

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17790-E

DONALD JONES,

Plaintiff - Appellant,

versus

BANK OF AMERICA,
STATE OF FLORIDA,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Donald Jones has failed to pay the filing and docketing fees to the district court within the time fixed by the rules, effective January 29, 2018.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Gloria M. Powell, E, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17790-E

DONALD JONES,

Plaintiff-Appellant,

versus

BANK OF AMERICA,
STATE OF FLORIDA,

Defendants-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: JULIE CARNES and NEWSOM, Circuit Judges.

BY THE COURT:

Donald Jones has filed a *pro se* a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's October 18, 2017, order denying his motion for leave to proceed *in forma pauperis* on appeal. Upon review, Jones's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief. *See* Fed.R.App.P. 40(a)(2).

APPENDIX-A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17790-E

DONALD JONES,

Plaintiff-Appellant,

versus

BANK OF AMERICA,
STATE OF FLORIDA,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Donald Jones is a *pro se* plaintiff who filed a civil action against Bank of America and the State of Florida. Jones first filed a complaint in this action in August 2016 and sought leave to proceed *in forma pauperis* ("IFP"). In his initial complaint, Jones stated that he had signed a reverse mortgage with Bank of America, who then harassed him with false fees and filed a frivolous foreclosure

lawsuit against him, contending that he did not live in his own home. Jones stated that Bank of America used the court to manipulate him by picking the judge in state proceedings and obtaining hundreds of millions of dollars in foreclosure fees. Jones attached various state court filings to his complaint, including his motions for the state court judge to disqualify himself, to strike a hearing that "had all the makings of a kangaroo hearing," and for a jury trial, as well as Bank of America's notice of voluntary dismissal of the foreclosure action.

A magistrate judge then conducted review, pursuant to 28 U.S.C. § 1915(e)(2)(B), and issued a report and recommendation ("R&R"), recommending that the pleading was deficient both for failure to clearly articulate federal jurisdiction and for failure to state a claim. Jones was directed to file an amended complaint.

In his amended complaint, Jones stated that, on December 15, 2015, a defendant² filed a foreclosure action, presumably in state court, for under \$50,000, stating that Jones did not live at a residence. Jones alleged that he filed affirmative defenses, submitting three years of water bills and six months of electric bills. The state court then denied a motion to strike the affirmative defenses. Jones stated that he filed a motion to move the case to trial and the defendant (again not specified) demanded that the action be decided by the court

² Jones did not specify which defendant filed the foreclosure lawsuit. It appears that he meant to refer to Bank of America.

and not by a jury trial. Jones asserted that he moved to strike the demand for a bench trial, but the state court judge denied the motion and denied him his right to a jury trial. Jones stated that he then filed another motion requesting a jury trial, but the state-court judge denied the motion, citing Fla. Stat. Ann. § 702.1 and stating that the Federal Rules of Civil Procedure do not apply in state court. Jones asserted that the defendant filed a notice of voluntary dismissal and that he filed a "motion to discuss settlement," which the state court judge denied as moot given the voluntary dismissal. In his amended complaint before the district court, Jones requested that the court grant him a jury trial and monetary award "for civil right[s] violation[s], age discriminat[ion], fraud, suffering and pain."

A magistrate judge then issued another R&R recommending that Jones's motion for IFP be denied and that the amended complaint be dismissed because Jones failed to set forth a cognizable federal claim. The R&R determined that Jones had failed to comply with Fed. R. Civ. P. 8, and, although his *pro se* complaint was held to a less stringent standard than pleadings drafted by attorneys, the allegations in his amended complaint did not amount to a cognizable claim in federal court. Further, Jones had failed to provide a short, plain statement of the court's jurisdiction or a short, plain statement of his claim for entitlement to relief. The R&R concluded that, although Jones alleged violations of his civil rights and age discrimination, the factual allegations did not support these contentions.

Rather, the R&R determined that it appeared that Jones requested a jury trial and monetary award for being sued in state court on a case that was voluntarily dismissed.

