IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

FILED
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MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

	)	**CASE NO.**
	)	
Plaintiff	)	**JUDGE**
	)	
vs.	)	**ORDER OF PROCEDURE**
	)	**(FORECLOSURE ACTION)**
	)	
	)	**Foreclosure Checklist of Compliance**
Defendants	)	**Attached Hereto**

In the interest of the most economical and efficient use of the court's time and to speed the case to conclusion, the following order is made and shall be binding on all parties. This order supplements the Local Rules of Practice and Procedure for the General Division of the Court of Common Pleas of Lake County, Ohio.

PRETRIAL PROCEDURES

{1} Foreclosure cases will not be scheduled for pretrial conference, unless requested, and will be set for trial only when there are issues properly joined for trial. If a pretrial or oral hearing has been scheduled, failure to appear at the pretrial or oral hearing may result in an adverse judgment, including, where appropriate, a default judgment or dismissal without prejudice against the party not appearing. In addition, the failure to appear may result in any other sanctions the court deems appropriate, and such sanctions may be imposed against the party and/or its counsel. All parties are reminded that this order supplements Lake Co.C.P.R. 1.07(D)(11).

{2} Motions, discovery, and other documents not filed within the time limits set forth in this order shall be deemed untimely and may result in the court's refusal to consider any such filing. All motions or requests for relief must be accompanied by a proposed judgment entry. A failure to submit a proposed entry may result in the court's denial of the matter submitted.

{3} The obligation to inform the court of special matters, pleadings, motions, etc. (*i.e.,* replevin, attachment, T.R.O., protective order), is upon the respective counsel. If immediate relief is requested, counsel must notify the assignment commissioner of this court. If pleadings or motions are filed after the pretrial, copies must be presented to this court's assignment commissioner. If a hearing date falls within the fourteen-day period of

Lake Co.C.P.R. 3.04(D), counsel must notify this court's assignment commissioner.

{4} Discovery shall commence immediately upon filing the action and shall be completed within eight months of filing the action.

{5} As the time limit set by the Supreme Court for disposition of foreclosure cases is one year, the action shall be prosecuted so as to conclude within one year from filing. Motions for default judgment or for summary judgment shall be filed within a reasonable time after the grounds therefor come to the attention of the claimant, and within a sufficient time to obtain the relief requested before the expiration of one year after filing the action.

NOTICE OF HEARING ON MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT

{6} In the event that a claimant files a motion for summary judgment under Civil Rule 56, the court hereby fixes the day for non-oral non-appearing hearing on the motion as twenty-three days after the day the motion was filed, so that any brief in opposition and any affidavit, or other evidentiary material in opposition shall be filed on or before the seventeenth day after the filing of the motion, and any brief, affidavit, or other evidentiary material in reply to the opposition shall be filed on or before the fifth day after the filing of the opposition, and such motion shall be deemed submitted for consideration and ruling on the twenty-third day. No brief, affidavit, or other evidentiary material shall be considered if not timely filed. The parties shall take notice, pursuant to Civil Rule 56 and Lake Co.C.P.R. 3.04(G), that a non-oral, non-appearing hearing is scheduled on the twenty-third day after the filing of any motion for summary judgment. **This is the only written notice the parties will receive of the day fixed for the hearing.**

{7} In the event that a claimant files a motion for default judgment under Civil Rule 55, the court may rule upon the motion immediately upon its filing, and shall not schedule a non-oral, non-appearing hearing for said motions. Motions for default judgment will not be granted without supporting evidence as to default or liability and as to damages.

{8} The parties, without exception, are to abide by Lake Co.C.P.R. 3.01(A), specifically limiting to ten pages the length of the body or text of any document filed after the pleadings. Further, the court shall strictly enforce Civil Rule 11.

{9} The court will not entertain any motion to compel discovery absent compliance with Lake Co.C.P.R. 5.04.

{10} No motion for default judgment or summary judgment for the party seeking affirmative relief will be entertained by the court unless the movant fulfills all of the items set forth on the relevant portion of the checklist of compliance that is attached to this order. (In addition, a copy of the checklist of compliance can be downloaded from the court's website.) The checklist of compliance is incorporated into this order by reference.

{11} Proposed judgment entries shall be signed by, or circulated to, all parties not in default.

{12} When a motion for confirmation of sale is filed, the court will not consider the motion for at least seventeen days after filing. A proposed confirmation entry must be submitted simultaneously with the filing of the motion to confirm sale. The entry of confirmation should contain the signature or consent of all parties not in default. If a signature or consent cannot be obtained in a timely fashion, the entry shall note that it has been circulated to all non-consenting parties not in default.

TRIAL PROCEDURES

{13} No continuance of a trial date will be granted without filing a written motion with the signature of the client along with supporting affidavits or other appropriate documentation. The motion must be accompanied by an order with a blank space for the court to insert the next appropriate court date.

{14} All documents and exhibits shall be marked for identification purposes, along with an index, and shared with opposing counsel at least two working days prior to trial, and a copy shall be provided to the judge's office. The plaintiff shall mark exhibits using numbers and the defendant shall mark exhibits using letters. If more than one party plaintiff or defendant intends to proffer exhibits, the exhibit numbers or letters should be preceded by the party's name, in abbreviated form or initials.

FORBEARANCE

{15} If the plaintiff enters into a forbearance agreement with the debtor-defendants, then the plaintiff and the debtor-defendant(s) shall file a joint motion to stay further proceedings. If the debtor-defendant(s) materially breach the forbearance agreement, then the plaintiff may file a motion to reinstate the foreclosure proceedings.

