US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CSAB MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-3 Plaintiff/Respondent, v. MARYSE GUILLAUME; MR. GUILLAUME, HUSBAND OF MARYSE GUILLAUME; EMILIO GUILLAUME; MRS. EMILIO GUILLAUME, HIS WIFE; CITY OF EAST ORANGE, Defendants/Petitioners.	:	SUPREME COURT OF NEW JERSEY DOCKET NO. 068176 Civil Action Sat Below: Trial Court: Harriet Farber Klein, J.S.C. Appellate Division: Clarkson S. Fisher, Jr., J.A.D. Douglas M. Fasciale, J.A.D.

PETITION FOR CERTIFICATION

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STATEMENT OF THE MATTER

This matter presents significant issues concerning the procedural and substantive rights of defendants in residential foreclosure matters, an area of heightened public importance. Approximately 60,000 foreclosure complaints were filed with the New Jersey Superior Court in ***each*** of 2009 and 2010, only a very small fraction of which were contested. See Department of Banking and Insurance, Residential Mortgage Foreclosure Statistics available at http://goo.gl/6iKCl ("Monthly Reports"); Administrative Office of the Courts Court Management Statistics available at http://goo.gl/FnXL1. At the same time, the availability of free legal assistance has decreased markedly; fewer than one-sixth of low-income New Jerseyans can secure a lawyer for their critical legal problems, and two-thirds of eligible Legal Services' applicants must be turned away due to lack of resources. See The Civil Justice Gap: An Inaugural Report (Legal Services of New Jersey April 2011) available at http://goo.gl/vGyig.

Against this backdrop, Haitian-Americans Maryse and Emilio Guillaume have been striving to save their family's East Orange home of nineteen years. They were so determined to do so that they contacted their loan servicer and a housing counseling agency in March 2008 -- even before they fell behind on their

payments -- and diligently pursued a loan modification in accordance with the servicer's instructions. Da16-22; Da36-52; Da146-152. In the midst of their loan modification efforts, in July 2008, the plaintiff filed the instant mortgage foreclosure complaint, while at the exact same time communicating to the Guillaumes that they were acting appropriately to resolve the situation by engaging in loan modification negotiations, and implying that legal action would not be instituted unless modification was unsuccessful. Da39; Da45 (letters dated July 30, 2008 and September 22, 2008). Nothing in the record suggests that either the plaintiff or the HUD certified housing counseling professionals upon whom the Guillaumes relied advised them that they had to file an answer or even consult with an attorney simultaneous with their loan modification efforts. When, after more than ten months, the servicer told them that "no workout options were available," the homeowners promptly sought legal assistance. Da51, 52 (letters dated February 5, 2009 and April 8, 2009); Da20 ¶23. By that time, the plaintiff had filed an ex parte application for entry of default judgment, and the judgment was entered on May 6, 2009. Significantly, that judgment was not based on competent evidence.

The trial court erroneously refused to vacate the default judgment, declaring that focusing on "trying to negotiate something with the bank was like sticking [their] head[s] in the

sand" and was so inexcusable as to deprive the Guillaumes of their day in court. The Appellate Division agreed.

The Guillaumes have substantial defenses to the foreclosure action including that the lender improperly under-disclosed the true cost of the mortgage, a violation of the federal Truth in Lending Act (TILA) entitling the Guillaumes to rescind the transaction. Had the court vacated the judgment and properly litigated the matter, the court would have been obligated to reduce the amount due to reflect the elimination of finance charges and to exercise its equitable authority to craft a tender procedure consonant with and dictated by the equities.

Despite the TILA violation, despite plaintiff's admitted contravention of the Fair Foreclosure Act, and despite a lack of competent evidence to support the judgment the courts below refused to vacate the default judgment or to allow a trial on the merits, apparently motivated in large part by the length of time that the case was pending and that the Guillaumes were not making "rent" payments. The Guillaumes did not cause the case to take more time and in fact pursued the servicer diligently and acted quickly once they learned that there were no workout options available to them. Indeed the record more strongly supports that the servicer strung the Guillaumes along until default judgment entered and then quickly sought to sell the home. The lower courts either ignored the fact that servicers

refuse to accept payments during the pendency of foreclosure actions or were unaware of that practice.

