

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

CARL FANFAIR and **GLORIA ANTOINE**,
on behalf of themselves and all others similarly
situated,

Petitioners,

v.

HON. LAWRENCE KNIPEL, in his official
capacity as the administrative judge and a Justice
of the Supreme Court of the State of New York,
Kings County; **HON. CENCERIA P.
EDWARDS**, in her official capacity as a Justice
of the Supreme Court of the State of New York,
Kings County; and the **NEW YORK STATE
OFFICE OF COURT ADMINISTRATION**,

Respondents.

For a Judgment Under Article 78 of the Civil
Practice Law and Rules

Index No. 2023-05048

This **STIPULATION OF SETTLEMENT** (“Stipulation of Settlement”) is made by and between Petitioners Carl Fanfair and Gloria Antoine and Respondents Hon. Lawrence Knipel, in his official capacity as the Administrative Judge and a Justice of the Supreme Court of the State of New York, Kings County; Hon. Cenceria P. Edwards, in her official capacity as a Justice of the Supreme Court of the State of New York, Kings County; and the New York State Office of Court Administration (“OCA”) (collectively, the “Parties”), as follows:

WHEREAS, on June 7, 2023, the Petitioners commenced this action (“Action”) by filing a Verified Class Petition pursuant to Rules 506 (b) and 7804 (b) of the Civil Practice Law and Rules (“CPLR”) in this Court, Case Number 2023-05048, against the Respondents; and

WHEREAS, the Verified Class Petition alleged, *inter alia*, the Respondents’

noncompliance with the provisions of CPLR 3408 requiring courts in residential foreclosure actions to hear and determine unrepresented homeowners’ motions to proceed as “poor persons” and their eligibility to be appointed counsel, and the provision of 22 NYCRR § 202.12-a requiring OCA to establish requirements for educating and training nonjudicial personnel assigned to conduct foreclosure settlement conferences on CPLR 3408; and

WHEREAS, on July 10, 2023, the Petitioners moved to certify a class of “[a]ll homeowner defendants currently in pre-judgment residential foreclosure proceedings in Kings County Supreme Court who were unrepresented at their initial settlement conference held pursuant to CPLR 3408” class certification; and

WHEREAS, in stipulations filed on June 16, July 31, September 14, October 13, November 9, and December 22, 2023, the Parties agreed to adjourn the return date, the Respondents’ deadline to serve a response to the Verified Class Petition, and the Petitioners’ deadline to serve any reply papers to permit the Parties to negotiate this Stipulation of Settlement; and

WHEREAS, the Appellate Division granted a final adjournment of the return date to March 18, 2024; and

WHEREAS, the Parties now wish to fully resolve the claims alleged in the Action, without further litigation or proceedings before any court or other forum, and have negotiated in good faith for that purpose; and

WHEREAS, neither any of the Petitioners nor any of the Respondents is an infant or incompetent person;

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations, and other consideration contained in this Stipulation of Settlement, Petitioners and Respondents hereby agree as follows:

I. Dismissal of the Action with Prejudice

A. Upon execution of this Stipulation of Settlement by the Parties, Petitioners shall file with the Appellate Division, Second Department an application to discontinue this Action with prejudice without further relief, payments, attorneys' fees, costs, disbursements, or expenses beyond those specified below.

II. Relief Concerning the Practices of the Supreme Court of the State of New York, Kings County, in Residential Foreclosure Actions

A. In all residential foreclosure proceedings in Kings County Supreme Court, judges shall deem all homeowner-defendants who appear unrepresented at initial settlement conferences to have made motions to proceed as "poor persons" ("Rule 3408 Motions"); hear those Rule 3408 Motions for all such homeowner-defendants, and determine whether to grant them permission to proceed as "poor persons" pursuant to CPLR 1101 and whether to appoint them counsel pursuant to CPLR 1102 (a). All these steps shall be taken and determinations reflected in orders on the record before conducting initial settlement conferences. In cases where the Court appoints counsel, the Court will adjourn initial settlement conferences to a date certain when the appointed counsel is able to appear for the homeowner-defendant.

B. Respondent OCA, in coordination with responsible personnel of the Kings County Supreme Court, will develop, implement, and/or maintain court rules, directives, and procedures for Kings County Supreme Court to ensure compliance with Section II, Paragraph A.