SETTLEMENT

{16} If the plaintiff's claim is settled, the plaintiff's attorney shall attempt to obtain the approval of all cross-claiming lienholders, and if any of the cross-claiming lienholders

refuses to consent, the plaintiff's attorney shall bring the situation to the attention of the court.

{17} Settled cases should be brought to the court's attention immediately by calling or e-mailing the court at the earliest opportunity. The judgment entry of settlement is to be submitted to the court by the scheduled trial date and should dispose of all claims, cross-claims, counterclaims, and third-party complaints. If the entry cannot be provided by the scheduled trial date, the parties shall fax confirmation of the settlement to the court, and provide the entry as soon as practicable, but within fourteen days. If a case is settled or dismissed pursuant to Civil Rule 41(A), on the day before trial or the morning of trial and as a result a jury is summoned, the party filing the dismissal must bear the cost of summoning the jury.

WITHDRAWAL FROM SHERIFF'S SALE

{18} Should a party which filed a praecipe for sheriff's sale desire to withdraw that property from the sale, it shall notify the sheriff in writing prior to the sale that it is unilaterally withdrawing the property from sale. No court order is required.

BANKRUPTCY

{19} Upon a party filing a petition for bankruptcy in the federal court, counsel is to file with the clerk of the court of common pleas a notice of said filing indicating the bankruptcy case number and the date of filing. The common pleas court case shall be stayed pursuant to 11 U.S.C. §362, subject to notification that a motion for relief from such stay has been granted. Counsel shall notify this court when the debtor is discharged or relief from stay has been granted, and in the interim, all counsel are not relieved of their duty to continue case preparation within the bounds of the bankruptcy stay.

IT IS SO ORDERED.

JUDGE EUGENE A. LUCCI

JUDGE RICHARD L. COLLINS JR.

JUDGE VINCENT A. CULOTTA

JUDGE JOHN P. O'DONNELL

FORECLOSURE CHECKLIST OF COMPLIANCE

The relevant portion of this checklist shall be completed by the party seeking affirmative relief at each of the stages designated below.

Pleading Stage

- ☐ If the debt involves a promissory note, the complaint, counterclaim, or cross-claim has attached to it: (1) a legible copy of the promissory note, or (2) an affidavit of lost note that establishes the material terms of the unavailable note, or (3) a signed statement indicating when a copy of the note or the affidavit of lost note will be filed.

- ☐ A Preliminary Judicial Report (PJR) has been filed no more than 30 days after the filing of the complaint, or other pleading requiring a PJR.

  - ☐ The PJR has an effective date current within 30 days prior to the filing of the complaint.
  - ☐ The PJR covers the complete and correct property being foreclosed.
  - ☐ The PJR lists the plaintiff as the real party in interest by showing a complete chain of assignments, if any.

In Conjunction with Any Dispositive Motion Filed by the Party Seeking Affirmative Relief

- ☐ All persons listed on the PJR have been added as a party and have been properly served with service of process.

- ☐ In support of any dispositive motion, an affidavit of damages has been filed establishing: (1) the principal balanced owed; (2) the date of default on the note; and (3) and the applicable interest rate.

- ☐ A Final Judicial Report (FJR) has been filed.

  - ☐ The FJR has an effective date more recent than the date on which the last necessary party was served with process.
  - ☐ The FJR begins from the effective date of the PJR.
  - ☐ The FJR covers the complete and correct property being foreclosed.
  - ☐ The FJR lists the plaintiff as the real party in interest if the PJR did not.

- ☐ A proposed judgment entry granting a decree of foreclosure has been sent to the court.

  - ☐ The entry accounts for all of the remaining parties in the case.
  - ☐ The entry finds an amount of damages that matches the damages established in the above mentioned affidavit of damages.

- ☐ The entry covers the complete and correct property being foreclosed.
- ☐ The entry directs that the remaining proceeds of the sale, if any, shall be held by the sheriff.
- ☐ The entry finds an amount of damages owing to any cross-claimant matching the amount established by that cross-claimant by judgment or affidavit.[1]
- ☐ All undetermined lien amounts in favor of other co-defendants are transferred to proceeds of the sale.
- ☐ The entry finds that the mortgage being foreclosed upon is a good, valid, and subsisting lien.
- ☐ The entry finds that the mortgage conditions have been broken, and the holder is entitled to foreclose.

After the Sheriff's Sale

☐ A motion for confirmation of sale has been filed, together with a proposed entry confirming the sale:

- ☐ The total distribution in the entry matches the amount from the sheriff's return of sale.
- ☐ The name of the purchaser(s) in the entry is correct and complete according to the sheriff's return of sale.
- ☐ The entry provides that all outstanding liens are cancelled.
- ☐ The entry has either the signature of all parties not in default or states that it has been submitted to all parties not in default.
- ☐ The entry does not seek a deficiency judgment against parties who have bankruptcy protection.
- ☐ The deficiency amount, if any, is correctly stated in the entry.
- ☐ The entry lists the priority of liens in the correct order.

Although the provisions of Civil Rule 11 do not apply to the completion of this checklist, judgment entries will be rejected if any of the relevant items shown on this checklist are not addressed promptly.

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1 However, the entry cannot make a finding for parties not requesting summary judgment or default judgment. *See Security Fed. Sav. & Loan Assn. v. Kleinman*, No. 98-L-098 (11th Dist. Ct. App., Lake, 12-3-1999), 1999WL1313837.