Over Jones's objections, the district court adopted the R&R, granted Jones's motion to reopen his case, denied IFP status, and dismissed the amended complaint.

Jones appealed and moved to proceed IFP on appeal, which the district court denied. He now seeks IFP status from this Court.

DISCUSSION:

Leave to appeal IFP:

Because Jones seeks to proceed IFP on appeal, the appeal is subject to a frivolity determination. 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it is without arguable merit in either law or fact. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

Pursuant to § 1915(e)(2)(B)(i), a district court must dismiss an IFP action if the court determines that the action fails to state a claim on which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(i). This Court reviews *de novo* a § 1915A(b)(1) *sua sponte* dismissal for failure to state a claim. *Leal v. Ga. Dep't of Corr.*, 254 F.3d 1276, 1279 (11th Cir. 2001). Allegations in a complaint are accepted as true and construed in the light most favorable to the plaintiff. *Leib v.*

Hillsborough Cnty. Pub. Transp. Comm'n, 558 F.3d 1301, 1305 (11th Cir. 2009). To survive dismissal, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). However, "[n]aked assertions devoid of further factual enhancement" or "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

Rule 8(a) of the Federal Rules of Civil Procedure provides that a pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed. R. Civ. P. 8(a)(1)-(3). The statement of the claim "need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (internal citations omitted) (determining that a *pro se* plaintiff who alleged that a prison doctor and prison

officials had withheld needed medication had met Rule 8(a)'s pleading requirements because the complaint gave the defendants the required fair notice).

Here, the district court properly concluded that Jones failed to state a cognizable claim. Even taking into account Jones's *pro se* status, his complaint failed to state a claim. *See Tannenbaum*, 148 F.3d at 1263. Jones cited to no violations of law. Further, while he requested a jury trial and monetary award for civil rights violations, age discrimination, fraud, and pain and suffering, Jones did not allege how any violations of his rights, discrimination, or fraud, took place. To the extent that Jones brought a claim based on the state court foreclosure case, his complaint does not state how the state foreclosure case resulted in civil rights violations, age discrimination, fraud, or pain and suffering. Additionally, his complaint concedes that the foreclosure action was voluntarily dismissed. Thus, the district court properly determined that Jones failed to state a claim, and his appeal has no arguable merit.

Accordingly, Jones's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. *See Napier*, 314 F.3d at 531.



UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DONALD JONES,

Plaintiff,

v.

Case No: 2:16-cv-597-FtM-29MRM

BANK OF AMERICA and STATE OF
FLORIDA,

Defendants.

ORDER

This matter comes before the Court on plaintiff's one-sentence Motion to Proceed In Forma Pauperis (Doc. #20) filed on January 9, 2017, which states: "The plaintiff is asking the court to forward his affidavit of forma pauperis to the Court Appeals, he will appeal his case." The Court will construe this as an express desire to proceed *in forma pauperis* on appeal. In order to do so, plaintiff must complete a new affidavit of indigency reflecting any updated information, and file it in the first instance with the district court for review. After a ruling, the document will be forwarded to the Eleventh Circuit Court of Appeals for further review. The motion will be denied pending completion of the new affidavit.

Accordingly, it is hereby

ORDERED:

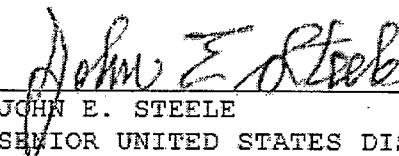
APPENDIX - B

1. Plaintiff's Motion to Proceed In Forma Pauperis (Doc. #20)

is **DENIED without prejudice.**

2. The Clerk shall forward a copy of the form to proceed *in forma pauperis* on appeal with this Order to plaintiff to complete and return for filing.

DONE and ORDERED at Fort Myers, Florida, this 11th day of January, 2017.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:

Plaintiff

Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DONALD JONES,

Plaintiff,

v.

Case No: 2:16-cv-597-FtM-99MRM

BANK OF AMERICA and STATE OF
FLORIDA,

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

Pending before the Court is the Complaint (Doc. 1) and the Affidavit of Indigency (Doc. 2) both filed on August 1, 2016. The Court construes the Affidavit of Indigency (Doc. 2) as a Motion to Proceed *In Forma Pauperis*.

In the Order (Doc. 4) entered on August 8, 2016, the Undersigned carefully reviewed both the Complaint (Doc. 1) and the Affidavit of Indigency (Doc. 2). The Undersigned explained that when an application is filed to proceed in forma pauperis, the Court is obligated to review the file pursuant to 28 U.S.C. § 1915. (Doc. 4 at 1). Section 1915(e)(2)(B) requires the Court to dismiss the case if it determines that the action is frivolous or malicious; if it fails to state a claim upon which relief may be granted; or if the complaint seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915. (*Id.*). A complaint is considered to be frivolous when it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). (*Id.*).

In the August 8 Order, the Undersigned determined that Plaintiff must amend the Complaint to state a cause of action. (Doc. 4 at 3). Pursuant to Fed. R. Civ. P. 8, a pleading must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed. R. Civ. P. 8(a)(1)-(3). (See Doc. 2 at 1-2).

Upon review of the Complaint (Doc. 1), and although not clear, Plaintiff appears to allege that on December 15, 2015, "defendant file [sic] a foreclosure law sue [sic] for under \$50.000. [sic] The defendant stated the plaintiff did not live at the residential [sic]." (Doc. 1 at 1). Plaintiff claims that he filed affirmative defenses in that case. (*Id.*). Plaintiff asserts that a defendant in that case chose the "scheduled [sic], the room and the judge, and mail court dates to the plaintiff." (*Id.*). Plaintiff filed a motion to disqualify the presiding judge and to "strike the two and half minutes hearing." (*Id.*).

To support his claim in the foreclosure case, Plaintiff submitted three (3) years of water bills and six (6) months of electric bills. (*Id.*). Plaintiff discusses certain motions he filed in the foreclosure action and the resolution of those motions. (*Id.* at 2). Plaintiff claims that the state-court judge's rulings: "(1) [c]ast reasonable doubt on the Judge's capacity to act impartially as a judge; (4) [sic] [i]nterfere with the proper performance of judicial duties." (*Id.*). Plaintiff appears to claim that he was entitled to a jury trial in the foreclosure action but Judge Laboda "file [sic] a order [sic] denying the motion for rehearing stating that Fla. Stat. 702.01 prohibits a

jury trial in foreclosure case, she also stated federal rules do not apply in a state court proceeding.” (*Id.*).

Plaintiff also claims that a day after the above-described order was entered, “the defendant file [sic] a notice of voluntary dismissal.” (*Id.*). Plaintiff apparently filed a “motion to discuss settlement. Judge Laboda on June 9, 2016 order [sic] the motion to settlement [sic] is MOOT as the defendant filed a Voluntary Dismissal.” (*Id.* at 2-3) (emphasis in original).

Plaintiff further asserts that on February 8, 2011, he entered into a reverse mortgage loan with Bank of America. (*Id.* at 3). Plaintiff claims that he is retired and on a fixed income. (*Id.*). Plaintiff alleges that defendant filed a frivolous foreclosure action against him and used “the court to manipulate the plaintiff by picking the judge and filing a sham pleading Rule 1.150 in a two and half [sic] minutes hearing.” (*Id.*). Plaintiff concludes that “[t]he defendant have [sic] been grant [sic] 100’s of millions of dollars from the courts in fee’s [sic] for fore closure [sic]. The plaintiff had been denied. The court stated that there [sic] do not recognize Federal Rules of civil procedure [sic]; Rule 38. (B) [sic] there widespread fraud and civil rights violation in this court and denied of a jury trial is one of the reason [sic].” (*Id.*). Plaintiff requests that the Court grant him a jury trial and a monetary award for “civil right [sic] violation, age discriminate [sic], fraud, suffering an [sic] pain.” (*Id.*).

