

ORIGINAL

# THE SUPREME COURT OF OHIO

Case No. 11-1392

**JNT PROPERTIES, LLC**

Plaintiff-Appellee

v.

**KEYBANK NATIONAL ASSOCIATION**

Defendant-Appellant

**APPELLEE'S OPPOSITION TO APPELLANT'S MOTION TO STRIKE NOTICE OF FILING IN THE TRIAL COURT OF VOLUNTARY DISMISSAL OF PLAINTIFF'S CLAIMS PURSUANT TO OHIO CIVIL RULE 41(A)(1)(a)**

On Appeal from the Cuyahoga County Court of Appeals,  
Eighth Appellate District, Case No. 10-95822

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## I. INTRODUCTION

On June 25, 2012, Plaintiff-Appellee JNT Properties, LLC voluntarily dismissed all of its claims against Defendant-Appellant KeyBank, by filing a Notice in the trial court pursuant to Civil Rule 41(A)(1)(a). Later that same day, Plaintiff advised this Court of the dismissal, submitting a notice which was docketed in this Court on June 26, 2012 (“Notice”).<sup>1</sup>

In a motion to strike the Notice that is rife with presumptions about both Plaintiff’s motives and the views of the members of this Court, KeyBank contends that Plaintiff’s voluntarily dismissal was a nullity and urges this Court to issue an opinion about legal claims that no longer exist. KeyBank’s arguments are misplaced.

## II. ARGUMENT

As explained below, Plaintiff’s claims have been dismissed because voluntary dismissal under rule 41(a)(1)(a) is self-effectuating.

### A. A Trial Court Retains Jurisdiction for Purposes of Filing a Rule 41(A)(1)(a) Dismissal

KeyBank mistakenly contends Plaintiff’s Rule 41(A)(1)(a) dismissal was a “nullity” because Plaintiff’s notice of dismissal was filed while an appeal was pending, apparently believing the mere existence of the appeal divested the trial court of the power to receive or accept the self-effectuating dismissal.

But even KeyBank seemingly concedes that the mere filing of an appeal does not entirely strip a trial court of jurisdiction during the pending of the appeal. Specifically, the cases cited by KeyBank observe that “the trial court is divested of jurisdiction over matters that are *inconsistent*

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<sup>1</sup> As a threshold matter, KeyBank’s argument that the Notice itself was unauthorized under S.Ct. Prac. R. 9.9 is wrong. Rule 9.9 bars post-argument briefing on the merits of the case, not a ministerial notice informing the Court that the underlying action has been voluntarily dismissed. It is KeyBank that arguably violated the Rule by sprinkling its Motion to Strike with commentary about the merits of the case.

with the reviewing court's jurisdiction to reserve, modify or affirm *the judgment*." (KeyBank Mem. at 5 (emphasis added; internal quotation marks omitted).) Thus, a trial court retains jurisdiction over matters that are *not inconsistent* with a reviewing court's jurisdiction to reserve, modify or affirm the judgment at issue. A Rule 41(A)(1) dismissal, which manifests a desire to end a case, is not inconsistent with an appellate court's jurisdiction to reverse, modify or affirm a lower court's *judgment* — *i.e.*, a particular assessment of and determination about the merits of a claim. *See Alexander v. Alexander*, 54 Ohio App.3d 77, 78, 560 N.E.2d 1337 (10th Dist., 1989) (concluding that stipulation of dismissal "pursuant to Civ. R. 41(A)(1)[(b)] was not inconsistent with our appellate jurisdiction; and thus, the trial court retained jurisdiction to properly dismiss the case pursuant to Civ. R. 41(A)(1)").

The judicial power is exercised to resolve genuine cases or controversies. *See State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 1996-Ohio-286, 74 Ohio St. 3d 536, 542, 660 N.E.2d 458, 463 (Ohio 1996) ("It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies . . . ." (internal quotation marks omitted)). Once a plaintiff voluntarily dismisses all of its claims against a defendant, there is no longer a case or controversy to adjudicate. *See Alexander*, 54 Ohio App.3d at 79 ("To now determine defendants' assignments of error would be to render an advisory opinion, as no controversy exists between the parties regarding the order which is the subject of the defendants' appeal."). Rather than frustrate an appellate court's jurisdiction to reverse, modify or affirm a judgment, recognizing a trial court's ability to "accept" a Rule 41(A)(1)(a) dismissal serves the interests of justice by resolving disputes while conserving valuable judicial resources.

