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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
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May 2, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Credit-Based Asset Servicing and Securitization LLC v. Marsha Pillich, Keith Pillich, et al.*
Document Received:	Order to Show Cause
Name of Moving Party:	Waterfall Victoria REO 2011-01 LLC
Moving Party's Attorney:	Michelle D. Maccagnano, Esq. Frenkel Lambert Weiss Weisman & Gordon, LLP 53 Gibson Street Bay Shore, New York 11706

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

This paper received
Erie County Clerk's Office
on the 5 day of May 2013
at a.m. 11:11 p.m.
by [signature]
Deputy Clerk

At the Supreme Court of the State of New York, held in and for the County of Erie, at the Erie County Supreme Court, located at 92 Franklin Street, Buffalo, New York on the ___ day of APR 09 2013

PAID
CHECK___ CASH___
APR 09 2013
ERIE COUNTY
CLERK'S OFFICE

PRESENT:

Hon. JUSTICE CHRISTOPHER J. BURNS
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE
----------X
Credit-Based Asset Servicing and Securitization, LLC,

Plaintiff,

-against-

Marsha Pillich, Keith Pillich, et al.,

Defendants.
----------X

ORDER TO SHOW CAUSE

Index Number: 2003-2388

Upon the reading and filing of the Affirmation of Michelle D. Maccagnano, Esq., dated April 1, 2013, attorney for Waterfall Victoria REO 2011-01 LLC in the action bearing Index Number: 004174/12 and owner of the property sold in the foreclosure action bearing Index Number: 2003-2388, all the prior pleadings and proceedings heretofore had herein,

LET the parties show cause at 9:30 a.m. at the Supreme Court, County of Erie located at 92 Franklin Street, Part 19 Buffalo, New York 14202, on April 25, 2013, or as soon thereafter as counsel may be heard for an Order pursuant to: CPLR § 602 consolidating the actions bearing Index Number 004174/12 with 2003-2388; CPLR §3012(b) dismissing the action bearing Index Number 004174/12, cancellation of the notice of pendency filed under Index Number 004174/12

pursuant to CPLR § 6514 and costs and expenses pursuant to CPLR § 6514; cancelling the Notice of Mechanic's Lien filed on November, 28, 2012 at Book 254, Page 3987; entry of an order prohibiting further frivolous court filings by Marsha Pillich and her husband, Keith Pillich; directing the County Clerk to void/cancel the filings of record and prohibit acceptance and/or voiding of future filings; an award of damages, sanctions and fees; and a finding of contempt against Marsha Pillich, Keith Pillich, and/or the attorney for Marsha Pillich, together with such other, further and different relief as to this Court seems just and proper.

SUFFICENT REASON APPEARING THEREON, let service by certified mail of the copy of the Order together with the papers be served on or before the 12 of April, 2013 on all the attorney for Marsha Pillich, Keith Pillich, and all other defendants named under Index Number 004174/12, and the Erie County Clerk's Office, be deemed good and sufficient service.

ENTER,

/S/ John A. Michalek
Justice of the Supreme Court
For JUSTICE CHRISTOPHER J. BURNS

GRANTED

APR 09 2013

BY ROBERT ADAMSKI
COURT CLERK

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

----------X

Credit-Based Asset Servicing and Securitization, LLC,

ATTORNEY AFFIRMATION

Plaintiff,

Index Number: 2003-2388

-against-

Marsha Pillich, Keith Pillich, et al.,

Defendants.

----------X

Michelle D. Maccagnano, Esq., an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. That I am an attorney of the law firm of Frenkel, Lambert, Weiss, Weisman & Gordon, LLP, counsel to Waterfall Victoria REO 2011-01 LLC (hereinafter referred to as "Waterfall Victoria") purchaser of the property in the foreclosure action bearing Index Number 2003-2388 ("Action #1") and the Defendant in Index Number 004174/12 ("Action #2"), and as such am fully familiar with the facts and circumstances set forth herein.

2. This affirmation is in support of Waterfall Victoria's motion to consolidate pursuant to CPLR § 602 as common questions of law exist and both actions pertain to the same set of facts. Therefore, these matters should be consolidated.

3. It is further requested that upon the granting of the motion herein, that Action #2 be consolidated into Action #1 so that both matters will now be under Index No.: 2003-2388 and will bear the caption of Action #1.

4. Pursuant to CPLR § 602(a), consolidation can be permitted if the actions involve a common question of law or fact so as to avoid unnecessary costs or delay.

