

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

VITO J. FENELLO, JR. )  
and BEVERLY H. FENELLO, )  
 )  
Plaintiffs, )

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

v. )  
 )  
BANK OF AMERICA, N.A., and )  
THE BANK OF NEW YORK MELLON )  
(as Trustee for CWALT, Inc.), )  
 )  
Defendants. )  
\_\_\_\_\_ )

**DEFENDANTS’ MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED  
COMPLAINT**

COME NOW Defendants Bank of America, N.A., (“BANA”), and The Bank of New York Mellon, (“BONY”)<sup>1</sup> (collectively “Defendants”), by and through their undersigned counsel, and respectfully move this Court to dismiss Plaintiffs’ First Amended Complaint (“FAC”) with prejudice because: (i) the FAC fails to comply with the July 17, 2012 Order of this Court; and (ii) the FAC fails to state a claim for relief pursuant to Fed. R. Civ. P. 8(a) and 12(b)(6). In support of this Motion to Dismiss, Defendants submit herewith its Memorandum of Law

<sup>1</sup> Plaintiff names “The Bank of New York Mellon (as Trustee for CWALT, Inc.)” as a Defendant. Defendants represent that the current owner of the Loan in question is The Bank of New York Mellon f/k/a/ the Bank of New York as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2007-5CB, Mortgage Pass-Through Certificates, Series 2007-5CB. Accordingly, BONY responds as Trustee.

containing argument and citation of authorities. Defendants respectfully pray for the following relief:

(a) that this Court grant Defendants' Motion to Dismiss pursuant to the July 17, 2012 Order of this Court and Fed. R. Civ. P. 8(a) and 12(b)(6); and

(b) that Defendants be granted such other and further relief as the Court deems equitable and appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 20th day of August, 2012.

/s/ Jarrod S. Mendel

Jarrod S. Mendel

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N.A. and The Bank of New York Mellon*

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SHUPING, MORSE & ROSS, LLP; )  
BANK OF AMERICA, N.A., and )  
THE BANK OF NEW YORK MELLON )  
(as Trustee for CWALT, Inc.), )  
 )  
Defendants. )

\_\_\_\_\_ )

**CERTIFICATE OF SERVICE, FONT AND MARGINS**

I hereby certify that on August 20, 2012, I electronically filed the foregoing *Motion to Dismiss Plaintiffs' First Amended Complaint* 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/ Jarrod S. Mendel

Jarrod S. Mendel