

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

FILED IN CLERK'S OFFICE
02/09/2012

FEB 09 2012

JAMES H. HAMILTON, CLERK
By: *[Signature]* Deputy Clerk

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

Plaintiffs,)

v.)

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

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

Defendants.)

PLAINTIFF'S RESPONSE TO DEFENDANTS'
MOTION TO STRIKE

COMES NOW, Plaintiff Vito J. Fenello Jr, and hereby files this RESPONSE to Defendants' Motion to Strike Plaintiffs' Second Response in Opposition to Defendants' Motion to Dismiss filed by Defendants on January 26, 2012 [Doc. 19] (hereinafter, "Motion to Strike").

Defendants allege in their Motion to Strike that the Plaintiffs Second Response is "procedurally improper" and "without merit." They further argue that

allowing “surreplies as a regular practice would put the court in the position of refereeing an endless volley of briefs.”

RESPONSE

Plaintiffs counter that their Second Response was within the 14 day time limit specified under Rule 12 of Federal Rules of Civil Procedure, as well as the extended response period that resulted from the Defendants’ own Motion to Stay Pretrial Deadlines (see Order granted by this court, Doc 14, which extended the comment period to January 12, as evidenced in the PACER system (Exhibit 21).

Given these deadlines, there is no threat of an “endless volley of briefs” as alleged by the Defendants.

Further, Plaintiffs’ counter that their Second Response, rather than being without merit, builds on the positions outlined in the Complaint and their First Response, and counters the Defendants’ repeated attempts to distract this court away from the big question: “Can Bank of America foreclose on a homeowner, without showing any evidence that their client actually owns the promissory note?”

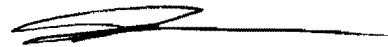
Plaintiffs’ Complaint lays out the tortuous actions of the Defendants, their First Response flushes out the case law that supports their position, and the Second response shows current rulings and other actions supporting the Plaintiffs’ case.

CONCLUSION

Should this Court choose to strictly enforce rules of surreplies, then the Defendants' own REPLY IN SUPPORT OF MOTION TO DISMISS (Doc 16) would also qualify as a surreply, and should be stricken as well. Further, if the court decides to strictly enforce these rules, it should also enforce the STANDING ORDER REGARDING CIVIL LITIGATION as issued by the Honorable Judge William S. Duffey, Jr., and disallow the Defendant's Motion to Dismiss for exceeding page limitations without prior court approval (Doc 11).

WHEREFORE, for the above and foregoing reasons, the Defendants' Motion to Strike should therefore be denied.

Respectfully submitted,



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Exhibit 21

1:11-cv-04139-WSD-AJB Fenello et al v. Shaping, Morse & Ross, LLP et al
William S. Duffey, Jr, presiding
Alan J. Baverman, referral
Date filed: 11/30/2011
Date of last filing: 01/12/2012

Deadlines/Hearings

Doc. No.	Deadline/Hearing	Event Filed	Due/Set	Satisfied	Terminated
<u>5</u>	<input checked="" type="radio"/> Submission to Magistrate Judge	12/07/2011	01/12/2012		
<u>6</u>	<input checked="" type="radio"/> Submission to Magistrate Judge	12/07/2011	01/12/2012		
<u>10</u>	<input checked="" type="radio"/> Submission Deadline	12/19/2011	01/24/2012		

PACER Service Center			
Transaction Receipt			
01/13/2012 11:49:01			
PACER Login:	vff0535	Client Code:	
Description:	Deadline/Hearings	Search Criteria:	1:11-cv-04139-WSD-AJB
Billable Pages:	1	Cost:	0.08