING AND PRETRIAL CONFERENCE.** Counsel are advised that this Order is not a Trial Order, but is a Scheduling Order to enforce compliance with time standards set forth below. By Separate Trial Order, this case will be set for trial no less than 30 days after expiration of the General Motion Hearing Deadlines. Counsel are directed to be fully prepared for trial by this date. Counsel shall notify the Court immediately, if trial of this cause is anticipated to be longer than 5 days, by serving and filing a Notice of Anticipated Lengthy Trial estimating the number of trial days, and delivering a copy of same to the Judge's Chambers.
- 11. **ORDERS SETTING SALE DATES:** Such orders, whether included in the Final Judgment or as an independent order, may only be modified or changed by a written order modifying the sale date. If a sale date is cancelled without written leave of court, no new sale date will be scheduled without an explanation to the court regarding why the court's prior order of sale was disobeyed. This will typically be done by an order to show cause re: contempt that will be issued in response to any request to reset the original sale date ordered by the court, when the date has passed and no sale has occurred. Failure by the creditor to tender the clerk's sale fee or to properly advertise the sale as required by law, which results in a cancellation of the sale by the clerk, may be treated as a violation of the court's order and result in contempt penalties.

12. **CASE MANAGEMENT AND OVER TIME STANDARDS CASES:** The court will regularly review the case for case management purposes, and a failure to progress the case as required by the scheduling order may result in dismissal without prejudice on the court's own motion, or such other sanctions or remedies as may be appropriate.

Counsel are advised that discovery will not be reopened, and continuance of the trial date will not be granted for cases that have exceeded these time standards absent a showing of extraordinary circumstances that justify such a request.

13. **SETTLEMENT:** Counsel shall file a fully signed, written stipulation and proposed order of dismissal before any settled case will be taken off the Court's docket.
14. **FACSIMILE TRANSMISSIONS:** Please call the Judicial Assistant in Chambers before initiating a facsimile transmission, to confirm authorization or to receive instructions for alternate methods of document delivery to the Court.

DONE and ORDERED in Chambers at Plantation Key, Monroe County, Florida, this _____ day of _____, 2014.

/s/ _____
LUIS M. GARCIA
CHIEF JUDGE

cc: