

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS

JAN 07 2013

CHRISTOPHER A. PRINE
CLERK

NO. 14-12-00412-CV

IN THE COURT OF APPEALS
FOURTEENTH DISTRICT OF TEXAS
HOUSTON

J. M. ARPAD LAMELL,
Appellant

V

INDYMAC MORTGAGE SERVICES, A DIVISION OF ONEWEST
BANK, FSB

Appellee

**RESPONSE IN SUPPORT OF APPELLANT'S MOTION FOR
REHEARING AND TO EXTEND TIME TO FILE APPELLANT'S BRIEF
AND IN OPPOSITION TO APPELLEE ONEWEST BANK'S RESPONSE
IN OPPOSITION TO SAME**

TO THE HONORABLE COURT OF APPEALS:

Comes now Appellant J. M. ARPAD LAMELL (hereinafter called "Appellant") and respectfully requests that he be granted a rehearing of the November 13, 2012 order of dismissal of this cause and on rehearing be granted an extension of time in which to file his brief as an Appellant so that if his brief is filed within 4 weeks from date of this motion it will be considered timely filed, and as grounds for such would show as follows:

I.

Order Being Appealed

This is an accelerated appeal of that one certain order, Order Denying Plaintiff's Application for Temporary Injunction signed April 10, 2012 by the Honorable R. K. Sandill, Judge Presiding of the 127th District Court of Harris County, Texas under that court's cause number 2010-11491 styled J. M. ARPAD LAMELL v. INDYMAC MORTGAGE SERVICES, a division of ONE WEST BANK, FSB, a foreign corporation.

II.

Appellate Timetable

Appellant, by and through his former attorney of record, Mr. Shawn Casey, perfected his accelerated appeal on April 30, 2012. On May 31, 2012 the Clerk's Record was filed with this Honorable Court. On June 4, 2012 the Reporter's Record was filed.

III.

Appeal Dismissed August 21, 2012

After notice to all counsel that this appeal was subject to dismissal for lack of prosecution, this appeal was in fact dismissed by this Court on November 13, 2012 due to Appellant's failure to timely file a brief.

IV.

Rehearing Motion Filed Within 15 Days of September November 28, 2012 Due Date

Appellant's motion for rehearing was filed on Wednesday November 28, 2012. This motion for rehearing was filed within 15 days after the rehearing motion was allowed without leave of Court.

V.

Grounds for Extension

As the Court well knows, and as counsel for IndyMac has laid out in its Response in Opposition to Appellant's request for rehearing and extension, Appellant's grounds for extension heretofore have been based on Mr. Casey's steadily worsening medical condition through Parkinson's disease. As a result, he has been unable to do the work required to prosecute Appellant's case on a timely basis.

However, beyond having become unable to do the actual legal work required, at least up until the filing of Appellant's present request for extension, Mr. Casey also failed to recognize the full extent of his disability and the effect it has had and is having on his relationship to that work and to his duties to Appellant. Simply put, Mr. Casey lied to Appellant. He never informed Appellant of the full extent and progress of his disease. Instead, he kept him in the dark as to the actual status of his appeal and the various extensions that he had obtained and that he expected to obtain. At every turn, Mr. Casey advised Appellant that he need not worry about the missed or imminent deadlines and that the required extensions could and would be granted as a matter of course, either because of statutory grace periods and allowances, or because of his good standing and reputation before the Court in his other dealings with it.

Appellant did not learn of these circumstances until this morning, Monday January 7.

VI.

Response to Appellee's Opposition to Extension Request

As a result of Mr. Casey's refusal to properly inform Appellant, he now stands on the brink of losing his house, his underlying case, his appeal, and his very well-being, all because he relied on Mr. Casey's promises that his appeal was "under control". Appellant's case

is meritorious and substantial documentation exists to support his claims of wrongdoing by Defendants.

Should the Court deny Appellant's request for Extension and Re-hearing, no other recourse or remedy would be available to Appellant to recover from the damages or losses that he would incur. Although substantial grounds for malpractice claims exist, no such action could ever set matters right in any useful manner.

VII.

No Harm to Appellee

Appellant currently has posted a supersedeas bond as required by the trial court to cover any potential loss if the Appellant should lose this appeal. Appellant knows of no prejudice to Appellee's rights if this request is in all things granted.