In the August 8 Order, the Court explained that while *pro se* complaints should be held to a less stringent standard than pleadings drafted by attorneys, the allegations in Plaintiff’s Complaint do not amount to a claim cognizable in federal court. (*See Doc. 4 at 3; Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976)¹). The Court determined that Plaintiff failed provide a

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit Court of Appeals adopted as binding precedent all the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

short, plain statement of the court's jurisdiction as well as a short, plain statement of his claim showing that he is entitled to relief. (Doc. 4 at 3). Further, Plaintiff failed to state what rights under the Constitution, laws, or treaties of the United States have been violated. (*Id.* at 3-4). The Court required Plaintiff to file an Amended Complaint that complied with the August 8, 2016 Order within twenty-one (21) days. (*Id.* at 4). The Court cautioned Plaintiff that if he failed to comply with the August 8, 2016 Order, the Court would recommend that this action be dismissed. (*Id.* at 4).

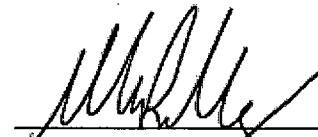
On September 8, 2016, the Undersigned entered an Order to Show Cause (Doc. 5) based upon Plaintiff's failure to comply with the August 8, 2016 Order by failing to file an Amended Complaint. (*Id.*). Citing Local Rule 3.10, the Undersigned determined that Plaintiff failed to prosecute this action.¹ (*Id.* at 1). The Court allowed Plaintiff one last opportunity to comply with the August 8 Order and file an Amended Complaint. (*Id.*). The Undersigned again cautioned Plaintiff that if he failed to comply with the September 8, 2016 Order to Show Cause, the Court would recommend that this action be dismissed. (*Id.* at 2). Plaintiff failed to comply with both the September 8, 2016 Order to Show Cause and the August 8 Order.

IT IS RESPECTFULLY RECOMMENDED:

The Affidavit of Indigency (Doc. 2) construed as a Motion to Proceed *In Forma Pauperis* (Doc. 2) be **DENIED**, and this action be dismissed for failure to comply with court orders and failure to prosecute.

¹ Local Rule 3.10, provides that “[w]henever it appears that any case is not being diligently prosecuted the Court may, on motion of any party or on its own motion, enter an order to show cause why the case should not be dismissed, and if no satisfactory cause is shown, the case may be dismissed by the Court for want of prosecution.” M.D. Fla. R. 3.10.

Respectfully recommended in Chambers in Ft. Myers, Florida on October 3, 2016.



MAC R. MCCOY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Copies furnished to:

Counsel of Record
Unrepresented Parties

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA
CIVIL ACTION

Bank of America NA,

CASE NO.: 15-CA-051445

Plaintiff,

CASE TYPE: CA Homestead Residential
Foreclosure 1: \$0-\$50,000

vs.

JUDGE: Alane C. Laboda

Jones, Donald, et al.,

Defendant,

ORDER ON DEFENDANT MOTION TO DISCUSS SETTLEMENT

THIS MATTER having come before the Court in Chambers upon the Defendant's, Donald Jones, Motion to Discuss Settlement filed May 31, 2016 and the Court having reviewed the notice, the court file, and being otherwise fully advised in the premises, it is;

ORDERED AND ADJUDGED the Defendant's Motion is hereby MOOT as Plaintiff filed a Voluntary Dismissal on May 25, 2016.

DONE AND ORDERED this 9 day of June, 2016, in Lee County Florida.


