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IN THE CIRCUIT COURT OF THE 7TH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO 2001 31518 CICI

BANK ONE, NATIONAL ASSOCIATION,  
AS TRUSTEE,

Plaintiff,

vs

ROBERT E WARD, JERILYNN WARD  
A/K/A JERILYN L WARD; SARA SUE  
FUGATE, JOHN DOE AND JANE DOE  
AS UNKNOWN TENANT(S) IN  
POSSESSION OF THE SUBJECT  
PROPERTY,

Respondent

---

**MOTION TO STAY ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT WITH PREJUDICE, ORDER GRANTING MOTION TO DISMISS  
COMPLAINT WITH PREJUDICE, ORDER DECLARING MORTGAGE, LIS  
PENDENS AND NOTE SATISFIED AND FULLY DISCHARGED AND FINAL  
JUDGMENT FOR DEFENDANTS**

**COMES NOW** Plaintiff, BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE,  
by and through undersigned counsel and, pursuant to Fla R App Pro 9 310, moves the Court  
for an order staying the effect of the order entered on December 27, 2002, by Circuit Judge,  
William C Johnson, Jr, denying Plaintiff's motion for summary judgment with prejudice,  
granting motion to dismiss complaint with prejudice, declaring mortgage, lis pendens and note  
satisfied and fully discharged and final judgment for Defendant, Sara Sue Fugate, and in support  
thereof would state the following

1 On or about July 25, 2001, plaintiff commenced this action to foreclose a  
mortgage on real property located in Volusia County, Florida, which was then owned by the

defendants, Robert E Ward and Jerilynn L Ward (hereinafter "Ward") The second mortgagee and former owner of the property, Sara Sue Fugate (hereinafter "Fugate"), was also joined as a defendant in the action<sup>1</sup>

2 Following service of the summons and a copy of the complaint on the defendants, the Clerk of the Court entered a default against the Wards and Fugate (a copy of the Clerk's default is attached as Exhibit "1" to the Appendix of Exhibits served herewith)

3 On or about September 20, 2001, the Honorable Joseph G Will heard plaintiff's initial motion for summary judgment of foreclosure The Defendant borrowers, Robert E Ward and Jerilynn L Ward appeared at the summary judgment hearing, at which time Judge Will ordered the parties to mediation

4 On or about December 6, 2001, undersigned counsel and Ward attended a mediation conference as directed by Judge Will At the mediation conference, plaintiff agreed to attempt loss mitigation efforts with the Wards, in an effort to assist them in reinstating the mortgage. However, those efforts failed Thereafter, on February 6, 2002, another hearing on plaintiff's motion for summary final judgment was heard, this time before Judge William C Johnson, Jr At that time, Judge Johnson assumed responsibility for the civil division to which this case was assigned Again, the motion for summary judgment was denied (although no written order was entered), and the Court orally directed the plaintiff to provide reinstatement quotes and a payoff quote to the defendants On the same date, February 6, 2002, plaintiff caused to be delivered by facsimile transmission to Fugate, a payoff letter, indicating that the payoff amount to satisfy the subject mortgage held by the plaintiff was \$72,039.34 (a copy of the February 6, 2002, letter to Ms Fugate is attached as Exhibit "2" in the Appendix served herewith)

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<sup>1</sup> The Wards deeded the property by quit claim to Fugate on March 26, 2002. The deed was recorded on May 24, 2002 at Official Records Book 4868, Page 1992, Public Records of Volusia County, Florida

6 On or about February 6, 2002, Fugate, caused to be delivered to plaintiff's mortgage servicing company, Homecomings Financial Network, in Dallas, Texas, a document purporting to be a Bill of Exchange, which document Fugate claimed served to satisfy the mortgage held by plaintiff (a copy of the original Bill of Exchange submitted by Sara Sue Fugate is attached as Exhibit "3" in the Appendix served herewith) However, Fugate did not follow the instructions contained in the payoff quote provided, by failing to submit a cashier's check or certified funds to the plaintiff's attorneys Plaintiff's attorneys were not even aware that Fugate had forwarded her alleged Bill of Exchange to its client in Texas, until another hearing on motion for summary judgment was held before Judge Johnson on July 10, 2002<sup>2</sup>

8 The plaintiff's servicing agent reasonably believes that the alleged Bill of Exchange submitted by Fugate is, in fact, a fraudulent document The alleged Bill of Exchange is not a bank draft, but rather a homemade document, likely prepared on a home computer In any event, Ms Fugate did not submit payoff funds in the form of payment required by the plaintiff As a result, plaintiff again requested entry of summary judgment and another hearing was held on July 10, 2002 before Judge Johnson At that hearing, Fugate argued that she had satisfied the mortgage by payment with the Bill of Exchange (See Appendix, Exhibit "3") and that she had "sent an additional \$72,005.22 to Homecomings yesterday" (See transcript of July 10, 2002 hearing before Judge Johnson at page 5, line 13, the original of which is apparently in the possession of Ms Fugate, but a copy has been filed in the Appendix as Exhibit "4") A copy of the second alleged Bill of Exchange dated July 9, 2002 is attached as Exhibit "5" in the Appendix The original of the second Bill of Exchange (See Appendix, Exhibit "5") was not received by the plaintiff, although plaintiff's attorney's received a copy

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<sup>2</sup> The initial Bill of Exchange was received by the cashing department of plaintiff's servicing agent The document was then delivered to the servicing agent's in-house counsel for a fraud investigation

9 Fugate alleged at the July 10, 2002 hearing that she had tendered the sum of \$144,432.07 to plaintiff (see transcript at page 4, line 5, Appendix, Exhibit "4"), although the amount necessary for Fugate's redemption of the property, as of February 6, 2002, was only \$72,039.34. The notion that fraudulent instruments totaling twice the amount due served to satisfy this loan is pure fiction. Unfortunately, Judge Johnson did not provide for an evidentiary hearing on the issue of redemption and orally dismissed the case, for reasons that are unknown to plaintiff (See page 10 of the transcript of the July 10, 2002 hearing before Judge Johnson, Appendix, Exhibit "4"). Judge Johnson ordered plaintiff's counsel to prepare a proposed order denying the motion for summary judgment and dismissing the action. The proposed order and a Motion for Clarification and/or Rehearing were sent to Judge Johnson on July 19, 2002 (See copy of July 19, 2002 cover letter to Judge Johnson with the proposed order, Appendix, Exhibit "6" and Motion for Rehearing, Appendix Exhibit "7").

10 On or about September 25, 2002 Judge Johnson telephoned one of plaintiff's attorneys, Amy M. Post, Esq., in an ex parte communication. During the call, Judge Johnson advised Ms. Post that the court file was in his chambers, but that he had not received the proposed order denying summary judgment that he directed to be sent to him after the hearing on July 10, 2002. Accordingly, Ms. Post directed another original of the proposed order along with correspondence dated September 25, 2002 (copy of letter from Amy Post, Esq. To Judge Johnson and Federal Express transmittal are attached to the Appendix as Exhibit "8").

11 On or about September 12, 2002 Fugate served her verified motion to show cause why the order for dismissal and verifying discharge should not be signed (a copy of said motion is attached as Exhibit "9" in the Appendix). The court conducted a hearing on Fugate's motion October 8, 2002 (the original transcript of said hearing has been filed with this motion for stay, a copy appears in the Appendix as Exhibit "10"). At the hearing, plaintiff again requested an evidentiary hearing on the issue of Fugate's alleged redemption by tender of the alleged Bills of

Exchange However, Judge Johnson indicated that he would not take any evidence in this case (see page 7 and 8 of the transcript of the October 8, 2003 hearing, Appendix, Exhibit "10")

12 On or about January 3, 2003, undersigned counsel received copies of three orders entered by Judge Johnson, including, order denying plaintiff's motion for summary judgment and dismissing case dated December 24, 2002 (Appendix, Exhibit "11"), order denying motion for clarification and/or rehearing entered December 27, 2002 (Appendix, Exhibit "12") and order denying plaintiff's motion for summary judgment with prejudice, granting motion to dismiss complaint with prejudice, order declaring mortgage, lis pendens and note satisfied and fully discharged, and final judgment for defendants, entered on December 27, 2002 (Appendix, Exhibit "13") These orders are currently on appeal

