

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - HUDSON COUNTY
DOCKET NO. F-18446-08

U.S. BANK NATIONAL ASSOCIATION, AS :
TRUSTEE FOR CSAB MORTGAGE-BACKED :
PASS-THROUGH CERTIFICATES SERIES :
2006-1, :
 :
 :
 :
 :
 Plaintiff, : TRANSCRIPT
 : of
 : Decision
 v. :
 :
 :
 XAVIER SINCHEGARCIA, :
 :
 :
 :
 Defendant. :

PLACE: Hudson County Courthouse
583 Newark Avenue
Jersey City, NJ 07306
DATE: June 11, 2009

BEFORE:

THE HONORABLE THOMAS P. OLIVIERI, P.J. CH.

TRANSCRIPT ORDERED BY:

MARGARET LAMBE JUROW, ESQ.
LEGAL SERVICES OF NEW JERSEY

APPEARANCES:

THOMAS BRODOWSKI, ESQ.
(PHELAN, HALLINAN & SCHMIEG, LLP)
Attorney for Plaintiffs

XAVIER SINCHEGARCIA
Pro Se

CAREYANN SHAFTAN, CSR, RPR
OFFICIAL COURT REPORTER
HUDSON COUNTY COURTHOUSE
583 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306

1 THE COURT: U.S. Bank, et al, versus
2 Sinchegarcia.

3 Mr. Brodowski, let me have your appearance.

4 MR. BRODOWSKI: Thomas Brodowski of Phelan
5 Hallinan & Schmieg on behalf of the plaintiff.

6 THE COURT: And I have Mr. Sinchegarcia here.

7 There are actually two matters. There is a
8 sheriff's sale scheduled for tomorrow and I think I,
9 unfortunately, left that paperwork inside, but I can get
10 that in a minute.

11 There is also the matter of the motion that was
12 filed to vacate the judgment in this matter, and pursuant
13 to my directive after the hearing that was held on May
14 27th, I received from Mr. Yoder, actually a submission
15 dated June 3rd.

16 Mr. Sinchegarcia, did you send me anything?

17 MR. SINCHEGARCIA: No, your Honor.

18 THE COURT: Is there a reason? I asked for
19 submissions from both of you.

20 You did not submit anything? I wanted to just
21 verify you didn't submit anything.

22 MR. SINCHEGARCIA: Correct, your Honor. I did
23 not.

24 THE COURT: This is pursuant to 4:50-1 made by
25 Mr. Sinchegarcia who argues that he was not -- one of his

1 arguments is that he was not properly served with a summons
2 and complaint or any notices in this matter.

3 The evidence in this matter, however, indicates
4 the following: The plaintiffs sent the defendant a notice
5 of intent to foreclose on March 17, 2008 that was sent by
6 way of certified mail and it was sent return receipt
7 requested, and it was sent to the subject mortgage premises
8 pursuant to the New Jersey Fair Foreclosure Act. It was
9 returned to the defendant after the defendant did not claim
10 that notice. And there was a tracking confirmation
11 statement.

12 Pursuant to 2A:50-56, that notice is deemed to
13 have been sent or effectuated when it was mailed to the
14 defendant. So it is this Court's decision that the
15 plaintiff has complied with the Fair Foreclosure Act in
16 that aspect or that particular aspect, and the defendant's
17 application under rule 4:50-1 does not pass muster.

18 The defendant did admit during the hearing in
19 this matter that he was aware that a foreclosure complaint
20 was going to be filed because he was aware that he had
21 defaulted on his mortgage and, in fact, he was awaiting the
22 appropriate paperwork.

23 But, again, he indicates that he was never
24 served. However, according to the evidence presented to
25 this Court as I indicated on or about May 7, 2008, a

1 process server appeared at the property and presented the
2 summons and complaint to an individual who identified
3 himself as the defendant, and although the identification
4 of the person served and Mr. Sinchegarcia's physical
5 description is not perfect, it is certainly similar.

6 Mr. Sinchegarcia testified that there were a
7 number of people residing at the subject property, people
8 were coming and going, and Mr. Sinchegarcia himself had
9 difficulty keeping track, so to speak, of who was coming
10 and going.

11 However, this Court asked Mr. Sinchegarcia if
12 there were people at the property who fit the description
13 that was given by the process server. So I am satisfied
14 that service of process was proper under 4:4-4.

15 Mr. Sinchegarcia also testified that he did not
16 receive any notification from counsel for the plaintiff
17 until after he received and reviewed certain records that
18 he had obtained independently.

19 Mr. Sinchegarcia testified that in December of
20 '08 he visited the Office of Foreclosure in Trenton and
21 reviewed the file, and it was at that time that he learned
22 that foreclosure proceedings had been commenced. He waited
23 approximately 14 days before taking any action to
24 communicate with plaintiff's counsel.

25 In that communication it did not claim that he

1 had never been served with the summons and complaint and,
2 as I said, instead of protesting about that, he wrote a
3 response to certain correspondence that had been received
4 from plaintiff's counsel.