Alane C. Laboda, Circuit Judge

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of this Order was mailed/e-mailed on JUNE 10, 2016, to:

Jonathan I. Meisels, Esq.
j.meisels@rasflaw.com
mail@rasflaw.com
k.mcguire@rasflaw.com

Donald Jones
476 Mississippi Ave
Fort Myers, FL 33905

United States Of America, Acting On Behalf Of The Secretary Of
Housing And Urban Development
400 N. Tampa St., Suite 3200
Tampa, FL 33602
Primary Email: USAFLS.2410@USDOJ.GOV

Unknown Spouse Of Donald Jones
476 Mississippi Ave
Fort Myers, FL 33905

By:


Civil Case Manager / Program Assistant

**DONALD JONES
PO BOX 51584
FORT MYERS, FL 33994-1584**

Borrower: DONALD JONES

**Property: 476 MISSISSIPPI AVE
FORT MYERS, FL 33905**

• Loan Balance: \$24,938.33

Loan #: 68011031121599

Dear Valued Customer(s):

We would like to welcome you as a Reverse Mortgage Solutions, Inc. customer at our Spring, Texas Servicing Center. The following is important information regarding the servicing of your reverse mortgage loan.

MONTHLY STATEMENTS

At the beginning of each month, you will receive a reverse mortgage loan monthly statement. You have the option of receiving these statements via E-mail. To take advantage of this option, please complete the enclosed E-mail Authorization Form and return it to us by fax, mail or E-mail as outlined below.

REPAIRS

If repairs were part of your loan agreement, you must complete the repairs within six months after your loan closes. Please refer to your Repair Rider, a document you received at closing, for an outline of the necessary repairs as well as the amount held in a Repair Set Aside account.

To start the repair process, please contact a contractor to begin the work. A Repair Administrator from our Servicing Department will contact you shortly to discuss the process and to answer any questions you have. You can contact your Repair Administrator at (877) 775-5014 or (TTY: (888) 827-6697).

APPENDIX D

HOW TO CONTACT US -

You can contact us in the following ways:

BY TELEPHONE

You can contact us by telephone. Our toll-free number is (877) 775-5014 and one of our Reverse Mortgage Specialists will be glad to assist you. Our regular business hours are Monday through Friday, between 8:00 A.M. and 5:00 P.M. Nationwide. We are closed on all Federal Holidays.

BY MAIL

Reverse Mortgage Solutions, Inc.
2727 Spring Creek Dr.
Spring, TX 77373

BY FAX

Our toll free fax number is (866) 790-3451. Your letters, E-mail Authorization Form and Annual Occupancy verifications can be sent to us by fax. If you do not have access to a fax machine, they can usually be found at local Kinkos, Staples, Office Depot or Office Max stores and in some local libraries.

BY E-MAIL

Your letters, E-mail Authorization Form and Annual Occupancy verifications can be sent to us via e-mail by scanning the document after you have signed the form, attaching it to an e-mail and sending it to us at CustomerService@myrmloan.com.

Please be sure the forms are signed by all borrowers before sending them. Again, welcome to Reverse Mortgage Solutions, Inc. and we look forward to servicing your reverse mortgage loan.

Sincerely,

Brandi Connell

Reverse Mortgage Servicing Department

E-mail Authorization Form

**DONALD JONES
PO BOX 51584
FORT MYERS, FL 33994-1584**

Property: 476 MISSISSIPPI AVE
FORT MYERS, FL 33905
Loan #: 68011031121599

This form authorizes Reverse Mortgage Solutions, Inc. to E-mail all correspondence to me at the following e-mail address:

* **Borrower e-mail:** _____ **Phone #:** _____

Borrower Signature: _____ **Date:** _____

** Providing your e-mail address authorizes e-mail correspondence and statements regarding your reverse mortgage in lieu of paper statements and letters via the U.S. Post Office. You can contact us to change this election at any time.*

Please contact us if you have any questions or concerns at (877) 775-5014. Our regular business hours are Monday through Friday, between 8:00 a.m. and 5:00 p.m. Nationwide.

Please mail request to:
Reverse Mortgage Solutions, Inc.
2727 Spring Creek Dr.
Spring, TX 77373

~ OR ~

Fax the completed form to:
Fax # (866) 790-3451
E-mail completed form to:
CustomerService@mymloan.com

IN THE CIRCUIT COURT OF THE TWENTIETH
JUDICIAL CIRCUIT, IN AND FOR LEE COUNTY,
FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO: 18-CA-1148

BANK OF AMERICA, N.A.
Plaintiff,
vs.
DONALD JONES, et. al.,
Defendant(s).