13 It is plaintiff's position that the alleged redemption by Fugate was ineffectual and that Judge Johnson should have provided an evidentiary hearing and/or trial on the redemption issue prior to ruling The effect of Judge Johnson's order is the total forfeiture of plaintiff's duly recorded and unsatisfied mortgage given by the Wards Plaintiff will suffer irreparable harm and damage unless the court stays the order of December 27, 2002 canceling the lis pendens, dismissing the action with prejudice and releasing the mortgage from the public records Plaintiff stands ready to post reasonable bond as required by law

WHEREFORE, plaintiff prays that the court stay the order of December 27, 2002, insofar as it declares plaintiff's mortgage, note and lis pendens to be fully satisfied and discharged

**I HEREBY CERTIFY** that a true and correct copy of the foregoing motion was provided via U S Mail to Defendants, Robert E Ward, 500 South Seneca Blvd , Daytona Beach, FL 32114, Jerlynn L Ward, 500 South Seneca Blvd , Daytona Beach, FL 32114, and Sara Sue Fugate, 15363 S E 105 Terrace Road, Summerfield, FL 34491, this 8 day of January, 2003

Law Offices of Marshall C. Watson, P A  
1800 N W. 49<sup>TH</sup> Street, Suite 120  
Fort Lauderdale, FL 33309  
Telephone (954) 453-0365/1-800-441-2438  
Facsimile (954) 771-6052  
Direct Dial (954) 453-5223

By   
Wm David Newman, Jr.

Florida Bar No 784771

IN THE CIRCUIT COURT OF THE 7TH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO 2001 31518 CICI

BANK ONE, NATIONAL ASSOCIATION,  
AS TRUSTEE,

Plaintiff,

VS

ROBERT E WARD, JERILYNN WARD  
A/K/A JERILYN L WARD, SARA SUE  
FUGATE, JOHN DOE AND JANE DOE  
AS UNKNOWN TENANT(S) IN  
POSSESSION OF THE SUBJECT  
PROPERTY,

Respondent

---

**NOTICE OF FILING**

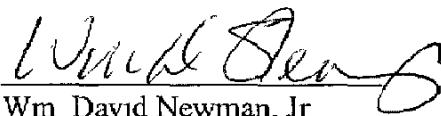
**COMES NOW** Plaintiff, BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE,  
by and through undersigned counsel and hereby gives notice of filing the original transcript of  
the hearing conducted before Judge William C Johnson, Jr on October 8, 2002

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Notice of Filing was  
provided via U S. Mail to Robert E Ward, 500 South Seneca Blvd , Daytona Beach, FL 32114;  
Jerilynn Ward, 500 South Seneca Blvd , Daytona Beach, FL 32114, and Sara Sue Fugate, 15363



S E 105 Terrace Road, Summerfield, FL 34491, this 8 day of January, 2003

Law Offices of Marshall C Watson, P A  
1800 N W. 49<sup>TH</sup> Street, Suite 120  
Fort Lauderdale, FL 33309  
Telephone (954) 453-0365/1-800-441-2438  
Facsimile: (954) 771-6052

By   
Wm David Newman, Jr  
Florida Bar No · 784771

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IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CASE NO : 2001-31518-CICI

BANK ONE NATIONAL ASSOCIATION,  
AS TRUSTEE,

Plaintiff,

vs.

ROBERT E. WARD, JERILYNN L. WARD, a/k/a  
JERILYN L. WARD, ET. AL ; SARA SUE FUGATE,

Defendants.

\* \* \* \* \*

PROCEEDINGS: MOTION HEARING  
DATE TAKEN: OCTOBER 8, 2002  
TIME COMMENCED: 8:40 A.M.  
TIME CONCLUDED: 8:50 A.M.  
PLACE: VOLUSIA COUNTY COURTHOUSE ANNEX  
125 EAST ORANGE AVENUE  
DAYTONA BEACH, FLORIDA  
REPORTED BY: DEBORAH WARREN, RPR  
COURT REPORTER AND NOTARY PUBLIC

\* \* \* \* \*

The above-styled cause came on to be heard before  
the Honorable William C Johnson, Circuit Court Judge, at  
the time and place above indicated, for the purpose of  
taking evidence and testimony in said cause.

VOLUSTIA REPORTING COMPANY  
POST OFFICE BOX 1409  
DAYTONA BEACH, FLORIDA 32115  
386-255-2150

**ORIGINAL**

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APPEARANCES :

WILLIAM DAVID NEWMAN, JR., ESQUIRE  
Law Offices of Marshall C Watson  
1800 NW 49th Street, Suite 120  
(954)-453-0365  
Attorney for Plaintiff

SARA SUE FUGATE  
Pro Se Defendant

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## P R O C E E D I N G S

1  
2 THE COURT Someone has a court reporter. Who  
3 is that on?

4 MR. NEWMAN: I ordered a court reporter, Your  
5 Honor.

6 THE COURT: Why don't you call the style of the  
7 case

8 MR. NEWMAN. The matter of Bank One, NA, versus  
9 Robert E Ward, Jerilynn Ward, et al., and Ms. Sara  
10 Sue Fugate.

11 THE COURT Who are you?

12 MR. NEWMAN: My name is William David Newman,  
13 Jr , Law Offices of Marshall Watson in Ft. Lauderdale  
14 for the plaintiff.

15 THE COURT. Okay. And your name?

16 MS. FUGATE: Sara Fugate.

17 THE COURT: You've been here any number of times  
18 before. You're Sara Fugate.

19 I had given instructions to my secretary to  
20 cancel this hearing. I didn't want to undertake it  
21 at expedited hearings. We don't take testimony at  
22 expedited hearings, and the nature of this hearing is  
23 such that it is far more extensive than the customary  
24 hearing anticipated to be taken up at expedited  
25 hearings

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1 In fact, we had notified your office that you  
2 couldn't appear by telephone.

3 MR. NEWMAN. Yes, sir.

4 THE COURT: We expected this hearing would  
5 exceed 15 minutes and certainly ten minutes, and you  
6 don't come to expedited's under any circumstances by  
7 telephone except in rare extraordinary difficulties.

8 MR. NEWMAN Yes, sir.

9 THE COURT: And have you received the motion for  
10 reconsideration that they had filed, Ms Fugate?

11 MS. FUGATE: Is that the rehearing?

12 THE COURT Something about asking for a  
13 reconsideration of my ruling.

14 MR. NEWMAN: Yes, sir I believe Your Honor  
15 conducted a hearing on July 10th of 2002 There was  
16 a transcript of the proceeding. Your Honor at that  
17 point denied a motion for summary judgement of  
18 foreclosure and also ordered that the case be  
19 dismissed, according to the record. That's why we're  
20 asking for some clarification on that particular  
21 order

22 THE COURT. I thought you asked for  
23 reconsideration on rehearing.

24 MR. NEWMAN: We had asked for that as well,  
25 because we believe that we have done all we need to

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1 do to show the plaintiff is entitled to judgement.  
2 Ms Fugate and the borrowers are both in default We  
3 have appeared here locally a couple of times to try  
4 to mediate with the borrower

5 THE COURT: I saw the word fraud, didn't I, in  
6 that motion that you filed? Did I see that word in  
7 there?

8 MR. NEWMAN: Not my motion.

9 MS. FUGATE: Mine. There is misleading and  
10 misinformation in that motion.

11 THE COURT. I think I indicated at that last  
12 hearing, didn't I, if I was going to take any  
13 testimony and evidence in this case, it was going to  
14 be live, and it would be the representatives of the  
15 plaintiff who would appear and offer the testimony,  
16 and that there be no summary judgement Did I not  
17 indicate that?

18 MR NEWMAN· You did, Your Honor We're here  
19 today on Ms. Fugate's notice of an order to show  
20 cause why the court should not dismiss the case

21 THE COURT: She's asking -- what she's doing, I  
22 think, from reading the pleadings, she's asking me to  
23 go ahead and enter the order that I indicated I would  
24 enter.

25 MR. NEWMAN: That's correct.

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1 THE COURT: The file sits right down at the end  
2 of the table. At my first opportunity, it's my  
3 intention to address it and to enter such an order  
4 And perhaps after that, any motions for rehearing or  
5 reconsideration might then be appropriate But I  
6 don't believe there has been any order entered, has  
7 there?