KeyBank does not dispute that the Plaintiff in this case has abandoned its action with the filing of the Rule 41(A)(1)(a) notice in the trial court on June 25, 2012. Instead, KeyBank urges

this Court to conjure up a controversy where one no longer exists, and issue what would amount to an advisory opinion — something this Court has explained repeatedly it will not do. *See, e.g., Dohme v. Eurand America, Inc.*, 130 Ohio St.3d. 168, 2011-Ohio-4609, 956 N.E.2d 825, ¶ 27 (“It is well settled that this Court does not issue advisory opinions.”).

**B. The Rule 41(A)(1)(a) Voluntary Dismissal Was Not “Too Late”**

Ohio Rule 41(A)(1)(a) permits voluntary dismissal by a Plaintiff “at *any time* before the commencement of trial . . . .” (Emphasis added.) Despite this clear language, KeyBank claims Plaintiff’s dismissal Notice was filed “far too late.” (KeyBank Mem. at 7.) Specifically, KeyBank asserts the Notice was too late because it “was filed *after* the entry of final judgment by the Trial Court.” (KB Mem. at 8 (emphasis in original).) KeyBank’s assertion is unfounded.

Although KeyBank argues that a Rule 41(A)(1)(a) notice cannot be filed after “judgment,” KeyBank ignores that in this case *the trial court’s summary judgment order was reversed and vacated prior to the initiation of the appeal to this Court.*<sup>2</sup> This is evident from the docket sheets in the trial court and Court of Appeals:<sup>3</sup>

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<sup>2</sup> For this reason, the Sixth District’s decision in *Huntington National Bank v. Syroka*, 6th Dist. No. L-09-1240, 2010-Ohio-1358, upon which KeyBank relies heavily, is inapposite. Specifically, in addition to a Rule 41(A)(1)(a) notice of dismissal, the plaintiff in *Syroka* had filed a motion to vacate the underlying judgment. In contrast, there is no such judgment to vacate in this case. Likewise, whereas *Syroka* involved a motion to dismiss the appeal on the ground that the Rule 41(A)(1)(a) notice in and of itself stripped the appellate court of jurisdiction, the Court need not resolve that question here. In any event, should this Court determine that the trial court in the present case lacked jurisdiction to “receive” or “accept” Plaintiff’s Rule 41(A)(1)(a) filing, this Court should dismiss its acceptance of KeyBank’s discretionary appeal and remand the case to the trial court with instructions to docket the Rule 41(A)(1)(a) filing, thereby extinguishing Plaintiff’s claims. This practical approach mirrors the one actually taken in *Syroka*, in which the court ultimately determined that it was “in the interests of judicial economy to sua sponte remand this case to the trial court for further action,” given the plaintiff’s desire to dismiss its claim. *See id.* at ¶ 15.

<sup>3</sup> *See* Exhibits 1 and 2, attached hereto.

- 6/30/11 *Court of Appeals Reverses and Remands; Notice Issued*
- 7/5/11 *Trial Court Dockets Judgment: Reversed and Remanded, and Issuance of Notice*
- 7/21/11 *Trial Court Sets Pretrial Conference for 8/18/11*
- 8/15/11 *KeyBank files request for discretionary review*

The docket sheets further reflect that KeyBank failed to request a stay of execution of the Court of Appeals's mandate pending appeal, as it could have under Rule of Appellate Procedure 27. Thus, at the time this appeal was initiated, there was no "judgment" in effect precluding the availability of Rule 41(A)(1)(a) to the Plaintiff.<sup>4</sup> Under these circumstances, Plaintiff retained "an absolute right, regardless of motives, to voluntarily terminate its cause of action at any time prior to the actual commencement of the trial." *See Standard Oil Co. v. Grice*, 46 Ohio App. 2d 97, 101, 345 N.E.2d 458 (2d Dist., 1975).

**C. Civil Rule 23(E) Did Not Require Trial Court Approval of Plaintiff's Voluntary Dismissal**

Invoking Civil Rule 23(E), KeyBank mistakenly claims that Plaintiff's voluntary dismissal should be given no effect because it was not approved by the trial court.

As a threshold matter, KeyBank misreads Rule 23(E). This is evident from at least two aspects of Rule 23 itself.