Appellee, in its reply to the present Request for re-hearing, indicates that it would suffer actual harm. Appellant disputes this because, not only is he posting supersedeas bond set by the trial court, but also the loan amount which Appellee seeks to enforce is less than the value of the property that stands as security for the note. Furthermore, the legal fees of which they complain are of their own making by the fact that they are trying to enforce a loan in which they have no pecuniary interest.

VIII.

Counsel to be replaced immediately

Appellant's Counsel has finally taken the filing of this Motion as the opportunity to advise all parties that, upon completion of the brief in this cause, he would retire from the practice of law and go on disability. He represents that his Parkinson's Disease, with its

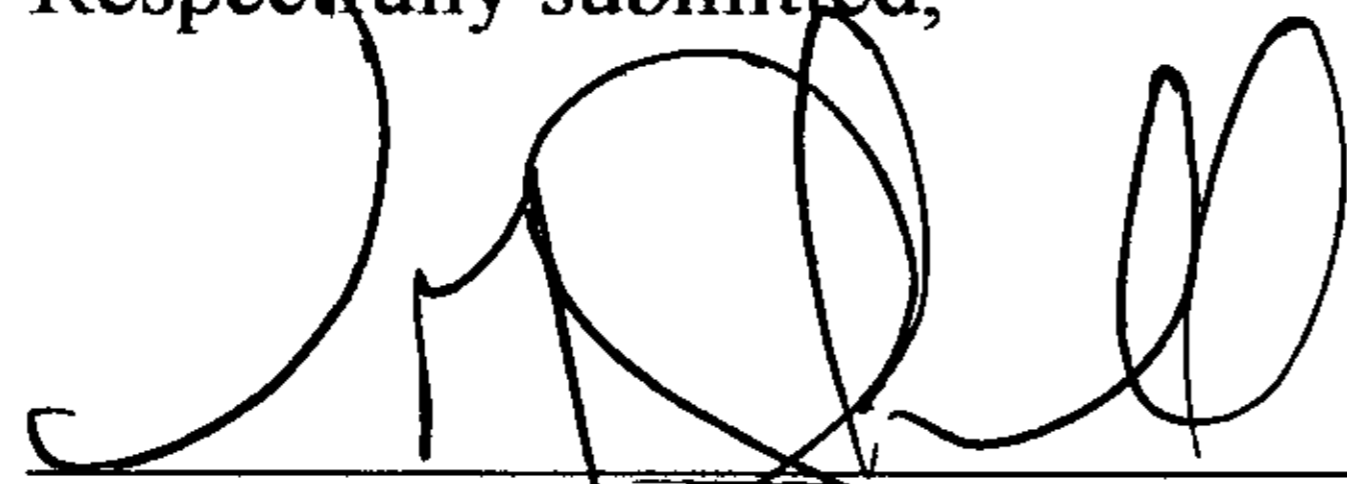
degenerative nature, has reached the point where he can no longer accomplish what is necessary on a timely basis to advocate on Appellant's behalf.

However, it has become clear to Appellant (and, belatedly to Mr. Casey) that no amount of time will be sufficient for him to carry this case forward. Something more decisive needs to be done immediately. Correspondingly, in tandem herewith, Appellant is filing a Motion for Substitution of Counsel to carry this case forward on a pro se basis.

Prayer

I sincerely beg the indulgence of this Court to allow me an additional 20 days, until January 27th, to prepare myself to handle the next steps in this case and to file the required appeal brief with the Court.

Respectfully submitted,



~~J M Arpad Lamell, Pro Se~~
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Houston, TX 77096
713 857 2483
lamell@alum.mit.edu

