

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CALVERT M. WILSON, an individual, *
*
Plaintiff, *
*
v. *
*

Case No.: 1:05-CV-00108 (JDB)

ABN AMRO MORTGAGE GROUP, INC., *
a foreign corporation (fka Atlantic Mortgage *
Investment Corp.); FRIEDMAN & *
MACFAYDEN, PA, a Maryland *
professional association; ALVIN E. *
FRIEDMAN, an individual; KENNETH J. *
MACFAYDEN, an individual and as *
Trustee for ABN AMRO; and MICHAEL *
CANTRELL, an individual, *

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION TO CONSOLIDATE RELATED CASES**

Defendants.

***** *

Pursuant to Rule 42 of the Federal Rules of Civil Procedure, Plaintiff-Appellant Calvert M. Wilson ("Wilson" or "Plaintiff"), by undersigned counsel, respectfully submits this Memorandum in Support of Motion to Consolidate the related case of **Calvert M. Wilson v. ABN AMRO Mortgage Group, Inc.**, Case No. 1:05-CV-0042 (JDB) ("Case No. 05-CV-42") with the instant litigation. In support of the Motion, Wilson hereby states as follows:

1. Motions to consolidate civil actions pending before a federal district court are governed by Fed. R. Civ. P. 42(a). Under Rule 42(a), "When actions involving a common question of law or fact are pending before the court, . . . it may order all the actions consolidated." In *Judicial Watch v. U.S. Department of Energy*, 207 F.R.D. 8 (D.D.C. 2002), this Court held that: "Under Rule 42 of the Federal Rules of Civil

Procedure, the Court has discretion to consolidate civil actions when the cases share common issues of law or fact, consolidation would serve the interests of judicial economy, and the parties would not be prejudiced by consolidation." *Id.*

2. Similarly in *Mylan Pharmaceuticals, Inc. v. Henney*, 94 F.Supp.2d 36 (D.D.C. 2000), this Court recognized the laudable merits of consolidation, to wit:

Consolidation of cases is 'permitted as a matter of convenience and economy of administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.' (Citation omitted). A court has discretion to consolidate cases under Rule 42(a) if such consolidation will help it manage its caseload with 'economy of time and effort for itself, for counsel, and for litigants'.

94 F.Supp.2d at 43 (citation omitted).

3. Consolidation of Case No. 05-CV-42 with this litigation would promote judicial economy without undue delay of either proceeding or prejudice to any other party for several reasons.

4. First, both cases involve common litigants and arise out of the same transactions and occurrences by, between and among Wilson, ABN AMRO and the law firm of Friedman & MacFayden, PA, in its capacity as counsel and substitute trustee for ABN AMRO. In fact, Plaintiff noticed these actions as related cases on January 19, 2005. *See* Exhibit No. "1". Furthermore, *but for* Plaintiff's ability to obtain a sub-prime bridge loan, under distress circumstances resulting from Defendants' misfeasance and nonfeasance, to momentarily avert the wrongful foreclosure sale, there is nothing that would have stopped the forced sale of his home. Unless and until Defendants are ordered to reconcile his mortgage and escrows accounts and provide accurate information to him so that his Chapter 13 bankruptcy case can be completed and he can qualify to refinance his Note with another lender, Plaintiff remains under an on-going and imminent threat of

real property loss. *See Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (recognizing federal jurisdiction when there is a reasonable expectation that the complaining party could face the same injury at the hands of the same respondent); *with*, Declaration of Calvert M. Wilson; Declaration of Michaelina J. Vaughan Chivers; Congressional Testimony of Susan M. Johnson (before the U.S. Senate Committee on Banking, Housing & Urban Affairs); *and*, Order granting stay of foreclosure against ABN AMRO for the benefit of Amy & Demetrious Smith, attached hereto as Exhibit Nos. "2" (Wilson), "3" (Chivers), and "4" (Johnson), and "5" (TRO & Motion for TRO in *Smith*), respectively.¹

5. Second, both actions involve common questions of D.C. and federal consumer protection and related laws pertaining to the loan administration and debt collection of residential mortgages, as well as allegations on on-going misconduct or the imminent threat thereof by ABN AMRO and/or its agents.

6. Third, both actions can be decided on the merits, following further development of the record, and without risk of overlapping decisions if these two cases involving common litigants, facts and law were to proceed independently. This is a vitally important consideration for this Court to bear in mind because **all** issues at stake in Case No. 05-CV-42 are subject to *de novo* review by this Court. In resolving this dispute, the Court invariably will be required to consider whether Plaintiff's on-going risk of losing his real property as a result of ABN AMRO's failure to reconcile Plaintiff's mortgage account and properly administer his escrow account, or at least stay

¹ Wilson is not the only homeowner that has been victimized by this kind of deception and abuse at the hands of ABN AMRO and its agents. See, e.g., Witness Statements describing continuing acts of deception and abuse in the loan administration and debt collection processes against Plaintiff and other borrowers, inside and outside bankruptcy proceedings, by ABN AMRO and its agents, as well as a injunction entered against ABN AMRO and its agents to prevent foreclosure fraud.

extraordinary collection efforts until these issues can be resolved, violate D.C. or federal law.² These are the very same issues that the Court has been asked to resolve in the above captioned matter.