*First*, although Rule 23 states that "a *class action* shall not be dismissed or compromised without the approval of the court," Civ.R. 23(E), Rule 23 distinguishes between cases where a class has been certified (a "class action") and cases where a complaint sets out a plaintiff's intent to proceed on a class basis but no class has been certified ("an action brought as a class action").

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<sup>4</sup> KeyBank's reliance on *State ex rel. Avellone v. Board of County Comm'rs of Lake County*, 60 Ohio App. 3d 127, 127, 574 N.E.2d 577 (11th Dist., 1989), is misplaced. Even assuming that opinion was correctly decided, the court explained that dismissal is unavailable in an action where "a final judgment has been rendered and which has been affirmed on appeal." *Id.* Here, however, summary judgment was reversed, not affirmed.

*Compare* Civ.R. 23(E), *with* Civ.R. 23(C)(1). Under the language of Rule 23, this case is “an action brought as a class action” — it is not a “class action.”<sup>5</sup>

*Second*, Rule 23(E) not only requires court approval to dismiss a “class action,” but also mandates that “notice of the proposed dismissal or compromise shall be given to *all members of the class . . . .*” Civ.R. 23(E). This requirement plainly makes no sense in the context of a case where a class has not yet been certified since there are no “members of the class” to notify.

That Rule 23(E) does not require Court approval to dismiss when there is no certified class is confirmed by examination of Rule 23.1, which imposes special requirements for derivative actions by shareholders. Rule 23.1 provides: “The action shall not be dismissed or compromised without the approval of the court . . . .” If even a *putative* class action required court approval under Rule 23(E) before it could be dismissed, it would have been redundant and unnecessary to include this provision in Rule 23.1.

KeyBank’s reading of Rule 23(E) is particularly implausible in a case like this, where *no motion for class certification has been filed*. Under KeyBank’s reading of Rule 23, the mere filing of a complaint as a proposed class action triggers a requirement that the trial court approve any dismissal or settlement. That is not the law. And adopting KeyBank’s invitation to change the law would only further burden busy trial court judges with new, unwarranted procedural responsibilities.<sup>6</sup>

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<sup>5</sup> KeyBank’s recitation of the procedural history accurately describes this case as a “putative class action.” (KeyBank Mem. at 1 (emphasis added).)

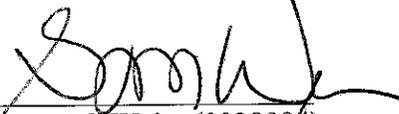
<sup>6</sup> Not only was KeyBank unable to cite any Ohio authority in support of its interpretation of Rule 23(E), but its reliance upon federal cases interpreting former Federal Rule of Civil Procedure 23(e) is misplaced. The current federal version of the rule expressly provides that court approval is only required if the claims, issues, or defenses of a *certified* class are resolved by a settlement, voluntary dismissal, or compromise. *See* Fed. R. Civ. P. 23(e). But the adoption of new language in Federal Rule of Civil Procedure 23 did not constitute a substantive change in the federal rule. As the advisory committee notes reveal, the amendment was meant to clarify

### III. CONCLUSION

For the foregoing reasons, Plaintiff's Rule 41(A)(1)(a) dismissal was effective and its Notice proper.

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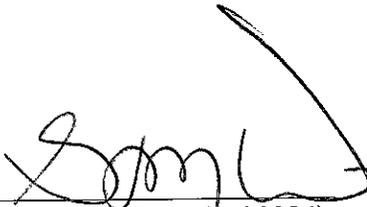
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that Rule 23(e)'s prior reference to "a class action" meant a certified class action. *See* Fed. R. Civ. P. 23(e) advisory committee note (2003) ("Rule 23(e)(1)(A) resolves the ambiguity in former Rule 23(e)'s reference to dismissal or compromise of 'a class action.'").

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been sent Ordinary U.S. Mail, postage prepaid, this 3rd day of July, 2012, to the following counsel of record:

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# EXHIBIT 1

[Print](#)**DOCKET INFORMATION****Case Number:** CV-09-681873**Case Title:** JNT PROPERTIES LLC vs. KEY BANK N.A.**Image Viewer:** [AlteraTIFE](#)**DOCKET INFORMATION**

