

COMMISSION AGENDA:

12.2.08 #24a

TO: The Honorable Chairman and Members of the  
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Authority for the County Attorney to Defend the Case of  
LaSalle Bank National Association v. Schultz  
Circuit Civil Case No. 08-16161-CI-20

DISTRIBUTION: The Honorable Diane Nelson, Tax Collector  
Robert LaSala, County Administrator  
Sarah Richardson, Managing Assistant County Attorney

DATE: December 2, 2008

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS APPROVE THE REQUEST FOR AUTHORITY TO DEFEND THE MORTGAGE FORECLOSURE CASE OF LASALLE BANK NATIONAL ASSOCIATION V. SCHULTZ, CIRCUIT CIVIL CASE NO. 08-16161-CI-20.

DISCUSSION: The Plaintiff in this mortgage foreclosure action is attempting to foreclose a homestead ad valorem tax lien recorded by the Property Appraiser pursuant to section 196.161, Florida Statutes, which by law is then collected by the Tax Collector. Plaintiff erroneously named the County as the party Defendant, but then failed to serve the County, but instead served the Complaint upon the Tax Collector for collection. The Tax Collector attempted to have the Plaintiff simply amend the Complaint to drop the County as a party and substitute the Tax Collector to defend the lien. Plaintiff failed to do so prior to the due date for an answer or responsive motion, so the attached motion was filed on behalf of both the County and the Tax Collector to avoid a default judgment. Therefore, the County Attorney requests after-the-fact authority to proceed with the defense of the County, which will hopefully result in a dismissal of the County from this action, and the County Administrator concurs.

JLB:SRS

Attachment

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY  
CIVIL ACTION

LASALLE BANK NATIONAL ASSOCIATION,  
AS TRUSTEE UNDER THE POOLING AND  
SERVICING AGREEMENT DATED AS OF  
AUGUST 1, 2006, GSAMP TRUST 2006-HE5,

Plaintiff,

UCN 522008CA016161XXCICI

vs.

REF: 08-16161-CI-20

LISA SCHULTZ; UNKNOWN SPOUSE OF LISA  
SCHULTZ; UNKNOWN TENANT I; UNKNOWN  
TENANT II; 6302 INC., A FLORIDA  
CORPORATION; PINELLAS COUNTY,  
FLORIDA, and any unknown heirs, devisees,  
grantees, creditors, and other unknown persons or  
unknown spouses claiming by, through and under  
any of the above-named Defendants,

Defendants.

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MOTION TO DISMISS COMPLAINT TO FORECLOSE MORTGAGE  
AND REESTABLISH NOTE AND MORTGAGE,  
MOTION TO DROP A PARTY, AND MOTION TO ADD A PARTY

COME NOW Diane Nelson, Tax Collector of Pinellas County, Florida, (hereinafter "Tax Collector"), and Pinellas County, Florida, (hereinafter "County"), by and through their undersigned counsel, and file this Motion to Dismiss the Complaint pursuant to Rules 1.140(2), 1.140(b)(5), and 1.140(b)(7), Florida Rules of Civil Procedure, and in the alternative to this Motion, file this Motion to Drop a Party pursuant to Rule 1.250(b) and Motion to Add a Party pursuant to Rule 1.250(c), as follows:

### Motion to Dismiss

1. The Tax Collector makes an appearance herein as commanded by the Summons served on the Tax Collector, described below, but not as a party to this action.

2. The County makes an appearance herein for the limited purpose of challenging the Court's jurisdiction over the County, as well as challenging the sufficiency of service of process and Plaintiff's failure to join an indispensable party.

3. Plaintiff has named Pinellas County, Florida as a Defendant in the above-styled action, and in paragraph 15 of the Complaint, states that Pinellas County, Florida may claim an interest in a recorded lien.

4. The referenced lien, recorded at O.R. Book 16127, page 1772, Official Records of Pinellas County, Florida, a copy of which is attached hereto as Exhibit "A," is a lien recorded by the Property Appraiser, and is collected by the Tax Collector, as evident on the face of the lien.

5. Although the Clerk of the Circuit Court docketed the Return of Service showing service on "Pinellas County, Florida," a copy of the summons and certification by Default Link Investigations shows that service was made on "Pinellas County Florida Tax Collector." A copy of the docket is attached hereto as Exhibit "B," and a copy of the summons and certification is attached hereto as Exhibit "C."

6. The Tax Collector is a sovereign County Constitutional Officer, pursuant to Article VIII, § 1(d), Florida Constitution, and Pinellas County, Florida is a political subdivision of the State of Florida pursuant to Article VIII, § 1(a), Florida Constitution and section 1.01(8), Florida Statutes. Service of process on the Tax Collector does not constitute good service of process on the County. Therefore, this Court lacks jurisdiction over the person of Pinellas

County under Rule 1.140(b)(2), and there is insufficient service of process with respect to the County under Rule 1.140(b)(5).

