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OCT 25 2000

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IN THE SUPREME COURT OF THE STATE OF FLORIDA

GERALD R. SHURMAN, SUPREME COURT CASE NO: SC 96,918
 Appellant, FIFTH DCA CASE NO: 5D99-556
 CIRCUIT COURT CASE NO: 98-720-CA

Vs.

ATLANTIC MORTGAGE &
INVESTMENT CORP. ETC..
 Appellee.

PETITIONER'S REPLY TO RESPONDENTS'S

BRIEF ON MERITS

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT STATE OF FLORIDS

Appellant:

Gerald R. Shurman
7204 Grace Road
Orlando, Florida 328 19

Appellee:

Ms. Jennifer Ebanks
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FLORIDA SUPREME COURT Case No 969 18

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this brief is 14 Point Times New Roman; with no more than ten characters per inch and complies with the Eleventh Circuit Court of Appeals Fed. R. App. P. 28-2 (d) & 32-4 (West)

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PRELIMINARY STATEMENT

The Petitioner Gerald R. Shut-man, in his rebuttal can only reassert the facts as submitted with his original brief on the merits. There is no additional case law, citations or Florida Statutes that have not been already submitted by the Petitioner & Plaintiff in their briefs. The difference is how the Plaintiff is trying to convince this court that the service on the Petitioner was correct as outlined by the Florida Legislators and this honorable Supreme court. Several major items were conveniently overlooked while trying to deceive this court, As a pro se citizen I can only present the true facts where as the Plaintiff can only distort the facts as well as the intent of the Florida Statutes.

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REBUTTAL OF STATEMENT OF CASE FACTS

Plaintiff/Atlantic Mortgage, continues to alleged that Petitioner service of process by substitute service through his wife was valid and proceeded with foreclosure proceedings, knowing that Petitioner was incarcerated for over a year. Their main concern was to take possession of the Shurman's home as soon as possible without any interference from Petitioner.

Plaintiff alleges that Petitioner took seven months to file has motion to set aside the foreclosure action. In similar cases this Court has allowed up to two years to file motions to set aside judgments. Plaintiff fails to tell this court that Petitioner did not know his home was sold in foreclosure prior to having any knowledge of any pending court proceedings. Plaintiff fails to tell this Court that Petitioner estranged wife was advised to file bankruptcy action in order to stop foreclosure action. This action took over three months to discover that the Shurman home was sold prior to filing bankruptcy and was denied a stay by the Federal Court in Orlando, Florida,

Shut-man/Petitioner, did demonstrate a meritorious defense. Yes Petitioner was married at the time of service, but how can anyone control the mind of a separated estrange wife. What ever her reasons were, should not be an excuse allowing Plaintiff to assume service was proper. Both first and second mortgage holders knew that Petitioner was incarcerated at time of service to his estranged wife.

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REBUTTAL OF THE SUMMARY OF ARGUMENT

The Plaintiffs argument states this Court does not have jurisdiction over this matter, when in fact it was clearly established that the case is conflicting in several district courts as well as earlier Florida Supreme Court cases have ruled in line with Petitioners case.

The Plaintiff states in its own opinion of “**USUAL PLACE OF ABODE**” and recites Florida Statute 48.03 1; when in fact Florida Courts have establish, after “one year” whether incarcerated or have moved does establish a new “usual place of abode” especially when a man is serving a eight year sentence.

Plaintiff further tries to imply that a favorable ruling would depart from existing Florida law creating an exception for Petitioner. This statement is made to try and control this Courts decision and change the intent of this courts decision in Housey v. Rutter, (1936) 123 Florida 156. If in fact, the Plaintiff thinks this court will establish an exception then it’s time this court should establish that this ruling has been abused by lower and district courts for the past (64 years)

The Fifth District Court decision should not be confirmed. Even this Court throughout the years has had conflicting decisions, which in fact has ruled in similar cases in favor of Petitioner’s

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REBUTTAL OF ARGUMENT

Petitioner's rebuttal will only address the issues where Plaintiff tries to confuse this Court. Plaintiff recites word for word verbiage from Florida Statutes in which this Court is very familiar with. Plaintiff continues to try and implant the thought that service was made through his wife. This is to the contrary. The fact of non service was established from court records that Petitioner was never served nor notified until his home was sold from foreclosure.

Plaintiff uses Merritt v. Heffernan, trying to indicate that a prisoner has no rights as compared to vacationing northerner, further the Plaintiff twists the facts of service when it clearly establishes that Heffernan had two homes and was living with his family establish that a man living with his family can be served at either location. Plaintiff tries to confused this Court that Petitioners place of abode should be his old address, when in fact it was established that Petitioner's Place of Adobe was Florida State Prison **after** serving 14 months of a 8 year sentence.

Plaintiff through out her argument sites citations after citation twisting district courts Rulings and citing cases from out of state. Florida Courts have been in favor of cases such as Petitioner, but money and power has taken first place in our court system making it easier to rule in favor of the large mortgage companies and large law firms.

Petitioner's case clearly establishes that Florida Prison was his new **“place of abode”**

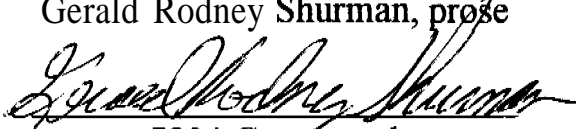
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CONTINUERE BUTTAL OF ARGUMENT

Petitioner established that he was estranged from his wife and she made the decision that Petitioner was not entitled to having knowledge of pending foreclosure action. Plaintiff knew of Petitioner location during time of service and foreclosure action. Plaintiff decided on their own that service was correct and misunderstanding of Florida Statutes relating to service was correct because that's the way service has been conducted for over 64 years.

Atlantic/Plaintiff states they had to rely on literal reading of Florida Statutes 48.031(1)(a) The purpose of this case is for this Court to clarify the reading of the Statutes not only the Plaintiff but to give relief to Petitioner and to establish service procedures for the misfortune such as Petitioner. Plaintiff is not being singled out, dual process is a necessity for our court system.

CONCLUSION

The Fifth District Court decision affirming the trial court's decision was wrong and unjust. The Petitioner prays this court will see Florida Statutes governing service has been abused for over 64 years and will set aside **final** judgment.

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