<b>Date</b>	<b>Side</b>	<b>Type</b>	<b>Description</b>	<b>Image</b>
02/04/2008	P1	AC	P1 JNT PROPERTIES LLC FIRST AMENDED CLASS ACTION COMPLAINT. STEVEN M WEISS 0028984	
01/15/2009	P1	SR	COMPLAINT FILED. SERVICE REQUEST - SUMMONS BY CERTIFIED MAIL TO THE DEFENDANT(S).	
01/15/2009	N/A	SF	JUDGE TIMOTHY E MCMONAGLE ASSIGNED (RANDOM)	
01/15/2009	P1	SF	LEGAL RESEARCH	
01/15/2009	P1	SF	LEGAL NEWS	
01/15/2009	P1	SF	LEGAL AID	
01/15/2009	P1	SF	COMPUTER FEE	
01/15/2009	P1	SF	CLERK'S FEE	
01/15/2009	P1	SF	DEPOSIT AMOUNT PAID STEVEN M WEISS	
01/15/2009	N/A	SF	CASE FILED	
01/16/2009	D1	CS	WRIT FEE	
01/20/2009	D1	SR	SUMS COMPLAINT(13214274) SENT BY CERTIFIED MAIL. TO: KEY BANK NATIONAL ASSOCIATION STATUTORY AGENT 127 PUBLIC SQUARE CLEVELAND, OH 44114-0000	
01/26/2009	D1	SR	CERTIFIED MAIL RECEIPT NO. 13214274 RETURNED BY U.S. MAIL DEPARTMENT 01/26/2009 KEY BANK NATIONAL ASSOCIATION MAIL RECEIVED AT ADDRESS 01/22/2009 SIGNED BY OTHER.	
02/04/2009	D1	SR	INSTRUCTION FOR SERVICE ON FIRST AMENDED COMPLAINT SENT BY CERTIFIED MAIL TO KEY BANK NATIONAL ASSN. FILED.	
02/05/2009	D1	CS	WRIT FEE	
02/06/2009	D1	SR	SUMS AMENDED COMPLNT(13306765) SENT BY CERTIFIED MAIL TO: KEY BANK NATIONAL ASSOCIATION STATUTORY AGENT 127 PUBLIC SQUARE CLEVELAND, OH 44114-0000	
02/10/2009	D1	SR	CERTIFIED MAIL RECEIPT NO. 13306765 RETURNED BY U.S. MAIL DEPARTMENT 02/10/2009 KEY BANK NATIONAL ASSOCIATION MAIL RECEIVED AT ADDRESS 02/09/2009 SIGNED BY OTHER.	
02/17/2009	D1	OT	D1 KEY BANK NATIONAL ASSOCIATION STIPULATION FOR LEAVE TO PLEAD..... HUGH M STANLEY 0013065	

03/23/2009 D1 MO D1 KEY BANK NATIONAL ASSOCIATION MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT..... HUGH M STANLEY 0013065 09/25/2009 - DENIED

03/23/2009 D1 OT D1 KEY BANK NATIONAL ASSOCIATION APPENDIX TO MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT. HUGH M STANLEY 0013065

03/25/2009 P1 OT P1 JNT PROPERTIES LLC STIPULATION FOR LEAVE TO RESPOND TO DEFT'S MOTION TO DISMISS TO APRIL 24 2009. STEVEN M WEISS 0028984

03/31/2009 P1 OT P1 JNT PROPERTIES LLC OPPOSITION TO DEFT KEYBANKS MOTION TO DISMISS FIRST AMENDED COMPLAINT. STEVEN M WEISS 0028984

04/01/2009 P1 MO P1 JNT PROPERTIES LLC MOTION TO DESIGNATE THIS ACTION AS COMPLEX LITIGATION STEVEN M WEISS 0028984 03/11/2010 - DENIED

04/09/2009 D1 MO D1 KEY BANK NATIONAL ASSOCIATION MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS WITH PROPOSED REPLY ATTACHED ..... HUGH M STANLEY 0013065 04/23/2009 - GRANTED

04/23/2009 N/A JE D1 KEY BANK NATIONAL ASSOCIATION MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS WITH PROPOSED REPLY ATTACHED ..... HUGH M STANLEY 0013065, FILED 04/09/2009, IS GRANTED. CLPAL 04/14/2009 NOTICE ISSUED

05/06/2009 P1 MO P1 JNT PROPERTIES LLC MOTION FOR LEAVE TO FILE SURREPLY IN FURTHER OPPOSITION TO DEFT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT, INSTANTER.... STEVEN M WEISS 0028984 05/11/2009 - GRANTED

