

FILED Aug 19, 2013

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(Please respond to NJ office)

August 15, 2013

VIA REGULAR MAIL

Superior Court Clerk's Office
Foreclosure Processing Services
25 Market Street, P.O. Box 971
Trenton, NJ 08625-0971

RECEIVED
AUG 19 2013
SUPERIOR COURT
CLERK'S OFFICE

ATTN: Objection to Notice of Intent to Foreclose

Re: Citimortgage Inc., et al v. James J. Santoro, et al. (F- 017318 -13)

Dear Clerk:

Enclosed, please find an Objection to Order to Show Cause, with Exhibits, to be filed on behalf of the defendants, James and Gerald Santoro in the above matter. Please file same and return a filed copy of the Objection only (no exhibits) to my New Jersey office listed above in the envelope provided. Please copy my office with all future correspondence regarding this case and any hearing dates. Thank you.

Sincerely,



B. Michael Rubinstein

Encl.

cc: Honorable Margaret Mary McVeigh, JSC
Passaic County Courthouse
71 Hamilton Street, Chambers 100
Paterson, NJ 07505

Theodore V. Wells, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019

Krouatin Klingenstein, LLC
60 Park PL
Newark NJ 07102

Gerald Santoro
(Your Name(s))

99 Manning Place, Keansburg, NJ 07734
(Your Mailing Address)

(732) 241-0145
(Your Daytime Telephone Number)

Superior Court of New Jersey
Chancery Division
General Equity

CITIMORTGAGE, INC.
(Name of company or bank that filed the foreclosure complaint)

Plaintiff(s),

Vs.

JAMES J. SANTORO et al.
(Name of first defendant listed on the complaint)

Defendant(s),

Passaic County
County where the property is located or
"Mercer" for an objection to the Order to Show Cause
Docket No F- 017318-13

CIVIL ACTION

OBJECTION TO: (select one)

- Order to Show Cause
- Corrected Notice of Intention to Foreclose

I/We Gerald C. Santoro; James J. Santoro, the defendant(s) in the foreclosure matter
(filing party or parties)

hereby object

(caption and docket number if different from above)

to the Plaintiff's filing of the (select one)

- Order to Show Cause
- Corrected Notice of Intention to Foreclose for the following specific reasons:
(Describe specific objections in numbered paragraphs. Please attach additional pages if necessary.)

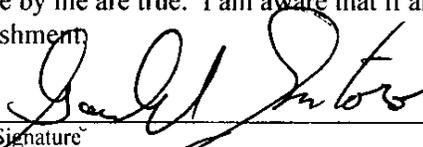
I - The Order to Show Cause, sets forth that it is seeking corrected NOI's (to set forth the true identity of the lender, as required under the recent USNB v. Guillaume opinion (209 N.J. 409 [2012]) . The Order to Show is for exclusively current "uncontested matters", i.e., at the time this action was commenced, May 9, 2013. This statement is contained in the the Order to Show Cause, and in a footnote 1, i.e., that "the foreclosure cases that are included on the corrected NOI list are 'currently uncontested', The Santoro parties are listed in the Citimortgage Count under that list as uncontested

II -However, the Santoro defendants had filed an answer, pro se, dated December 17, 2013 and served upon plaintiff's attorney, the Phelan firm, on or about January 7, 2013, encrypted copy annexed to these objections,. Hence it was filed APPROXIMATELY 5 MONTHS BEFORE the Complaint , SO THAT ANY CLAIM THAT THE SANTORO FORECLOSURE IS CURRENTLY AN UNCONTESTED MATTER, AS OF MAY 9, 2013, IS NOT TRUE. And, for the reason stated in the answer Citimortgage Inc. lacked authority.

See answer annexed, para 13: The NOI, served by CitiMortgage, Inc., made within 90 days of commencement of this action, was made at a time when CitiMortgage, Inc. did not have authority to do so, since it allegedly did not receive an assignment of the mortgage until one day before the foreclosure commenced."

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment

08/16/2013
Date


Signature

GERALD C. SANTORO
Print or Type Name

Certification of Service

I hereby certify that on 08/16/2013 I sent my objection to the following parties by: (Select which mailing method you chose. If you sent it by both regular and certified mail, check both.

regular mail certified mail other _____

List each party to the lawsuit; send your opposition to the attorney if the party is represented by counsel; if the party is pro se you may send the papers directly to that individual.

Name Krovatin Klingeman LLC

Name Theodore V. Wells, Esq. Paul Weiss Rifkind et

Address 60 Park Place

Address 1285 Avenue of the Americas

Newark, N.J. 07102

New York, N.Y. 10019

Tel.: (973)-424-9777

Attorney for plaintiffs in order to show cause

Attorney for plaintiffs in order to show cause

08/16/2013

Date



Signature

GERALD C. SANTORO

Print or Type Name

The Santoro Defendants
Appearing Pro Se
99 Manning Place
Keansburg, N.J. 07734

CITIMORTGAGE, INC.

