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August 23, 2011

VIA HAND DELIVERY

Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 W. Market Street
8th Floor
Trenton, New Jersey, 08625-0970

Re: US Bank National Association, As Trustee for CSAB Mortgage-Backed Pass-Through Certificates 2006-3 vs. Maryse Guillaume; Mr. Guillaume, Husband of Maryse Guillaume; Emilio Guillaume; Mrs. Emilio Guillaume, His Wife; City of East Orange Supreme Court of New Jersey, Docket No. 068176

To the Clerk:

Respondent US Bank National Association ("US Bank") files this letter pursuant to Rule 2:6-11(d) to inform the Court of a relevant case filed subsequent to Respondent's brief in Opposition to the Petition for Certification. See, Exhibit A, Bank of New York as Trustee for the Certificate Holders CWALT 2004 25T1 v. Sarah G. Laks, et al. (hereafter, "Laks"). This subsequent, published Appellate Division opinion conflicts directly with the Appellate Division opinion in Guillaume. For this reason, and as described in more detail below, Respondent partially withdraws its Opposition to the Petition for certification, and partially joins in the Petition. This Court should grant certification for the purposes of resolving a newly-developed conflict between panels of the Appellate Division, a conflict which could cause damage to New Jersey's economy and the operation of its courts.

Mindful of the procedural posture under which this letter is submitted, Respondent will provide only a brief summary of how the Laks decision impacts the suitability of Guillaume for certification. On

April 20, 2011, the Appellate Division decided Guillaume. Among the issues joined, the panel reviewed the position of Defendants-Appellants that pre-filing notification provided to them by US Bank did not satisfy the requirements of the Fair Foreclosure Act, N.J.S.A. 2A:50-56c ("FFA"). Specifically, the Notice of Intent to Foreclose ("NOI") provided to Defendants-Appellants provided the name and contact information for the servicer of the loan, not the lender. The Guillaume Appellate Division panel flatly rejected the contention that this violated the FFA as being "without merit," reasoning that "[d]irecting the Guillaumes to contact [the servicer] fulfilled the purpose of the notice provision under the FFA – making the debtor aware of the situation, and how and who to contact to either cure the default or raise potential disputes." pp. 6-7.

On June 16, 2011, Petitioners filed their Petition for Certification. Among the issues raised was the issue of the sufficiency of the NOI. On August 4, 2011, Respondent filed its Brief in Opposition to the Petition for Certification. Respondent noted, as was true at the time, that "no 'special reasons' exist which warrant certification," p.1, including that the Guillaume decision was not "in conflict with another decision of the Appellate Division," p. 3.

On August 8, 2011, the Appellate Division decided Laks and approved it for publication. The panel in Laks considered the exact same NOI issue raised by the Guillaumes. But the Laks panel came to exactly the opposite conclusion. The Laks panel held that an NOI providing the name and the contact information of the servicer, but not the lender, violated the FFA.

The publication of the Laks decision has created grounds for certification of Guillaume on the FFA issue presented in the Petition. Because of Laks, "the decision under review [Guillaume] is in conflict with the decision of the same...court[.]" Rule 2:12-4. Moreover, this controversy "calls for an exercise of the Supreme Court's supervision". Id. The Laks decision is out of step with the realities of

the administration of defaults on residential loans. As the Appellate Division panel in Guillaume correctly noted, homeowners routinely deal with servicers rather than holders, p. 7. Homeowners make their monthly payments to servicers, and negotiate cures with servicers. It was in light of this fundamental reality that this Court amended its Residential Mortgage Foreclosure Rules to permit foreclosure counsel to rely on servicer representations as to amounts due in a foreclosure proceeding. See, amended Rule 4:64-1(a)(2)(A) (requiring foreclosure counsel to set forth an affidavit "confirming that the attorney has communicated with an employee or employees of the plaintiff [holder] or of the plaintiff's mortgage loan servicer")(emphasis added). The public interest now requires this Court to amplify the Guillaume decision by granting certification and affirming the Appellate Division.

Accordingly, Respondent withdraws its Opposition to the Petition for Certification, limited to the first question presented by Petitioners. Petitioners framed this question as, "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)?" This Court has the power to reformulate questions presented. See, e.g., State Farm Mut. Auto. Ins. Co. v. Zurich Am. Ins. Co., 62 N.J. 155 (1973). To best join the issues raised by the conflict between Guillaume and Laks, Respondent would propose reformulation and certification of Petitioners' question in this form:

I. Did the Appellate Division err by finding that the Fair Foreclosure Act can be satisfied by a Notice of Intent to Foreclose which identifies the loan servicer and not the current holder of the note?

In the event that this Court grants certification, Respondent will request permission to file an additional brief providing full argument.

ReedSmith

Very truly yours,

Henry F. Reichner

HFR:rp

cc: Margaret Lambe Jurow, Esquire
Vladimir Palma, Esquire