05/11/2009 N/A JE P1 JNT PROPERTIES LLC MOTION FOR LEAVE TO FILE SURREPLY IN FURTHER OPPOSITION TO DEFT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT, INSTANTER.... STEVEN M WEISS 0028984, FILED 05/06/2009, IS GRANTED. NO FURTHER BRIEFS SHALL BE ALLOWED. CLTMP 05/11/2009 NOTICE ISSUED

06/05/2009 N/A SR SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR STANLEY/HUGH/M ON 06/05/2009 17:01:15

06/05/2009 N/A SR SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR WEISS/STEVEN/M ON 06/05/2009 17:01:15

06/05/2009 N/A SC CASE MGMNT CONFERENCE SET FOR 06/29/2009 AT 09:20 AM.

06/08/2009 N/A JE UPON REVIEW OF THE FILE, THE COURT FINDS THAT THIS CASE IS APPROPRIATE FOR THE COMMERCIAL DOCKET. CASE IS HEREBY SENT TO ADMINISTRATIVE JUDGE NANCY MCDONNELL FOR REASSIGNMENT TO THE COMMERCIAL DOCKET. CLTMP 06/04/2009 NOTICE ISSUED

06/09/2009 N/A JE JUDGE TIMOTHY E MCMONAGLE (057) REMOVED - TRANSF'D TO COMMERCIAL DOCKET. CASE REASSIGNED TO JOHN P O'DONNELL (340) (RANDOM). CLDLJ 06/09/2009 NOTICE ISSUED

07/02/2009 P1 OT P1 JNT PROPERTIES LLC SUBMISSION OF ADDITIONAL AUTHORITY

IN SUPPORT OF ITS OPPOSITION TO DEFT KEY BANK'S MOTION TO DISMISS FIRST AMENDED COMPLAINT. STEVEN M WEISS 0028984

09/25/2009 N/A JE PRE TRIAL CONFERENCE SET FOR 10/28/2009 AT 01:30 PM. IN THE EVENT OF AN APPEAL OF THE RULING ON THE MOTION TO DISMISS THIS PRE-TRIAL CONFERENCE WILL BE CANCELED AND THE TRIAL COURT PROCEEDINGS STAYED. CLPAL 09/25/2009 NOTICE ISSUED

09/25/2009 N/A JE DEFENDANT KEY BANK NATIONAL ASSOCIATION'S MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT (HUGH M STANLEY 0013065, FILED 03/23/2009) IS DENIED. PURSUANT TO CIVIL RULE 54(B), THERE IS NO JUST CAUSE FOR DELAY. O.S.J. CLCAH 09/25/2009 NOTICE ISSUED

10/06/2009 D1 CA \_\_\_\_\_ NOTICE OF APPEAL \_\_\_\_\_ CA NO. 94045  
NOTICE OF APPEAL FILED BY THE DEFT. APPELLANT W/A 9A PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.

10/07/2009 N/A SC PRE TRIAL CONFERENCE SCHEDULED FOR 10/28/2009 AT 01:30 PM IS CANCELLED.

11/04/2009 D1 CA APPELLANT'S 9A RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 94045.

12/23/2009 P JE \*\*\*CA\*\*\* MOTION BY APPELLEE TO DISMISS APPEAL IS GRANTED. NOTICE ISSUED.

12/28/2009 P JE \*\*\*\*\*C/A\*\*\*\*\* SUA SPONTE, THIS APPEAL IS DISMISSED SUA SPONTE AT APPELLANT'S COSTS FOR LACK OF A FINAL APPEALABLE ORDER..SEE R. C. 2505.02...NOTICE ISSUED

01/11/2010 D1 AN D1 KEY BANK NATIONAL ASSOCIATION ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT AND COUNTERCLAIM. THOMAS R SIMMONS 0062422

01/21/2010 N/A JE PAGE 5 OF THE COURT'S 09/25/2009 JOURNAL ENTRY IS AMENDED, NUNC PRO TUNC, SO THAT THE INCORRECT REFERENCE TO A LEAP YEAR HAVING 364 DAYS IS CHANGED TO 366 DAYS. CLPAL 01/21/2010 NOTICE ISSUED

01/25/2010 N/A JE PRE TRIAL CONFERENCE SET FOR 02/08/2010 AT 01:00 PM. CLCCC 01/22/2010 NOTICE ISSUED

01/28/2010 P1 AN P1 JNT PROPERTIES LLC ANSWER OF JNT PROPERTIES LLC TO COUTNERCLAIMS OF DEFT. KEYBANK NATIONAL ASSOCIATION. STEVEN M WEISS 0028984

