

**IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PASCO COUNTY, FLORIDA**

**THE BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR THE
CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE
LOAN TRUST 2006-OA3 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-OA3,**

Plaintiff,

CASE NO. 51-2009-CA-3026-ES

JENNIE WONG, et al.

Defendants.

/

FINAL JUDGMENT

THIS CAUSE having come before the Court on November 13, 2012 on Defendant's Motion for Rehearing of its Motion for Involuntary Dismissal made at non-jury trial held on August 28, 2012 and the Court does FIND and CONCLUDE as follows:

1. By its Complaint, Plaintiff sought a final judgment of foreclosure. Defendant Jennie Wong, through counsel, filed an Answer and Affirmative Defenses. Affirmative Defense One (1) provided: "Plaintiff failed to perform all conditions precedent prior to filing this suit and accelerating the Mortgage. Specifically, Plaintiff failed to furnish Defendant with written notice of the default prior to filing this action as required by paragraph 22 of the mortgage." Plaintiff filed a Motion to Strike the Defendant's Affirmative Defenses that was set for hearing on August 27, 2012, the

day before the trial. Defendant's counsel also had his Motion to Withdraw set for the same day, but due to inclement weather, the Courts in the Sixth Judicial Circuit were administratively closed and Plaintiff's and Defendant's hearings were cancelled and were not heard prior to trial or otherwise.

2. At trial, the December 17, 2008 "Notice of Intent to Accelerate" or "demand letter" was admitted into evidence as Plaintiff's Exhibit Number 1. As stated, it was Defendant's position at trial, by affirmative defense, that Plaintiff failed to comply with its contractual obligations regarding paragraph 22 of the subject mortgage. Particularly, Paragraph 22 of the subject Mortgage, requires in relevant part: "The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure." Paragraph 22 is the only paragraph of the 25 paragraph mortgage that is in bold and written to protect the borrower's interest.

3. The language in the mortgage is clear and unambiguous, and the word shall in the mortgage created a condition precedent to both acceleration and foreclosure. Konsulian v. Busey Bank, N.A., 61 So.3d 1283, 1285 (Fla. 2d DCA 2011).

4. The Court GRANTS the motion for involuntary dismissal pursuant to

Rule 1.420(b), Fla. R. Civ. P., because the Plaintiff has failed to show a right to the affirmative relief sought. In the State of Florida where foreclosure is an equitable remedy that must be sought by a judicial proceeding, there is a *vastly different meaning* between a defendant being able to assert defenses “in the foreclosure proceeding” as unambiguously required in paragraph 22 of the mortgage and “to bring a court action” as misinformed by the “demand letter” entered into evidence as Exhibit Number 1. Moreover, if there were any ambiguity in paragraph 22, the mortgage is to be construed against the drafter, Plaintiff. Therefore, it is

ADJUDGED that Plaintiff, The Bank of New York Mellon F/K/A the Bank of New York, as Trustee for the Certificateholders CWALT, Inc., Alternative Loan Trust 2006-OA3 Mortgage Pass-Through Certificates, Series 2006-OA3, takes nothing by this action and Defendants, Jennie Wong, et al., shall go hence forth without day.

ORDERED at Dade City, Pasco County, Florida, on this ____ day of _____, 20____.

ORIGINAL SIGNED
DEC 20 2012
CIRCUIT JUDGE

Lynn Tepper, Circuit Judge

Copies furnished to:

Brendan R. Riley, Esq.
Florida Foreclosure Attorneys, PLLC