

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CHASE HOME FINANCE, LLC, GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 09-012515 CA 01

vs.

GEORGE GALIOUNGHI, et al.,

Defendants.

DEFENDANT GALIOUNGHI'S
ANSWER AND AFFIRMATIVE DEFENSES

Defendant George Galionghi by and through undersigned counsel and pursuant to applicable rules of the Florida Rules of Civil Procedure files this Answer and Affirmative Defenses to Plaintiff's Complaint, and states:

1. Defendant Galionghi denies all allegations of Plaintiff's Complaint and demands strict proof thereof.

2. Defendant Galionghi specifically denies that conditions precedent to Plaintiff's right of action, right to attorney's fees and or right to accelerate herein were performed or met by Plaintiff or the same was waived by defendant.

AFFIRMATIVE DEFENSES

3. As a first affirmative defense, defendant states that plaintiff's complaint fails to states a cause of action upon which relief requested may be granted and therefore this action is barred.

4. As a second affirmative defense, defendant states that plaintiff does not have capacity to sue or bring this action and this action is therefore barred.

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5. As a third affirmative defense, defendant states that plaintiff is not the real party in interest and or duly authorized agent of same upon which plaintiff's alleged claim is based and therefore has no standing to bring this action.

6. As a fourth affirmative defense, defendant states that plaintiff failed to perform conditions precedent to the initiation of this action and or for acceleration of payments allegedly due. As a result, 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.

7. As fifth affirmative defense, defendant asserts all terms and condition of the promissory note and mortgage upon which plaintiff's alleged claim is based.

8. As a sixth affirmative defense, defendants assert all requirements of applicable mortgage foreclosure statutes.

9. As a seventh affirmative defense, defendant states that plaintiff is not the lawful assignee of the Promissory Note and Mortgage upon which plaintiff's alleged claim is based.

10. As an eighth affirmative defense, defendant states that plaintiff cannot produce the original Promissory Note and Mortgage upon which this action is based and therefore relief requested is barred.

11. As a ninth affirmative defense, defendant states that plaintiff is not the holder of the Promissory Note and Mortgage upon which this action is based and therefore relief requested is barred.

12. As a tenth affirmative defense, defendant states that plaintiff is not the owner of the Promissory Note and Mortgage upon which this action is based and therefore relief requested is barred.

13. As an eleventh affirmative defense, defendant states that plaintiff is not in possession of the Promissory Note and Mortgage upon which this action is based and therefore relief requested is barred.

14. As a twelfth affirmative defense, defendant states that upon information and belief, the note has been paid in full by an undisclosed third party who prior to or contemporaneously with the closing on the loan transaction paid the Lender in exchange for certain unrecorded rights to the revenues arising out of the loan documents. Upon information and belief, Plaintiff has no financial interest in the note or mortgage. Upon information and belief the missing assignments on the note may have made it void and a legal nullity, thus they have exploited key and vital evidence or shipped same off-shore to a structured investment vehicle that also has no interest in the note or mortgage or the revenue therefrom. Upon information and belief, Plaintiffs allegation that the note and mortgage is lost, stolen or destroyed is therefore a fraud upon the court.

15. As a thirteenth affirmative defense, defendant states that plaintiff's claim is barred by the statute of frauds, laches and or the statute of limitations.

16. As a fourteenth affirmative defense, defendant states that plaintiff's claim is barred and or limited for violation of the federal truth in lending act.

17. As a fifteenth affirmative defense, defendant states that plaintiff's claim is barred and or limited for violation of RESPA. Upon information and belief, Plaintiff and or its predecessor(s) in interest violated various provisions of the Real Estates Settlement Procedures Act ("RESPA"), which is codified at 12 U.S.C. section 2601, et seq. by, inter alia:

a) Failing to provide the Housing and Urban Development (HUD) special information booklet, a Mortgage Servicing Disclosure Statement, and Good Faith Estimate of settlement/closing costs to Defendant at the time of the loan application or within three (3) days thereafter;

b) Failing to provide Defendants with an Escrow Disclosure Statement for each year of the mortgage since its inception;

c) Giving or accepting fees, kickbacks and or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for services not actually performed;

d) Charging a fee at the time of the loan closing for the preparation of truth-in-lending, uniform settlement and escrow account statements.