C. Respondent OCA, in coordination with responsible personnel of the Kings County Supreme Court, will develop, implement, and/or maintain court rules, directives, and procedures for Kings County Supreme Court to provide all unrepresented homeowner-defendants with guidance explaining the information and documents that unrepresented homeowner-defendants need to provide to the Court in support of their Rule 3408 Motions; and a form affidavit by which homeowners-defendants can support their Rule 3408 Motions. Respondent OCA has developed updated guidance and a form affidavit. Petitioners' counsel have submitted proposed revisions to both of these documents. Petitioners and Respondent OCA will continue to meet and confer in good faith regarding these proposed revisions, and Respondent OCA will reply in writing to the proposals within thirty (30) days of the execution of this Stipulation of Settlement.

D. Respondent OCA, in coordination with responsible personnel of the Kings County Supreme Court, will provide notices to all parties¹ in residential foreclosure proceedings prior to initial settlement conferences informing them of the time, date, and location of the conference; the purpose of the conference; and homeowner-defendants' rights to be deemed to have submitted Rule 3408 Motions if they are unrepresented and to have those motions heard and determined before the Court conducts their initial settlement conferences.

E. Respondent OCA, in coordination with responsible personnel of the Kings County Supreme Court, will provide on the Kings County Supreme Court website information in plain language regarding the purpose of initial settlement conferences and homeowner-defendants' rights under CPLR 3408. This information shall be provided in the following languages: English, Spanish, Chinese, Arabic, Russian, and Haitian Creole.

¹ The term "parties" with a lower-case "p" in this provision, consistent with its usage in CPLR 3408(e), refers to the parties to residential foreclosure proceedings, rather than the Parties to this Action.

F. All information, forms, and guidance referring to “poor person” status that Respondent OCA provides to homeowner-defendants or posts on its website shall specify that “poor person” is a term derived from statute and does not necessarily mean that homeowner-defendants making Rule 3408 Motions are poor, indigent, or impoverished in the ways those words are used in other contexts.

III. Relief Concerning Unrepresented Homeowner-Defendants in Residential Foreclosure Actions

A. Respondent OCA, in coordination with responsible personnel of the Kings County Supreme Court, will send notices by first class mail to all homeowner-defendants in all active, pre-auction residential foreclosure matters in Kings County filed on or after December 1, 2022, in which an initial settlement conference has already been conducted. The notice will inform homeowner-defendants regarding their rights under this agreement and under CPLR 3408 and notify them that they are entitled to a judicial determination on their deemed Rule 3408 Motions if they were unrepresented at the time of their initial settlement conferences. All homeowner-defendants will be afforded an opportunity for such a judicial determination before any further proceedings are conducted in court as set forth in paragraph C below.

B. Respondent OCA, in coordination with responsible personnel of the Kings County Supreme Court, will also send an advisory to all justices assigned to foreclosure matters on a quarterly basis for one year stating the following, in sum and substance: (i) the requirements of CPLR 3408(b), including “[i]f the court appoints defendant counsel pursuant to subdivision (a) of section eleven hundred two of this chapter, it shall adjourn the conference to a date certain for appearance of counsel ...”; (ii) where a homeowner-defendant continues to appear pro se, regardless of when the action was commenced, the Court should review the file to ascertain whether the Court heard and determined the homeowner-defendant’s deemed Rule 3408

Motion, and at the next scheduled appearance inform such pro se homeowner-defendants of their rights under CPLR 3408(b) on the record and, if they have not received the notice described in Section III, Paragraph A, provide them with that notice; and (iii) where a Court has not determined a homeowner-defendant's deemed motion to proceed as a "poor person" as required under CPLR 3408 (b), including assignment of counsel under CPLR 1102 (a), the Court shall decide such an application, including the assignment of counsel, in an order before proceeding further in the case.

C. In active, pre-auction residential foreclosure matters in Kings County in which the homeowner-defendants were unrepresented at their initial settlement conference and did not receive an order treating them as having filed and determining their deemed Rule 3408 Motions, the Court will (a) provide an opportunity for the homeowner-defendant to submit information and documents in support of their Rule 3408 Motion, and (b) schedule an appearance at which the Court will hear and determine the Rule 3408 Motion, on the record and memorialized in an order, before conducting any further proceedings in the matter. In cases where the Court decides to appoint counsel, (a) proceedings will be adjourned to a date certain when the counsel appointed is able to appear for the homeowner-defendant and (b) homeowner-defendants will have the option to have the Court conduct, de novo, the initial settlement conference as well as all subsequent proceedings in the foreclosure action with the representation of appointed counsel.

IV. Relief Concerning the Practices of Courts Across the State of New York in Residential Foreclosure Actions.

A. Respondent OCA will develop, implement, and/or maintain statewide court rules, directives, procedures, website language, and/or forms to ensure that Rule 3408 Motions will be heard and determined in residential foreclosure actions in courts across the state in the same manner as described in Section II.