SUMMONS

YOU ARE COMMANDED to serve this summons and a copy of the complaint in this action on defendant(s):

DONALD JONES
476 MISSISSIPPI AVE
FORT MYERS, FL 33905

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book). If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff's/ Plaintiff's Attorney" named below.

Robertson, Anschutz & Schneid, P.L.
Jonathan Meisels, Esquire
Service Email: mail@rasflaw.com
Attorney for Plaintiff
6409 Congress Avenue, Suite 100
Boca Raton, Florida 33487
Telephone: 561-241-6901
Fax: 561-997-6909
Linda Doggett
CLERK OF THE CIRCUIT COURT

Dated: 03/21/2018

By: J. Hammad
Deputy Clerk of Court



FLORIDA STATUTE 48.031(5)

DATE 3-27-18 TIME 5:50 pm
I.D./BADGE 157181 INITIALS TD
MARRIED Y N MILITARY Y N



IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR LEE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO.

BANK OF AMERICA, N.A.,
Plaintiff,

vs.

DONALD JONES; UNKNOWN SPOUSE OF DONALD JONES; UNITED STATES OF AMERICA ON BEHALF OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT; 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, Defendant(s).

VERIFIED COMPLAINT FOR FORECLOSURE OF MORTGAGE

Plaintiff, BANK OF AMERICA, N.A, sues the Defendants and alleges:

COUNT I - MORTGAGE FORECLOSURE

1. This is an action to foreclose a mortgage on real property in Lee County, Florida.
2. The Court has jurisdiction over the subject matter.
3. DONALD JONES, executed and delivered a promissory note ("Note"), dated February 22, 2011, in favor of BANK OF AMERICA, N.A. A copy of the note is attached hereto as Exhibit "A."
4. DONALD JONES, executed and delivered the Home Equity Conversion Mortgage ("HECM" or the "Mortgage"), dated February 22, 2011, securing the promise to pay the sums due under the Note. A copy of the Mortgage is attached hereto as Exhibit "B." The Mortgage was recorded on March 1, 2011, at Instrument 2011000050642, of the Public Records of Lee County, Florida, and encumbered the property described in the Mortgage then owned by and in possession of the mortgagor.

5. ~~The Mortgage of the Plaintiff is a lien superior in dignity to any prior or subsequent right, title, claim, lien or interest arising out of mortgagor(s) or the mortgagor(s)' predecessor(s) in interest.~~

6. Plaintiff is the holder of the original Note secured by the Mortgage pursuant to Fla. Stat. § 702.015(2)(a).

7. Plaintiff declares the full amount payable under the Note and Mortgage to be due, pursuant to the terms of the Mortgage.

8. Grounds for acceleration exist because the property ceased to be the principal residence of DONALD JONES for reasons other than death. The Secretary of Housing and Urban Development approved this occurrence as grounds for acceleration of the debt on or about June 24, 2015.

9. As of March 2, 2018, Defendant(s) owe Plaintiff \$40,118.12 that is due and owing on principal on the Note and Mortgage plus interest, and title search expenses for ascertaining necessary parties to this action. Additional amounts may accrue hereafter.

10. In order to protect its security, the Plaintiff may have advanced and paid Ad Valorem Taxes, premiums on insurance required by the Mortgage and other necessary costs, or may be required to make such advances during the pendency of this action. Any such sum so paid will be due and owing Plaintiff.

11. The property is now owned by Defendant(s) DONALD JONES and the record legal title to said mortgaged property is now vested in Defendants(s), DONALD JONES, if living and if dead, the unknown spouses, heirs and beneficiaries of DONALD JONES who hold or holds possession.

12. All conditions precedent to the acceleration of this Note and to foreclosure of the Mortgage have been fulfilled and have occurred.