7. Fourth, consolidation of these related cases will not prejudice any other party in either case because none of the Defendants have responded to the First Amended Complaint in this case. Plaintiff is represented by the same counsel in both actions, and has consented to Defendants' separate requests to enlarge the time to respond to the First Amended Complaint in this litigation until **April 22, 2005**. See Docket Entry Nos. 6 and 7, from the Docket Sheet in the captioned matter, which is attached hereto as Exhibit No. "6" ("108 Docket"). This Court approved the parties' stipulations for enlargement of time for Defendants to respond to the Verified First Amended Complaint by Minute Entry Order in this matter. See 108 Docket (April 4, 2005 entry).

8. Finally, it is not clear as of the date of this Rule 42 Motion, despite Plaintiff's written request for clarification to defense counsel, precisely who is representing defendant ABN AMRO in Case No. 05-CV-42. See A true and correct copy of the Docket Sheet in that action is attached hereto as Exhibit No. "7" ("42 Docket"). Although defendants Cantrell and the Friedman Law Firm are identified as "counsel of record" in that proceeding, counsel for Plaintiff was advised in an April 15, 2005 writing from David Perlmutter, Esq., lead counsel for ABN AMRO in the above-captioned matter,

² Plaintiff also notes that no remand will be necessary to resolve any of the common issues at stake in Case No. 05-CV-42 if these related cases are consolidated by this Court because all parties are present here. See, e.g., *Air Line Pilots Assoc. Int'l v. Eastern Airlines, Inc.*, 863 F.2d 891, 895 (D.C. Cir. 1988) (quoting *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 832 (D.C. Cir. 1972) (recognizing *de novo* review from lower court's decision to grant or deny injunctive relief); see also 28 U.S.C. § 1334 (Because this Court already has been conferred with jurisdiction over all cases under Title 11 of the U.S. Code, as well as all *civil proceedings* arising under or related to cases under Chapter 11, subject only to an order of reference at the discretion of the District Court, there is no statutory impediment to consolidation of these related actions). Accord 28 U.S.C. § 157(d).

that the Friedman Law Firm will no longer be representing ABN AMRO in Case No. 05-CV-42, and that "for now", all pleadings in that matter intended for ABN AMRO can be served on his law firm, Goodwin Proctor, LLP.

9. ABN AMRO apparent lack of formal representation in Case No. 05-CV-42 also is significant because neither ABN AMRO nor the Friedman Law Firm have filed any pleadings or proposed designations to the record in connection with Case No. 05-CV-42; which includes a period dating back to November 2004. See, e.g., Exhibit Nos. "8", "9", "10", and "11", attached hereto (correspondence between undersigned counsel and the Chapter 13 Trustee regarding the inaction by ABN AMRO and the Friedman Law Firm).

10. Consequently, it would be a waste of this Court's and the parties' resources to litigate these federal actions on multiple tracks unless and until Defendants are ready to proceed, especially when a house-keeping matter, such as substitute counsel for ABN AMRO in Case No. 05-CV-42, can readily be resolved by the single act of consolidating these related cases.

WHEREFORE, Plaintiff Calvert M. Wilson respectfully requests that this Court enter an Order consolidating related Case No. 05-CV-42 (JDB) with and into the above captioned matter, and that Case No. 05-CV-0108 (JDB) be designated as the lead case,

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...

together with such other relief favoring Wilson as this Court deems proper under the circumstances. A proposed Order has been submitted herewith as Exhibit "12".

Respectfully submitted,

By: /s/ Rawle Andrews Jr.
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Attorney for Plaintiff

Dated: April 18, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of April, 2005, I caused a copy of the foregoing "APPELLANT'S NOTICE OF FILING MOTION FOR CONSOLIDATION OF RELATED CASES" that was filed electronically with this Court and all counsel of record in this case, to be filed via electronic mail to all counsel of record in Related Case No. 05-CV-0042 (JDB) as identified below:

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Counsel for Plaintiff

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FOR THE DISTRICT OF COLUMBIA**

CALVERT M. WILSON, an individual, *
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Plaintiff, *
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ABN AMRO MORTGAGE GROUP, INC., *
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Investment Corp.); FRIEDMAN & *
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FRIEDMAN, an individual; KENNETH J. *
MACFAYDEN, an individual and as *
Trustee for ABN AMRO; and MICHAEL *
CANTRELL, an individual, *
*
Defendants. *

**COMPENDIUM OF EXHIBITS IN SUPPORT OF
PLAINTIFF'S MOTION TO CONSOLIDATE
RELATED CASES**

***** *

Plaintiff Calvert M. Wilson, by undersigned counsel, respectfully submits this
Compendium of Exhibits in Support of Motion to Consolidate Related Cases.

<u>Exhibit</u>	<u>Document</u>
1	Notice of Related Case
2	Decl. Calvert M. Wilson
3	Decl. of Michaelina J. Vaughan Chivers
4	Cong. Testimony of Susan M. Johnson
5	Motion and Order Staying Foreclosure for the Smith Family
6	DCT Docket Sheet (Case No. 05-CV-0108)
7	DCT Docket Sheet (Case No. 05-CV-0042)

Exhibit

Document

8	BK Order (Reduction of ABN AMRO Claim)
9	02/18/05 Letter to Chapter 13 Trustee
10	03/04/05 Letter to Rawle Andrews Jr., Esq.
11	04/05/05 & 04/14/05 Emails to Defense Counsel (Case No. 05-CV-0108)
12	[Proposed] Order Granting Motion