

**IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

**LAW OFFICES
OF DAVID J. STERN P.A.,**

Case No. 4D10-4708

Appellant,

v.

**STATE OF FLORIDA,
DEPARTMENT OF LEGAL
AFFAIRS,**

Appellee.

MOTION FOR CERTIFICATION

The Office of the Attorney General moves for certification of a question of great public importance pursuant to Fla.R.App.P. 9.330(a).

The Office of the Attorney General is investigating a widespread social and economic problem, the creation of invalid assignments of home mortgages that are subsequently used to deprive Florida homeowners of their homes.

The financial crisis of the last few years has hit Florida homeowners hard. About 1.9 million of Florida residential mortgages are “underwater,” meaning that about 45 percent of the state’s homes are valued at less than the amount of the

mortgage.¹ Foreclosure filings in the state have dropped slightly within the last few months, but still remain high, with 67,886 filings reported in the third quarter of 2011, the fifth highest foreclosure rate in the nation.² Many foreclosure proceedings have been marred by the use of invalid assignments of notes and mortgages, often by “robo signing.”^{3/4} Given the large number of foreclosures in Florida and the prevalence of robo-signing and other unlawful practices, there can be no question that Florida consumers are at considerable risk.

The court’s opinions in this case and *State v. Shapiro & Fishman LLP*, 59 So.3d 353 (Fla. 4th DCA 2011), have impaired a significant line of inquiry into this pressing problem by holding that the law firms’ suspected participation in the creation of such invalid assignments and the firm’s use of these documents for clients in the debt collection practice of foreclosure are the practice of law in the representation of a client in litigation and, therefore, not trade or commerce under

¹ <http://blogs.palmbeachpost.com/realtime/2011/09/13/nearly-2-million-florida-mortgages-underwater/>.

² <http://www.realtytrac.com/content/news-and-opinion/florida-foreclosure-activity-up-in-third-quarter-6907>.

³ *Id.*

⁴ See also <http://www.businessweek.com/news/2011-12-17/nevada-sues-lender-processing-services-claiming-robo-signing.html> (State of Nevada suit against Lender Processing Services); *Central Mortgage Co. v. Acevedo*, 2011 WL 5107236 *1 (N.Y. Supp. 2011) (noting in October 2010 “recent disclosures by major mortgage lenders of significant insufficiencies—including widespread deficiencies in notarization and robosigning’ of supporting documents—in residential foreclosure filings in courts nationwide.”).

the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

Consumers are unable to defend themselves adequately against these unlawful practices, as this court implicitly recognized in *Pino v. Bank of New York Mellon*, 57 So.3d 950 (Fla. 4th DCA 2011).⁵ Indeed, this court realized that the creation of such invalid documents and their use were widespread and harmful. See *id.*, at p. 954: “We conclude that this is a question of great public importance, as many, many mortgage foreclosures appear tainted with suspect documents.” Thus, while this court did not grant the homeowner-defendant in *Pino* their requested relief, it understood the magnitude of the issue by certifying a question to the Supreme Court.

The Office of the Attorney General asks no less of the court. The Office of the Attorney General is the governmental entity best positioned and best authorized by the Attorney General’s constitutional, common law and statutory powers to protect the people of the state from such invalid and unlawful practices.

Consequently, the Office of the Attorney General asks the court to certify the following question pursuant to Rule 9.330(a):

⁵ See also *Federal National Mortgage Association v. Bradbury*, 2011 WL 6057999 (Me. 2011) (Maine Supreme Judicial Court refuses to find GMAC in contempt for use of robo-signed documents in foreclosure). The dissent, Levy, J., called the behavior “extreme misconduct which misled the court and thereby undermined the integrity of the judicial process.” *Id.* at *5.

Whether the creation of invalid assignments of mortgages by a law firm and subsequent use of such documents by the firm in foreclosure litigation on behalf of the purported assignee is an unfair or deceptive trade practice under FDUTPA which may be the subject of an investigation by the Office of the Attorney General.

CONCLUSION

For these reasons, the court should grant the motion.

RESPECTFULLY SUBMITTED,

PAMELA JO BONDI
ATTORNEY GENERAL

/s

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail to Jeffrey Tew, 1441 Brickell Ave. 15th floor, Miami, FL 33131, this 28 day of December, 2011.

/s

Jason Vail

CERTIFICATE OF COMPLIANCE WITH RULE 9.210(a)(2)

I hereby certify that this paper complies with the formatting requirements of
Rule 9.210(a)2.

_____/s_____
Jason Vail