8 MR NEWMAN: No, Your Honor. I believe our  
9 office prepared an order pursuant to your  
10 instructions and forwarded it to your attention, and  
11 it has not yet be entered, to my knowledge.

12 THE COURT: It's all right there, the stack with  
13 the big clip on the end.

14 MR NEWMAN Certainly if Your Honor would care  
15 to entertain an evidentiary hearing, we will provide  
16 representatives from --

17 THE COURT: My intention, if I change my mind, I  
18 was going to set it for trial.

19 MR NEWMAN Yes, sir.

20 THE COURT: So anything else?

21 MS. FUGATE: Your Honor, I've provided motions,  
22 affidavits, records to verify --

23 THE COURT: I have them all, Ms. Fugate.

24 MS. FUGATE. I understand. I believe that  
25 Homecomings Financial Institute accepted my tender.

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1 THE COURT: I said I'm not going to take any  
2 testimony this morning. I have everything there. I  
3 was out all last week, one of the reasons I wanted to  
4 cancel this hearing I thought we had notified you  
5 it was being cancelled.

6 MS. FUGATE: No, sir.

7 THE COURT: It was supposed to have been. If I  
8 deny it -- if I grant the end of the final judgement,  
9 then if I take up the reconsideration, even if I  
10 grant it, at the very least there will be a trial --

11 MR. NEWMAN: Yes, sir

12 THE COURT: -- with live testimony.

13 MR. NEWMAN: I would understand, Your Honor,  
14 that the trial would be over the punitive redemption  
15 under Statute 4503 5.

16 THE COURT: You have to come and prove your case  
17 and overcome such affirmative defenses as made.

18 MR. NEWMAN. My understanding of the file is  
19 that defaults were entered

20 THE COURT: I make no representations concerning  
21 the status of the file. I assume you've make those  
22 representations to me upon your personal examination  
23 of the court file. Do you?

24 MR. NEWMAN. Yes, sir

25 THE COURT: The one downstairs?

VOLUSIA REPORTING COMPANY



1           MR. NEWMAN: No, sir. I have a copy of a --  
2 conformed copy from the clerk that indicates that  
3 Ms. Fugate and the borrowers are both in default.

4           THE COURT I'm talking about the whole court  
5 file.

6           MR. NEWMAN: I have not reviewed the whole court  
7 file.

8           THE COURT: Is there anything else?

9           MR. NEWMAN: No, sir, Your Honor.

10          THE COURT: Anything come of your efforts to  
11 reconcile whatever difference you claim to exist  
12 between you?

13          MR. NEWMAN: I became involved in the case just  
14 around the end of September, so I'm new to it. I  
15 understand that Ms. Fugate submitted a document, the  
16 original of which I brought with me.

17          THE COURT: As I say, no evidence.

18          MR. NEWMAN: Yes, sir. It's my client's  
19 position that that particular document does not  
20 represent a bank draft which would be necessary to  
21 pay the redemption.

22          MS. FUGATE A bill of --

23          THE COURT: Never mind.

24          Anything else? This hearing is closed

25          (WHEREUPON, the proceeding was concluded.)

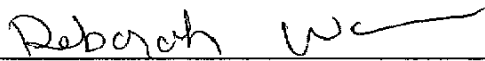
VOLUSIA REPORTING COMPANY

## C E R T I F I C A T E

STATE OF FLORIDA  
COUNTY OF VOLUSIA

I, Deborah Warren, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 10th day of October, 2002.

  
\_\_\_\_\_  
Deborah Warren, Court Reporter

VOLUSIA REPORTING COMPANY

IN THE CIRCUIT COURT OF THE 7TH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO 2001 31518 CICI

BANK ONE, NATIONAL ASSOCIATION,  
AS TRUSTEE,

Plaintiff,

vs

ROBERT E WARD; JERILYNN WARD  
A/K/A JERILYN L WARD, SARA SUE  
FUGATE, JOHN DOE AND JANE DOE  
AS UNKNOWN TENANT(S) IN  
POSSESSION OF THE SUBJECT  
PROPERTY,

Respondent

---

**APPENDIX OF EXHIBITS TO MOTION FOR STAY RELIEF**


**Table of Exhibits**

- 1 Clerk's default dated August 28, 2001
- 2 February 6, 2002, letter from Plaintiff's counsel to Sara Sue Fugate
- 3 Copy of Bill of Exchange dated February 6, 2002
- 4 Transcript of July 10, 2002, hearing
- 5 Copy of Bill of Exchange dated July 9, 2002
- 6 Copy of July 19, 2002, letter to Judge Johnson and proposed order denying motion for summary judgment and dismissing action
- 7 Copy of motion for clarification and/or rehearing dated July 19, 2002

- 8 Copy of letter to Judge Johnson dated September 25, 2002
- 9 Fugate's verified motion to show cause
- 10 Copy of October 8, 2002, hearing transcript
- 11 Order on Plaintiff's motion for summary judgment dated December 24, 2002
- 12 Order denying motion for clarification and/or rehearing dated December 27, 2002
- 13 Order denying Plaintiff's motion for summary judgment with prejudice, order granting motion to dismiss complaint with prejudice, order declaring mortgage, lis pendens and note satisfied and fully discharged, and final judgment for Defendants

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Notice of Filing was provided via U S Mail to Robert E Ward, 500 South Seneca Blvd , Daytona Beach, FL 32114; Jerlynn Ward, 500 South Seneca Blvd , Daytona Beach, FL 32114, and Sara Sue Fugate, 15363 S.E 105 Terrace Road, Summerfield, FL 34491, this 6 day of January, 2003

Law Offices of Marshall C Watson, P A  
1800 N.W 49<sup>TH</sup> Street, Suite 120  
Fort Lauderdale, FL 33309  
Telephone: (954) 453-0365/1-800-441-2438  
Facsimile (954) 771-6052

By   
Wm. David Newman, Jr  
Florida Bar No . 784771

IN THE CIRCUIT COURT OF THE 7TH  
JUDICIAL CIRCUIT IN AND FOR VOLUSIA  
COUNTY, FLORIDA  
CIVIL DIVISION  
CASE NO. 2001 31518 CICI

BANK ONE, NATIONAL ASSOCIATION, AS  
TRUSTEE

Plaintiff,

vs

**MOTION FOR DEFAULT**

ROBERT E WARD, JERILYNN L WARD A/K/A  
JERILYN L WARD, SARA SUE FUGATE, JOHN  
DOE AND JANE DOE AS UNKNOWN  
TENANT (S) IN POSSESSION OF THE SUBJECT  
PROPERTY,

;

Defendants

Plaintiff moves for entry of a Default by the Clerk against Defendant(s), JERILYNN L WARD  
A/K/A JERILYN L WARD, ROBERT E. WARD, SARA SUE FUGATE; for failure to serve any paper  
on the undersigned or file any paper as required by law.

**NOTE TO CLERK:**

In the event that any of the aforementioned defendants have timely filed any paper in the above-styled cause,  
or should their return of service not be filed, then please strike the name of such defendant from the above  
motion

Law Offices of Marshall C Watson, P A  
1800 NW 49<sup>th</sup> Street, Suite 120  
Fort Lauderdale, FL33309  
Telephone: (954) 453-0365  
Facsimile: (954) 771-6082

By Patricia Arango  
Patricia A Arango, Esq.  
Bar Number 479993

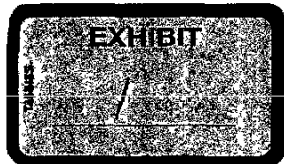
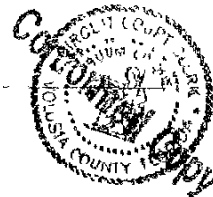
**DEFAULT**

A Default is hereby entered in this action against the Defendant(s) Jerilynn L Ward A/K/A Jerilyn L  
Ward, Robert E Ward, Sara Sue Fugate; for failure to serve or file any paper as required by law

WITNESS my hand and seal of said Court this 20<sup>th</sup> day of August, 2001

DIANE M MATOUSEK  
As Clerk of the Court

By W E Wholly  
As Deputy Clerk



01-02987

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\*\*\* TX REPORT \*\*\*  
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TRANSMISSION OK

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LAW OFFICES OF  
**Marshall C. Watson, P.A.**  
1800 NORTH WEST 49<sup>TH</sup> STREET, SUITE #120  
FORT LAUDERDALE, FLORIDA 33309

Managing Attorneys  
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Douglas R. Bleck  
Nicole M. Frost  
Okan Gunay  
Traciann G. McKenzie  
WM. David Newman, Jr  
Dahlu A. Paul  
Amy M. Post

February 6, 2002

VIA FACSIMILE  
(352) 288-2801

Sara Fugate

RE Property Address 500 SOUTH SENECA BLVD DAYTONA BEACH, FL 32114  
Loan # 0432225159  
Owner ROBERT E WARD AND JERILYNN L WARD A/K/A JERILYN L WARD  
Mortgagor ROBERT E WARD AND JERILYN L WARD A/K/A JE  
Our File # 01-02987

Dear Sir/Madam

This firm represents BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE, the Plaintiff in the above referenced mortgage foreclosure action. We are attempting to collect the money due under that mortgage and any information obtained from you will be used for that purpose.