5. Affirmant respectfully submits that it will be in the interest of judicial expediency, as well as avoid unnecessary costs of filing two separate motions and undue delay associated with filing two motions, to have both actions herein consolidated into one.

6. It is further requested that the County Clerk be directed to consolidate both Action #1 and Action #2 and file all documents with respect to both actions under the Index Number for Action #1.

7. This affirmation is also submitted in support of the instant motion to dismiss Action #2 pursuant to CPLR §3012(b) and vacate the notice of pendency filed in conjunction therewith pursuant to CPLR § 6514, for costs and expenses pursuant to CPLR § 6514 as the Plaintiff has failed to serve a complaint within 20 days of service of the notice of appearance. Waterfall Victoria also seeks a finding of contempt, damages, sanctions, fees, voiding/cancelling the Mechanic's Lien filed by Keith Pillich, directing the County Clerk to void/cancel said documents of record, and prohibition against future filings or an order stating that any future filings by Keith Pillich, Marsha Pillich or any other party with respect to 8 Eltham Drive as it pertains to Action #1, Action #2, the Mechanic's Lien or any claim deriving therefrom are invalid.

8. Action #2 was commenced by Marsha Pillich, by the service of a summons with notice. A copy of the summons with notice is attached hereto at **Exhibit "A"**.

9. Waterfall Victoria served a notice of appearance on January 4, 2013. The notice of appearance was filed on January 8, 2013. Copies of the notice of appearance, along with proof of filing, and proof of mailing are attached hereto at **Exhibit "B"**.

10. Pursuant to CPLR § 3012(b), the complaint must be served within twenty days after service of the notice of appearance.

11. Marsha Pillich in Action #2 has failed to serve a complaint within the time frame prescribed by CPLR § 3012(b) and therefore, this action must be dismissed.

12. The notice of pendency filed in Action #2 must be cancelled pursuant to CPLR § 6514 and Waterfall Victoria is respectfully requesting the costs and expenses associated with the filing and cancellation of the notice of pendency, in addition to the costs of this action as permitted pursuant to CPLR § 6514.

13. Keith Pillich has since filed a mechanic's lien against the premises in the amount of $400,000.00. A copy of the mechanic's lien is attached hereto at **Exhibit "C"**.

14. Upon information and belief, this action was commenced frivolously and the notice of pendency filed, without any merit whatsoever, and filed only to harass and annoy Waterfall Victoria and prevent Waterfall Victoria from transferring the property located at 8 Eltham Drive, Amherst, New York.

15. Upon information and belief, Marsha Pillich and Keith Pillich, and at times, the attorney for Marsha Pillich, have consistently since the foreclosure action commenced in 2003 – TEN YEARS AGO, filed motions, bankruptcy petitions, and appeals, all done with the intent to purposely avoid and/or delay either the foreclosure sale or ultimately, vacating the premises at 8 Eltham Drive, Amherst, New York. There has never been any merit to any of the allegations by Marsha Pillich and Keith Pillich.

16. The procedural posture is succinctly set forth in the memorandum in opposition previously submitted by Dean M. Drew, Esq. on behalf of the plaintiff in the foreclosure action and the Affirmation of Dean M. Drew with exhibits. A copy of the memorandum is attached hereto at **Exhibit "D"** and the Affirmation of Dean M. Drew with exhibits is attached hereto at **Exhibit "E"**. Both exhibits are incorporated herein by reference.

17. The Appellate Division, Fourth Department, by order dated February 29, 2012, stayed enforcement of the January 27, 2012 Writ of Assistance until March 30, 2012 or until seven days after the Supreme Court fixes the amount of the undertaking for an automatic stay, whichever occurred first. Copies of the order and underlying Writ of Assistance are attached hereto at **Exhibit "F"**.

18. The Erie County Sheriff's Department was enforcing the Writ of Assistance and Marsha Pillich filed another petition in the United States Bankruptcy Court Western District. However, Marsha Pillich was already divested of title and the property was no longer part of her estate to invoke the protection of the automatic stay. Moreover, the order of the Hon. Carl L. Bucki, dated August 27, 2010, held that if Marsha Pillich or her husband, Keith Pillich,

> or any party claiming an interest in the property located at 8 Eltham Drive, Amherst, New York 14226 ... files a subsequent petition for relief under Title 11 of the United States Code anywhere in the United States, the automatic stay shall not attach to the Property and it will be deemed void *ab initio* and annulled upon the filing with respect to Secured Creditor, its successors, agents or assigns, and without further order of the Court.

