

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2013

GREGORY J. WILLIS,
Appellant,

v.

**THE BANK OF NEW YORK MELLON AS SUCCESSOR BY MERGER TO
THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE
HOLDERS CWALT INC. ALTERNATIVE LOAN TRUST 2005-60TI
MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2005-60TI,**
Appellee.

No. 4D12-894

[June 19, 2013]

PER CURIAM.

In entering a final summary judgment of foreclosure, the trial court also granted a reformation of the mortgage to include a legal description of the property foreclosed, as apparently the mortgage failed to include the proper legal description. The appellee Bank's motion for summary judgment and accompanying notice, however, did not raise the issue of reformation as an issue to be addressed at the summary judgment hearing. Because of the lack of notice, the court erred in reforming the mortgage to add a legal description. *See Gee v. U.S. Bank Nat'l Ass'n*, 72 So. 3d 211, 214-15 (Fla. 5th DCA 2011) (where motion for summary judgment makes no mention of request to reform legal description in mortgage, court errs in granting such relief in foreclosure judgment); *Locke v. State Farm Fire & Cas. Co.*, 509 So. 2d 1375, 1377 (Fla. 1st DCA 1987) ("The appellee's motion stated only in general terms that no material issues of fact or law existed and that appellee was entitled to the relief requested. Such a motion is insufficient to place the nonmoving party on notice of the issues of fact or law which will be argued at the hearing.").

Based on the record, the Bank's boilerplate motion for summary judgment was insufficient to apprise appellant of this specific topic that would be discussed at the motion hearing. We affirm as to the remaining issues raised.

Affirmed in part; reversed in part and remanded.

WARNER, DAMOORGIAN and CONNER, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Joel T. Lazarus, Judge; L.T. Case No. 09-34467 CACE.

Gregory J. Willis, Weston, pro se.

Christopher Hixson of Law Office of Daniel C. Consuegra, P.L.,
Tampa, for appellee.

Not final until disposition of timely filed motion for rehearing.