5 The first class mail that was sent was not
6 returned. However, as the Court indicated, the certified
7 mail return receipt requested was also not claimed.

8 Mr. Sinchegarcia has also provided a defense to
9 this action. He does not dispute the validity of the loan,
10 does not dispute that he is in default, and he indicates
11 that some of the financial problems he had been having was
12 as a result of a divorce. He believes that he can make
13 payment. So I don't believe that there is a meritorious
14 defense to this matter.

15 So for all of those reasons under 4:50-1, the
16 motion to vacate judgment is denied. However, that does
17 not -- and Mr. Brodowski, if you would be kind enough to
18 submit a proposed form of order that denies the
19 application.

20 MR. BRODOWSKI: Sure thing, your Honor.

21 THE COURT: But Mr. Sinchegarcia has filed a
22 motion to adjourn the sheriff's sale for today and requests
23 mediation, and that is something different. And once I get
24 the paperwork out from my law clerk, Mr. Brodowski, I will
25 go over with you what Mr. Sinchegarcia has filed. It is a

1 request to adjourn so that mediation can take place.

2 Mr. Sinchegarcia, I have asked you this. You
3 occupy the subject property?

4 MR. SINCHEGARCIA: Yes, your Honor.

5 THE COURT: And it is how many families?

6 MR. SINCHEGARCIA: It is two-family, your Honor.

7 THE COURT: It would appear, Mr. Brodowski, that
8 Mr. Sinchegarcia would fit within the foreclosure mediation
9 program, does it not?

10 MR. BRODOWSKI: I believe so, your Honor.

11 THE COURT: Okay. I am still waiting to get the
12 file. I am going to adjourn the sheriff's sale, Mr.
13 Sinchegarcia, to allow you to participate in the
14 foreclosure mediation program, but I just need to get this
15 paperwork out so that I do this properly.

16 Have you filled out the financial worksheet?

17 MR. SINCHEGARCIA: Yes, your Honor.

18 THE COURT: Were you able to go to a housing
19 counselor?

20 MR. SINCHEGARCIA: Yes, your Honor. I went to
21 the housing counselor on the 5th.

22 THE COURT: Of?

23 MR. SINCHEGARCIA: June 5th.

24 THE COURT: This paperwork that I am waiting for
25 would tell me that, but that is very good news.

1 Mr. Brodowski, what I am going to do then, once
2 I get the file out here, is have Mr. Sinchegarcia, and he
3 will be accompanied by my law clerk, go up one floor to our
4 CDR point person with the paperwork that he has submitted
5 and he has apparently seen a housing counselor to schedule
6 the mediation as quickly as possible.

7 Again, just waiting for the paperwork. What is
8 my custom is to adjourn the sheriff's sale for about 90
9 days to allow the mediation to take place.

10 There are -- in the summer there are sheriff's
11 sales every other Thursday, not every Thursday as there is
12 during the rest of the year, so I will adjourn it
13 consistent with that schedule.

14 The sheriff's sale, there is one scheduled for
15 today, June the 11th, so we will adjourn the sheriff's sale
16 until September the 10th. There are no sheriff's sales
17 because of the Labor Day holiday the previous Monday so,
18 Mr. Brodowski, I am going to adjourn the sheriff's sale to
19 September 17.

20 MR. BRODOWSKI: Okay, your Honor.

21 THE COURT: Now, you don't have to submit a
22 proposed form of order because we have one, but I would ask
23 you to alert the sheriff.

24 MR. BRODOWSKI: Do we still need a proposed form
25 of order for the final judgment?

1 THE COURT: Yes, please do that.

2 MR. BRODOWSKI: Okay.

3 THE COURT: But not for the sheriff's sale. But
4 be kind enough to submit one on the decision denying the
5 motion to vacate.

6 MR. BRODOWSKI: I could do that.

7 THE COURT: All I want you to do is alert the
8 sheriff that the sheriff's sale is put off until the 17th,
9 and when my law clerk comes out to -- I know it was inside
10 because I one just taking a look at it. I will find it.

11 All right, Mr. Brodowski, thank you.

12 MR. BRODOWSKI: Thank you, your Honor.

13 THE COURT: Mr. Sinchegarcia, if you wait a
14 minute I think I know where your paperwork is. We need to
15 do an order and then take the paperwork that you have given
16 us upstairs. You will go with my law clerk.

17 MR. SINCHEGARCIA: Yes, your Honor. I have a
18 copy if you need.

19 THE COURT: That's all right. I was just
20 looking at it.

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C E R T I F I C A T I O N

I, CAREYANN SHAFTAN, License Number 30X100192900,
an official Court Reporter in and for the State of
New Jersey, do hereby certify the foregoing to be
prepared in full compliance with the current Transcript
Format for Judicial Proceedings and is a true and
accurate non-compressed transcript to the best of my
knowledge and ability.

Careyann Shaftan *August 24, 2009*

Official Court Reporter Date

Hudson County Courthouse