

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL DEPOSIT INSURANCE	)	
CORPORATION, etc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09 C 4458
	)	
CHARLES T. MUDD, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

On January 11, 2010 counsel for First Chicago Bank & Trust ("Bank") presented its motion for leave to file an Answer in this mortgage foreclosure action. Because the proposed Answer and an accompanying putative affirmative defense contained some flaws that otherwise would have prompted issuance of a corrective opinion, this Court welcomed the opportunity to identify those deficiencies to Bank's counsel orally, with the goal of obtaining a proper responsive pleading in place of the flawed version.

Now Bank has filed its Amended Answer ("AA"), an examination of which discloses that the new pleading is still chock-full of one of the types of errors identified by this Court's oral remarks at the January 11 hearing. This time AA ¶¶1-3, 5-7, 10, 11 and AA ¶12's subparagraphs D, H through K, M(ii) and N through U repeat the same practice that had infected the corresponding paragraphs of the original Answer: assertion of an appropriate disclaimer under Fed. R. Civ. P. ("Rule") 8(b)(5), followed by the phrase "and therefore denies the same."

That locution is of course oxymoronic--how can a party that asserts (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation then proceed to deny it in accordance with Rule 11(b)? Accordingly the quoted phrase is stricken from each of those paragraphs of the AA.

Under the circumstances, this Court could well consider the imposition of sanctions for counsel's heedless actions. But although this Court would view such an imposition as overkill, it does order that counsel make no charge to Bank for the added work and expense incurred in correcting counsel's own errors. Bank's counsel are ordered to apprise their client to that effect by letter, with a copy to be transmitted to this Court's chambers as an informational matter (not for filing).



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Milton I. Shadur  
Senior United States District Judge

Date: January 20, 2010