Our Legislature has repeatedly recognized saving homes to be the public policy of the state, not speedy foreclosures. N.J.S.A. 2A:50-54 ("The Fair Foreclosure Act" N.J.S.A. 2A:50-53 to 68); N.J.S.A. 55:14K-83 ("The Mortgage Stabilization and Relief Act" N.J.S.A. 55:14K-82-87). The decisions below contravene this critical public policy.

QUESTIONS PRESENTED AND ERRORS COMPLAINED OF

1. Where the plaintiff failed to comply with the Fair Foreclosure Act, is the foreclosure judgment void and did the courts below abuse their discretion by failing to vacate it pursuant to R. 4:50-1(d)?

2. Did the courts below erroneously employ a "sparing" review of the Guillaumes' R. 4:50-1 motion to vacate default judgment, rather than the "liberal" and "indulgent" review that must be afforded when a judgment enters by default?

3. Was finding that the defendants failed to satisfy the R. 4:50-1(a) requirement of mistake, inadvertence, surprise or excusable neglect abuse of discretion where the Guillaumes demonstrated that their confusion arose in large part from plaintiff's own dual-track foreclosure and loan modification practices?

4. Where the Guillaumes demonstrated the existence of meritorious defenses, i.e., failure to comply with the Fair Foreclosure Act and the right to rescind the transaction pursuant to the Truth in Lending Act, was the courts' failure to vacate the default judgment pursuant to R. 4:50-1(a) to permit resolution on the merits an abuse of discretion?

5. Must a court vacate a default judgment where it was not supported by competent evidence that the plaintiff complied with the Fair Foreclosure Act and held an obligation of the defendants which was in default and secured by a mortgage in its favor?

REASONS WHY CERTIFICATION SHOULD BE GRANTED

POINT I

THE PLAINTIFF FAILED TO SATISFY THE REQUIREMENTS OF THE FAIR FORECLOSURE ACT RENDERING THE FORECLOSURE JUDGMENT VOID

The content and timing of notices required by the Fair Foreclosure Act (FFA) is an issue of critical significance to record numbers of homeowners desperately seeking loan modifications and to cure their mortgages. Strict compliance with the FFA is jurisdictional, and a plaintiff's failure to comply is a complete defense to foreclosure. Here, despite recognizing that the Notice of Intention to Foreclose (NOI) was deficient, the courts below improperly allowed the foreclosure judgment to stand.

Enacted in 1995, the FFA creates a comprehensive framework for residential mortgage foreclosures. See Myron C. Weinstein, Law of Mortgages in 30 N.J. Prac. § 24 (2d ed. 2000); Scott T. Tross, New Jersey Foreclosure Law & Practice, Chapter 2(New Jersey Law Journal Books 2001). The Legislature declared the public policy of New Jersey to be:

> that homeowners should be given every opportunity to pay their home mortgages, and thus keep their homes; and that lenders will be benefited when residential mortgage debtors cure their defaults and return defaulted residential mortgage loans to performing status.

N.J.S.A. 2A:50-54.

The FFA is remedial legislation that should be strictly construed. Atlantic Palace Dev. v. Robledo, 396 N.J. Super. 171, 178-179 (Ch. Div. 2007) (citing Service Armament Co. v. Hyland, 70 N.J. 550 (1976)). The plain language of the FFA unambiguously specifies the exact information that must be "clearly and conspicuously" set forth in the NOI. N.J.S.A. 2A:50-56(c)(1)-(11). The FFA distinguishes between the lender and its representatives (such as a servicer) and requires identification of both. N.J.S.A. 2A:50-55. Here, the plaintiff omitted the name and address of the lender and instead misrepresented that the servicer was the lender. Da37-38. The trial court opined that the misrepresentation was a "technicality," and, substituting its judgment for that of the

legislature, that it would be confusing to the borrowers if the NOI identified the lender as well as the servicer. 1T13-17 to 14-4; 1T15-4 to 8; 2T16-17 to 17-13. The Appellate Division agreed that, although deficient, the NOI "satisfied the purpose of the FFA." (slip op. at 7).