7. Furthermore, because the Tax Collector and not the County is the correct officer to collect the referenced lien, Plaintiff has failed to join an indispensable party pursuant to Rule 1.140(b)(7).

WHEREFORE, the Tax Collector and the County respectfully request this Court to Dismiss this Complaint for lack of jurisdiction over the County, for insufficient service of process on the County, and for failure to join the Tax Collector as an indispensable party.

Motion to Drop a Party and Motion to Add a Party

8. The County and the Tax Collector incorporate by reference the facts set forth in paragraphs 1 through 5 above.

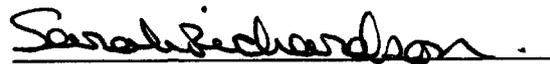
9. The Tax Collector is a sovereign County Constitutional Officer, pursuant to Article VIII, § 1(d), Florida Constitution, and Pinellas County, Florida is a political subdivision of the State of Florida pursuant to Article VIII, § 1(a), Florida Constitution and section 1.01(8), Florida Statutes. Service of process on the Tax Collector does not constitute good service of process on the County.

10. In the alternative to the Motion to Dismiss, the County maintains that it was incorrectly named as a party Defendant in this action, as only the Tax Collector may collect proceeds to satisfy the lien referenced in paragraph 15 of the Complaint. Therefore, the County asserts that this Court should enter an order dropping the County as a party to this action, pursuant to Rule 1.250(b).

11. In the alternative to the Motion to Dismiss, the Tax Collector requests that this Court require the Plaintiff to add the Tax Collector as the proper party defendant to defend the lien referenced in paragraph 15 of the Complaint, pursuant to Rule 1.250(c).

WHEREFORE, the Tax Collector and the County respectfully request the Court to grant the County's motion to drop the County as a party defendant, and to grant the Tax Collector's motion to add the Tax Collector as a party defendant.

I HEREBY CERTIFY that a copy of the foregoing Answer has been served by U.S. Mail on Frank Albert Reder, Butler & Hosch, P.A., 3185 South Conway Road, Suite E, Orlando, FL 32812, this 14<sup>th</sup> day of November, 2008.

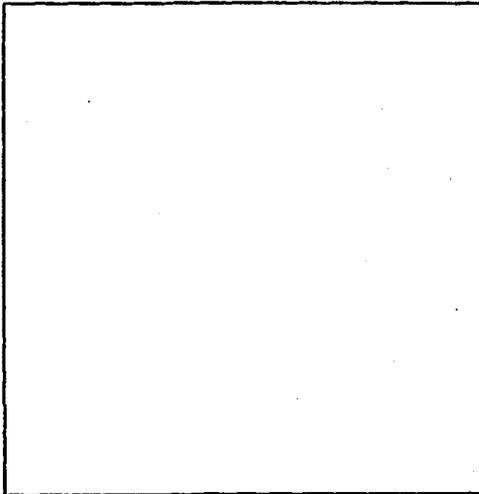
  
Sarah Richardson  
Managing Assistant County Attorney  
315 Court Street  
Clearwater, FL 33756  
(727) 464-3354 phone; 464-4147 fax  
Fla. Bar No. 319201  
SPN 261311  
Attorney for the Tax Collector

## Notice of Tax Lien for Homestead Exemption and/or Limitation Exclusion

DR-453  
 R. 12/05

PINELLAS County

Pursuant to the provisions of Sections 196.031, Florida Statutes, homestead exemption has been allowed on the property described below and the taxpayer named below received exemption(s) for a homestead in the aggregate amount of \$8081.31 for 2003-2007 year(s). In accordance with §196.011(9)(a), §196.161(1)(a) and §193.155 Florida Statutes, notice is hereby given that the recipient(s) named below was not legally entitled to receive said exemption(s) or limitations(s) because said person(s) rented the property. The statutes provide for recovery of unpaid taxes by means of a lien, including a 50% penalty and 15% interest for any year or years within the prior 10 years from the person(s) who was not entitled, but granted a homestead tax exemption. This document shall constitute a lien on the real property specifically addressed and legally owned by said taxpayer in the State of Florida.



