

IN THE CIRCUIT COURT OF THE 4th JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR DUVAL COUNTY

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, unremarried widow and
surviving Spouse of Edgar E. Massey,
Deceased; Unknown Parties in Possession #1;
Unknown Parties in Possession #2; If living,
and all Unknown Parties claiming by,
through, under and against the above named
Defendant(s) who are not known to be dead
or alive, whether said Unknown Parties may
claim an interest as Spouse, Heirs, Devisees,
Grantees, or Other Claimants

Defendant(s).

Case #: 07 CA 3840 (CV-G)

Division #: CV-G

UNC:

FILED
JUN 30 2008

[Signature]
CLERK OF THE COURT

**PLAINTIFF'S ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT'S
COUNTERCLAIM**

COMES NOW, the PLAINTIFF, Deutsche Bank National Trust Company, as Trustee for
the registered holders of GSAMP Trust 2005-SEA1, Mortgage Pass-Through Certificates, Series
2005-SEA1, by and through its undersigned attorneys, and hereby files this, its Answer and
Affirmative Defenses to Defendant's Counterclaim, and sets forth:

1. Plaintiff is without knowledge of the allegations contained in paragraph 1 of the
Defendant's Counterclaim and therefore denies the allegations contained therein.

2. In response to paragraph 2 of the Defendant's Counterclaim, Plaintiff denies all
allegations stated in the Defendant's Affirmative Defenses and demands strict proof thereof.

3. Plaintiff denies the allegations contained in paragraph 3 of the Defendant's
Counterclaim and demands strict proof thereof.

4. Plaintiff denies the allegations contained in paragraph 4 of the Defendant's Counterclaim and demands strict proof thereof.

5. Plaintiff denies the allegations contained in paragraph 5 of the Defendant's Counterclaim and demands strict proof thereof.

6. Plaintiff denies the allegations contained in paragraph 6 of the Defendant's Counterclaim and demands strict proof thereof.

7. Plaintiff denies the allegations contained in paragraph 7 of the Defendant's Counterclaim and demands strict proof thereof.

8. Plaintiff denies the allegations contained in paragraph 8 of the Defendant's Counterclaim and demands strict proof thereof.

9. Plaintiff denies the allegations contained in paragraph 9 of the Defendant's Counterclaim and demands strict proof thereof.

Plaintiff readopts and realleges its responses to the Affirmative Defenses and paragraph 8 of the Defendant's Counterclaim as if specifically set forth herein verbatim.

10. Plaintiff is without knowledge of the allegations contained in paragraph 10 of the Defendant's Counterclaim and therefore denies the allegations contained therein.

11. Plaintiff denies the allegations contained in paragraph 11 of the Defendant's Counterclaim and demands strict proof thereof.

12. Plaintiff denies the allegations contained in paragraphs 12 (a) through (d), inclusive, of the Defendant's Counterclaim and demands strict proof thereof.

13. Plaintiff denies the allegations contained in paragraph 13 of the Defendant's Counterclaim, and demands strict proof thereof.

Plaintiff readopts and realleges its responses to the Affirmative Defenses and paragraphs 8 and 12 of the Defendant's Counterclaim as if specifically set forth herein verbatim.

14. Plaintiff is without knowledge of the allegations contained in paragraph 14 of the Defendant's Counterclaim, and therefore denies the allegations contained therein.

15. Plaintiff denies the allegations contained in paragraph 15 of the Defendant's Counterclaim and demands strict proof thereof.

16. Plaintiff denies the allegations contained in paragraphs 16 and 16 (a) of the Defendant's Counterclaim and demands strict proof thereof.

17. Plaintiff denies the allegations contained in paragraph 17 of the Defendant's Counterclaim and demands strict proof thereof.

18. Plaintiff denies the allegations contained in paragraph 18 of the Defendant's Counterclaim and demands strict proof thereof.

AFFIRMATIVE DEFENSES

19. As and for its First Affirmative Defense, Plaintiff states that Defendant has failed to state a cause of action for declaratory relief and injunctive relief. Defendant's claim for injunctive relief is unclear, ambiguous, and unsupported by evidence. An injunction should be granted only in clear cases, reasonably from doubt, and when necessary to prevent great irreparable injury, and the claim has the burden of proving those facts which support the entitlement for relief. Defendant has failed to allege any of the four (4) elements to award injunctive relief:

- That irreparable harm will follow unless the status quo is maintained;
- That no adequate remedy at law exists;
- That there is a clear legal right to the requested relief; and
- That an injunction will favor public interest.