New Jersey courts have repeatedly held that strict compliance with the FFA is required, and that substantial compliance or satisfying the spirit of the FFA is insufficient. EMC Mortgage Corp. v. Chaudhri, 400 N.J. Super. 126, 138 (App. Div. 2008) ("a lender's 'substantial compliance' with the contents of a notice of intent . . . was not authorized by the statute's terms"); Cho Hung Bank v. Kim, 361 N.J. Super. 331, 344-45 (App. Div. 2003) (Reversing the denial of a motion to vacate judgment where the NOI was defective); Bank of New York Mellon v. Elghossain, 419 N.J. Super. 336, 342 (Ch. Div. 2010) (Approved for publication while this case was pending before the Appellate Division. Dismissing the complaint, the court held "Lenders' substantial compliance with the FFA is not enough; strict compliance is required" and that post-filing service of a corrected notice is not permitted "because this would eviscerate the statute's plain meaning.")

The FFA does not authorize post-filing or post-judgment cures of deficient NOIs. To the contrary, the plain language of the FFA is clear that (1) the NOI must be served before

commencement of a foreclosure action, at least 30-days in advance and (2) that compliance is a component of the residential mortgage foreclosure cause of action that must be pled. N.J.S.A. 2A:50-56(a) and (f). As such, here, the court abused its discretion by denying the motion to vacate the default judgment and providing the plaintiff with an opportunity to correct the notice, which despite the opportunity to cure remains defective to this day.

POINT II

THE MOTION TO VACATE THE DEFAULT FORECLOSURE JUDGMENT, LIKE ALL DEFAULT JUDGEMENTS, SHOULD HAVE BEEN CONSIDERED WITH GREAT LIBERALITY SO THAT THE CASE MIGHT BE RESOLVED ON THE MERITS.

The courts below erroneously employed a "sparing" review of the Guillaumes' motion to vacate default judgment, rather than the "liberal" and "indulgent" review that must be afforded to default judgments so that the matter may be determined on its merits.

Relief from a final judgment or order - whether entered after trial, by consent order or by default - is available to a litigant pursuant to R. 4:50-1. Although a R. 4:50-1 application is addressed to the sound discretion of the court, when a judgment enters by default the court is required to exercise its discretion **"with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is**

reached." Housing Authority of Morristown v. Little, 135 N.J. 274, 283-284 (1994) (emphasis added). This principle is so well settled that the Appellate Division has recognized it as "axiomatic." Nowosleska v. Steele, 400 N.J. Super. 297, 303 (App. Div. 2008). Moreover, when the issue is relief from a default judgment, "**doubt should be resolved in favor of the party seeking relief**." Housing Authority of Morristown v. Little, supra, 135 N.J. at 284 (emphasis added).

A liberal review of a motion to vacate a judgment that enters by default is appropriate because our system of justice strongly favors the disposition of matters on their merits. See Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 338 (1984); Nowosleska v. Steele, supra, 400 N.J. Super. at 303 ("A court's liberality in vacating default judgments is justified, since a default judgment is based on only one side's presentation of the evidence without due consideration to any countervailing evidence of point of view, and, thus, may not be a fair resolution of the dispute"); Siwiec v. Financial Resources, Inc. 375 N.J. Super. 212, 220 (App. Div. 2005)("Where . . . the defendant's application to re-open the judgment. . . raise[s] sufficient question as to the merits of plaintiffs' case, courts may grant the application even where defendant's proof of excusable neglect is weak").

Relying on DEG v. Fairfield Twp., 198 N.J. 242, 261-262 (2009) the Appellate Division erroneously held that "relief from judgment under Rule 4:50-1 should be granted **sparingly**" (slip op. at 4) (emphasis added). The "sparing" standard is one that this Court has reserved for judgments that do not enter by default, such as the judgment in DEG. This Court expressly recognized that distinction in F.B. v. A.L.G., 176 N.J. 201, 209-210 (2003) where "sparing" review was appropriate because "this was not a situation in which a default judgment was entered against A.L.G., depriving him of his opportunity to be heard on the merits."

While the grant of relief under R. 4:50-1 is left to the sound discretion of the Court, the court's discretion is not unfettered. See Housing Authority of Morristown v. Little, supra, 135 N.J. at 283. "If the judge misconceives or misapplies the law, his discretion lacks a foundation and becomes an arbitrary act. When that occurs, the reviewing court should adjudicate the matter in light of the applicable law to avoid a manifest denial of justice." In re Presentment of Bergen County Grand Jury, 193 N.J. Super. 2, 9 (App. Div. 1984).

