

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

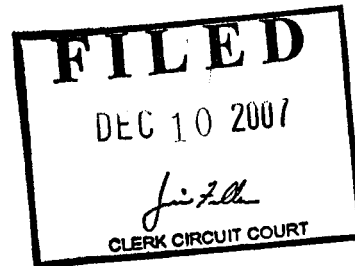
CASE NO.: 16-2007-CA-003840-XXXX-MA
DIVISION: CV-G

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE FOR THE REGISTERED HOLDERS
OF GSAMP TRUST 2005-SEA1, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-SEA1,
Plaintiff,

vs.

MARGARET A MASSEY, ET AL,
Defendants.

FILED
IN COMPUTER
K. B.



**DEFENDANT Margaret Massey's ANSWER TO AMENDED COMPLAINT; MOTION TO DISMISS
COUNT II; AFFIRMATIVE DEFENSES; COUNTERCLAIMS AND DEMAND FOR JURY TRIAL**

COMES NOW, the separate Defendant and for her answer to the plaintiff's amended complaint, motion to dismiss count II; affirmative defenses, counterclaims and demand for jury trial, states:

COUNT I

1. Admitted that the mortgage is attached, but denied that a complete copy of the promissory note is attached because the adjustable rate rider does not correspond to the terms of the note.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Admitted that Margaret Massey owns the subject property; denied that she took title with the subject mortgage encumbering the subject property.
10. Denied.

11. Admitted.
12. Denied, this is not an allegation of fact.
13. Denied.

MOTION TO DISMISS COUNT II

Defendant moves to dismiss count II of the plaintiff's amended complaint for failure to state a cause of action to reestablish a promissory note under F.S. 673.3091.

AFFIRMATIVE DEFENSES

1. **FAILURE OF CONTRACTUAL CONDITION PRECEDENT: NO NOTICE OF DEFAULT:** Plaintiff failed to provide Separate Defendant with a Notice of Default and Intent to Accelerate as required by and/or that complies with Paragraph 22 of the subject mortgage. As a result, Separate Defendant has been denied a good faith opportunity, pursuant to the mortgage and the servicing obligations of the Plaintiff, to avoid acceleration and this foreclosure.

2. **NO HUD COUNSELING NOTICE:** Plaintiff failed to comply with the foreclosure prevention loan servicing requirement imposed on Plaintiff pursuant to the National Housing Act, 12 U.S.C. 1701x(c)(5) which requires all private lenders servicing non-federally insured home loans, including the Plaintiff, to advise borrowers, including this separate Defendant, of any home ownership counseling Plaintiff offers together with information about counseling offered by the U.S. Department of Housing and Urban Development. The U.S. Department of Housing and Urban Development has determined that 12 U.S.C. 1701x(c)(5) creates an affirmative legal duty on the part of the Plaintiff. Plaintiff's non-compliance with the law's requirements is an actionable event that makes the filing of this foreclosure premature based on a failure of a statutory condition precedent to foreclosure which denies Plaintiff's ability to carry out this foreclosure. Plaintiff cannot legally pursue foreclosure unless and until Plaintiff demonstrates compliance with 12 U.S.C. 1701x(c)(5).

3. **PLAINTIFF FAILED TO COMPLY WITH APPLICABLE POOLING AND SERVICING AGREEMENT LOAN SERVICING REQUIREMENTS:** Plaintiff failed to provide this separate Defendant with legitimate and non predatory access to the debt

management and relief that must be made available to borrowers, including this Defendant pursuant to and in accordance with the Pooling and Servicing Agreement or other trust agreement that controls and applies to the subject mortgage loan. Plaintiff's non-compliance with the conditions precedent to foreclosure imposed on the plaintiff pursuant to the applicable pooling and servicing agreement is an actionable event that makes the filing of this foreclosure premature based on a failure of a contractual and/or equitable condition precedent to foreclosure which denies Plaintiff's ability to carry out this foreclosure. Plaintiff cannot legally pursue foreclosure unless and until Plaintiff demonstrates compliance with the foreclosure prevention servicing imposed by the subject pooling and servicing or trust agreement under which the plaintiff owns the subject mortgage loan.

4. FAILURE OF GOOD FAITH AND FAIR DEALING: UNFAIR AND UNACCEPTABLE LOAN SERVICING: Plaintiff intentionally failed to act in good faith or to deal fairly with the subject Defendant by failing to follow the applicable standards of residential single family mortgage **servicing** as described in these Affirmative Defenses thereby denying this Defendant access to the residential mortgage servicing protocols applicable to the subject note and mortgage.