02/05/2010 P1 MO P1 JNT PROPERTIES LLC MTN FOR ADMISSION PRO HAC VICE RICK D SONKIN 0038771 03/01/2010 - GRANTED

02/08/2010 N/A JE PRE-TRIAL CONFERENCE HELD 02/08/2010. ALL COUNSEL PRESENT. THE DEFENDANT'S ORAL MOTION FOR LEAVE TO FILE A MOTION FOR SUMMARYJUDGMENT IS GRANTED. THE MOTION FOR SUMMARYJUDGMENT IS TO BE FILED NO LATER THAN 05/14/2010. OPPOSITION AND REPLY BRIEFS ARE DUE ACCORDING TO LOCAL RULE 11(I). PRE TRIAL CONFERENCE SET FOR 07/22/2010 AT 01:30 PM. CLPAL 02/08/2010 NOTICE ISSUED

- 03/01/2010 N/A JE PLAINTIFF JNT PROPERTIES LLC'S MOTION TO ADMIT WILLIAM H. NARWOLD PRO HAC VICE (RICK D SONKIN 0038771, FILED 02/05/2010) IS GRANTED. CLPAL 03/01/2010 NOTICE ISSUED 
- 03/11/2010 N/A JE PLAINTIFF JNT PROPERTIES LLC'S MOTION TO DESIGNATE THIS ACTION AS COMPLEX LITIGATION (STEVEN M WEISS 0028984, FILED 04/01/2009) IS DENIED. CLPAL 03/10/2010 NOTICE ISSUED 
- 04/12/2010 P1 MO P1 JNT PROPERTIES LLC UNOPPOSED MOTION TO ADMIT INGRID L. MOLL PRO HAC VICE.....(W)..... STEVEN M WEISS 0028984 04/15/2010 - GRANTED
- 04/15/2010 N/A JE PLAINTIFF JNT PROPERTIES LLC'S UNOPPOSED MOTION TO ADMIT INGRID L. MOLL PRO HAC VICE (STEVEN M WEISS 0028984, FILED 04/12/2010) IS GRANTED. CLTMW 04/13/2010 NOTICE ISSUED 
- 05/14/2010 D1 OT D1 KEY BANK NATIONAL ASSOCIATION DEPOSITION TRANSCRIPT OF NORMAN TRAFFIS (TAKEN APRIL 17 2010). THOMAS R SIMMONS 0062422
- 05/14/2010 D1 OT D1 KEY BANK NATIONAL ASSOCIATION DEPOSITION TRANSCRIPT OF JAMES MCSHERRY (TAKEN APRIL 20 2010). THOMAS R SIMMONS 0062422
- 05/14/2010 D1 OT D1 KEY BANK NATIONAL ASSOCIATION NOTICE OF FILING DEPOSITION TRANSCRIPTS AND EXHIBITS. THOMAS R SIMMONS 0062422
- 05/14/2010 D1 MO D1 KEY BANK NATIONAL ASSOCIATION MOTION FOR SUMMARY JUDGMENT HUGH M STANLEY 0013065 09/08/2010 - GRANTED
- 06/14/2010 P1 OT P1 JNT PROPERTIES LLC OPPOSITION TO DEFT KEYBANK'S MOTION FOR SUMMARY JUDGMENT. STEVEN M WEISS 0028984
- 06/18/2010 D1 MO D1 KEY BANK NATIONAL ASSOCIATION UNOPPOSED MOTION FOR ONE-WEEK EXTENSION OF TIME TO FILE REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT THOMAS R SIMMONS 0062422 09/08/2010 - GRANTED
- 07/01/2010 D1 BR D1 KEY BANK NATIONAL ASSOCIATION BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT. HUGH M STANLEY 0013065
- 07/23/2010 N/A JE TELEPHONE CONFERENCE HELD 07/22/2010. ALL COUNSEL PARTICIPATED AND AGREED TO THE FOLLOWING: PRE TRIAL CONFERENCE SET FOR 09/16/2010 AT 01:30 PM. CLPAL 07/22/2010 NOTICE ISSUED 
- 09/08/2010 N/A JE DEFENDANT KEY BANK NATIONAL ASSOCIATION'S MOTION FOR A ONE-WEEK EXTENSION OF TIME TO FILE REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (THOMAS R. SIMMONS 0062422, FILED 06/18/2010) IS GRANTED. DEFENDANT KEY BANK NATIONAL ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT (HUGH M. STANLEY 0013065, FILED 05/14/2010) IS GRANTED. THE CONTRACT (THE NOTE) IS CLEAR THAT THE DEFENDANT INTENDED TO USE THE 365/360 METHOD TO CALCULATE INTEREST. THERE IS NO EVIDENCE THAT THE PLAINTIFF EITHER DIDN'T CONSENT TO THE 365/360 METHOD OR INTENDED THE USE OF SOME OTHER METHOD. THE FACT THAT THE WORDS USED TO DESCRIBE THE FORMULA FOR CALCULATING THE INTEREST RATE ("THAT IS, BY APPLYING THE RATIO OF THE ANNUAL INTEREST

