

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
CERTIFICATE HOLDERS OF BEAR STEARNS
ASSET BACKED SECURITIES I LLC, ASSET
BACKED CERTIFICATES, SERIES 2007-AC2,

Plaintiff,

GENERAL CIVIL DIVISION
Case No. 08-CA-14532

vs.

GARY MEYERS; KATERYNA MEYERS
A/K/A KATYA MEYERS;

Defendant
_____ /

ANSWER TO THE COMPLAINT

The Defendants, GARY MEYERS; KATERYNA MEYERS A/K/A KATYA MEYERS;,
(hereinafter "MEYERS) and, by and through its undersigned counsel, pursuant to applicable
Fla.R.Civ.P., hereby file their Answers and Affirmative Defenses to Plaintiff's Complaint and
states as follows:

COUNT 1

1. MEYERS lacks sufficient knowledge as to the allegations in paragraph one of the complaint.
2. MEYERS lacks sufficient knowledge as to the allegations in paragraph two of the complaint.
3. MEYERS denies the allegations set forth in paragraph three of the complaint.
4. MEYERS denies the allegations in paragraph four of the complaint.

5. MEYERS denies the allegations in paragraph five of the complaint.
6. MEYERS denies the allegations in paragraph six of the complaint.
7. MEYERS denies the allegations in paragraph seven of the complaint.
8. MEYERS denies the allegations in paragraph eight of the complaint.
9. MEYERS denies the allegations in paragraph nine.

WHEREFORE, Defendants demands this court to dismiss with prejudice the above titled action.

COUNT II

10. MEYERS denies the allegations in paragraph ten of the complaint.
11. MEYERS denies the allegations in paragraph eleven of the complaint.
12. MEYERS denies the allegations in paragraph twelve of the complaint.
13. MEYERS admits the allegations in paragraph thirteen of the complaint.
14. MEYERS denies the allegations in paragraph fourteen.
15. MEYERS denies the allegations in paragraph fifteen of the complaint.
16. MEYERS denies the allegations in paragraph sixteen of the complaint and demands strict proof.
17. MEYERS denies the allegations in paragraph seventeen of the complaint.
18. MEYERS lacks sufficient knowledge as to the allegations in paragraph eighteen of the complaint and demands the plaintiff provide strict proof.
19. MEYERS denies the allegations in paragraph nineteen of the complaint and demands provide strict proof.

20. MEYERS denies the allegations in paragraph nineteen of the complaint and demands provide strict proof.

WHEREFORE, the Defendants demand this court dismiss with prejudice the above style action.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses, the Defendants assert and state as follows:

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands. Plaintiff, through its alleged assignors, breached its contractual obligations and its wrongful and illegal conduct of engaging in predatory lending preclude Plaintiff from seeking to invoke the court's equitable jurisdiction.

SECOND AFFIRMATIVE DEFENSE

The underlying Mortgage and Note is illegal and unenforceable under the Real Estate Settlement Procedures Act. The Plaintiff's assignor engaged in predatory lending tactics by conspiring to induce MEYERS into entering the Mortgage. Accordingly, the Mortgage and Note and all of the obligations therein are also unenforceable.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because MEYERS was fraudulently induced to sign the Mortgage. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR QUICKEN LOANS, INC., falsely represented to MEYERS that they were the mortgage brokers for the sole benefit of MEYERS. In fact, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR QUICKEN LOANS,

INC, was acting in a dual capacity as mortgage broker to both MEYERS and WELLS FARGO BANK and without MEYERS'S consent or knowledge. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR QUICKEN LOANS, INC knew that this representation was false but nevertheless made it for the purpose of inducing MEYERS to sign the Mortgage. As a result of this fraudulent representation, MEYERS signed the Mortgage.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because Plaintiff and assignor of the Mortgage, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR QUICKEN LOANS, INC breached the covenant of good faith and fair dealing implicit in all contracts under Florida law by failing to make disclosures of its relationship with the mortgage broker who was supposedly working solely and exclusively with MEYERS, for MEYERS'S sole benefit.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff lacks proper standing to bring a cause of action and reestablish the promissory note under 673.3091 Florida Statutes because Plaintiff was not a proper holder in due course of said note as required under Florida Rules of Civil Procedure. The Florida Rules of Civil procedure require that "All ..., notes, ... or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading." The plaintiff has failed to meet this requirement on the face of its complaint.