The courts' failure to allow the case to be determined on its merits is even more serious here, as this matter involves a residential mortgage foreclosure - an issue of heightened public importance during this crisis period. Both courts below turned

R. 4:50-1(a) on its head by (1) citing the homeowner's diligent and regular contact with the loan servicer and HUD certified housing counselors as a lack of excusable neglect rather than the honest mistake, inadvertence, surprise or excusable neglect that it was; and (2) requiring that the defendants not only plead a meritorious defense but that the defense meet a standard of significance or importance beyond that provided by the statute.

A. The Guillaumes presented mistake, inadvertence surprise or excusable neglect in support of their motion which viewed liberally supports the vacation of the default judgment.

R. 4:50-1(a) provides relief to a litigant who shows that the untimely answer resulted from "mistake, inadvertence, surprise, or excusable neglect" and that the litigant has a meritorious defense. These defendants clearly showed that they took reasonable steps to address their mortgage problems and save their home. Da16-22; Da36-52; Da146-152. Nowhere in the record is there any suggestion that the defendants' failure to timely answer was anything but a mistake, inadvertence, surprise or excusable neglect. Moreover, plaintiff's simultaneous pursuit of foreclosure and loan modification - a practice known as the *"dual-track" system* - and the confusion that practice creates for homeowners such as the Guillaumes, the courts, and even servicers themselves is well-documented. Finding that the

Guillaumes failed to show mistake, inadvertence, surprise, or excusable neglect represents an abuse of discretion because it ignores the pervasive confusion created by this incomprehensible system. See, e.g., Problems in Mortgage Servicing from Modification to Foreclosure (Part I), Testimony before the Sen. Banking Comm., 110th Cong. (Nov. 16, 2010) available at http://goo.gl/xhkYL (Bank of America President Barbara Desoer testifies that parallel foreclosure and modification processes are an industrywide servicing practice and a source of confusion that should be addressed); Problems in Mortgage Servicing from Modification to Foreclosure (Part II), Testimony before the Sen. Banking Comm., 110th Cong. (Dec. 1, 2010) available at http://goo.gl/BOcIe (Acting Comptroller of the Currency John Walsh testifies that dual-track processing is "unnecessarily confusing for distressed homeowners,"); U.S. Gen. Accounting Office, Mortgage Foreclosures: Documentation Problems Reveal Need for Ongoing Regulatory Oversight, GAO-11-433 (May 2, 2011)available at http://goo.gl/FWtfV.

The South Carolina Supreme Court recently ordered lenders not to proceed with foreclosures in that state until they can demonstrate that they have given troubled homeowners a meaningful opportunity to modify their loans. According to Chief Justice Jean H. Toal who issued the order, it was motivated by the "dual track" process that has created "a grand mess" in the

court system, because "the confusion creates unnecessary delays and burdens for the courts." Dina El Boghdady, Ruling May Slow Foreclosures in South Carolina, Wash. Post, May 3, 2011, available at http://goo.gl/7HAkT.

The record here documents some of the specific communication problems between the Guillaumes and America's Servicing Company, the loan servicer, before and during the pendency of this matter. Da36-52; Da146-152. Letters from America's Servicing Company dated July 30, 2008 and September 22, 2008 tell the Guillaumes that by requesting a loan modification they have acted appropriately, stating "thank you for your interest in our Borrower Counseling Program. By expressing your interest to work with us, you have taken the first step in resolving your current situation." Da39; Da44-45 Adding to the uncertainty, the letters imply that foreclosure will not be instituted unless modification is unsuccessful. Da39; Da45 ("It is urgent for you to respond immediately as we cannot delay **potential** legal action to collect the balance of your loan which **may** include foreclosure") (emphasis added). Similarly, a letters dated February 5, 2009 and April 8, 2009 denying workout options make no mention of the pending foreclosure action; the only recourse the letters identify is to request reconsideration of the denial. Da51-52 Further, even though the servicer rejected the Guillaumes' request for a loan

modification, notes supplied by plaintiff's attorney suggest that the net present value of a loan modification was greater than foreclosure or other options, suggesting that the Guillaumes actually qualified for a modification. Da162

Shortly after they were notified that there were no workout options available to them, the Guillaumes promptly sought legal assistance. Da20 ¶¶22-23. At about the same time, the plaintiff received the default judgment it had applied for ex parte and listed the property for sheriffs sale. Da138-141.