5. UNCLEAN HANDS: The Plaintiff comes to court with unclean hands and is prohibited by reason thereof from obtaining the equitable relief of foreclosure from this Court. The Plaintiff's unclean hands result from the Plaintiff's improvident and predatory intentional failure to comply with material terms of the mortgage and note; the failure to comply with the default loan servicing requirements that apply to this loan, all as described herein above. As a matter of equity, this Court should refuse to foreclose this mortgage because acceleration of the note would be inequitable, unjust, and the circumstances of this case render acceleration unconscionable. This court should refuse the acceleration and deny foreclosure because Plaintiff has waived the right to acceleration or is estopped from doing so because of misleading conduct and unfulfilled contractual and equitable conditions precedent.

6. ILLEGAL CHARGES ADDED TO BALANCE Plaintiff has charged and/or collected payments from Defendant for attorney fees, legal fees, litigation attorney fees,

foreclosure costs, late charges, property inspection fees, "property valuation" charges, and other charges and advances, and predatory fees and charges that are not authorized by or in conformity with the terms of the subject note and mortgage. Plaintiff wrongfully added and continues to unilaterally add these illegal charges to the balance Plaintiff claims is due and owing under the subject note and mortgage.

7. **PLAINTIFF LACKS STANDING:** DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR THE REGISTERED HOLDERS OF GSAMP TRUST 2005-SEA1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-SEA1 is not the true owner of the claim sued upon, is not the real party in interest and is not shown to be authorized to bring this foreclosure action.

WHEREFORE, Defendant demands the Plaintiff's complaint be dismissed with prejudice, and for her attorney's fees and costs and for all other relief to which this Court finds Defendant entitled.

COUNTERCLAIMS

COUNT I: DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action for declaratory and injunctive relief against the Plaintiff.
2. Defendant reasserts and alleges, as her statement of facts, her Affirmative Defenses stated above.
3. The Plaintiff has no right to pursue this foreclosure because the Plaintiff has failed to provide servicing of this residential mortgage loan in accordance with the controlling servicing requirements prior to filing this foreclosure action.
4. Defendant has a right to receive foreclosure prevention loan servicing from the Plaintiff before the commencement or initiation of this foreclosure action.
5. Defendant is in doubt regarding her rights and status as a borrower under the National Housing Act and also under the Pooling and Servicing or trust agreement that controls and applies to the subject mortgage. Defendant is now subject to this foreclosure action by reason of the above described illegal acts and omissions of the Plaintiff.
6. Defendant is being denied and deprived by Plaintiff of her right to access the required troubled mortgage loan servicing imposed on the plaintiff and applicable to the

subject mortgage loan by the National Housing Act and also under the Pooling and Servicing or trust Agreement that controls and applies to the subject mortgage. Defendant is being illegally subjected by the Plaintiff to this foreclosure action, being forced to defend the same and she is being charged illegal predatory court costs and related fees, and attorney fees. Defendant is having her credit slandered and negatively affected, all of which constitutes irreparable harm to Defendant for the purpose of injunctive relief.

7. As a proximate result of the Plaintiff's unlawful actions set forth herein, Defendant continues to suffer the irreparable harm described above for which monetary compensation is inadequate.

8. Defendant has a right to access the foreclosure prevention servicing prescribed by the National Housing Act and under the Pooling and Servicing or trust Agreement that controls and applies to the subject which right is being denied to her by the Plaintiff. These wrongful and predatory acts committed by the plaintiff, and/or through the plaintiff's agents, employees or predecessor in interest were intentional and deceptive.

9. There is a substantial likelihood that Defendant will prevail on the merits of her counterclaims.

WHEREFORE, Defendant requests the Court dismiss the Plaintiff's amended complaint with prejudice, enter a judgment pursuant to Fla. Stat. 86 declaring that the Plaintiff is legally obligated to provide the Defendant with access to the special troubled loan servicing prescribed by the National Housing Act and under the Pooling and Servicing or trust Agreement that controls and applies to the subject mortgage loan and enjoining the Plaintiff from charging foreclosure fees and costs and from commencing or pursuing this foreclosure until such servicing is provided to Defendant, for attorney's fees and for all other relief to which Defendant proves herself entitled.

COUNT II: ILLEGAL CONSUMER COLLECTION

Defendant reasserts and realleges the Affirmative Defenses as contained herein above together with paragraph 8 of these counterclaims as her statement of facts.