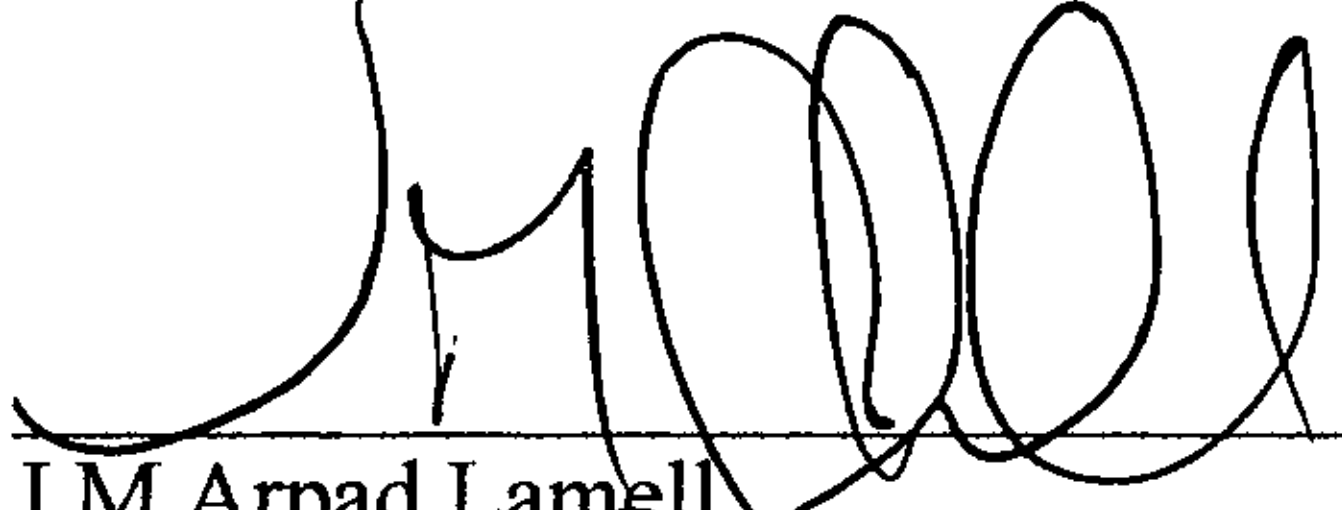
Verification

State of Texas
County of Harris

Before me, the undersigned Notary of Public, on this day, personally appeared J M Arpad Lamell. Upon his oath, he stated as follows:

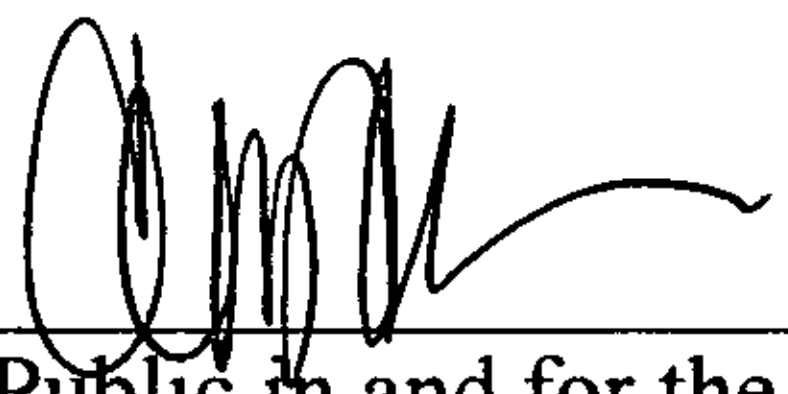
“My name is J M Arpad Lamell. I am over 21 years of age and have never been convicted of a felony or a crime of moral turpitude. My primary residence address is in Houston, Harris County, Texas. I am of sound mind and competent in all respect to make this affidavit.

I have read the foregoing RESPONSE IN SUPPORT OF APPELLANT’S MOTION FOR REHEARING AND TO EXTEND TIME TO FILE APPELLANT’S BRIEF AND IN OPPOSITION TO APPELLEE ONEWEST BANK’S RESPONSE IN OPPOSITION TO SAME. The facts set forth in this response are true and correct within my own personal knowledge.



J M Arpad Lamell

Sworn and subscribed before me, the undersigned Notary Public, on this 7th day of January, 2013.



Notary Public in and for the State of Texas



Certificate of Conference

As required by Texas Rule of Appellate Procedure 10.1(a)(5), I certify that I have conferred, or made a reasonable attempts to twice confer, with all other parties—which are listed below—about the merits of this motion with the following results:
Christine Nowak (Attorney for Appellee Indymac Mortgage Services, a division of One West Bank FSB a foreign corporation)