A copy of the order is attached as Exhibit "Ei" to the Affirmation of Dean M. Drew at Exhibit "E". Notwithstanding the foregoing, the Hon. Carl E. Bucki ordered the stay to be modified to permit the eviction and thereafter ordered the stay to be vacated *nunc pro tunc* with a waiver of the 14 day waiting period. Copies of the orders are attached hereto at **Exhibit "G"**.

19. The Hon. Christopher J. Burns, J.S.C. in his order granted March 8, 2011 held that no further action with regard to this property be commenced other than a direct appeal of this decision. A copy of the order is attached at Exhibit "Ii" to the Affirmation of Dean M. Drew, which attached hereto at Exhibit "E". The order states:

> The rescheduling of the sale of this property has now reached double digits with many of the sales being cancelled at the last

> minute because defendant filed for bankruptcy protection which provided for an automatic stay of any sale. The bankruptcy court has now issued a decision indicating any further attempts to file a bankruptcy proceeding by Marsha M. Pillich or Keith Pillich asserting an interest in 8 Eltham Drive will not be entitled to the automatic stay and will be "*void ab initio.*" This Court also finds that the case history of repeated unjustified attempts to forego repayment of the mortgage on this property requires a final remedy. As such, the Court hereby directs that no further action with regard to the property at 8 Eltham Drive, other than by direct appeal of this decision, may be commenced. This includes any threatened action of Keith Pillich, as suggested by counsel's reply papers.

20. The commencement of this action and the filing of the Mechanic's Lien attached at Exhibit "C" are in direct violation of the Court's prior order as set forth in paragraph 13 above. Therefore, a finding of contempt is warranted.

DAMAGES, SANCTIONS AND FEES

21. Action #2 filed by Marsha Pillich and the Mechanic's Lien filed by Keith Pillich are frivolous and Waterfall Victoria is entitled to an award of both sanctions and fees, along with damages.

22. 22 NYCRR § 130-1.1 states in relevant part:

> (a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Part.
>
> (b) The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both. Where the award or sanction is against an attorney, it may be against the attorney personally or upon a partnership, firm, corporation, government agency, prosecutor's office, legal aid society or public defender's office with which the attorney is

associated and that has appeared as attorney of record. The award or sanctions may be imposed upon any attorney appearing in the action or upon a partnership, firm or corporation with which the attorney is associated.

(c) For purposes of this Part, conduct is frivolous if:

(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, or should have been apparent, or was brought to the attention of counsel or the party.

(d) An award of costs or the imposition of sanctions may be made either upon motion in compliance with CPLR 2214 or 2215 or upon the court's own initiative, after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case.

23. This action is frivolous on two grounds. It is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law and it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another.

24. Counsel for Marsha Pillich, Marsha Pillich and her husband, Keith Pillich are all perfectly aware of the prior orders, specifically an order prohibiting future filings. Counsel for

Plaintiff appeared at the last bankruptcy return date on behalf of his client knowing full well that there was a prior order in bankruptcy court voiding a stay in any future filing.

25. The Mechanic's Lien is completely false and ridiculous. It is clearly brought in violation of all three grounds set forth in 22 NYCRR § 130-1.1(c). The judgment of foreclosure and sale is attached at Exhibit "B" of the Affirmation of Dean M. Drew, attached hereto at Exhibit "E". The basis of the Mechanic's Lien is for repairs, maintenance, taxes, utilities and upkeep pursuant to the judgment of foreclosure and sale. The Plaintiff and her husband remained in the home payment free and obtained a stay of the Writ of Assistance, thereby prolonging their ultimate eviction. The terms of the judgment of foreclosure and sale were complied with by the referee and the property was sold. There is absolutely no basis in law or in fact to award Keith Pillich any amounts due on the Mechanic's Lien as it is completely false and filed only to harass Waterfall Victoria and prevent the sale of the property to another party. The judgment of foreclosure and sale does not permit recovery as alleged and the Mechanic's Lien should be voided and cancelled immediately.

