

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE

SAMUEL K. LIPARI,

Plaintiff,

v.

CHAPEL RIDGE

MULTIFAMILY, LLC, et al.,

Defendants.

Case No. 0916-CV38273

Division 14

**WELLS FARGO & COMPANY'S MOTION FOR ORDER DIRECTING  
PLAINTIFF TO IDENTIFY PARTY AND TO QUASH SERVICE**

COMES NOW, Wells Fargo & Company, by and through counsel, asserts and that this Court lacks personal jurisdiction over it, and, without in any way waiving said defense, appears for the limited purpose of filing this Motion for Order Directing Plaintiff to Identify Party and Quash Service, and states:

1. Plaintiff has named as a defendant to the instant action a party he identifies as "Wells Fargo". Plaintiff named "Wells Fargo" as a defendant in his petition and caused a summons to be issued to "Wells Fargo" on or about March 3, 2010.
2. Plaintiff sought to serve said defendant via personal service by instructing the Sheriff of Cole County to deliver a copy of summons and Plaintiff's petition to Lawyers Incorporating Service Company in Jefferson City, Missouri.
3. Lawyers Incorporating Service Company is in the business of acting as registered agent for corporate entities organized in, or licensed to do business in Missouri. Such being the case, it can be reasonably presumed that Plaintiff sought to serve "Wells Fargo" by serving its registered agent, and further presumed that Plaintiff considered Lawyers Incorporating Service Company to be the registered agent of "Wells Fargo".

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4. Though there are numerous business entities registered to do business in Missouri which include “Wells Fargo” in their name, there is no domestic or foreign corporation registered in Missouri called “Wells Fargo”, nor is “Wells Fargo” registered as a fictitious name for any business entity. Therefore, no corporation bearing the name “Wells Fargo” can be properly served via personal service upon a registered agent in Missouri under Rule 54.13.

5. Nevertheless, the Sheriff of Cole County filed a return of service indicating that “Wells Fargo” had been served by way of personal service on Lawyers Incorporating Service Company on March 10, 2010. As no answer was filed by the “Wells Fargo” defendant, Plaintiff filed a motion requesting entry of an interlocutory order of default on or about April 23, 2010, seeking \$1.35 billion in damages from “Wells Fargo”.

6. Plaintiff’s motion for entry of an interlocutory order of default is styled as “Motion for Interlocutory Order of Default Against Defendant Wells Fargo & Company Under Rule 74.05.” In addition, Plaintiff alleges in his Petition that the address of “Wells Fargo” is 420 Montgomery Street, San Francisco, California 94163. This is the address of the corporate offices of Wells Fargo & Company.

7. Given the foregoing, it appears that Plaintiff seeks to prosecute his claims against Wells Fargo & Company, a California corporation, though Plaintiff has failed to name or effectuate service upon Wells Fargo & Company, and in fact, has not properly served any party by way of his service on Lawyers Incorporating Service Company for the “Wells Fargo” defendant.

8. Though Wells Fargo & Company has not been properly made a party to this suit, and therefore is not required to take any action to defend Plaintiff’s claims, entry of a default judgment in favor of Plaintiff against “Wells Fargo”, legally effective or not, would be

detrimental to Wells Fargo & Company, or any of its associated companies doing business under a name containing “Wells Fargo”, as the companies would be compelled to take measures to ensure that said judgment could not be successfully executed upon, in addition to incurring harm as a result of other potentially negative ramifications of being associated with such a judgment.

9. Wells Fargo & Company desires the Court to enter an order directing Plaintiff to properly name the party he identifies as “Wells Fargo”. If said party is Wells Fargo and Company or one of its associated companies, and Plaintiff correctly serves such party, Wells Fargo and Company can properly defend this lawsuit or ensure that the lawsuit is properly defended on behalf of another Wells Fargo company.

10. To the extent that Plaintiff’s service upon “Wells Fargo” was intended to be service upon Wells Fargo & Company, Wells Fargo Bank, N.A., or any related entity, such service ought to be quashed as it was not obtained in accordance with the Missouri Rules of Civil Procedure. Further, Plaintiff’s motion for default judgment should be denied as it seeks entry of an interlocutory order of default against a non party.

11. It would be impracticable and unnecessary for Wells Fargo & Company contest the Court’s lack of personal jurisdiction over it or to file a response to Plaintiff’s motion for default judgment, unless and until it is certain that it is properly named and joined as a party to this suit.

12. If Wells Fargo & Company, Wells Fargo Bank, N.A., or any associated company is named by Plaintiff, such company reserves the right to assert any affirmative defenses to Plaintiff’s claims available to it, including those defenses enumerated in Rule 55.27.

13. Specifically, Plaintiff’s Petition fails and should be dismissed because a) this Court lacks personal jurisdiction over Wells Fargo & Company, Wells Fargo Bank, N.A. or any

other associated company; b) process and/or service of process is insufficient; and, c) that Plaintiff's Petition fails to state a claim upon which relief can be granted.

WHEREFORE, Wells Fargo and Company prays for this Court's order directing Plaintiff Samuel K. Lipari to properly identify the "Wells Fargo" defendant within 10 days of the entry of said order and if Plaintiff fails to do so, for the dismissal of the "Wells Fargo" defendant; for the Court's order quashing service upon the "Wells Fargo" defendant; for the Court to deny Plaintiff's motion seeking interlocutory default against the "Wells Fargo" defendant; and, for such other and further relief the Court deems just and proper.

Respectfully submitted,

SOUTH & ASSOCIATES, PC

By: 

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ATTORNEYS FOR WELLS FARGO &  
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**CERTIFICATE OF MAILING**

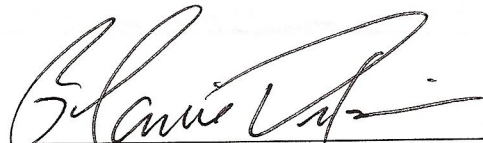
The undersigned hereby certifies that a true and correct copy of the above and foregoing was sent via United States First Class Mail, postage prepaid, this 17<sup>th</sup> day of May, 2010, to:

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