18. As a sixteenth affirmative defense, defendant states that plaintiff's claim is barred and or limited for violation of the state and or federal fair debt collection practices act.

19. As a seventeenth affirmative defense, defendant states that plaintiff claim for attorneys fees is barred for failure to perform and or meet conditions precedent under the promissory note and or mortgage upon which action is allegedly based. Alternatively, there is no valid contract or other written agreement between the parties permitting the award of attorney's fees in connection with this action.

20. As an eighteenth affirmative defense, defendant states that 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 term of the mortgage and note; the failure to comply with the default loan servicing requirements that apply to this loan, as described hereinabove. 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.

21. As a nineteenth affirmative defense, defendant states that upon information and belief, Defendants have made all payments required by law under the circumstances; however Plaintiff and/or its predecessor(s) in interest improperly applied such payments resulting in the fiction that Defendant was in default. Defendant is entitled to a full accounting through the master transaction histories and general ledgers for the account since a dump or summary of said information cannot be relied upon to determine the rightful amounts owed. Further, the principal balance claimed as owed is not owed and is the wrong amount; the loan has not been properly credited or amortized. Additionally, Plaintiff wrongfully placed forced insurance on the property and or is attempting to collect on property taxes, insurance and fees not owed.

22. As a twentieth affirmative defense, defendant states that plaintiff failed to comply with the foreclosure prevention loan servicing requirement impose 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 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).

23. As a twenty-first affirmative defense, defendants state that plaintiff has charged and or collected payments from defendant for attorneys 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, force placed insurance and other 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 owing under the subject note and mortgage.

24. As a twenty-second affirmative defense, defendant states that plaintiff failed to provide defendants 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 by the subject pooling and servicing or trust agreement under which the plaintiff owns the subject mortgage loan.

25. As a twenty-third affirmative defense, defendant states that 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 term of the mortgage and note; the failure to comply with the default loan servicing requirements that apply to this loan, a;; 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.

26. As a twenty-fourth affirmative defense, defendant states that plaintiff intentionally failed to act in good faith or to deal fairly with the defendants by failing to follow the applicable standards of residential single family mortgage *servicing* as described in these affirmative defenses thereby denying defendant access to the residential mortgage servicing protocols applicable to the subject note and mortgage.

27. Plaintiff is not entitled to any deficiency judgment as it failed to mitigate damages by refusing to accept a deed in lieu and or short sale offers proposed by or on behalf of defendant. Plaintiff otherwise failed to mitigate its damages by other factors to be revealed through discovery.

28. As a twenty-fifth affirmative defense, defendant states that in light of all of the foregoing defenses, and on the face of the purported loan documents, the terms and circumstances of the Note and Mortgage were unconscionable when made and were unconscionably exercised, it is therefore unconscionable to enforce the mortgage by foreclosure.

29. As a twenty-sixth affirmative defense, defendant states that plaintiff cannot prove its case against defendant and therefore this court should enter judgment in defendant's favor and quiet title in their favor, voiding the alleged promissory note and mortgage upon which plaintiff seeks to recover herein.

30. As a twenty-seventh affirmative defense, defendant state that plaintiff is liable for defendant's costs and attorney's fees pursuant to terms of the agreement between the parties and Florida Statutes, Section 57.105 and or applicable

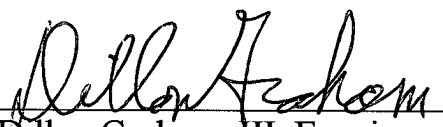
provisions of the state and federal fair debt collection practices act and or the federal truth and lending act.

WHEREFORE defendant Galiounghi requests this court to enter judgment in his favor, quieting title, awarding costs and attorney's fees for those reasons set forth herein in addition to other relief deemed proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon Penny Fraser, Esquire, Law Offices of Marshall C. Watson, P.A., Attorneys for Plaintiff, 1800 NW 49 Street, Suite 120, Fort Lauderdale, Florida 33309 on June 8, 2010.

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