FOR OFFICIAL USE ONLY

NAME SGHULZ, LISA  
PATIDES, KALLIOPE KLITSAS  
 ADDRESS \_\_\_\_\_  
 \_\_\_\_\_  
 LEGAL ORANGE HEIGHTS  
 DESCRIPTION BLK 1 LOT 3

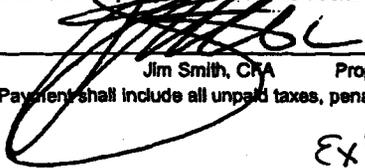
PARCEL ID # 13-27-15-64188-001-0030

1 Tax Year/ Date tax due	2 Value exempted	3 Amount of tax exempted	4* Penalty on tax exempted	5 Interest on tax exempted	6 Assessment limitation value	7 Tax due from wrongful assessment limitation	8* Penalty on assessment limitation	9 Interest on assessment limitation	10 TOTAL (3+4+5+7+8+9)
11/1/07	25000 WX500	498.99	249.50		81927	1603.17	801.58		
11/1/06	25000 WX500	544.45	272.22		55529	1185.59	592.79		
11/1/05	25000 WX500	571.87	285.93		75100	1684.21	842.10		
11/1/04	25000	554.05	277.02		39800	882.04	441.02		
11/1/03	25000	556.94	278.47		0	0	0		

**\*NOTICE TO COLLECTOR:** The 50% penalty applies to the year(s) the taxes were exempted and is calculated individually for each homestead exemption violation. The interest shall be based on the taxes exempted from the date the taxes become due for each assessment until satisfaction of this lien. The Tax Collector shall also collect any fees and costs which the Property Appraiser or the Tax Collector has incurred in filing this lien, or collecting same.

Column 10 total  
 Fees and costs paid by Property Appraiser  
 Fees and costs paid by Tax Collector  
**TOTAL DUE**

"Under penalties of perjury, I declare that I have read the foregoing notice of tax lien and that the facts states in it are true. If prepared by someone other than the Property Appraiser, his declaration is based on all information of which he has any knowledge."

Signature and Title  Date 12/13/2007  
 Jim Smith, CRA Property Appraiser

Payment shall include all unpaid taxes, penalties, interest, fees, cost or the lien shall not be satisfied.

Exhibit "A"

PROPERTY APPRAISER'S NOTES

TAX DISTRICT	MILLAGE RATE	TAX YEAR
TS	19.5683	2007
	21.3509	2006
	22.4262	2005
	22.1618	2004
	22.2775	2003

UNOFFICIAL COPY

**Consolidated Justice Information System**  
*CJS*  
 Pinellas County, Florida  
**Civil/Small Claims - Docket Viewing - Fct D**

[Link Icon Explanation](#)

Uniform Case	Pinellas Case	Section	Case Type	Type
522008CA016161XXCIC1	08016161CI	020	MTG FORECL	MF
Style: LASALLE BANK NATIONAL ASSOCIATION				
vs. SCHULTZ LISA				
Jury Trial	STIP	NOTH	Reason	Type Disp.
Filing Date	Appeal Date	Judg. Date	Reop Date	Docket Date
10/24/08				
Case/Cat	Docket Code	DOR?	Loc	ACN
MORTGAGE FORECLOSURE	ALL			013A

16 Docket Entries, 11/05/08 to 10/24/08 [New Search](#)

Link To	Pages	Date	P/D	Docket Entry	Ver
		11/05/08	CLERK	SUMMONS RETD SERVED LISA SCHULTZ 102508	F
		11/05/08	CLERK	SUMMONS RETD NOT SERVED UNKNOWN SPOUSE OF LISA SCHULTZ	F
		11/05/08	CLERK	KNA KALLI PATIDES	F
		11/05/08	CLERK	SUMMONS RETD SERVED UNKNOWN TENANT I 102508	N
		11/05/08	CLERK	SUMMONS RETD NOT SERVED UNKNOWN TENANT II	F
		11/05/08	CLERK	SUMMONS RETD SERVED 6302 INC 102808	F
		11/05/08	CLERK	SUMMONS RETD SERVED PINELLAS COUNTY FLORIDA 102808	F
		10/24/08	PLAINTIFF	SUMMONS FEE PAID \$60.00	N
		10/24/08	PLAINTIFF	ADDITIONAL PARTY FEE PAID - \$5.00	N
		10/24/08	PLAINTIFF	LIS PENDENS RECORDING FEE PAID - \$10.00	N
		10/24/08	PLAINTIFF	CIRCUIT CIVIL FILING FEE PAID \$300.00	N
		10/24/08	CLERK	SUMMONS TO PROCESS SERVER	N
		10/24/08	PLAINTIFF	CIVIL COVER SHEET	F
		10/24/08	PLAINTIFF	LIS PENDENS OR16414PG0315-002	F
		10/24/08	PLAINTIFF	COMPLAINT	F
		10/24/08	PLAINTIFF	THIS CASE ASSIGNED BY CLERK TO SECTION 020 BY 2682 - RANDOM MF	N

[New Search](#)

NOTH Notice of Hearing  
 STIP Stipulation  
 Ver Verified, F=Filed, N=Not Filed/Notice. There is no case file document associated with a notice.

