

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA**

**CASE NO: 16-2011-CA-002119-XXXX-MA  
DIVISION: FC-B**

**APOSTOLIC ASSEMBLIES OF  
JESUS CHRIST, INC., a Florida  
not-for-profit corporation,**

**Plaintiff,**

**vs.**

**CHRIST TABERNACLE MISSIONARY  
BAPTIST CHURCH, a Florida not-for-  
profit corporation, and CITY OF  
JACKSONVILLE,**

**Defendants.**

---

**PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S MOTION FOR RELIEF  
FROM JUDGMENT AND TO RESCHEDULE FORECLOSURE SALE**

COMES NOW, the Plaintiff, **APOSTOLIC ASSEMBLIES OF JESUS CHRIST, INC., "Apostolic Assemblies,"** by and through the undersigned co-counsel, and hereby moves this Honorable Court, pursuant to Rules 1.140 (f) and 1.150 (a), F. R. Civ. P., Order Striking Defendant's pleadings and rescheduling foreclosure sale, and in support therefore would show the following, to wit:

1. A final judgment of foreclosure was entered in this case on or about November 16, 2011;
2. The judicial sale of the subject property was scheduled for January 23, 2012.
3. Defendant filed a motion to cancel foreclosure sale on or about December 20, 2011, in contemplation of filing a motion for relief from judgment.

4. Defendant filed its motion for relief from judgment on or about December 20, 2011.
5. This court granted its order continuing foreclosure sale.
6. The basis for Defendant's motion for relief from judgment was predicated upon the following issues, to wit:
  - a. defective of service of process;
  - b. answer filed by non-lawyer; and
  - c. the ambiguity of the deed and note.
7. The deposition of the former registered agent for defendant, who alleged that he did not receive the summons and complaint, has been taken.
8. The former registered agent for defendant has acknowledged, in his deposition, that he indeed received the summons and complaint, and provided the documents to defendant's corporate officer.
9. The former registered agent further acknowledged that one of defendant's corporate officers requested that the registered agent file an answer on its behalf.
10. The defendant has been aware for some time that the registered agent, a non-lawyer, filed the answer on its behalf, but never attempted to cure the filing defect.
11. Defendant alleged that the deed and note associated with Plaintiff's mortgage was ambiguous, or somehow defective, but, hitherto, has not demonstrated with competent substantial record evidence that a defect existed.

12. From defendant's actions, or lack thereof, its eleventh hour motion for stay of the foreclosure sale of the subject property was merely a delay tactic, which has proven to be meritless.
13. Plaintiff requests that this court finds that Defendant's actions in moving to stay the foreclosure sale were not made in good faith, but for purposes of delay.
14. Pursuant to the above referenced rules of civil procedure, Plaintiff further request that this court should strike Defendant's pleadings and reschedule the foreclosure sale.
15. Since Plaintiff has been granted a default judgment in this case and defendant has never tendered a single payment towards the reduction of the said debt, no prejudice will inure to defendant's detriment if this motion is granted.
16. On the other hand, if this motion is not granted, Plaintiff will be highly prejudiced, since defendant shall continue to occupy the buildings, without tendering any payments, and laying waste to the premises.
17. This motion is made in good faith and for the interest of justice and for no other reason.

#### **Memorandum of Law**

In order to obtain relief from a default final judgment pursuant to rule 1.540 (b), Florida Rules of Civil Procedure, a party seeking relief must demonstrate excusable neglect, a meritorious defense, and that the party acted with due diligence. E.g. *Schwartz v. Business Cards Tomorrow, Inc.*, 644 So.2d 611 (Fla. 4th DCA 1994). Defendant has not demonstrated excusable neglect.

The striking of a party's pleadings “has long been an available and often favored remedy for a party's misconduct in the litigation process.” *Bertrand v. Belhomme*, 892 So.2d 1150, 1152 (Fla. 3d DCA 2005). The rationale underlying the sanction is that “a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends.” *Id.* (quoting *Metro. Dade County v. Martinsen*, 736 So.2d 794, 795 (Fla. 3d DCA 1999)). Of course, the dismissal of a party's pleading is a severe sanction, and thus should be administered only in the most egregious cases. *Bertrand*, 892 So.2d at 1152. As a result, an order striking pleadings for fraud upon the court is reviewed under a “narrowed” abuse of discretion standard. *Williams v. Miami-Dade County Pub. Health Trust*, 17 So.3d 859, 859 (Fla. 3d DCA 2009).

The proponent of a motion to strike pleadings must prove, by clear and convincing evidence, “that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense.” *Cox v. Burke*, 706 So.2d 43, 46 (Fla. 5th DCA 1998) (quoting *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir.1989)).

Courts favor the disposition of complaints upon the merits of each case and not upon a technicality, such as a mistake by the registered agent in failing to prosecute a claim on behalf of the entity in which he represents for such purpose. Trial courts are vested with the sole discretion to relieve a party from a mistake, particularly, where a manifest injustice may inure to its detriment and no prejudice shall inure to the detriment of the opposing party. The defendant has not shown that there was a mistake on behalf of

the registered agent, or any defect in the mortgage or note associated with the subject property.

A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time.<sup>1</sup> If as party deems any pleading or part thereof filed by another party to be a sham, that party may move to strike the pleading or part thereof before the cause is set for trial and the court shall hear the motion, taking evidence of the respective parties, and if the motion is sustained, the pleading to which the motion is directed shall be stricken.<sup>2</sup>

**WHEREFORE**, Petitioner prays that this court finds that good cause exists to relieve the registered agent's mistaken belief relative to service of process and set aside the final judgment and permit this action to proceed upon the merits.

**G.E.B. WILLIAMS, I., P.A.**

**BY: /s/ *G Everett Burghardt Williams, I.***

**G. EVERETT BURGHARDT WILLIAMS, I.**

Florida Bar No.: 0317993

Post Office Box 10293

Jacksonville, Florida 32247-0293

904-398-1951 (Voice)/904-398-4442 (Facsimile)

Attorney for Defendant Apostolic Assemblies

<sup>1</sup>Rule 1.140 (f), F. R. Civ. P.

<sup>2</sup>Rule 1.150 (a), F. R. Civ. P.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a copy of the above and foregoing has been furnished to **GUY VICTOR MURRAY, ESQUIRE**, 118 West Adams Street, Suite 320, Jacksonville, Florida 32202, via E-Mail [guyvictormurrayp@bellsouth.net](mailto:guyvictormurrayp@bellsouth.net); **HERMAN S. PAUL, ESQUIRE**, 4811 Atlantic Blvd, Suite 2, Jacksonville, Florida 32207, E-Mail [paherman@paherman.com](mailto:paherman@paherman.com); **DALE, BALD, SHOWALTER, MERCIER & GREEN, P.A.**, E-Mail [DBSMFLA@DALEBLAD.COM](mailto:DBSMFLA@DALEBLAD.COM); and **DEBORAH WALTERS**, 117 West Duval Street, Suite 480, Jacksonville, Florida 32202, E-Mail [DebWalters@aol.com](mailto:DebWalters@aol.com); on this 29<sup>th</sup> day of May, 2014.

*/s/ G Everett Burghardt Williams, J.*  
A T T O R N E Y