RATE OVER A YEAR OF 360 DAYS, MULTIPLIED BY THE OUTSTANDING PRINCIPAL BALANCE, MULTIPLIED BY THE ACTUAL NUMBER OF DAYS THE PRINCIPAL BALANCE IS OUTSTANDING") DO NOT CORRECTLY DESCRIBE THE 365/360 CALCULATION DOES NOT CHANGE THE PARTIES' AGREEMENT THAT "THE ANNUAL INTEREST RATE FOR THIS NOTE IS COMPUTED ON A 365/360 BASIS." AS THE PLAINTIFF NOTES AT PAGE 6 OF ITS OPPOSITION BRIEF, "WHEN A SINGLE PORTION OF A LENGTHY CONTRACT IS UNINTELLIGIBLE, BUT YET SEVERABLE FROM THE REMAINDER, A COURT MAY STRIKE THAT PORTION ITSELF WITHOUT AFFECTING THE ENFORCEABILITY OF THE REMAINDER." IN THIS CASE THE UNINTELLIGIBLE VERBAL FORMULA MAY BE IGNORED, BUT THE REFERENCE TO THE 365/360 METHOD - ACCEPTED SHORTHAND FOR A COMMONLY USED FORMULA - RETAINED AND ENFORCED. COURT COST ASSESSED TO THE PLAINTIFF(S). CLCCC 09/08/2010 NOTICE ISSUED

- 10/07/2010 P1 CA APPELLANT'S 9A RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 95822.
- 10/07/2010 P1 CA \_\_\_\_\_ NOTICE OF APPEAL \_\_\_\_\_ CA NO. 95822  
NOTICE OF APPEAL FILED BY THE PLTF. APPELLANT W/A 9A PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.
- 07/05/2011 P JE \*\*\*CA\*\*\*\* JUDGMENT: REVERSED AND REMANDED. O.S.J. NOTICE ISSUED.
- 07/21/2011 N/A JE PRE TRIAL CONFERENCE SET FOR 08/18/2011 AT 09:00 AM. THE CONFERENCE WILL BE CANCELED IF A DISCRETIONARY APPEAL IS FILED WITH THE OHIO SUPREME COURT. NOTICE ISSUED
- 10/24/2011 N/A JE THE DEFENDANT HAS FILED A DISCRETIONARY APPEAL TO THE OHIO SUPREME COURT AS CASE NUMBER 2011-1392. THEREFORE, THE CASE IS REMOVED FROM THE TRIAL COURT'S ACTIVE DOCKET UNTIL THE DISPOSITION OF THE APPEAL. NOTICE ISSUED
- 06/25/2012 P1 OT P1 JNT PROPERTIES LLC NOTICE OF VOLUNTARY DISMISSAL OF PLTF'S CLAIMS PURSUANT TO OHIO CIVIL RULE 41(A)(1)(A). STEVEN M WEISS 0028984

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# EXHIBIT 2

Print

## DOCKET INFORMATION

Case Number: CA-10-095822

Case Title: JNT PROPERTIES, LLC vs. KEYBANK N.A.