[Link Icon Explanation](#)

Exhibit "B"

IN THE CIRCUIT COURT IN AND FOR  
PINELLAS COUNTY, FLORIDA

CASE NO: 08 16161420

LASALLE BANK NATIONAL ASSOCIATION,  
AS TRUSTEE UNDER THE POOLING AND  
SERVICING AGREEMENT DATED AS OF  
AUGUST 1, 2006, GSAMP TRUST 2006-HE5

Plaintiff,

vs.

LISA SCHULTZ, ET AL.,

Defendants.

FILED  
SL. PATRICKSON, CLERK  
2008 NOV -5 PM 3:15  
KEN QUINKE  
CLERK OF DISTRICT COURT

**SUMMONS**

THE STATE OF FLORIDA:  
To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint  
or Petition in this action on Defendant,

FLORIDA  
Pinellas County Tax Collector  
Diane Nelson TAX COLLECTOR  
315 Court St., 3rd floor  
Clearwater, FL. 33756

( Def #06 )

Each Defendant is hereby required to serve written defenses to the Complaint or Petition on  
Frank Albert Reder, Esquire at:

BUTLER & HOSCH, P.A.  
3185 South Conway Road, Ste. E  
Orlando, Florida 32812

within 20 days after service of this Summons on that Defendant, exclusive of the day of service,  
and to file the original of the defenses with the Clerk of this Court either before service on  
Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a Default will be entered  
against that Defendant for the relief demanded in the Complaint or Petition.

Exhibit "C"

B&H # 267113  
999 249 627

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Within two (2) working days of your receipt of the summons/notice, please contact the Human Rights Office, 400 S Ft. Harrison Ave., Ste. 300, Clearwater, FL 33756, (727) 464-4062 (V/TDD).

DATED on OCT 24 2008, 2008.

KEN BURKE, Clerk Circuit Court

CLERK OF THE CIRCUIT COURT

By: Kathy Aln  
Deputy Clerk



(COURT SEAL)

# AFFIDAVIT OF SERVICE

State of FLORIDA

County of PINELLAS

Circuit Court

Case Number: 08-16161-CI-20

Plaintiff:

LASALLE BANK NATIONAL ASSOCIATION, ETC., ET.AL.

vs.

Defendant:

LISA SCHULTZ, ET.AL.

For:

Frank Albert Reder, Esquire  
BUTLER & HOSCH  
3185 South Conway Road  
Suite E  
Orlando, OR 32812

374350

-A

**SPECIAL PROCESS SERVICE**

Pinellas County, Florida  
Jim Coats, Sheriff

Received by DEFAULT LINK INVESTIGATIONS on the 24th day of October, 2008 at 4:43 pm to be served on PINELLAS COUNTY FLORIDA TAX COLLECTOR C/O DIANE NELSON, 315 COURT STREET, 3RD FLOOR, CLEARWATER, FL 33756.

I, CHARLOTTE A. KEPLINGER, being duly sworn, depose and say that on the 28th day of October, 2008 at 11:25 am, I:

**GOVERNMENT AGENCY:** served by delivering a true copy of the **SUMMONS, COMPLAINT TO FORECLOSE MORTGAGE AND REESTABLISH NOTE & MORTGAGE WITH EXHIBITS** with the date and hour of service endorsed thereon by me, to: **SUSIE BLANCO, who is authorized to accept, as EXECUTIVE SENIOR ASSISTANT TO TAX COLLECTOR,** at the address of **315 COURT STREET, 3RD FLOOR, CLEARWATER, FL 33756** for **PINELLAS COUNTY FLORIDA TAX COLLECTOR C/O DIANE NELSON,** and informed said person of the contents therein, in compliance with State Statutes.

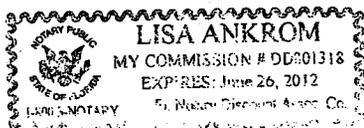
I certify that I am over the age of 18, have no interest in the above action, and am a Special Process Server, in good standing, in the judicial circuit in which the process was served.

Pursuant to Florida Statute 92.525, and under penalty of perjury, I declare that the facts set forth in the foregoing return of service are true and correct 10/28/08.

Subscribed and Sworn to before me on the 28th day of October, 2008 by the affiant who is personally known to me.



NOTARY PUBLIC



CHARLOTTE A. KEPLINGER  
APS#27834

DEFAULT LINK INVESTIGATIONS  
3185 S. Conway Road  
Suite E  
Orlando, FL 32812  
(407) 737-4155  
Our Job Serial Number: 2008006279  
Ref: B&H #267113