Attached hereto is the pay-off statement you requested regarding the above-referenced account.

Upon receipt of the total pay-off sum due, in the form of cashier's check or certified funds, the subject action will be dismissed. Until such receipt, the action will be prosecuted in a normal fashion, and this letter shall not be construed as an agreement on the part of the Plaintiff in any way to abate said prosecution.



**PLEASE BE ADVISED THAT THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Sincerely yours,

*Patricia Arango*  
Patricia Arango, Esq.

File Number 01-02987

Per Diem Amount 18 51

Unpaid Loan Balance	\$	60,641.54
Interest Due	\$	5,683.27
Escrow Overdraft	\$	1,005.09
Late Charges	\$	231.52
Broker's Price Opinion	\$	100.00
Appraisal	\$	2,425.66
NSF check fee	\$	10.00
Recording fee	\$	6.00
Property Inspection	\$	69.75
Credit	\$	-(170.49)
Foreclosure Costs	\$	1,087.00
Foreclosure Attorney fee	\$	950.00
<b>Total</b>	\$	<b>72,039.34</b>

01-02987

LETTER OF ADVICE  
NOT SUBJECT TO NEGOTIABILITY -- ACCEPTANCE FOR VALUE

Re Account No 0432225159

COPY

Attn HOMECOMINGS FINANCIAL NETWORK  
838 S Greenville Avenue, Suite 200  
Richardson, Texas 75081

Sara S. Fugate, Secured Party  
c/o 15363 SE 105 Terrace Road  
Summerfield Florida 34491

Re: Notice -- Processing of Bill of Exchange (BA-Time Draft)

Date February 6 2002

I am in receipt of the attached offer requesting payment. Enclosed please find the Bill of Exchange (BA -- Time Draft) the processing of which will discharge the entire current amount stated on the claim herein accepted for value. This Negotiable Instrument is presented under authority of Public Law 73-10, UCC 3-104(c), *Spencer v Sterling Bank*, 63 Cal Ap. 4<sup>th</sup> 1055 (1998), *Guaranty Trust Co of New York v Henwood et al*, 59 S. Ct. 847, and *Wilkin Negotiable Instruments*, Vol 3 (2001 Supplement) on the undersigned's UCC Contract Trust Account. Following are the steps required to settle this account. **This is not a Treasury/Bond Account**

1. The enclosed Negotiable Instrument is hereby presented and the following process **must be followed to the letter** in order to satisfy the claimed amount due on this account and discharge of this debt.
2. My Personal Direct Treasury Trust (UCC Contract) Account has been set up at the Department of the Treasury and may only be accessed with my approval through the bank account of the Claimant directly to the Secretary of the Treasury. The original Negotiable Instrument must be presented by claimant's financial institution via Certified or Registered Mail directly to the Secretary of the Treasury - Department of the Treasury Bank (Federal Window), 1500 Pennsylvania Ave NW, Washington, D.C. 20220, Attn: Paul H. O'Neill.
3. The Item Processor at Claimant's financial institution, with full identification and Baillee (Authorized Agent) signature, is to present the original Negotiable Instrument along with the Instruction Notice and the stamped Claim to the Secretary of the Treasury - Department of the Treasury Bank at the above address.
4. Claimant's financial institution is to retain the document copies and request that a copy of the Return Receipt from the Federal Window be supplied to them noting the date the original Negotiable Instrument was received at the Federal Window in accordance with Public and Banking Policy. For out of state transactions the UCC and Banking Codes stipulate fifteen (15) days.
5. The copy of the Negotiable Instrument is to be held at the financial institution until the required period for the Federal Window, Regulation J and Federal Reserve, Reg Z-Truth in Lending, 12 USC § 2261 et seq the Order/Property has passed. Then the full-face amount of the Negotiable Instrument is automatically released by the local financial institution for credit to Claimant's account and discharge of the claim.
6. If the **Secretary of the Treasury (Drawee)** sends notice **in writing** of some error or problem please notify the undersigned immediately upon receipt of such Notice and the matter will be addressed with the Department of the Treasury Bank and the Federal Window. You will be notified of the corrective action taken.
7. I hereby request that you notify the undersigned when the required time period for the Federal Window and the Federal Reserve under Regulation J and Regulation Z have transpired and the account has been adjusted.

Thank you for your cooperation in getting this account settled and the claim discharged

Sara S. Fugate, Secured Party -- Creditor





\$72,428 05

\$72,428.05

BILL OF EXCHANGE  
Bill of Acceptance - Time Draft

COPY

Sara S. Fugate, Secured Party/Drawer  
c/o 15363 SE 105 Terrace Road  
Summerfield, Florida [34491]

Date February 6, 2002

To: Secretary of the Treasury, Department of the Treasury Bank -- Ledger #000000518

On or by FEBRUARY 28, 2002 Credit the account of HOMECOMINGS FINANCIAL  
NETWORK #0432225159.

(Seventy Two Thousand Four Hundred Twenty Eight Dollars and Five Eight Cents) \$72 428 05

Personal Direct Treasury (UCC Contract) Account # RR 550 444 898 US

The obligation of the Drawee (acceptor), Secretary of the Treasury, through the bailee (authorized agent) of Claimant's financial institution, hereof arises out of the want of consideration for the pledge and by the redemption of the pledge under Public Resolution HJR-192, now Public Law 73-10 and 59 S. Ct. 847 (FN3), represented by the attached claim Accepted for Value and bearing the account number #0432225159

This claim document is hereby surrendered as said pledge is redeemed (discharged) by the drawer through the attached document of acceptance for value and exempt from levy. The Claimant's financial institution is to accept this bill, sign and present directly via Certified or Registered mail, Return Receipt to the Secretary of the Treasury -- Department of the Treasury. Unless the original Negotiable Instrument is dishonored in writing within 15 days of receipt by the Secretary of the Treasury Claimant's financial institution is to release the credit to the payee within the time stipulated by Regulation "Z", Truth in Lending Act or on the date designated, whichever is later. The amount of this accepted draft is to be credited by Claimant's financial institution to the designated account and the discharge of this claim fifteen (15) days after receipt by the Federal Window (Regulation Z)

NOTICE: The law relating to principal and agent applies

By \_\_\_\_\_  
Bailee's signature (authorized bank agent)

Accepted at (Summerfield Florida) on February 06 2002

Document Copies have been filed with the DTB

\_\_\_\_\_  
Drawer, Secured Party-Creditor  
Without Recourse

\$72,428 05

\$72,428 05

COPY

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CASE NO.: 2001-31518-CICI

BANK ONE NATIONAL ASSOCIATION,  
AS TRUSTEE,

Plaintiff,

vs.

ROBERT WARD; JERILYNN L. WARD, a/k/a  
JERILYN L. WARD; SARA SUE FUGATE; JOHN  
DOE AND JANE DOE AS UNKNOWN TENANT(S)  
IN POSSESSION OF THE SUBJECT PROPERTY,

Defendants.

\* \* \* \* \*

PROCEEDINGS: MOTION FOR SUMMARY JUDGEMENT

DATE TAKEN: JULY 10, 2002

TIME COMMENCED: 11:10 A.M.

TIME CONCLUDED: 11:20 A.M.