Image Viewer: [AlternaTIFF](#)

## DOCKET INFORMATION

Date	Side	Type	Description	Image
10/07/2010	A1	EV	ORIGINAL PAPERS FILED BY TRIAL COURT.	
10/07/2010	A1	NT	RECORD ON APPEAL FILED AND NOTICE ISSUED TO ALL PARTIES.	
10/07/2010	A1	EV	NOTICE OF APPEAL FILED FROM COMMON PLEAS CIVIL DIVISION COURT , CASE # CV-681873 WITH JOURNAL ENTRY, PRAECIPE, DOCKETING STATEMENT, AND DOCKET SHEET.	
10/07/2010	A1	SF	LEGAL RESEARCH	
10/07/2010	A1	SF	LEGAL NEWS	
10/07/2010	A1	SF	COMPUTER FEE	
10/07/2010	A1	SF	CLERK'S FEE	
10/07/2010	A1	SF	COURT OF APPEALS SPECIAL PROJECTS	
10/07/2010	A1	SF	DEPOSIT AMOUNT PAID STEVEN M WEISS	
10/07/2010	N/A	SF	CASE INITIATED	
10/21/2010	N/A	MO	MOTION BY APPELLANT TO EXTEND TIME TO FILE ASSIGNMENTS OF ERROR AND BRIEF	
10/25/2010	N/A	JE	MOTION BY APPELLANT TO EXTEND TIME TO FILE ASSIGNMENTS OF ERROR AND BRIEF IS GRANTED TO NOVEMBER 22, 2010. NO FURTHER EXTENSION WILL BE CONSIDERED PER ORDER OF THE ADMINISTRATIVE JUDGE. VOL. 715 PG. 668. NOTICE ISSUED.	
11/22/2010	A1	EV	APPENDIX TO BRIEF OF APPELLANT FILED.	
11/22/2010	A1	EV	APPELLANT'S BRIEF FILED.	
12/06/2010	N/A	MO	MOTION BY APPELLEE TO EXTEND TIME TO FILE ANSWER BRIEF	
12/07/2010	N/A	JE	MOTION BY APPELLEE TO EXTEND TIME TO FILE ANSWER BRIEF IS GRANTED TO JANUARY 4, 2011. NO FURTHER EXTENSION WILL BE CONSIDERED. VOL. 718 PG. 733. NOTICE ISSUED.	
01/04/2011	E1	EV	APPELLEE'S BRIEF FILED.	
01/18/2011	A1	EV	REPLY BRIEF OF APPELLANT FILED	
05/02/2011	N/A	MO	APPELLEE'S NOTICE OF ADDITIONAL AUTHORITIES	
06/30/2011	N/A	BL	REVERSED AND REMANDED MARY EILEEN KILBANE, A.J., AND MARY J. BOYLE, J., CONCUR; MELODY J. STEWART, J., CONCURS IN	

## Case Docket

- JUDGMENT ONLY. VOL. 733 PG. 667. NOTICE ISSUED.
- 06/30/2011 N/A JE REVERSED AND REMANDED MARY EILEEN KILBANE, A.J., AND MARY J. BOYLE, J., CONCUR; MELODY J. STEWART, J., CONCURS IN JUDGMENT ONLY. VOL. 733 PG. 667. NOTICE ISSUED.
- 08/22/2011 N/A EV OHIO SUPREME COURT CASE NO. 11-1392--NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO FILED BY THE APPELLANT, KEYBANK NATIONAL ASSOCIATION IN THE OHIO SUPREME COURT ON 8-15-11
- 12/05/2011 A1 SF COPIES MAILED TO COUNSEL FOR ALL PARTIES. COSTS TAXED.
- 12/05/2011 A1 EV RECORD SENT TO THE OHIO SUPREME COURT.
- 12/05/2011 N/A JE SUPREME COURT OF OHIO SUPREME COURT NO. 2011-1392. ORDER TO CERTIFY RECORD TO THE SUPREME COURT OF OHIO GRANTED. Vol. 743 Pg. 0079. Notice issued.
- 12/05/2011 N/A JE SUPREME COURT CASE NO.2011-1392. UPON CONSIDERATION OF THE JURISDICTIONAL MEMORANDA FILED IN THIS CASE, THE COURT ACCEPTS THE APPEAL. THE CLERK SHALL ISSUED AN ORDER FOR THE TRANSMITTAL OF THE RECORD FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY, AND THE PARTIES SHALL BRIEF THIS CASE IN ACCORDANCE WITH THE RULES OF PRACTICE OF THE SUPREME COURT OF OHIO. Vol. 743 Pg. 0078. Notice issued.
- 12/19/2011 N/A EV TRANSCRIPT SENT TO OHIO SUPREME COURT CERTIFIED MAIL NO.: 7008 1830 0001 0898 2018 PAGINATION OF RECORD: \$40.00 POSTAGE: \$19.38.

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