opposes motion

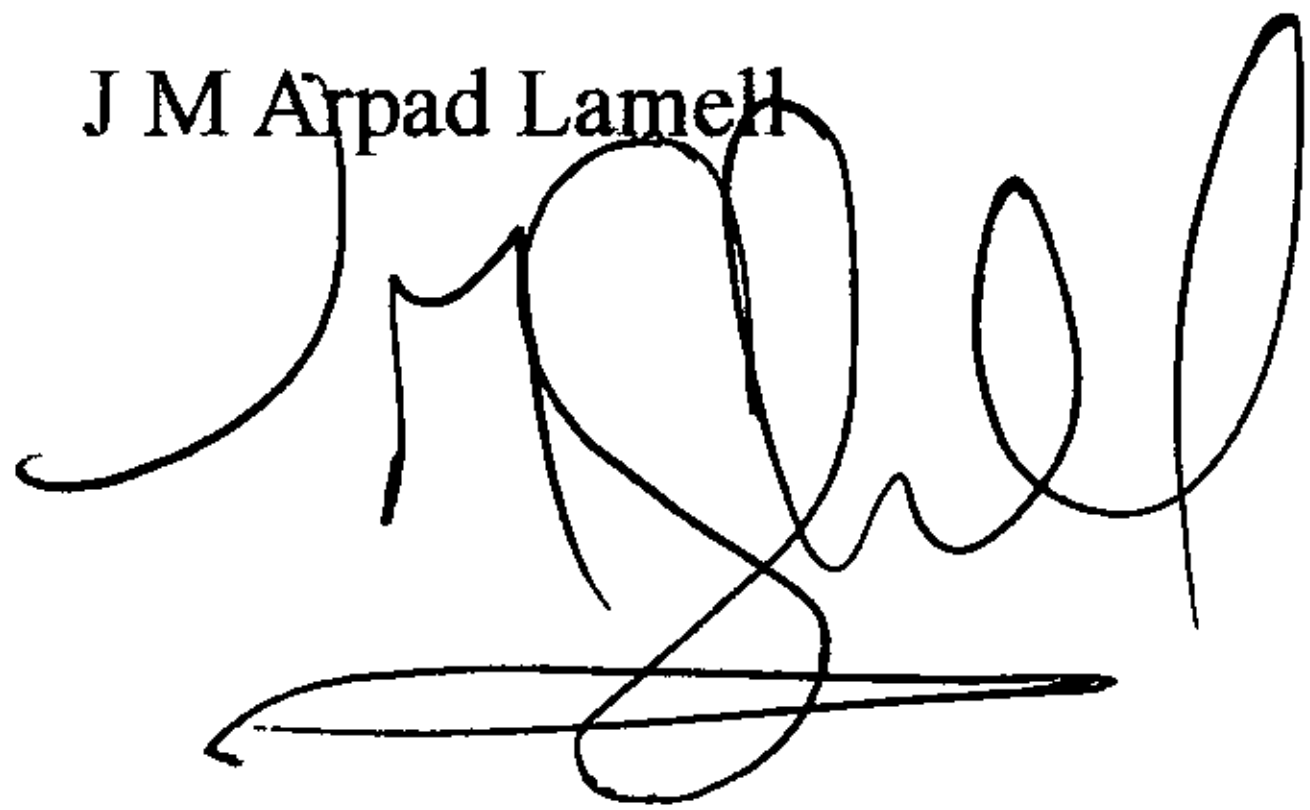
does not oppose motion

agrees with motion

would not say whether motion is opposed


did not return my message regarding the motion prior to filing

J M Arpad Lamell

A handwritten signature in black ink, appearing to read 'J M Arpad Lamell', with a horizontal line drawn underneath it.

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2013, a true and correct copy of the foregoing RESPONSE IN SUPPORT OF APPELLANT'S MOTION FOR REHEARING AND TO EXTEND TIME TO FILE APPELLANT'S BRIEF AND IN OPPOSITION TO APPELLEE ONEWEST BANK'S RESPONSE IN OPPOSITION TO SAME was sent by e-service, certified mail, return receipt requested, and/or hand delivery to parties of record as shown below.



J M Arpad Lamell

Parties:

Via: e-service certified mail, RRR courier, receipted delivery

To: IndyMac Mortgage Services, Division of One West Bank
c/o Thomas M. Hanson
DYKEMA
Commercia Bank Tower
1717 Main Street, Ste. 4000
Dallas, TX 75201
(214) 462-6420 telephone (214) 462-6401 telecopier
thanson@dykema.com
www.dykema.com

Via: e-service certified mail, RRR courier, receipted delivery

To: IndyMac Mortgage Services, Division of One West Bank
c/o Christine Nowak
DYKEMA
Commercia Bank Tower
1717 Main Street, Ste. 4000
Dallas, TX 75201
(214) 462-6432 telephone (214) 462-6401 telecopier
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