PLACE: VOLUSIA COUNTY COURTHOUSE ANNEX  
125 EAST ORANGE AVENUE  
DAYTONA BEACH, FLORIDA

REPORTED BY: DEBORAH WARREN, RPR  
COURT REPORTER AND NOTARY PUBLIC

\* \* \* \* \*

The above-styled cause came on to be heard before  
the Honorable William C. Johnson, Circuit Court Judge, at  
the time and place above indicated, for the purpose of  
taking evidence and testimony in said cause.

VOLUSIA REPORTING COMPANY  
POST OFFICE BOX 1409  
DAYTONA BEACH, FLORIDA 32115  
386-255-2150

COPY



1 APPEARANCES:

2 AMY M. POST, ESQUIRE  
3 Law Offices of Marshall C. Watson  
4 1800 NW 49th Street, Suite 120  
5 (954)-453-0365  
6 Attorney for Plaintiff

7 SARA SUE FUGATE  
8 ROBERT E. WARD  
9 JERILYNN L. WARD  
10 Pro Se Defendants  
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## P R O C E E D I N G S

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THE COURT: All right. Who do we have here?

MS. POST: Good morning. Amy Post on behalf  
of --

THE COURT: Please come up here and tell me the  
style of the case, the name of the case, and who you  
are and who you represent, and then we will ask these  
people to do the same.

MS. POST: Certainly. Your Honor, my name is  
Amy Post. I represent Bank One in the matter of Bank  
One versus Ward.

This is plaintiff's motion for final judgement  
of mortgage foreclosure, which has been before Your  
Honor on numerous occasions. I think you're well  
acquainted with the matter.

THE COURT: Could I ask you to please stand and  
tell me your names.

MR. WARD: Robert Ward.

MS. WARD: My name is Jerilynn Ward.

THE COURT: You his wife?

MS. WARD: Yes.

MS. FUGATE: Sara Fugate.

THE COURT: So you are one of the parties?

MS. FUGATE: Yes, sir.

THE COURT: Now, you look familiar to me. Are

VOLUSIA REPORTING COMPANY

1           you the lady that comes in with that letter of  
2           credit, bill of credit?

3           MS. FUGATE: It's a bill of exchange, yes, sir.

4           THE COURT: Seventy something thousand?

5           MS. FUGATE: I've provided certified funds  
6           totaling \$144,432.07, specifically to discharge debt  
7           associated with this case, which is supported by  
8           affidavit which has been entered into the record this  
9           morning. And I have a copy to give you.

10          THE COURT: Have you seen that?

11          MS. FUGATE: I've got one for her also.

12          THE COURT: Why don't you all come up here, if  
13          you can. Stand there and then --

14          MS. FUGATE: If you like a copy of this, I also  
15          have one.

16          THE COURT: Give one to Ms. Post. Let me see  
17          what you got. Let me look at this and then I'll hear  
18          you.

19          Are you preparing your own pleadings or is  
20          someone else doing it for you?

21          MS. FUGATE: I'm doing it myself with help.

22          THE COURT: Whose help?

23          MS. FUGATE: A friend.

24          THE COURT: An attorney?

25          MS. FUGATE: No, sir.

VOLUSIA REPORTING COMPANY

1 THE COURT: It's not Tony (undiscernible), is  
2 it?

3 MS. FUGATE: I never heard of her.

4 THE COURT: Who is your friend?

5 MS. FUGATE: I have no attorney.

6 THE COURT: Who is the friend that does this for  
7 you?

8 MS. FUGATE: I choose not to answer. It's  
9 nobody that knows any law or an attorney of any kind.

10 THE COURT: Have you had an opportunity to look  
11 at this? Have you shown her, again, the money and  
12 all this?

13 MS. FUGATE: I've sent an additional \$72,005.22  
14 to Homecomings yesterday.

15 THE COURT: Who did you send it to?

16 MS. FUGATE: Homecomings Financial Network.

17 THE COURT: I wish you hadn't done that. I wish  
18 you would have brought it in here. You sent it to  
19 them yesterday?

20 MS. FUGATE: Yes, sir.

21 THE COURT: Who have you been talking to about  
22 this? I ask this not so much for me but Ms. Post's  
23 sake.

24 MS. FUGATE: I did talk to Michael Cackling  
25 (phonetic) one time. He never did respond to me. I

VOLUSIA REPORTING COMPANY

1 sent several faxes out to him. Michael Burke in Amy  
2 Post's office gave me the address of the Homecomings  
3 Financial Network.

4 THE COURT: Who are they? They're in the Bank  
5 One?

6 MS. FUGATE: That's who the check is made out  
7 to. That's who the bill of exchange is made out to.

8 MS. POST: They're the servicer. They deal with  
9 the payment.

10 THE COURT: I get so infuriated at the maze  
11 these mortgage companies are creating.

12 MS. FUGATE: Nobody in this company would  
13 respond to any of my faxes.

14 THE COURT: I believe you. That's all I hear  
15 all the time. Nobody can get through to anybody.  
16 Nobody will call back. Nobody will give a last name.

17 Now, where does that leave with us summary  
18 judgement?

19 MS. POST: In regard to the motion for summary  
20 judgement -- before I present that to Your Honor, in  
21 regard to the affidavit that Ms. Fugate has presented  
22 to me this morning, of course, I have no knowledge as  
23 to whether there has been payment received and  
24 accepted by Homecomings. This is all new to me at  
25 this moment.

VOLUSIA REPORTING COMPANY

1           But in regard to the affidavit, I certainly  
2 haven't had an opportunity to read it all, but just  
3 in reviewing it briefly, I'm of the position that I  
4 should move forward for my client on the motion for  
5 summary judgement.

6           THE COURT: Really?

7           MS. POST: Yes, Your Honor.

8           THE COURT: Should I hear your argument?

9           MS. POST: Your Honor, there are no issues of  
10 facts to present. There was a -- the initial  
11 mortgage and note were signed on the 7th of  
12 August 2000. The default occurred on May 1st, 2001;  
13 wherein, at that time we instituted an action against  
14 the Wards, proceeded to service, and had a default  
15 entered against the Wards, as well as Ms. Fugate, on  
16 the 28th of August 2001.

17           Therefore, any filings with the court should not  
18 be deemed accepted and presented during the motion  
19 for summary judgement.

20           The issue is that there has been a default, and  
21 at this time my client believes they're entitled to  
22 final judgement of mortgage foreclosure based on that  
23 default.

24           THE COURT: Have you seen the letter in this  
25 file, June 10th, 2002, law firm of Marshal Watson,

VOLUSIA REPORTING COMPANY



1 PA, says \$75,459.25 will pay this mortgage up to  
2 date? Have you seen that?

3 MS. POST: Yes, Your Honor, I have. And in  
4 regard to that, I have asked of my client -- of  
5 course, I don't know about the current funds that  
6 Ms. Fugate is stating she has presented to  
7 Homecomings, but prior to that I asked my client to  
8 review the records, and if -- and asked if they had,  
9 in fact, received any funds, what they have done with  
10 them if they had, or if they had not, et cetera, and  
11 asked my client -- representative of my client sign  
12 an affidavit in regards to those facts.

13 I do have that affidavit to present to Your  
14 Honor this morning, stating basically that no payoff  
15 funds were received from Sara Fugate, and that was  
16 signed on July 2nd. So a representative of my  
17 client --

18 THE COURT: When did you mail that, Ms. Fugate?

19 MS. FUGATE: I have a receipt or a Fedex copy  
20 where on February 7th at 9:48 a.m., C. Anderson  
21 signed for the bill of exchange that was sent to  
22 Homecomings.

23 THE COURT: Do you want to look at that?

24 MS. POST: Please.

25 MS. FUGATE: You can call the number and that's

VOLUSIA REPORTING COMPANY

1           what you'll hear.

2           MS. POST: May I ask a question?

3           THE COURT: Sure.

4           MS. POST: Specifically what is a bill of  
5 exchange?

6           MS. FUGATE: Okay.

7           MS. POST: Because I have a feeling my client  
8 will not know what this is in order --

9           THE COURT: They're in the business. It's a  
10 bank instrument.

11          MS. FUGATE: It's an instrument to pay through a  
12 treasury account.

13          MS. POST: Okay.

14          MS. FUGATE: If you read the instructions that  
15 come with that, it tells you exactly how to receive  
16 the funds from the Treasury Department, the US  
17 Treasury Department.