B. Respondent OCA will make available within sixty (60) days of the execution of this Stipulation of Settlement representatives from the Office for Justice Initiatives who coordinate OCA's response to foreclosure matters for a meeting with Petitioners' counsel to discuss topics relevant to the implementation of Rule 3408 including but not limited to access to counsel in foreclosure proceedings in New York.

V. Implementation

A. Respondent OCA, in coordination with responsible personnel of the Kings County Supreme Court, shall have forty-five (45) days from the execution of this Stipulation of Settlement to implement the requirements of Sections II and IV.A.

B. Respondent OCA will provide Petitioners' counsel copies of all court rules, directives, procedures, website language, and/or forms created pursuant to Section II to review within thirty (30) days of the execution of this Stipulation of Settlement.

C. For a period of one year from the execution of this Stipulation of Settlement, Respondent OCA will notify Petitioners' counsel of and provide them with any newly adopted, amended, or revised court rules, directives, procedures, website language, and forms created pursuant to Section II or otherwise relating to the implementation of CPLR 3408 (b) at least ten days before those rules, directives, procedures, website language, and forms are publicly disseminated to permit Petitioners' counsel an opportunity to provide suggestions to the language, which Respondent OCA will consider but is not obligated to adopt.

VI. Reporting

A. For a three-year period commencing with the execution of this Stipulation of Settlement, Respondent OCA agrees to provide Petitioners' counsel quarterly reporting based upon

available de-identified aggregate data derived from OCA’s case management system showing the following:

1. The number of homeowner-defendants that appear at initial residential foreclosure settlement conferences who are represented and pro se;
2. The number of pro se homeowner-defendants that have had their Rule 3408 Motions heard and determined;
3. The number of times initial settlement conferences have been adjourned because a homeowner-defendant is pro se;
4. The number of times courts have granted a homeowner-defendant’s motion to proceed as a “poor person”;
5. The number of times that counsel was appointed for homeowner-defendants;
6. The number of times that homeowner-defendants appointed counsel by the court were subsequently represented by counsel; and
7. Data on the outcome of cases involving homeowner-defendants who were pro se at their initial settlement conference, including the outcomes of cases where the homeowners obtained representation compared to the outcomes of cases where the homeowners did not obtain representation.

B. The data reporting discussed above in Section VI.A shall commence within ninety (90) days of the execution of this Stipulation of Settlement.

VII. Enforcement and Dispute Resolution

A. Should Petitioners believe that Respondent OCA has failed to materially comply with any term(s) of the Stipulation of Settlement, including but not limited to that court rules, directives, procedures, website language, and forms created pursuant to Sections II and IV do not

comport with the terms of this Stipulation of Settlement, Petitioners' counsel shall provide written notifications of such non-compliance to Respondent OCA's counsel, who shall respond in writing to any such notification within thirty (30) days. Petitioners and Respondent OCA agree to meet and confer, if necessary, and engage in good-faith discussions and/or negotiations concerning the alleged non-compliance. Respondent OCA will have a reasonable opportunity to cure any alleged non-compliance.

B. Respondent OCA agrees that the Named Petitioners may enforce this Stipulation of Settlement, including for alleged violations of the Stipulation that affect homeowner-defendants other than Named Petitioners, for a period of two years from the execution of this Stipulation of Settlement. Nothing in this Stipulation of Settlement should be read to limit the abilities of individual homeowner-defendants to challenge a court's non-compliance with CPLR 3408 in their individual foreclosure proceedings.

VIII. Attorneys' Fees and Costs

A. As a Named Petitioner has submitted an affidavit of eligibility substantiating that they are a "Party" able to recover fees under CPLR 8602, Respondent OCA agrees to pay Petitioners' counsel the sum of \$20,000 for a portion of Petitioners' counsel's attorneys' fees. Respondent OCA acknowledges that the \$20,000 represents a portion of the fees and costs incurred by Petitioners' counsel. Petitioners agree that this constitutes full satisfaction of any and all claims for attorneys' fees, costs, disbursements, and/or expenses in this action.

IX. General Release

A. For and in consideration of the obligations specified in the foregoing Sections II through VIII, and other good and valuable consideration described herein, the sufficiency of which is hereby acknowledged, Petitioners, on behalf of themselves and their heirs, executors,

administrators, successors, and assigns (the “Releasing Parties”) hereby jointly and severally release and discharge on the merits with prejudice New York State; Respondents OCA, Justice Knipel, and Justice Edwards; and all past and present New York State officials, employees, directors, representatives, agents, agencies, departments, subdivisions, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees (the “Releasees”) of and from all manner of claims, actions, costs from the beginning of time through the date that this Stipulation of Settlement is executed, that Petitioners ever had, now have, or can, shall, or may hereafter have against Releasees, or any of them, either alone or in any combination with others, arising out of the causes of action, acts, transactions, occurrences, or omissions which are described or alleged in the Petition in this Action. For the avoidance of doubt, this release includes a release of any and all claims the Releasing Parties had, have, or may have against Releasees for attorneys’ fees, costs, disbursements, and all other expenses related to, concerning, or in connection with the Petition or the Proceeding. The Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and each and all of their respective successors, heirs, assigns, executors, and legal representatives.