In evaluating whether the defendant's failure to timely file a formal answer was the result of a mistake, inadvertence, surprise or excusable neglect, New Jersey courts have looked at a wide range of factors, evaluating personal circumstances and capacity to understand and respond to service of process. See, e.g., Bergen-Eastern Corp. v. Koss, 178 N.J. Super. 42, 46 (App. Div. 1981). This Court recently held that the Chancery Division abused its discretion when, in evaluating similar equitable considerations, it denied a homeowner's motion to vacate a sheriff's sale. U.S. v. Scurry, 193 N.J. 492, 505 (2008)("in the balance of equities that lies at the very foundation of laches, the prejudice alleged by plaintiff simply does not match up to defendant having been dispossessed of her home and belongings").

The Guillaumes' failure to file a timely answer was the result of mistake, inadvertence, surprise or excusable neglect - circumstances that arose in large part from plaintiff's own dual-track foreclosure and loan modification practices widely recognized as confusing to borrowers. There is no evidence that the failure was contumacious, or reflected any improper purpose. Simply stated, there was no basis in fact for the decisions below; indeed, it is difficult to imagine a plainer case of excusable neglect.

B. The Guillaumes presented a meritorious defense of the foreclosure pursuant to the Truth in Lending Act (TILA)

The Guillaumes demonstrated the existence of a meritorious defense, and it was abuse of discretion for the courts below to refuse to vacate the default judgment to permit the Guillaumes to litigate the defense on the merits.

The Truth in Lending Act [TILA] affords consumers the right to rescind a mortgage loan transaction where, as here, the finance charges were not accurately disclosed within a tolerance for error of $35.00 if the loan is in foreclosure.[1] 15 U.S.C. §1602(u); 15 U.S.C. §1631(a); 15 U.S.C. §1635; 12 C.F.R. §226.23(a)3. Rescission is a mandatory remedy intended to serve a remedial effect. Vallies v. Sky Bank, 432 F.3d 493, 496 (3rd

[1] Rescission liability, unlike the award of statutory damages, is not dependant on an error being apparent on the face of the documents provided to the assignee. 15 U.S.C. §1641(c); In re Slaw, 178 B.R. 380, (Bk. D.N.J. 1994); In re Armstrong, 288 B.R. 404, 416 (Bk. E.D. Pa. 2003).

Cir. 2006; In re Community Bank of Northern Virginia, 418 F.3d 277, 305 (3rd Cir. 2005); Schnall v. Amboy Nat'l Bank, 279 F.3d 205, 217 (3rd Cir. 2002); In re Porter, 961 F.2d 1066, 1078 (3rd Cir. 1992); Brodo v. Bankers Trust Co., 847 F. Supp. 353, 358 (E.D. Pa. 1994) (recognizing the harshness of the TILA but holding that the Court has no discretion with respect to liability once a violation has occurred, no matter how technical.)

Here, the trial court stated that it considered the TILA violation "so diminimus [sic] that I would allow them to assert the holder in due course status in this situation." 1T 33-9 - 12. The Court was wrong on two counts, first in holding the violation was *de minimis* and second in holding that the assignee was a holder in due course. TILA provides that errors exceeding $35.00 are material, not *de minimis*. As for holder in due course, TILA provides that assignees are directly liable irrespective of holder in due course status. "Any consumer who has the right to rescind a transaction under section 1635 of this title [TILA] may rescind the transaction as against any assignee of the obligation." 11 U.S.C. §1641(c); Kocsis v. Pierce, 480 N.W.2d 598, 602 (Mich. App. 1991). (TILA 's rescission remedy preempts holder in due course doctrine.) The court improperly substituted its judgment for that of Congress. Courts are not authorized to rewrite a statute because they

might deem its effects susceptible of improvement. Badaracco v. Commissioner of Internal Revenue, 464 U.S. 386, 398, 104 S.Ct. 756, 78 L. Ed.2d 549 (1984).

Perhaps recognizing that the trial court's reasoning was wrong, the Appellate Division rejected it and resorted to a finding that the Guillaumes cannot rescind the transaction because they are unable to tender -- a finding that is not supported by a scintilla of evidence in the record.