18          MS. POST: Okay.

19          MS. FUGATE: According to Florida Statute  
20 672.304, price payable in money, goods, realty or  
21 otherwise, and I chose otherwise. It says the price  
22 can be made payable in money or otherwise, and I  
23 chose otherwise, which was the bill of exchange.

24                 And there is a large amount of case law  
25 supporting the facts that notes and bills of exchange

VOLUSIA REPORTING COMPANY

1 are the same as money and checks, et cetera.

2 MS. POST: Your Honor, it's my client's position  
3 that the terms of the note and mortgage rule this a  
4 default. In regards to making a payoff of the note  
5 and mortgage, they have deemed they would like those  
6 funds sent via certified funds in order to process  
7 it.

8 MS. FUGATE: That is certified funds.

9 THE COURT: I tell you what, you can tell Home  
10 Serving (sic), or whoever they are, or Bank One, send  
11 a representative down here and she'll deliver the  
12 funds.

13 Meanwhile, motion for summary judgement is  
14 denied. Send me an order. This case is dismissed.

15 (WHEREUPON, the deposition was concluded at  
16 11:20 a.m.)

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VOLUSIA REPORTING COMPANY

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C E R T I F I C A T E

STATE OF FLORIDA  
COUNTY OF VOLUSIA

I, Deborah Warren, Registered Professional  
Reporter, certify that I was authorized to and did  
stenographically report the foregoing proceedings and that  
the transcript is a true and complete record of my  
stenographic notes.

Dated this 16th day of July, 2002.

  
\_\_\_\_\_  
Deborah Warren, Court Reporter

VOLUSIA REPORTING COMPANY

LETTER OF ADVICE

NOT SUBJECT TO NEGOTIABILITY -- ACCEPTANCE FOR VALUE

Re Account No 0432225159

Attn HOMECOMINGS FINANCIAL NETWORK  
BANK ONE NATIONAL ASSOCIATION  
AS TRUSTEE

Sara Sue Fugate  
c/o 15363 SE 105 Terrace Road  
Sumnerfield, Florida [34491]

Re Notice -- Processing of Bill of Exchange (BA-Time Draft)

Date July 9, 2002

I am in receipt of the attached offer requesting payment. Enclosed please find the Bill of Exchange (BA - Time Draft) the processing of which will discharge the entire current amount stated on the claim herein accepted for value. This Negotiable Instrument is presented under authority of Public Law 73 10, UCC 3-104(c) *Spencer v Sterling Bank*, 63 Cal App 4<sup>th</sup> 1055 (1998), *Guaranty Trust Co of New York v Henwood et al*, 59 S Ct 847, and *Witkin Negotiable Instruments*, Vol 3 (2001 Supplement) on the undersigned's UCC Contract Trust Account. Following are the steps required to settle this account. **This is not a Treasury/Bond Account.**

1. The enclosed Negotiable Instrument is hereby presented and the following process *must be followed to the letter* in order to satisfy the claimed amount due on this account and discharge of this debt.
2. My Personal Direct Treasury Trust (UCC Contract) Account has been set up at the Department of the Treasury and may only be accessed with my approval through the bank account of the Claimant directly to the Secretary of the Treasury. The original Negotiable Instrument must be presented by claimant's financial institution via Certified or Registered Mail directly to the Secretary of the Treasury - Department of the Treasury Bank (Federal Window), 1500 Pennsylvania Ave NW, Washington, D.C. 20220, Attn: Paul H. O'Neill.
3. The Item Processor at Claimant's financial institution, with full identification and Bailee (Authorized Agent) signature, is to present the original Negotiable Instrument along with the Instruction Notice and the stamped Claim to the Secretary of the Treasury - Department of the Treasury Bank at the above address.
4. Claimant's financial institution is to retain the document copies and request that a copy of the Return Receipt from the Federal Window be supplied to them noting the date the original Negotiable Instrument was received at the Federal Window in accordance with Public and Banking Policy. For out of state transactions the UCC and Banking Codes stipulate fifteen (15) days.
5. The copy of the Negotiable Instrument is to be held at the financial institution until the required period for the Federal Window, Regulation J and Federal Reserve Reg Z-Truth in Lending, 12 USC § 2201 et seq. the Order/Property has passed. Then the full-face amount of the Negotiable Instrument is automatically released by the local financial institution for credit to Claimant's account and discharge of the claim.
6. If the *Secretary of the Treasury (Drawee)* sends notice *in writing* of some error or problem please notify the undersigned immediately upon receipt of such Notice and the matter will be addressed with the Department of the Treasury Bank and the Federal Window. You will be notified of the corrective action taken.
7. I hereby request that you notify the undersigned when the required time period for the Federal Window and the Federal Reserve under Regulation J and Regulation Z have transpired and the account has been adjusted.

I thank you for your cooperation in getting this account settled and the claim discharged.

*Sara S. Fugate*

Sara S. Fugate, Secured Party - Creditor



\$72, 005.22

\$72,005 22

BILL OF EXCHANGE  
Bill of Acceptance - Time Draft

Sara S Fugate, Secured Party/Drawer

Date July 9, 2002

c/o 15363 SE 105 Terrace Road  
Summerfield, Florida [34491]

To Secretary of the Treasury, Department of the Treasury Bank - Ledger #000000518

On or by July 9, 2002 Credit the account of HOMECOMINGS FINANCIAL  
NETWORK #0432225159

(Seventy Two Thousand Five Dollars and Twenty-Two Cents) \$72,005 22

Personal Direct Treasury (IICC Contract) Account # RR 550 444 898 US

The obligation of the Drawee (acceptor), Secretary of the Treasury, through the bailee (authorized agent) of Claimant's financial institution hereof arises out of the want of consideration for the pledge and by the redemption of the pledge under Public Resolution HJR-192, now Public Law 73-10 and 59 S Ct 847 (FN3), represented by the attached claim Accepted for Value and bearing the account number #0432225159

This claim document is hereby surrendered as said pledge is redeemed (discharged) by the drawer through the attached document of acceptance for value and exempt from levy. The Claimant's financial institution is to accept this bill, sign and present directly via Certified or Registered mail, Return Receipt to the Secretary of the Treasury - Department of the Treasury. Unless the original Negotiable Instrument is dishonored in writing within 15 days of receipt by the Secretary of the Treasury Claimant's financial institution is to release the credit to the payee within the time stipulated by Regulation "Z", Truth in Lending Act or on the date designated, whichever is later. The amount of this accepted draft is to be credited by Claimant's financial institution to the designated account and the discharge of this claim fifteen (15) days after receipt by the Federal Window (Regulation Z)

NOTICE: The law relating to principal and agent applies

By \_\_\_\_\_  
*Bailee's signature (authorized bank agent)*

Accepted at (Summerfield Florida) on February 06, 2002

Document Copies have been filed with the DTB

*Sara S. Fugate*  
Drawer, Secured Party-Creditor  
Without Recourse

\$72,005 22

\$72,005 22

LAW OFFICES OF  
**Marshall C. Watson, P.A.**  
1800 NORTH WEST 49<sup>TH</sup> STREET, SUITE #120  
FORT LAUDERDALE, FLORIDA 33309

Managing Attorneys

**Marshall C. Watson**

**Diana A. Saffa**

Associate Attorneys

**Patricia A. Arango**

**Douglas R. Bleck**

**Olson Gunay**

**Traciann G. McKenzie**

**WM David Newman, Jr**

**Dalha A. Paul**

**Amy M. Post**

Telephone (954) 453-

0365

Facsimile (954)

771-6052

July 19, 2002

The Honorable WILLIAM C. JOHNSON, JR.  
Circuit Court Judge  
125 East Orange Avenue, Room 302  
Daytona, FL 32114

RE Bank One, National Association, As Trustee vs Robert E. Ward And Jerilynn L.  
Ward A/K/A Jerilyn  
Case No.: 2001 31518 CICI

Your Honor

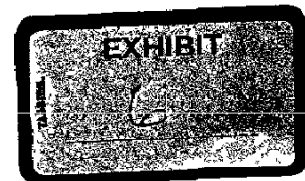
Enclosed please find a proposed Order on Plaintiff's Motion for Summary Final Judgment, which was heard on JULY 10, 2002, as well as Plaintiff's Motion for Clarification and/or rehearing on Plaintiff's Motion for Summary Judgment