SIX AFFIRMATIVE DEFENSE

Plaintiff has failed to join an indispensable party, i.e. the holder in due course of the promissory note at the time this action was filed and if the mortgage has not been assigned to Plaintiff and the lender does not have the note then Plaintiff lacks standing to bring suit because it has suffered no legally cognizable injury upon which relief can be granted.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has breached the contract with Defendant by failing to provide the original promissory note as affirmatively required in the original promissory note and mortgage contract in order to file a foreclosure suit thus contractually this cause of action is not valid when executed in violation of an agreement entered into with the mortgagor and acquiesced in by the mortgagee, in the absence of a compliance with the terms of the agreement.

EIGHTH AFFIRMATIVE DEFENSE

FHA loans have special servicing requirements, including a counseling notice mailed to the mortgagor within 45 days of default, a face-to-face meeting with the borrower within 90 days of default, and a notice of available counseling. Plaintiff has failed to apprise Defendants of such and thus failed to follow the procedure requirement to bring a foreclosure suit in this jurisdiction.

NINTH AFFIRMATIVE HUD DEFENSES

FAILURE TO COMPLY WITH SERVICING REGULATIONS

The mortgage which is the subject of this action is insured by the federal Single-Family

Loan Insurance Program, 12 U.S.C. §1709. Therefore, Plaintiff must service the mortgage according to the applicable federal regulations. Plaintiff failed to comply with these regulations as detailed below, precluding the initiation of foreclosure proceedings.

- (a) Failed to send a delinquency notice as required by 24 C.F.R. §203.602.
- (b) Failed to contact or make reasonable attempts to contact Defendants as required by 24 C.F.R. §203.604.
- (c) Refused to accept partial payments which it was required to accept under 24 C.F.R. §203.556.
- (d) Failed to provide Defendant with a pre-foreclosure counseling notice within forty-five (45 days) of having missed a payment, as required by the U.S.C. §1701x(c) (5).
- (e) Failed to provide a default notice as required by 24 C.F.R. 650.

TENTH AFFIRMATIVE DEFENSE

FAILURE TO CONDITION PRECEDENT

Plaintiff seeks to enforce an agreement for deed through foreclosure when Plaintiff himself has failed to perform under the terms and conditions of the agreement for deed.

Plaintiff's failure to perform under the agreement for deed bars it from claiming a default based the stipulated notice of foreclosure letters and correspondences Plaintiff was entitled to receive.

ELEVENTH AFFIRMATIVE DEFENSE

BAD NOTICE WITH TOO MUCH DEMAND

The mortgage obligated the Plaintiff to send a notice to Defendant permitting

reinstatement, prior to the filing of a foreclosure.

The notice permitting reinstatement was to inform the Defendant of the amount payments past due, the interest and late charges thereon, and any other amounts that were then due and owing under the terms of the mortgage.

Plaintiff's notice to Defendant improperly demanded advance payments of amounts coming due in the future under the mortgage.

TWELFTH AFFIRMATIVE DEFENSE

UNCONSCIONABILITY

The mortgage is unconscionable in that it purports to waive rights to which the mortgagor is entitled by law.

Specifically, the mortgage is unconscionable in that it seeks to have the mortgagor waive his rights to a notice mandated by federal law at 12. U.S.C. §1701(x) (c) (5).

Specifically, the mortgage is unconscionable in that it seeks to have the mortgagor waive his right to due process prior to entry upon the land he owns.

Because the mortgage is unconscionable, it cannot be enforced in this action.

THIRTEENTH AFFIRMATIVE DEFENSE

BREACH OF CONTRACT

The mortgage obligates the Plaintiff to notify the Defendant of a default prior to acceleration and to give the Defendant thirty days in which to cure the default.

Here, the Plaintiff sent a notice to the Defendant, informing him of a default in the lapse of insurance and giving the Defendant 10 days in which to cure the default.

On the twentieth day after sending the notice to the Defendant, the Plaintiff sent a letter to the Defendant, accelerating the mortgage debt.

Plaintiff's breach of the terms of the mortgage now prohibit it from seeking foreclosure in this action.