Tender is not an element of liability under TILA as it is at common law for equitable rescission. Large v. Conseco Fin. Serv. Corp., 292 F.3d 49, 55 (1st Cir. 2002); Williams v. Homestake Mortgage Co., 968 F.2d 1137, 1139 (11th Cir. 1992); Cornerstone v. Ponzar, 254 S.W.3d 221, 229 (Mo. Ct. App. 2008) (reversing lower court's denial of rescission since consumers had not tendered); Johnson v. GMAC Mortg Corp., 162 S.W.3d 110, 120-121 (Mo. App. W.D. 2005); Johnson v. Thomas, 794 N.E.2d 919, 933 (Ill. App. Ct. 2003) (refusing to require consumer to show ability to make tender at time of rescission). The homeowner's obligation to tender arises after the court fixes the amount due and deducts interest and finance charges, and the court may order the method of tender and its timing. Family Fin. Servs. v. Spencer, 677 A.2d 479, 488 (Conn. App. Ct. 1996).

When a transaction is rescinded under TILA the lender may not collect interest or fees on the loan. Quite simply, given

the undisputed TILA violation here, the plaintiff is not owed the approximately $215,000 provided in the default judgment as that amount included interest and finance charges. That said, the Guillaumes will not get a free house. If the court has a concern about the homeowner's ability to return the principal to the lender after it determines liability, it can fashion an equitable remedy that restores the parties to their pre-transaction status. See, e.g., Avelo Mortgage v. Jeffery, A-0765-08T1, 2010 WL 2795050 (App. Div. July 15, 2010) Certification of Rebecca Schore (Ex. 1); Tribeca Lending v. Gilbert, F-5589-06 (Ch. Div. November 21, 2008) Certification of Rebecca Schore (Ex. 2). Having stated a basis to rescind the Court should have permitted the Guillaumes to file an answer, affirmative defenses and counterclaim. It was simply premature to consider the ultimate remedy on a motion to vacate default judgment; in no event should the Court have allowed a judgment to stand which included interest and finance charges to which the plaintiff is not entitled.

POINT III

DEFAULT JUDGMENT WAS NOT BASED ON COMPETENT EVIDENCE

Default judgment was entered on inadequate proofs, and should have been vacated by the trial court. The judgment was based in part upon on a Certification of Amount Due filed with the Office of Foreclosure that was neither based on the

affiant's personal knowledge nor made out a business records exception to the hearsay rule pursuant to N.J.R.E. 803(c)(6). Da11-13. See New Jersey Div. of Youth and Fam. Servs. v. M.C. III, 201 N.J. 328, 346-47 (2010). During the pendency of this appeal the Appellate Division decided Wells Fargo Bank v. Ford, 418 N.J. Super. 592 (App. Div. 2011), concerning "the evidence required to establish the standing of an alleged assignee of a mortgage and negotiable note to maintain a foreclosure action." The plaintiff in Ford had filed a motion for summary judgment supported by a conclusory certification that failed to set forth the source of the affiant's purported knowledge. Ford, supra, 418 N.J. Super. at 594-595. The Appellate Division held that Wells Fargo was required to comply with R. 1:6-6 and that a certification would support its motion only if the facts stated therein were based on "personal knowledge." Ford, supra, 418 N.J. Super. at 599. The Appellate Division's decision in the present case is thus inconsistent with its opinion in Ford.

Similarly, both the Chancery Division and Appellate Division approved of an attorney stamp on a copy of a note that read "certified to be a true copy," erroneously holding that R. 4:64-2 creates an exception to Rules 1:4-4 and 1:6-6. The rule does no such thing. Instead, the rule merely permits a New Jersey attorney to authenticate relevant documents instead of an employee of the mortgagee. This does not mean, however, that

the attorney may certify to the authenticity of the copy without comparing it to the original before certifying that the former is an accurate copy of the latter. It also does not exempt the attorney from making his or her certification in the manner and form required by the rules.

The Appellate Division cited this Court's recent emergent amendment to R. 4:64 as support for its holding. However, the recent amendments to Rules 1:5-6, 4:64-1 and 4:64-2 are all directed at ensuring that judgments, even by default or in uncontested matters, are entered based upon competent evidence. There is nothing in the text of the amended rules that suggests that foreclosure judgments require less reliable proof than any other judgment.

CONCLUSION

For the foregoing reasons, the defendants respectfully request that the Court grant certification to review this matter and reverse the decision of the Appellate Division and remand the matter to the Chancery Division to allow the defendants to file a responsive pleading to the foreclosure complaint.

Respectfully submitted,
LEGAL SERVICES OF NEW JERSEY

Date: June 16, 2011

By: _____
Rebecca Schore