Should you require any additional information, please do not hesitate to contact this office

Respectfully,

  
Amy Post

Enclosures



IN THE CIRCUIT COURT OF THE  
7TH JUDICIAL CIRCUIT, IN AND  
FOR VOLUSIA COUNTY,  
FLORIDA  
CIVIL DIVISION  
CASE NO - 2001 31518 CICI

BANK ONE, NATIONAL  
ASSOCIATION, AS TRUSTEE

Plaintiff,

vs

ROBERT E. WARD; JERILYNN L  
WARD A/K/A JERILYN L.  
WARD, SARA SUE FUGATE,  
JOHN DOE AND JANE DOE AS  
UNKNOWN TENANT (S) IN  
POSSESSION OF THE SUBJECT  
PROPERTY,

Defendants

---

**ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

THIS CAUSE having come before the Court and the Court being duly advised; it

IS

**ORDERED AND ADJUDGED**

1. Plaintiff's Motion for Summary Judgment is Denied
2. A representative of the Plaintiff shall personally appear before this Court regarding any future hearing.
3. This case is Dismissed

**ORDERED** at Daytona, Volusia County, Florida, on this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2002

---

HONORABLE WILLIAM C JOHNSON, JR



**Case No. 2001 31518 CICI**

**MAILING LIST**

**ROBERI E WARD  
JERILYNN L. WARD A/K/A JERILYN L WARD  
605 NORTHLAKE BLVD  
ALTAMONTE SPRINGS, FLORIDA 32701**

**SARA SUE FUGATE  
15363 S E 105<sup>TH</sup> TERRACE ROAD  
SUMMERFIELD, FL 34491**

**JOHN AND JANE DOE AS UNKNOWN TENANT (S)  
IN POSSESSION OF THE SUBJECT PROPERTY  
500 SOUTH SENECA BOULEVARD  
DAYTONA BEACH, FL. 32114**

IN THE CIRCUIT COURT OF THE  
7TH JUDICIAL CIRCUIT, IN AND  
FOR VOLUSIA COUNTY,  
FLORIDA  
CIVIL DIVISION  
CASE NO. 2001 31518 CICT

BANK ONE, NATIONAL  
ASSOCIATION, AS TRUSTEE  
Plaintiff,

vs.

ROBERT E WARD; JERILYNN L  
WARD A/K/A JERILYN L.  
WARD, SARA SUE FUGATE,  
JOHN DOE AND JANE DOE AS  
UNKNOWN TENANT (S) IN  
POSSESSION OF THE SUBJECT  
PROPERTY,

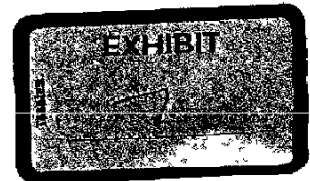
Defendants

COPY

MOTION FOR CLARIFATION AND OR REHEARING

COMES NOW, Plaintiff, BANK ONE, NATIONAL ASSOCIATION, AS  
TRUSTEE, by and through its undersigned counsel, and moves this Court for  
Clarification of Hearing set on July 10, 2002 and or Rehearing pursuant to Florida Rules  
of Civil Procedure 1 530 and as grounds thereof would state as follows

- 1 That on July 10, 2002, undersigned counsel attended hearing on Plaintiff's  
Motion for Final Judgment of Mortgage Foreclosure.
- 2 Plaintiff's counsel presented to this Court that all named Defendants, those  
being ROBERT E WARD; JERILYNN L WARD A/K/A JERILYN L  
WARD, SARA SUE FUGATE were properly served and Defaulted by the  
Clerk of Court on August 28, 2001
- 3 In addition, all affidavits pursuant to Florida Rule of Civil Procedure 1 510  
were timely filed in support of Plaintiff's Motion for Summary Judgment.
- 4 Defendant, SARA SUE FUGATE, was present during the hearing on  
Plaintiff's Motion for Summary Judgment and presented a Notice of Filing  
of Affidavit Regarding Discharge of Indebtness with attachments (Exhibit A  
)



- 5 Said Affidavit indicates that SARA SUE FUGATE tendered a payment to Homecomings Financial Network dated February 6, 2002 in the amount of \$72,428.05 as evidenced by Defendant's Exhibit D. (Exhibit A)
6. Said Affidavit further indicates that she tenders payment to Homecomings Financial Network in the amount of \$72,005.22 as evidenced by Defendant's Exhibit E
7. Plaintiff provided Defendant SARA SUE FUGATE with a payoff statement which indicated that "PAYOFF FUNDS MUST BE IN THE FORM OF CASHIER'S CHECK PAYABLE TO 'HOMECOMINGS FINANCIAL NETWORK'. CHECKS MADE PAYABLE TO ANY OTHER ENTITY WILL NOT BE ACCEPTED."
8. Defendant did not present funds as required by Plaintiff's payoff letter and did not present a negotiable instrument as said document evidenced as Defendant's exhibit D states that it is "Not Subject to Negotiability-Acceptance for Value," as a result said document is not payment and thereby not considered redemption under Florida Statutes
- 9 Defendant's "tender" of payment does not include interest accrued to date as well as additional attorney's fees and costs
- 10 Plaintiff further provided a supplemental affidavit in support of its Motion for Summary Judgment evidencing that no payoff was received from SARA SUE FUGATE, said affidavit was signed July 2, 2002 (Exhibit B).
11. At the conclusion of the hearing, this Court Ordered Plaintiff's Motion for Summary Judgment Denied and that a corporate representative of the Plaintiff must appear in person on any future matters pertaining to this action and then Dismissed.
- 12 Defendants and Plaintiff's counsel remained the Courtroom to finalize the matter when the Judicial Assistant approached the undersigned and asked if the undersigned knew the content of the Order Judge requested the undersigned draft for Judge.
- 13 Undersigned counsel responded that this Court Ordered Plaintiff's Motion for Summary Judgment Denied and that a representative of the Plaintiff

must personally appear before this Court on any future matters regarding this action

14. The Judicial Assistant then informed the undersigned that this Court also wanted the proposed Order to read that this action is Dismissed
15. Undersigned counsel requests clarification of said Order Denying Plaintiff's Motion for Summary Judgment and requiring a representative of the Plaintiff personally appear in any future matters before this Court as well as the Dismissal of the action as they are inconsistent
16. Undersigned counsel understood this Court's Order to only include a Denial of the Motion for Summary Judgment and that a representative of the Plaintiff shall appear before this Court on any future hearings before the Court and not a Dismissal of the entire action.
17. Plaintiff asserts that if said Motion for Summary is Denied and a representative of the Plaintiff shall appear for any future matters, then said case should not be dismissed but kept open and pending as to Dismiss said action prejudices the Plaintiff
18. Plaintiff asserts that in the interest of Equity this matter should remain open and pending in order to obtain either a Final Judgment of Foreclosure or seek discovery to aid at trial

**WHEREFORE**, Plaintiff, BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE respectfully requests that this Court enter an Order Clarifying the results of Plaintiff's Motion for Final Judgment of Foreclosure or in the alternative grant the Plaintiff a rehearing on Plaintiff's Motion for Summary Judgment

**I HEREBY CERTIFY** that a true copy of the foregoing was delivered to the parties on the attached mailing list by mail this 19<sup>th</sup> day of July, 2002.