13. Plaintiff is entitled to pay Plaintiff's attorneys a reasonable fee for their services.

Plaintiff is entitled to recover its attorneys' fees pursuant to the express terms of the note and mortgage.

14. Plaintiff alleges that the claims of the remaining Defendants are secondary, junior, inferior and subject to the prior claim of Plaintiff.

15. Defendant, UNKNOWN SPOUSE OF DONALD JONES, may claim some right, title, or interest in the property herein sought to be foreclosed by virtue of homestead rights, possession or some other unknown interest, the exact nature of which is unknown to Plaintiff and not a matter of public record. However, said interest, if any, is subordinate, junior, and inferior to the lien of Plaintiff's mortgage.

16. Plaintiff's Mortgage is superior in right, title, and seniority to any interest in the property inuring to the Defendant, UNITED STATES OF AMERICA ON BEHALF OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT, including, but not limited to, MORTGAGE recorded March 1, 2011, at Instrument 2011000050689 of the Public Records of Lee County, Florida.

17. 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 are joined as defendants herein. The claims of said defendants are subordinate, junior, and inferior to the interest of Plaintiff.

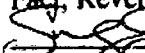
WHEREFORE, Plaintiff demands judgment foreclosing the mortgage, for costs (and, when applicable, for attorney's fees); requests that the Court ascertain the amount due to Plaintiff for principal and interest on the Mortgage and Note and for abstracting, taxes, expenses and costs, including attorney's fees, plus interest thereon; that if the sums due Plaintiff under the Mortgage and Note are not paid immediately, the Court foreclose the Mortgage and direct the

~~Cost of the Court and the Property necessary the satisfaction to satisfy the Plaintiff's Mortgage
Sum in accordance with the provisions of Florida Statutes §45.031 (2006); that the rights, title
and interest of any Defendant, or any party claiming by, through, under or against any Defendant
named herein or hereinafter made a Defendant be forever barred and foreclosed; that the Court
appoint a receiver of the Property and of the rents, issues, income and profits thereof, or in the
alternative, order sequestration of rents, issues, income and profits pursuant to Florida Statutes
§697.07 (2006); and that the Court retain jurisdiction of this action to make any and all further
orders and judgments as may be necessary and proper, including the issuance of a writ of
possession.~~

VERIFICATION

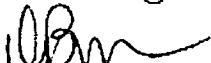
Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged
therein are true and correct to the best of my knowledge and belief.

BANK OF AMERICA, N.A
through its duly authorized Servicer & Attorney-in-
Fact, Reverse Mortgage Solutions, Inc.


Date: 3/5/18
Name: Shelly Sanchez
Title: Authorized Signer

RE: Borrower: DONALD JONES
Address: 476 MISSISSIPPI AVE
FORT MYERS, FL 33905
File #: 17-088163

ROBERTSON, ANSCHUTZ & SCHNEID, P.L.
Attorney for Plaintiff
6409 Congress Ave., Suite 100
Boca Raton, FL 33487
Telephone: 561-241-6901
Facsimile: 561-997-6909
Service Email: mail@rasflaw.com

By: 
 Jonathan Meisels, Esq., Florida Bar No. 29235, Email Address: j.meisels@rasflaw.com
 Melissa Konick, Esq., Florida Bar No. 17569, Email Address: mkonick@rasflaw.com
 Gweneth Brimm, Esq., Florida Bar No. 727601, Email Address: gbrimm@rasflaw.com

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD JONES — PETITIONER
(Your Name)

UNITED STATES DISTRICT MIDDLE DISTRICT OF FLORIDA
FORT MYER DIVISION — RESPONDENT(S)

PROOF OF SERVICE

I, DONALD JONES, do swear or declare that on this date, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

MS LINA DOGGETT
1100 MONROE ST.
FORT MYERS 33901

I declare under penalty of perjury that the foregoing is true and correct.

Executed on APRIL 1, 2018

Donald Jones