

DIANA ZALESKI

2004 FEB 26 PM 3: 29

SUMMIT COUNTY  
IN THE COURT OF COMMON PLEAS  
CLERK OF COURTS  
SUMMIT COUNTY, OHIO

FAIRBANKS CAPITAL CORP.

CASE NO. 2002-06-3097

Plaintiff

JUDGE MARY SPICER

MAGISTRATE JOHN SHOEMAKER

GAIL D. KELLER et al

**MOTION FOR SANCTIONS AND  
DISMISSAL OF PLAINTIFF AND  
EQUICREDIT AS PARTIES AND  
MOTION TO NAME GOLDMAN  
SACHS AS A PARTY  
DEFENDANT**

Defendants

It appearing by reason of the contents of the attached copy of a letter from plaintiff's counsel, that both plaintiff Fairbanks Capital Corporation and defendants EquiCredit Corporation were never owners of the note and mortgage deed the subject of the foreclosure action filed by plaintiff, and were not even pled as agents of the true owner of the note and mortgage deed security interest, the Court should apply Rule 11 sanctions against Fairbanks Capital Corporation, EquiCredit Corporation and Decision One Mortgage for engaging in activity that has been misleading to the Court and Keller and Hanson as to the actual true party in interest, that quite apparently being Goldman Sachs. Fairbanks Capital and EquiCredit through their respective counsel executed court filed documents misrepresenting their authority to make such filings. The result of this misrepresentation, along with the silence on the part of Decision One as to its known assignment of the note and mortgage interest to Goldman Sachs although having executed an assignment recorded with the Summit County Recorder in favor of

EquiCredit Corporation, has caused counsel for Keller and Hanson many hours of wasted effort in pursuing the claims of Keller and Hanson against the wrong parties. This Court should allow reasonable attorney fees to be determined at a hearing for such purpose the upon the filing of an itemized statement of the approximate lost hours of time at an hourly rate, in the preparation of all pleadings, pursuit of discovery, correspondence and Court appearances, attempting to move this forward to some conclusion over the past some twenty months years since the filing of the foreclosure action in June of 2002. Fairbanks Capital Corporation and EquiCredit Corporation should be dismissed out as parties to this lawsuit and replaced by Goldman Sachs as a party plaintiff if a voluntary appearance is made by Goldman Sachs, or that Goldman Sachs be named as a party defendant, thereby giving it opportunity to protect its interest in its presumed claim with proof of money owing to it by Gail D. Keller and Audrey G. Hanson.

Respectfully Submitted,



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Attorney for Gail D. Keller and  
Audrey G. Hanson

#### CERTIFICATE OF SERVICE

A copy of the foregoing motion was sent this 26<sup>th</sup> day of February, 2004, by regular mail to counsel of record and a copy of this motion was sent by regular mail to Goldman Sachs at 85 Broad Street, New York City, NY 10004.

  
Joseph C. McLeland

COPY

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January 13, 2004

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*In re:* Fairbanks Capital Corp., plaintiff, vs. Gail Kellar, et al., defendants,  
 Court of Common Pleas of Summit County, Ohio, Case No. 2002-06-3097

Gentlemen:

Please be advised that as a result of the transfer of a considerable number of loan files from the prior servicer, Fairbanks Capital Corp., to the present loan servicer, GMAC Mortgage Corp., the settlement discussions have taken an unexpected turn. In my discussions with GMAC Mortgage Corp., I have been advised that the investor, the holder of the note and mortgage, is actually Goldman Sachs.

I would appreciate it if you would provide my client the time to evaluate the case, analyze the plaintiffs' settlement proposal of January 9<sup>th</sup> and engage in meaningful settlement discussions with the myriad of parties as per our discussions this morning. On behalf of my client, I thank you for your accommodation.

Very truly yours,

Lerner, Sampson & Rothfuss

Anthony J. Gemmato, Jr.