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F -041084-13

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Superior Court Clerk's Office, Foreclosure Processing Services
Attention: Objection to Notice of Intention to Foreclose
P.O.Box 971
Trenton, NJ 08625

Honorable Margaret Mary McVeigh, P.J.Ch.,
Superior Court of New Jersey, Passaic County Courthouse
Chambers 100 71 Hamilton Street
Paterson, New Jersey 07505

Dated: March 3, 2014



Samir Hickson

SAMIR HICKSON
215 Evergreen Drive
Willingboro, NJ 08046

BANK OF AMERICA	:	SUPERIOR COURT OF NEW
Plaintiff	:	JERSEY
v.	:	CHANCERY DIVISION
SAMIR HICKSON,	:	BURLINGTON COUNTY
Defendant	:	DOCKET NO.: F-041084-13
	:	<u>CIVIL ACTION</u>
	:	DEFENDANT'S RESPONSE TO ORDER TO SHOW CAUSE

DEFENDANT'S ANSWER TO NOTICE OF INTENTION TO FORECLOSE, INITIAL COMPLAINT AND
AFFIRMATIVE DEFENSE NUNC PRO TUNC

COMES NOW, SAMIR HICKSON, Notice of Intention to Foreclose and states:

Plaintiffs' purposeful fraud in attempting to appear as **CREDITOR** to this Honorable Court, when in fact Plaintiffs are well aware they are not the **CREDITOR** and therefore **NOT the Real Party in interest** in this instant matter.

It is now incumbent on this Court to query Plaintiffs as to Plaintiffs' lawful position in this instant matter. If Plaintiffs refuse to stipulate in open Court that Plaintiffs, are the **CREDITOR** in this instant matter, this Court must remove Defendants, hereinafter referred to as Plaintiff, from this hearing forthwith, as this Court is here to settle a matter between a **CREDITOR** and a **DEBTOR**.

Accordingly, if Defendants are not the **CREDITOR** in this Matter, then Defendants have thus stipulated that Plaintiff, hereinafter referred to as Defendant, **MUST** be the **CREDITOR** in this matter.

Defendants cannot be the **CREDITOR** in this instant matter as Defendants **NEVER** risked any assets, nor are Defendants holding any assets.

A **CREDITOR** cannot be a **CREDITOR** if they don't hold the asset in question, [*i.e.*: the **NOTE** and/or the **property**, and **Mortgage Pass-through Trusts**, *i.e.* **R.E.M.I.C.**, as defined in **TITLE 26, Subtitle A, CHAPTER 1, Subchapter M, PART II, §§ 850-862**] cannot hold assets for if they do their tax exempt status is violated and the Trust itself is void *ab initio*.

Defendant **MUST NOW** inform this court, the I.R.S. and the S.E.C. of their status of either being a **CREDITOR** and/or not being a **CREDITOR**.

Defendant's own acts of fraud upon this court, Plaintiff, and the public in general are the single cause of this paradox and absent Defendants stating the claim as **CREDITOR**, this court cannot hear from Defendants.

By Law and precedent and in accordance with the Supreme Court of the United States *pro se* Pleadings **MAY NOT** be held to the same standard as a lawyer's and/or attorney's; and whose motions, pleadings and all papers may **ONLY** be judged by their function and never their form. See: Haines v. Kerner; Platsky v. CIA; Anastasoff v. United States; Litigants are to be held to less stringent pleading standards;

See: Haines v. Kerner, 404 U.S. 519-421; In re Haines: *pro se* litigants are held to less stringent pleading standards than admitted or licensed bar attorneys. Regardless of the deficiencies in their pleadings, *pro se* litigants are entitled to the opportunity to submit evidence in support of their claims.

See also: Platsky v. C.I.A., 953 f.2d. 25; In re Platsky: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.

See also: Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000); In re Anastasoff: litigants' constitutional (guaranteed) rights are violated when courts depart from precedent where parties are similarly situated.

AFFIRMATIVE DEFENSES I

A. Defendant SAMIR HICKSON denies all allegations of Plaintiff's Complaint except those with insufficient knowledge and those admitted to and Demands strict proof thereof.

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

AFFIRMATIVE DEFENSES II

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

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

3. 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.

4. As a fourth affirmative defense, defendant states that plaintiff's failed to

Perform conditions precedent to the initiation of this action and or for acceleration of payment 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.

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

6. As a sixth affirmative defense, defendant asserts all requirements of applicable mortgage foreclosure statutes.

7. 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.

8. As a 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.

9. As 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.

10. As an tenth 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.

11. As a eleventh 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 legal nullity, thus they have exploited key and vital evidence

or shipped same off-shore to a structure investment vehicle that also has no interest in the note or mortgage or the revenue therefrom. Upon information and belief, plaintiff's allegation that the note and the mortgage is lost, stolen or destroyed is therefore a fraud upon the court.

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

13. As a thirteenth affirmative defense, defendant states that plaintiff's claim is barred and or limited for violation of the federal Truth in Lending Act (TILA).

14. As a fourteenth 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 provision of the Real Estate Settlement Procedures Act ("RESPA"), which is codified as 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, kickback and or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for service 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 settlements.

15. As a fifteenth 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.

16. As a sixteenth affirmative defense, defendant states that plaintiff claim for attorney's fee is barred for failure to perform 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.

17. As an seventeenth 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 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 circumstanced 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 stopped from doing so because of misleading conduct and unfulfilled contractual and equitable conditions precedent.

18. As a eighteenth affirmative defense, defendant states that upon information and belief, Defendant 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 ledger for the account since a dump or summary of said information cannot be relied upon to determine the rightful amount 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.

19. As a nineteen affirmative defense, the defendant states that plaintiff failed To comply with the foreclosure prevention loan servicing requirements impose on plaintiff pursuant to the National Housing Act, 12 U.S.C. 1701x(c) (5) which requires all private lenders serving 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 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).

20. As a twentieth affirmative defense, defendant states that plaintiff has charged and or collected payments from defendant for attorneys fees, legal fees, litigation attorney fees, foreclosure cost, 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.

21. As twenty-one affirmative defenses, defendant states that plaintiff failed to provide defendant with legitimate and non predatory access to the debt management

and relief that must be made available to borrowers, including the 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 Service 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.

22. As a twenty-second affirmative defense, defendant states that plaintiff unintentionally 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.

23. As a twenty-third Affirmative Defenses, Plaintiff is not entitled to any deficiency judgment as it failed to mitigate damages by refusing to accept a deed in lieu 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.

24. As a twenty-fourth affirmative defenses, 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.

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

26. As a twenty-sixth 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 or applicable Provisions of the State and Federal Fair Debt Collection Practices act and or the Federal Truth and Lending Act.

WHEREFORE, Defendant SAMIR HICKSON requests this Court to enter Judgment in Defendants favor, DISMISSING NOTICE OF INTENTION TO FORECLOSE, quieting title, awarding cost and attorney's fee for those reasons set forth herein in addition to relief deemed proper.

A handwritten signature in black ink, appearing to read 'Samir', written over a horizontal line.

SAMIR HICKSON, Defendant