Further, declaratory relief is appropriate when the claimant alleges that there is a bona fide dispute between the parties and there is doubt as to her rights under a contract or statute. Defendant has failed to adequately plead these elements.

20. As and for its Second Affirmative Defense, Plaintiff states that Defendant has failed to state a cause of action for violations of the Florida Consumer Collection Act. Florida Statute §559.72(9) specifically requires proof of knowledge by the party collecting the debt, that the debt is not legitimate or the right does not exist, and intent. Defendant has failed to allege or demonstrate that Plaintiff knows the debt is not legitimate. The records of the Plaintiff specifically state that the debt is legitimate. Further, Defendant cannot maintain this cause of action as Defendant's premise for Plaintiff's alleged wrongdoing is based on the violation of 12 U.S.C. §1710 (a). However, this particular Statute details the Secretary of HUD's ability to pay insurance benefits to a mortgagee under certain circumstances. There are no affirmative duties contained within this Statute on behalf of the Plaintiff to the Defendant herein. Finally, the Defendant states that the Plaintiff violated the obligations imposed on it pursuant to the Pooling and Servicing or Trust Agreement that controls and applies to the subject loan. However, the Defendant fails to state what specific Pooling and Servicing or Trust Agreement is applicable to this Plaintiff, nor has she attached a copy of this Agreement, detailing what the duties are, in violation of Florida Rules of Civil Procedure, Rule 1.130. Defendant states that the Plaintiff has claimed, attempted, and threatened to collect charges which are not authorized or in conformity with the note and mortgage, including, but not limited to, attorneys fees, foreclosure costs, late charges, property inspection fees, and property valuation charges. However, paragraph 1 of the Mortgage, which is attached to the Amended Complaint as Exhibit "B" and incorporated herein by reference, allows for the charging of late charges due under the Note. Paragraph 8(a) of the Note, which is attached to the Amended Complaint as Exhibit "A" and incorporated herein by reference, allows for charging a late fee.

21. As and for its Third Affirmative Defense, Plaintiff states that Defendant's claims are barred under the Florida Consumer Collection Act, as the Plaintiff is exempted from these actions pursuant to the Statute.

22. As and for its Fourth Affirmative Defense, Plaintiff states Defendant is in breach of the mortgage's terms by failing to remit payment as required. Plaintiff properly applied all payments received and satisfied all conditions precedent to the filing of this action.

23. As and for its Fifth Affirmative Defense, Plaintiff states that Defendant is in breach of the mortgage as set forth more fully in Plaintiff's Complaint, the allegations of which are incorporated herein by reference. Accordingly, Plaintiff is entitled to set off from any monies to which Defendant may recover.

24. As and for its Sixth Affirmative Defense, Plaintiff states that the Defendant's damages, if any, were caused in whole or in part by her own actions. Further, Plaintiff has complied with all servicing requirements and all requirements pursuant to the note and mortgage. Therefore Defendant is estopped from pursuing these claims.

25. As and for its Seventh Affirmative Defense, Plaintiff states that Defendant has waived any claims stated within the Counterclaim by her own actions. Further, Plaintiff has complied with all servicing requirements and all requirements pursuant to the note and mortgage.


26. As and for its Eighth Affirmative Defense, Plaintiff states that Defendant has failed to mitigate her damages by failing to undertake efforts to attempt a resolution with the Plaintiff, or its servicer.

"THIS COMMUNICATION, FROM A DEBTOR COLLECTOR, IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 24 day of JUNE, 2008, to the following:

Margaret A. Massey, unremarried widow and surviving Spouse of Edgar E. Massey, Deceased, c/o April Carrie Charney, Esquire; Attorney for Defendant, 126 West Adams Street, Jacksonville, FL 32202; Unknown Parties in Possession #1, 245 West 3rd Street, Jacksonville, FL 32206; Unknown Parties in Possession #2, 245 West 3rd Street, Jacksonville, FL 32206

By: 
IRA SCOT SILVERSTEIN
FL Bar # 0009636

SHAPIRO & FISHMAN, LLP
Attorneys for Plaintiff
2424 North Federal Highway, Suite 360
Boca Raton, Florida 33431
Telephone: (561) 998-6700
Fax: (561) 998-6707

07-76346B

FORECLOSURE.COM