X. Entire Agreement

A. This Stipulation of Settlement constitutes the entire agreement between the Parties pertaining to the subject matter of this Stipulation of Settlement, and supersedes and embodies, merges, and integrates all prior and current agreements and understandings of the Parties whether written or oral, with respect to the subject matter of this Stipulation of Settlement, and may not be clarified, modified, changed, or amended except in a writing duly executed by the Parties or an authorized representative of the Parties.

XI. No Admission of Liability

A. It is understood and agreed that any actions taken or payments made pursuant to this Stipulation of Settlement are made solely to avoid the burdens and expense of protracted litigation; that this Stipulation of Settlement and the actions taken pursuant hereto are not to be construed as constituting any determination on the merits of any claims in this dispute or as constituting any admission of wrongdoing or liability on the part of Respondents OCA, Justice Knipel, Justice Edwards, and the State of New York, or their present and former agencies, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, trustees, agents, attorneys, insurers, heirs, and assigns, whether in their individual or official capacities, or any of them, or all of them, and that they expressly deny any wrongdoing or liability. Nothing contained in this Stipulation of Settlement shall be deemed to constitute an admission or concession by the State of New York regarding any policy or practice. Nothing contained in this Stipulation of Settlement shall be deemed to constitute an admission or concession by Respondent OCA regarding any past policy or practice. Nor shall anything contained in this Stipulation of Settlement be deemed to constitute an admission or concession by Petitioners that Respondent OCA or the State of New York was not liable for any past policy or practice.

XII. No Precedential Value

A. This Stipulation of Settlement and any Order entered thereon shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose except to enforce the provisions of this Stipulation of Settlement.

XIII. Governing Law

A. The terms of this Stipulation of Settlement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts to be performed wholly within the State of New York, except to the extent that federal law may apply to the releases and waiver of federal claims pursuant to this Stipulation of Settlement.

XIV. Severability

A. If any provision of this Stipulation of Settlement shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable in whole or in part, such decision shall not invalidate the remaining portion or affect its validity.

XV. Execution

A. This Stipulation of Settlement may be executed in any number of counterparts, all of which taken together shall constitute one Stipulation of Settlement and may be executed by facsimile signature and facsimile notary seal.

Dated: March 15, 2024

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

By: /s/ Terry T. Ding

Terry T. Ding
Daniel R. Lambright
Ifeyinwa K. Chikezie
Christopher T. Dunn

125 Broad Street, 19th Floor
New York, N.Y. 10004
(212) 607-3368
tding@nyclu.org

YOLANDE I. NICHOLSON, P.C.
Yolande I. Nicholson
26 Court Street, Suite 1211
Brooklyn, N.Y. 11242
(347) 707-1212
attorneynicholson@gmail.com

MEHRI & SKALET, PLLC
Joshua Karsh*
Michael Lieder*
2000 K Street NW, Suite 325
Washington, D.C. 20006
(202) 822-5100
JKarsh@findjustice.com

VALLI KANE & VAGNINI LLP
Matthew L. Berman
600 Old Country Road, Suite 519
Garden City, N.Y. 11530
(516) 203-7180
mberman@vkvlawyers.com

Attorneys for Petitioners

*Applications for *pro hac vice*
admission forthcoming

Dated: March 15, 2024

LETITIA JAMES
Attorney General
State of New York

*Attorney for Respondents Knipel and
Edwards*

By: /s/ Joya C. Sonnenfeldt

Joya C. Sonnenfeldt, Esq.,
Assistant Attorney General
28 Liberty Street, 16th Floor
New York, NY 10005
Tel: (212) 416-8184
Joya.Sonnenfeldt@ag.ny.gov

Dated: March 15, 2024

DAVID NOCENTI
Counsel
Unified Court System: Office of Court
Administration

*Attorney for Respondent New York State
Office of Court Administration*

By: /s/ Lisa Evans

Lisa Evans, Esq.
Deputy Counsel
25 Beaver Street
New York, NY 10004
Tel: (212) 428-2150
lievans@nycourts.gov