26. Lien Law § 3 permits a Mechanic's Lien on real property under certain conditions. Keith Pillich is not a contractor, subcontractor, laborer, materialman, etc. and did not perform any labor at the request of Waterfall Victoria. The lien is further invalid as it was filed after Waterfall Victoria took ownership but falsely alleged that work was performed pursuant to the judgment of foreclosure and sale, prior to the transfer to Waterfall Victoria. The lien does not comport with the provisions of Lien Law § 9(3). Upon information and belief, there was no agreed upon price as required pursuant to Lien Law § 9(4) despite Keith Pillich alleging there was a stipulated price. The entire lien is fraudulent and contains false statements. The lien filed by Keith Pillich is false and willfully exaggerated and is therefore void pursuant to Lien Law §

39. Waterfall Victoria respectfully requests that the Court void the Mechanic's Lien and declare that there is no right to file any other or further lien for the same claim in violation of both the Court's prior order and in violation of Lien Law § 39.

27. Attached hereto at **Exhibit "H"** is the affidavit of Patricia Maccagnan on behalf of Waterfall Victoria. The affidavit attests to the false, fraudulent, and threatening conduct of Keith Pillich and the financial losses suffered by Waterfall Victoria at the hands of both the Marsha Pillich and her husband, Keith Pillich.

28. As set forth above, there is no good faith basis to bring Action #2 against Waterfall Victoria or to file the Mechanic's Lien. The documents attached hereto have already addressed the allegations currently set forth in the summons with notice attached at Exhibit "A". The Mechanic's Lien is false, in violation of the prior court order, and is filed in bad faith only with the purpose of harassing and annoying Waterfall Victoria. Marsha Pillich and Keith Pillich are barred by collateral estoppel.

29. The attorney for Marsha Pillich is aware of the prior orders and knew of should have known that Action #2 is prohibited both by prior court order and by collateral estoppel.

30. The fact that counsel for Marsha Pillich has chosen to file Action #2 and Keith Pillich filed the Mechanic's Lien simply to further delay the subsequent sale of the property is absolutely frivolous and is subject to sanctions and fees. This is exactly the type of frivolous conduct that is contemplated in 22 NYCRR § 130.

31. Based upon the foregoing, it is respectfully requested that the Court consolidate the two actions as they pertain to the same facts and direct the County Clerk to index both actions under Action #1, cancel the notice of pendency in Action #2, dismiss Action #2, void the Mechanic's Lien, direct the County Clerk to cancel and remove all of the documents from the

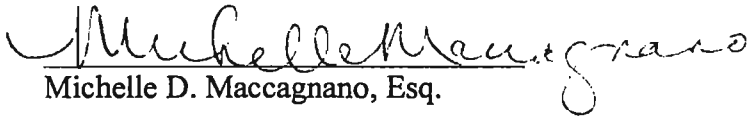
record, prohibit future filings by Marsha Pillich, Keith Pillich, and any other third party claiming an interest in 8 Eltham Drive, Amherst, New York, relative to the foreclosure action, and any claims deriving therefrom except for a subsequent conveyance by Waterfall Victoria and any filings thereafter by a party relative to the subsequent purchaser or an order directing that any future filings are to be considered void and invalid and not a cloud on title; and award Waterfall Victoria damages, sanctions, and fees, in an amount to be determined by the Court, but in an amount no less than $500,000.00 to be paid by Marsha Pillich, Keith Pillich, and/or the attorney for Marsha Pillich.

32. No previous application has been made for the same or similar relief as herein sought.

WHEREFORE, it is respectfully requested that the Court issue an order: consolidating Action #1 with Action #2 and that the County Clerk be directed to file both actions under Action #1, dismissing Action #2 with prejudice, cancelling the notice of pendency in Action #2, voiding the Mechanic's Lien filed on November 28, 2012 at Book 254, Page 3987, directing the County Clerk to cancel and remove the lien and notice of pendency from the record, prohibit future filings by the Marsha Pillich, Keith Pillich, and any other third party claiming an interest in 8 Eltham Drive, Amherst, New York, relative to the foreclosure action or claims deriving therefrom, except for a subsequent conveyance by Waterfall Victoria and any filings thereafter by a party relative to the subsequent purchaser or an order directing that any future filings by the Marsha Pillich and/or Keith Pillich or any filing on their behalf or to their benefit relative to 8 Eltham Drive, Amherst, New York are to be considered void and invalid and not a cloud on title, finding Marsha Pillich, Keith Pillich and/or the attorney for Marsha Pillich in contempt, and awarding Waterfall Victoria damages, sanctions, and fees, in an amount to be determined by the

Court, but in an amount no less than $500,000.00 to be paid by Marsha Pillich, Keith Pillich, and/or the attorney for Marsha Pillich, and for any and all other relief that this Court deems just and proper.

Dated: April 1, 2013
Williamsville, New York



Michelle D. Maccagnano, Esq.