FOURTEENTH AFFIRMATIVE DEFENSE

FAILURE OF CONDITION PRECEDENT

The Plaintiff failed to provide Defendant with a pre-foreclosure counseling notice within 45 days of having missed a payment, as required by the U.S.C. §1701(x) (c) (5).

FIFTEENTH AFFIRMATIVE DEFENSE

FAILURE TO COMPLY WITH 12 U.S.C. §1701(X)(C) (5)

Failure to Comply with 12 U.S.C. §1701(x)(c)(c), prior to instituting this foreclosure action and is therefore stopped from proceeding with this action.

Plaintiff filed this foreclosure action concerning the conventional mortgage under which Defendant is obligated and which is the subject of this cause.

Defendant defaulted on the mortgage due to an involuntary reduction in his/her income.

Plaintiff is required by the Housing and Community Development Act of 1987, as amended, to send a notice of the availability of financial counseling to the Defendant who

became delinquent due to an involuntary loss of income before Plaintiff can legally initiate a foreclosure action against Defendant. United Companies Financial Corp. vs. McClane, (Fla. Cir. Ct. Orange County, 1991, Case Number 90-10345); 54 Fed. Reg. 210964, 20965 (May 15, 1989); U.S. v. Trimble, 86 F.R.D. 435 (S.D. Fla. 1980).

12 U.S.C. §1701 (x) (c) (5), was first passed as a provision of the Housing and Community Development Act of 1987. Congress has extended this pre-foreclosure notice requirement through 1994. See, Housing and Community Education and Development Act of 1992, Section 162; P. 102-150; 106 Stat. 3719-3722.

The Federal Regulations issued pursuant to the statute require the creditor to send notification before the expiration of the 45 day period beginning on the date on which the failure to pay occurs.

Plaintiff is required under the statute and regulations to advise Defendant of any home ownership counseling Plaintiff may offer together with information about counseling offered by the U.S. Department of Housing and Urban Development.

The Department of Housing and Urban Development has determined that the act created an affirmative legal duty on the part of the creditor which the homeowner/mortgager can enforce and that the creditor's non-compliance with the law's requirement may be an actionable event that could affect a mortgage's liability to carry out foreclosure in a timely manner. 54 Fed. 20964-65 (May 15, 1988).

Plaintiff never sent Defendant the required notice.

Plaintiff has no valid cause of action for foreclosure unless and until it can demonstrate

compliance with 12 U.S.C. §1701 (x) (c) (5). Cross vs. Federal National Mortgage Association, 359 So.2d 464, 465 (4th DCA 1978); First Union Home Equity Corp. vs. Joshua, Sarasota Circuit Court Case No. 92-4728-CA-01 (11/01/93).

SIXTEENTH AFFIRMATIVE DEFENSE

INEQUITABLE AGREEMENT

Plaintiff is not permitted to profit from his own inequity. Plaintiff seeks to foreclose an agreement for deed that is abhorrent under the law.

The agreement for deed is inequitable in that it does not allow for recordation in the official records of Orange County, Florida.

The agreement for deed is inequitable in that it included a promise by the Plaintiff to perform an act with the Plaintiff knew he was incapable of performing, Specifically, the Plaintiff was prohibited from alienating or transferring any interest in the property.

The agreement for deed is inequitable because it attempts to forego rights created by the laws and Constitution of Florida. Specifically, the agreement for deed attempts to grant the Plaintiff the right to unlawfully reenter the premises without benefit of legal action.

The agreement for deed is inequitable because it attempts to forego rights created by the laws and Constitution of Florida. Specifically, the agreement for deed attempts to deprive the Defendant of her right to notices required by law.

SEVENTEENTH AFFIRMATIVE DEFENSE

UNCLEAN HANDS

Plaintiff cannot foreclose the agreement for deed because he is not free of inequitable conduct relative to the controversy.

Plaintiff entered into the agreement for deed in bad faith in that he knew he was unable to perform under the terms of the agreement for deed.

When Plaintiff and Defendant entered into the agreement for deed, Plaintiff represented that he was able to transfer the property to the Defendant upon the Defendant's satisfaction of the terms of the agreement for the deed.

