

IN THE CIRCUIT COURT OF THE XXXXXXXXX JUDICIAL
CIRCUIT, IN AND FOR XXXXXXXXXXXXXXXX COUNTY, FLORIDA

AURORA LOAN SERVICES, LLC,

Case No.: XXXXXXXXXXXXXXXX

Plaintiff,

vs.

_____, et. al.

Defendant.

_____ /

MOTION FOR INVOLUNTARY DISMISSAL

COMES NOW, Defendant, _____, by and through her undersigned Counsel, files this Motion for Involuntary Dismissal, pursuant to Fla.R.Civ.P. 1.420(b), and in support thereof states as follows:

I. PLAINTIFF'S REPEATED FAILURE TO SERVE THE AMENDED COMPLAINT

1. This is a foreclosure action.
2. On April 20, 2011, an Order was entered on the Defendant's Stipulation for Substitution of Counsel wherein the undersigned was substituted in place of XXXXXXXXXXXXXXXX, Esquire. See attached "Exhibit A."
3. On June 22, 2011, Plaintiff's counsel filed a cover letter and undated Motion for Leave to Amend Complaint to Foreclose Mortgage bearing an incomplete certificate of service.¹ Further, the certificate of service indicates it was served on Defendant's prior counsel. See attached "Exhibit B."
4. On July 12, 2011, the Court's online docket reflects an Order granting the Plaintiff's Motion for Leave to Amend Complaint was entered. This Order was never served upon the Defendant or her counsel.
5. On December 6, 2012, January 28, 2013, and April 30, 2013, the undersigned sent correspondence to Plaintiff's counsel advising that a copy of the Plaintiff's Amended Complaint was never properly served upon the undersigned and requested that the Plaintiff's counsel properly serve the Amended Complaint. The Plaintiff's counsel failed to respond to said requests. See attached "Exhibit C."

¹ The certificate of service contains no actual certifying language whatsoever. Only names and addresses are listed.

6. Florida Rules of Civil Procedure, 1.080(a) states, “[e]very pleading subsequent to the initial pleading, **all orders, and every other document filed in the action must be served** in conformity with the requirements of Florida Rule of Judicial Administration 2.516.” (Emphasis added.)
7. Florida Rule of Judicial Administration 2.516(a) states, “[u]nless the court otherwise orders, or a statute or supreme court administrative order specifies a different means of service, **every pleading subsequent to the initial pleading and every other document filed in any court proceeding**, except applications for witness subpoenas and documents served by formal notice or required to be served in the manner provided for service of formal notice, **must be served in accordance with this rule on each party.**” (Emphasis added.)
8. Florida Rule of Judicial Administration 2.516 (b) states, “[w]hen service is required or permitted to be made upon a party represented by an attorney, **service must be made upon the attorney** unless service upon the party is ordered by the court.” (Emphasis added.)
9. The XXXXXXXXXXXXXXXXXXXXXXX County, Florida Administrative Order XXXXXXXXXXXXXXXXXXXXXXX states, “...the parties are advised to use good faith efforts to resolve the issues set forth in the motion **prior** to the setting of a motion; coordinate the date and time of the hearing...”
10. Furthermore, Florida Rules of Civil Procedure, 1.190(a) states in part, “[a] party shall plead in response to an amended pleading within 10 days after service of the amended pleading unless the court otherwise orders.” (Emphasis Added).
11. In this action, in violation of the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration, and one of this Circuit’s own long standing Administrative Orders(“local rules”), the Plaintiff failed to 1) serve the Motion for Leave on the Defendant, 2) use good faith to resolve the issue prior to setting the hearing, 3) coordinate the date and time of the hearing with the Defendant, and 4) serve the Order granting leave to amend.
12. Despite an Order substituting in the Defendant’s current counsel and despite the Defendant’s numerous good faith attempts to resolve this issue, the Plaintiff counsel failed to cooperate in anyway or rectify these blatant violations.

II. PLAINTIFF’S REPEATED FAILURE TO PROVIDE WITNESS LIST AND EXHIBITS

13. On April 4, 2013, a Foreclosure Uniform Order Setting Cause for Non-Jury Trial, and Trial Instructions were entered, setting this cause for trial on May 20, 2013.

14. The Trial Order states “no later than twenty (20) days prior to the trial date..,” “[a]ll exhibits to be offered in evidence at trial shall be made available to opposing counsel for examination and initialing.” Furthermore, “no later than fifteen (15) days prior to the trial date,” “[p]arties shall furnish opposing counsel with a written list containing the names and address of all non-expert witnesses (impeachment, rebuttal or otherwise) intended to be called at trial **and only those witnesses listed shall be permitted to testify.**”(Emphasis added.)
15. On April 30, 2013, the undersigned filed a Notice of Request to Make All Trial Exhibits Available, e-served and sent a separate letter. A subsequent request was made on May 8, 2013. See attached “Exhibit D.”
16. On May 14, 2013, the Plaintiff’s Counsel filed a Witness and Exhibit List², which failed to name any witnesses or attach any of the exhibits as previously requested to be made available. See attached “Exhibit E.”
17. On May 15, 2013, the undersigned sent a third request to the Plaintiff’s Counsel requesting copies of the Plaintiff’s exhibits. **Like all other correspondence to the Plaintiff’s lawyer,** this request went unanswered. See attached “Exhibit G.”

III. CONCLUSION

18. Florida Rules of Civil Procedure, 1.420(b) provides in part, “[a]ny party may move for dismissal of an action or of any claim against that party **for failure of an adverse party to comply with these rules or any order of court.**” (Emphasis added.)
19. In Lasley v. Cushing, 244 So.2d 770 (Fla. 1st DCA 1971), the court cited Warriner v. Ferraro, 177 So.2d 723 (Fla. App. 1965), in which “it was held that the court had inherent power to impose the sanction of dismissal for a failure to comply with a court order.”
20. In the instant case, the Plaintiff has failed to comply with the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration, and one of this Circuit’s own long standing Administrative Orders(“local rules”). Despite the Defendant’s numerous, above and beyond, good faith attempts to rectify the Plaintiff’s violations, the Plaintiff continues to refuse to comply.

² The Plaintiff’s Witness and Exhibit List incorrectly named the Plaintiff as “Nationstar Mortgage, LLC” when the Plaintiff is in fact “Aurora Loan Services, LLC.” An Order denying the Plaintiff’s prior Motion to Substitute Party Plaintiff was entered XXXXXXXXXXXXXXXX. The hearing on this motion was also set with no good faith attempt to resolve, no coordination as to the date and time of the hearing, and no notice of the hearing, whatsoever, was provided. See attached “Exhibit F.”

21. In addition, Plaintiff has also violated a very clear, simple to read, one and one half page Order of this Court in regards to how it is to conduct itself in preparation for Trial. This too is in spite of the Defendant's numerous good faith attempts to resolve these issues.
22. In further disregard to this Court, despite a XXXXXXXXXXXXXXXXXXXX Order denying its Motion to Substitute, the Plaintiff's defective Witness list names Nationstar as the Plaintiff.
23. These violations are rampant and in the face of numerous attempts by the Defendant to give the Plaintiff opportunities to rectify.
24. This Court should give the Plaintiff no more opportunities to ignore the rule of law and its orders.

WHEREFORE, Defendant, _____, respectfully requests that an Order be entered granting the Defendant's Motion for Involuntary Dismissal, without prejudice, and award Attorney's Fees and Costs for the Defendant, and any other relief that this Court finds just and proper.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to _____ by email this _____ day of May, 2013.

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