Law Offices of Marshall C. Watson, P.A.  
1800 NW 49<sup>TH</sup> Street, Suite 120  
Fort Lauderdale, FL 33309  
Telephone: (954) 453-0365  
Facsimile: (954) 771-6052

By

AMY POST, Esquire  
Bar Number 0195456

Case No 2001 31518 CICI

**MAILING LIST**

**ROBERT E. WARD  
JERILYNN L. WARD A/K/A JERILYN L. WARD  
605 Northlake Blvd.  
Altoma Springs, Florida 32701**

**SARA SUE FUGATE  
15363 S.E. 105<sup>TH</sup> TERRACE ROAD  
SUMMERFIELD, FL. 34491**

**JOHN AND JANE DOE AS UNKNOWN TENANT (S)  
IN POSSESSION OF THE SUBJECT PROPERTY  
500 SOUTH SENECA BOULEVARD  
DAYTONA BEACH, FL. 32114**

LAW OFFICES OF  
**Marshall C. Watson, P.A.**  
1800 NORTH WEST 49<sup>TH</sup> STREET, SUITE #120  
FORT LAUDERDALE, FLORIDA 33309

Managing Attorneys  
Marshall C. Watson  
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Okan Gunay  
Traeann G. McKenzie  
WM. David Newman, Jr.  
Dahia A. Paul  
Amy M. Post

September 25, 2002

The Honorable William C. Johnson, Jr.  
Circuit Court Judge  
125 East Orange Avenue, Room 302  
Daytona, FL 32114

RE. Bank One, National Association, As Trustee vs Robert E. Ward And Jerilyn L.  
Ward A/K/A Jerlyn L. Ward, et al  
Case No. 2001 31518 CICI

Dear Judge Johnson

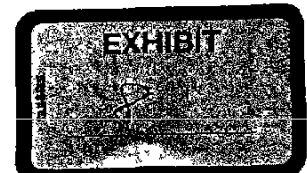
Enclosed please find a proposed Order on Plaintiff's Motion for Summary Final Judgment, which was heard on July 10, 2002. In addition, enclosed please find Plaintiff's Motion for Rehearing and Motion for Clarification previously submitted. Plaintiff served all parties and the Court with said Motion for Rehearing and Motion for Clarification on July 19, 2002. However, Your Honor brought to the undersigned's attention that said Motion and Order are missing from Your Honor's office. As a result, counsel for the Plaintiff respectfully re-submits a copy of the previously served Motion as well as the previously served Order for Your Honor's review. I have also attached copies to be conformed by your Judicial Assistant and mailed to the respective parties.

Should you require any additional information, please do not hesitate to contact this office on our toll free number (800)441-2438.

Respectfully,

  
Amy Post

Enclosures



From JUAN SANTIAGO (954)453-5216  
MARSHALL WATSON  
1800 NW 49TH STREET  
SUITE 120  
FORT LAUDERDALE, FL, 33309

REVENUE BARCODE



To: CIRCUIT JUDGE (000)000-0000  
THE HONORABLE WILLIAM C. JOHNSON, J  
125 EAST ORANGE AVE., ROOM 302

SHIP DATE 19JUL02  
WEIGHT 1 LBS

DAYTONA, FL, 32114

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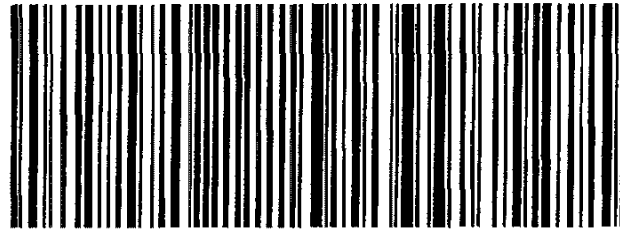
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IN THE CIRCUIT COURT OF THE 7<sup>TH</sup> JUDICIAL CIRCUIT,  
IN AND FOR VOLUŞIA COUNTY, FLORIDA

BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE Plaintiff,	)	CIVIL DIVISION
v.	)	CASE NUMBER 2001-31518-CICI
ROBERT E. WARD; JERILYNN WARD A/K/A JERILYN I. WARD, ET. AL, SARA SUE FUGATE Respondent.	)	

**RESPONDENT'S VERIFIED MOTION TO SHOW CAUSE WHY THE ORDER FOR DISMISSAL AND VERIFYING DISCHARGE SHOULD NOT BE SIGNED**

**Comes now**, Sara Sue Fugate, a living woman, ("Respondent") to move this court TO SHOW CAUSE WHY THE ORDER FOR DISMISSAL AND VERIFYING DISCHARGE SHOULD NOT BE SIGNED and who further states;

**Introduction**

1. During a hearing on July 10, 2002, plaintiffs brought before the court a MOTION FOR SUMMARY JUDGMENT.
2. The court reviewed the facts and heard arguments from both the Respondent and plaintiffs and after considering the facts and law, entered a verbal order dismissing the case.

**Facts to verify debt was discharged**

3. It is supported by affidavit, incorporated herein by reference as **Exhibit "A"** that Respondent discharged all indebtedness owed and owing to HOMECOMINGS FINANCIAL NETWORK (a/k/a BANK ONE NATIONAL ASSOCIATION), ("plaintiffs"), who are purported to be plaintiffs, having standing in Florida
4. The affidavit stated in part; "...That the Affiant did tender payment to HOMECOMINGS FINANCIAL NETWORK dated February 6, 2002, in the amount of \$ 72,428.05..".
5. The affidavit further stated in part, "... That the Affiant is tendering a second payment to HOMECOMINGS FINANCIAL NETWORK in the amount of \$72,005.22..."





6. The affidavit further stated in part; "...That the Affiant has tendered certified funds as payment to HOMECOMINGS FINANCIAL NETWORK totaling \$144,433 27 specifically to discharge debt for the above referenced case...".

7. Furthermore; plaintiffs and plaintiff's attorney provided the final payoff amount by "Affidavit of Indebtedness", dated June 14, 2002. Said affidavit, by plaintiffs verifies the total amount due to be \$ 72,005 22 and which is the same amount Respondent provided by Bill of Exchange for discharge of the debt requested by plaintiffs.

8. Furthermore, Respondent had previously provided a Bill of Exchange in the amount of \$ 72,428.05, leaving plaintiffs an amount totaling \$ 144,433.27 out of which to collect any additional fees, costs or interest due them.

9. The record clearly shows that plaintiffs have received an overabundance of negotiable instruments, in the form of Bills of Exchange and which included a "Letter of Advice" with specific instructions for presentation to plaintiff's bank for collection.

10. Respondent previously provided Florida statute and Uniform Commercial Code references to verify that "tender" of payment can be in money or otherwise, as stated in pertinent part in Florida statute, "F.S. 672.304 Price payable in money, goods, realty, or otherwise...The price can be made payable in money or otherwise.." and Respondent chose "otherwise" by utilizing Bills of Exchange.

The court dismissed the case on the merits

in applicable —  
Article 2 / SA 455

11. During a July 10, 2002 hearing, this court heard testimony from the plaintiff and Respondent and reviewed the facts and law regarding this case.

12. During the July 10<sup>th</sup> hearing, plaintiff's counsel asked the question, " ..what is a bill of exchange? and then stated; "because I have a feeling my client will not know what this is.. ", a copy of the July 10, 2002 transcript incorporated herein by reference, as

Exhibit "B".

13. The court proceeded to clarify that a bill of exchange must be acceptable to the plaintiffs, as they are in the banking business, when the court stated; "**They're in the business (banking business). It's a bank instrument**". See Exhibit "B". [emphasis added]

14. The court had previously verified through testimony given that plaintiffs had received payment in full, by certified mail, on two occasions and on the court's own

motion stated;” ...**motion for summary judgment is denied. Send me an order. This case is dismissed”.**

15. Respondent proceeded to provide the court an Order on or about July 15<sup>th</sup> and followed up to see if the Order had been signed. Respondent further followed up with the court on three or four other occasions over the next three weeks

16. It appears the court failed to sign the order provided and neither plaintiffs, nor the court have provided any reason why the order should not be signed

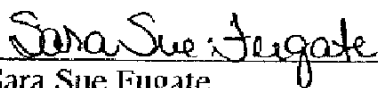
#### **Conclusion and Relief Sought**

**Wherefore;** it has been shown that the Respondent discharged all debt owed or owing plaintiffs and it has been shown that during the July 10<sup>th</sup> hearing, the court verified that plaintiffs had received said payment and on it’s own motion dismissed the case.

**Furthermore;** Respondent previously provided this court a proposed Order and no reason has been shown why the court should not sign the order and it appearing the Order has not been signed.

**Therefore;** by obligation to the “Oath” and Respondent’s request herein to make a “judicial determination consistent with the Oath of Office”, the Respondent moves this court to sign the Order provided by Respondent. It is requested said Order verify the case has been dismissed and said Order verify the debt to be discharged and said Order require plaintiffs provide Respondent clear title within 30 days.

Dated this 12th, day of September, 2002



Sara Sue Fugate  
c/o. 15363 Southeast 105<sup>th</sup> Terrace Road  
Summerfield, Florida [34491]