10. Defendant is a consumer and the obligation between the parties which is the

debt owned pursuant to the subject note and mortgage is a consumer debt as defined in F. S. Section 559.55(1).

11. Plaintiff has engaged in consumer collection conduct which amounts to a violation of F.S. Section 559.72(9) and Defendant, as a proximate result thereof, has sustained economic damages for which the Defendant is entitled to compensation from the Plaintiff, pursuant to F.S. Section 559.77.

12. Plaintiff's collection activities violated the Act in the following particulars:

a. The Plaintiff is claiming, attempting and threatening to collect and enforce this consumer mortgage debt by this foreclosure action when the Plaintiff knows that the right to pursue foreclosure does not exist;

b. Plaintiff does not have a legal right to pursue this foreclosure because the plaintiff was required and has failed to first comply with the foreclosure prevention loan servicing obligations imposed on Plaintiff prescribed by the National Housing Act and under the Pooling and Servicing or trust Agreement that controls and applies to the subject mortgage loan.

c. These foreclosure prevention loan servicing obligations are imposed on the Plaintiff pursuant to the National Housing Act, 12 U.S.C. Section 1710(a) and/or the Pooling and Servicing or trust Agreement that controls and applies to the subject mortgage loan.

d. These special troubled mortgage loan servicing obligations are conditions precedent to the commencement of this foreclosure action because the Plaintiff cannot state a cause of action for foreclosure of single family residential mortgage loan until the Plaintiff complies with the applicable troubled loan servicing obligations described in the affirmative defenses incorporated herein by reference.

13. As a result of the Plaintiff's failure to properly service this mortgage loan before filing this foreclosure action, Defendant has been damaged and Defendant seeks to recover her actual or statutory damages from the Plaintiff under F.S. 559.77.

WHEREFORE, Defendant demands the Plaintiff's amended complaint be dismissed with prejudice, for an award of damages in defendant's favor and against the plaintiff for her actual or statutory damages whichever is greater and for her attorney's

fees and costs and for all other relief to which this Court finds Defendant entitled.

COUNT III: ILLEGAL CONSUMER COLLECTION

Defendant reasserts and realleges her Affirmative Defenses as contained herein above and paragraphs 8 and 12 of these counterclaims as her statement of facts.

14. Defendant is a consumer and the obligation between the parties which is the debt owned pursuant to the subject note and mortgage is a consumer debt as defined in F. S. Section 559.55(1).

15. Plaintiff has engaged in consumer collection conduct which amounts to a violation of F.S. Section 559.55(1) and Defendant, as a proximate result thereof, has sustained economic damages for which the Defendant is entitled to compensation from the Plaintiff, pursuant to F.S. Section 559.77.

16. Plaintiff's collection activities violated the Act in the following particulars:

a. The Plaintiff is claiming, attempting and threatening to collect fees and charges including attorney fees, legal fees, litigation attorney fees, foreclosure costs, late charges, property inspection fees, "property valuation " charges, and other charges and advances, and predatory fees and charges that are not authorized by or in conformity with the terms of the subject note and mortgage. Plaintiff wrongfully added and continues to unilaterally add these illegal charges to the balance Plaintiff claims is due and owing under the subject note and mortgage.

17. Plaintiff continues to claim, attempt, and threaten to enforce this mortgage debt through acceleration and foreclosure when the Plaintiff knows that such conduct is in bad faith because the Plaintiff has charged and collected money from defendant that she did not owe; forced defendant into deepening indebtedness and then failed to meet the contractual and statutory conditions precedent before filing this action to collect this consumer debt.

18. As a result of the Plaintiff's wrongful and illegal actions in the collection of this consumer debt, Defendant has been damaged and Defendant seeks to recover her actual or statutory damages from the Plaintiff under F.S. 559.77.

WHEREFORE, Defendant demands the Plaintiff's complaint be dismissed with prejudice, for an award of damages in favor of defendant and against the plaintiff for

her actual or statutory damages whichever is greater and for her attorney's fees and costs and for all other relief to which this Court finds Defendant entitled.

DEMAND FOR TRIAL BY JURY

Defendant hereby demands trial by jury.

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this document has been mailed to Silverstein, Shapiro & Fishman, 2424 N. Federal Highway, Suite 360, Boca Raton, Florida 33431, Attorney for Plaintiff this 10/10, 2007.

JACKSONVILLE AREA LEGAL AID, INC.

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Attorney for Defendants