When the plaintiff and Defendant entered into the agreement for deed, Plaintiff was subject to a mortgage on the property that proscribed alienation or transfer of any interest in the property. Plaintiff did not disclose the existence of the mortgage to the Defendant, nor disclose the prescription against alienation of transfer.

The Defendant was without legal counsel at the time the parties entered into the agreement for deed.

The Plaintiff entered into the agreement for deed knowing he lacked the authority to transfer any interest in the property to the Defendant.

Plaintiff's actions show he has acted in an inequitable fashion which bars him from seeking the equitable relief of foreclosure.

EIGHTEENTH AFFIRMATIVE DEFENSE

UNCLEAN HANDS

Plaintiff cannot foreclose the agreement for deed because he is not free of inequitable conduct relative to the controversy.

Plaintiff entered into the agreement for deed in bad faith in that he did not intend to perform under the terms of agreement for deed.

The Defendant was without legal counsel at the time the parties entered into the agreement for the deed.

Plaintiff transferred the home to the Defendant “as is” and knew that Defendant intended to perform certain ordinary repairs and improvements to the property.

Plaintiff knew or should have known there were serious defects with the property but did not disclose these to the Defendant.

Plaintiff knew or should have known the serious defects would affect the Defendant’s ability to live in the home.

The Defendant performed numerous repairs to the property, including a repair to correct a defect in the septic drain field which was not disclosed by the Plaintiff prior to the agreement for deed.

The repairs performed by the Defendants enriched and enhanced the property.

Subsequent to the repairs, the Plaintiff sought to regain possession of the property by pressuring the Defendant to sign a quitclaim deed.

The process of entering into an unrecordable agreement for deed, allowing improvements to the property, and then seeking to regain the property through a quitclaim deed, at a time when

the Plaintiff lacked a good faith and an intent of the Plaintiff's to enrich himself at the expense of the Defendant.

Plaintiff's actions show he has acted in an inequitable fashion which bars him from seeking the equitable relief of foreclosure.

NINETEENTH AFFIRMATIVE DEFENSE

WAIVER ACCEPTANCE OF PAYMENTS AFTER ACCELERATION

Plaintiff waived his right to foreclose the mortgage by accepting payments from Defendant subsequent to the letter of acceleration.

TWENTIETH AFFIRMATIVE DEFENSE

UNCLEAN HANDS FAILURE TO FOLLOW LAW

Plaintiff is barred by the doctrine of "unclean hands" from the foreclosure that it seeks in connection with the subject transaction because the transaction violates a federal consumer protection statute and because Plaintiff has violated 12 U.S.C. §1701 (x) (c) (5), which requires mortgagees to send a pre-foreclosure notice to a mortgagor regarding home ownership counseling prior to instituting a foreclosure proceeding.

TWENTY-FIRST AFFIRMATIVE DEFENSE

VIOLATION OF TRUTH IN LENDING, RESCISSION

The transaction upon which the present foreclosure is based ("transaction"), including the promissory note and the mortgage is subject to the provisions of the Truth-in-Lending-Act, 15 U.S.C. §1601-1641 ("Act"), and Regulation Z, 12 C.F.R §226.23.

In connection with the transaction, Defendants have not been given a disclosure statement that complies with the Act and Regulation. One defect in the disclosure statement is an understatement of the finance charge.

As a result of Defendant's rescission, the transaction including the mortgage sought to be foreclosed herein, is completely unenforceable.

TWENTY-SECOND AFFIRMATIVE DEFENSE

CIVIL INJURY

Plaintiff charged the Defendant civilly usurious interest, as that term is defined at §687.03 Fla Stat.

Because the Plaintiff engaged in unlawful lending, he is prohibited from foreclosing on the mortgage instrument.

WHEREFORE, Defendants request the Court to dismiss the Plaintiff's Complaint with prejudice, enter an Order declaring the subject transaction rescinded with the result that Plaintiff's security is void and unenforceable and Defendants' attorney fees and costs and all such other relief as Defendants may prove themselves entitled.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. mail to the Clerk of the Orange Court in Orlando, FL, and to Anissa Bolton, Esq, Law Offices of Marshall C. Watson, P.A., 1800 N.W. 49th Street , Suite 120, Fort Lauderdale, FL. 33309 this _____ day of July, 2008.

/s/Richard Nazareth

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