

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VITO J. FENELLO, JR.)
and BEVERLY H. FENELLO,)
)
Plaintiffs,)
)
v.)
)
BANK OF AMERICA, N.A., and)
THE BANK OF NEW YORK MELLON)
(as Trustee for CWALT, Inc.),)
)
Defendants.)
_____)

CIVIL ACTION FILE
NO. 1:11-cv-04139-WSD-AJB

**MOTION TO STRIKE PLAINTIFFS' SECOND RESPONSE
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

COME NOW, Defendants Bank of America, N.A. and The Bank of New York Mellon, as Trustee for CWALT, Inc. (collectively, "Defendants"), by and through their undersigned counsel, and respectfully moves the Court to strike Plaintiffs' Second Response in Opposition to Defendants' Motion to Dismiss filed by Plaintiffs on January 12, 2012 [Doc. 18] (hereinafter, "Second Response") as it is procedurally improper and without merit.

I. Plaintiffs' Second Response is Procedurally Improper.

As a threshold matter, neither the federal nor local rules permits Plaintiffs to file a sur-reply to Defendants' pending motion to dismiss, which was filed on December 7, 2011 [Doc. 6]. See Garrison v. Northeast Ga. Med. Ctr., Inc., 66 F.Supp.2d 1336, *1340 (N.D. G.A. April 20, 1999) (holding "to allow such surreplies as a regular practice would put the court in the position of refereeing an endless volley of briefs"). In addition, the fact that Plaintiffs are appearing *pro se* offers "no impenetrable shield, for one acting *pro se* has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." Patterson v. Aiken, 841 F.2d 386, 387 (11th Cir. 1988) (quoting Ferguson v. MBank Houston, N.A., 808 F.2d 358, 359 (5th Cir. 1986)).

II. Plaintiffs' Second Opposition is Without Merit.

Moreover, similar to the Complaint and all subsequent filings by Plaintiffs, the Second Response still offers little to rescue Plaintiffs' unsupported allegation that the attempted foreclosure was wrongful and their insufficient pleadings which fail to meet the requirements of Rules 8 and 12.

CONCLUSION

WHEREFORE, for the above and foregoing reasons, this Court should grant Defendants' Motion to Strike Plaintiffs' Second Opposition, grant Defendants'

Motion to Dismiss in its entirety, and grant such other and further relief as the Court deems equitable and appropriate under the circumstances.

This 26th day of January, 2012.

/s/ Andrew G. Phillips

Andrew G. Phillips
Georgia Bar No. 575627
McGuireWoods LLP
1230 Peachtree Street, NE
Promenade II, Suite 2100
Atlanta, Georgia 30309-3534
(404) 443-5724 (telephone)
(404) 443-5599 (facsimile)
aphillips@mcguirewoods.com

*Attorneys for Defendants Bank of America,
N.A. and The Bank of New York Mellon*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VITO J. FENELLO, JR.)
and BEVERLY H. FENELLO,)
)
Plaintiffs,)
)
v.)
)
BANK OF AMERICA, N.A., and)
THE BANK OF NEW YORK MELLON)
(as Trustee for CWALT, Inc.),)
)
Defendants.)
_____)

CIVIL ACTION FILE
NO. 1:11-cv-04139-WSD-AJB

CERTIFICATE OF SERVICE, FONT AND MARGINS

I hereby certify that on January 26, 2012, I electronically filed the foregoing *Motion to Strike Plaintiffs' Second Response in Opposition to Defendants' Motion to Dismiss* with the Clerk of the Court using the CM/ECF System and served a true and correct copy of same on *Pro Se* Plaintiffs via First-Class Mail, postage prepaid, addressed to:

Vito J. Fenello, Jr.
Beverly H. Fenello
289 Balaban Circle
Woodstock, Georgia 30188

I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this Court.

 /s/ Andrew G. Phillips
Andrew G. Phillips