

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA** **CIVIL ACTION**

**THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE FOR
CERTIFICATE HOLDERS CWABS, INC.,
ASSET-BACKED CERTIFICATES, SERIES 2006-16,**

CASE NO. 09-6846CA

Plaintiff,

vs.

THOMAS V. LACKEY, et.al.,

Defendants.

FILED
2012 MAR 23 AM 11:58
BARBARA J. ...
CLERK OF THE CIRCUIT
CHARLOTTE COUNTY

**ORDER REGARDING THE NON-PARTY MOVANT'S FEBRUARY 6, 2012 MOTION
TO VACATE AND THE PLAINTIFF'S DECEMBER 2, 2011 MOTION TO STRIKE
AND EXPUNGE OR SEAL**

THIS CAUSE came before the Court for a hearing on March 7, 2012, on a pro se "Motion to Vacate Sealing Order Pursuant to Florida Supreme Court Ruling SC06-2136 and the Florida Rules of Judicial Administration 2.420(5)," which was filed February 6, 2012 by a non-party, Ronald Gillis. As an initial matter, the Court notes that Rule 2.420(5) does not exist. Instead, the Court has treated this motion as if filed pursuant to Florida Rule of Judicial Administration 2.420(e)(5),¹ and held a timely hearing in accordance with that rule. Having considered this motion, the court file, the arguments submitted by Mr. Gillis,² and the applicable law, the Court finds as follows:

1. On December 18, 2009, the Plaintiff filed a complaint seeking to foreclose a mortgage on real property. On June 8, 2010, the Court issued a final judgment of foreclosure. A certificate of sale was filed on September 12, 2011, and a certificate of title was filed on September 27, 2011. Neither party filed any objection or appeal. By all accounts, this case is final.

¹ Requests to determine the confidentiality of trial court records in non-criminal cases are governed by Rule 2.420(e).
² Plaintiff failed to appear at the March 7, 2012 hearing, and has not otherwise responded to the February 6, 2012 motion.

2. On September 27, 2011, Ronald Gillis, who is not a party to this action, filed in this court file copies of complaints against attorneys, Farzad A. Milani and James Hutton, that he had previously filed with the Florida Bar. Each bar complaint included an attachment entitled "Affidavit & Public Notice Reference Fraudulent Activity Related to this Property," which reflected that the affidavit had been recorded in the Public Records of Charlotte County, Florida, on September 12, 2011, in OR Book 3596 at Page 1160-1161.

3. On December 2, 2011, the Plaintiff filed a motion seeking an order striking, granting, and/or expunging the aforementioned complaints and affidavit from both the court file and the Public Records. Plaintiff did not cite any specific procedural rule authorizing the request for an order expunging or sealing the documents. Instead, Plaintiff cited to Florida Rule of Civil Procedure 1.140(f), which provides that a party may file a motion to strike redundant, immaterial, impertinent, or scandalous pleadings at any time.

4. In any event, the Plaintiff's motion did not meet the pleading requirements of Florida Rule of Judicial Administration 2.420(e)(1). Notably, the motion lacked an appropriate title and a certificate of good faith required under that rule. Nevertheless, by an order filed December 7, 2011, the Court granted the Plaintiff's motion and directed the Clerk of Court to expunge / seal these pleadings from both the court file and the Public Records.

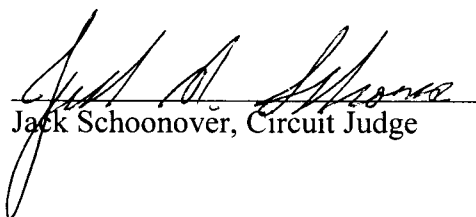
5. In his motion, Mr. Gillis seeks an order vacating the Court's December 7, 2011 order. Neither party has contested this motion. To the extent that the Plaintiff failed to adhere to the procedural requirements of Rule 2.420(e) when it sought to seal or expunge court records, the motion to vacate is well taken. Accordingly, the Court will vacate the order filed December 7, 2011 and direct the Clerk to unseal the documents referenced in that order.

6. This order should not be construed as condoning the filing of documents containing immaterial, impertinent, or scandalous matter. On the contrary, to the extent that the Plaintiff's December 2, 2011 motion sought an order pursuant to Rule 1.140(f) striking the non-party movant's September 27, 2011 pleadings from the instant court file as immaterial, impertinent, and scandalous, that relief shall be granted. This order should also not be construed as condoning the recording of documents or instruments, such as the affidavit recorded by Mr. Gillis, that are not authorized for recording with the Clerk of Court under §28.222, Florida Statutes. While the Plaintiff has failed to demonstrate any authority for the expungement or sealing of a document improperly recorded with the Clerk of Court, the fact remains that the recording of an unauthorized instrument constitutes a "vain and futile act." *Malsby v. Gamble*, 61 Fla. 310, 61 Fla. 327, 54 So. 766 (1911). It is, therefore,

ORDERED AND ADJUDGED as follows:

1. The February 6, 2012 motion to vacate is **GRANTED** and the order rendered December 7, 2011 is hereby **VACATED**.
2. **The Clerk of Court shall unseal and reinstate the pleadings that were sealed and/or expunged from the court file and the Public Records by virtue of the order rendered December 7, 2011.**
3. To the extent that the Plaintiff's December 2, 2011 motion sought an order, pursuant to Rule 1.140(f), striking the bar complaints and attached affidavits filed September 27, 2011, the Plaintiff's motion is **GRANTED** and those documents are hereby **STRICKEN** from this court file. The Plaintiff's December 2, 2011 motion is, in all other respects, **DENIED** without prejudice to any right Plaintiff may have to seek relief in compliance with Rule 2.420(e), or any other applicable law.
4. The parties are cautioned that the filing of unauthorized pleadings may result in sanctions.

DONE AND ORDERED in Chambers at Punta Gorda, Charlotte County, Florida,
this 22nd day of MAR., 2012.


Jack Schoonover, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Ronald Gillis, P.O. Box 380842, Murdock, Florida 33938-0842; Barbara A. Couture, Esquire, Shapiro, Fishman, & Gaché, LLP, 4630 Woodland Corporate Blvd., Suite 100, Tampa, Florida 33614; Thomas V. Lackey, 2801 Oyster Creek Drive, Englewood, Florida 34224; Chris E. Lackey, 3674 Lookout Lane, North Port, Florida 34288; Unknown Parties in Possession #1, 2801 Oyster Creek Drive, Englewood, Florida 34224; Unknown Parties in Possession #2, 2801 Oyster Creek Drive, Englewood, Florida 34224, this _____ day of _____, 2012.

By: _____
Judicial Assistant

No Copies/Envelopes Provided