Plaintiff,

vs

JAMES J. SANTORO, and
MRS. JAMES J. SANTORO,
His wife, et. al.,

SUPERIOR COURT OF
NEW JERSEY MONMOUTH
COUNTY
CHANCERY DIVISION
MONMOUTH COUNTY
Docket No. F-041572-10

CERTIFIED ANSWER

Defendants JAMES J. SANTORO , GERALD C. SANTORO , and
KAREN SANTORO, each appearing pro se, as and for their joint answer
allege as follows:

The First Count:

1. As to the allegations contained in Paragraph "1" of the
complaint, Defendants admit that they executed a Note on or about March
26, 2009, in favor of Citizens Community Bank. ("Citizens Bank"), to
secure the sum of Two Hundred Fifty-Nine Thousand and Eight Hundred
and twenty-two (\$259,822.00) Dollars, and that upon information and
belief, the Note was/ an Adjustable Rate Note subject to adjustment

pursuant to the terms of the Note, payable in monthly installments of principal and interest as stated therein.

a. Defendants NEITHER ADMIT NOR DENY the truth or accuracy of the allegations containing the terms of the Note, including that it does not have a prepayment clause as alleged in Paragraph "9", and respectfully refers the court to that document, which is conspicuously missing from the complaint, for the truth and accuracy thereof.

2. DEFENDANT(S) ADMIT(S) to the allegations contained in paragraph "2" of the complaint, to wit, that on that date they also executed a Mortgage to secure the payment of the Note, to MERS, as nominee for Citizen's Bank, but NEITHER ADMITS NOR DENY the remaining allegations contained in paragraph "1" "2" and "4", regarding the terms and conditions of the Note Mortgage, or that the latter was duly recorded, and respectfully refers the Court to those instruments for the truth and accuracy thereof, which instruments are conspicuously absent from the complaint, and denies knowledge or information sufficient to form a belief as to the recording of said mortgage alleged therein, and neither admits nor denies the legal description of the property and refers the court to that instrument for the truth and accuracy thereof.

3. DEFENDANTS NEITHER ADMIT NOR DENY the allegations contained in paragraphs "2a" and "2b" of the complaint that plaintiff assigned the mortgage as set forth therein, and that plaintiff is the holder of the mortgage and note, except as to the affirmative defenses raised to that contention, as set forth herein, and otherwise respectfully refers the court to those instruments for the truth and accuracy thereof, and DENIES that defendant(s) defaulted on this loan which would allow the tax clause in the agreement to be triggered.

4. DEFENDANTS NEITHER ADMIT NOR DENY the allegations contained in paragraph "3" of the complaint describing the property by metes and bounds, and respectfully refers the court to the instrument(s) containing said description for the truth and accuracy thereof.

5. DEFENDANTS NEITHER ADMIT NOR DENY the allegations contained in paragraphs "5" of the complaint that there are no other instruments of record which affect or may affect the premises described in Paragraph "3", and whether the other parties named in the complaint are necessary parties

6. Defendants DENY the allegations set forth in paragraph numbered "7" , "8" and "9" of the Complaint that they defaulted on

payments of this loan, that plaintiff is entitled to a lien on the mortgaged premises and that they received proper notice under the Fair foreclosure Act.

The Second Count:

7. Defendants DENY each and every allegation contained in paragraphs "1" through "4" of the Second Count of Plaintiff's complaint.

ALLEGATIONS COMMON TO ALL AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS

8. Defendants repeat and reallage, the allegations contained in paragraphs "1" through "7" as so fully set forth at length herein

9. That at the closing of this mortgage transaction, which occurred on March 26, 2009, as set forth above, the mortgage was allegedly given to Mortgage Electronic Registration Systems, (known as "MERS"), as *NOMINEE* for the lender/originator, Citizen's Bank, and MERS has a business address at PO Box 2026, Flint, Michigan 48501

10. On the same day, the servicing of said mortgage loan was assigned to CitiMortgage, Inc., the plaintiff.

11. Upon information and belief, the mortgage assignment from MERS, to CITIMORTGAGE, as plaintiff, was made on August 25, 2010,

one day prior to the commencement of this Foreclosure action, which occurred on August 26, 2010.

12. The notice of Lis Pendens was not filed until September 17, 2010, over one month after the commencement of the action.

13. The Notice of Intent to Foreclose, served by CitiMortgage, Inc., within 90 days of commencement of this action, was made at a time when CitiMortgage, Inc., did not have authority to do so, since it allegedly did not receive an assignment of the mortgage until one day before the foreclosure commenced, as set forth in paragraph 10, supra..

14. The mortgage assignment document/instrument is greatly suspect on its face, replete with evidence of fraudulent, "robo-signing of this document without personal knowledge of the facts nor authorization to do so and therefore is indicative of an invalid assignment to Citimortgage, Inc.; since:

a. MERS is a Michigan corporation, yet the Mortgage was assigned in the State of New Jersey; and there is no showing that MERS is authorized to do business in this state;

b. Upon information and belief, CitiMortgage, Inc. is a corporation formed and licensed to business in the State of Missouri, and

hence its authority/authorization to execute the instruments of assignment as indicated is suspect;

c. Citizens Bank is a new Jersey Corporation, yet the Notary on the Assignment Instrument is authorized to notarize documents in the State of Pennsylvania;

d. The signature upon behalf of MERS assigning the mortgage, that of Judith T. Roman, as purported officer of MERS, is suspect since she is not, upon information and belief, was not an officer or employee of MERS when she signed this document, but rather was an employee of the law firm representing plaintiff, the PHELAN firm, and otherwise has been the subject of various articles as having a reputation as a "robo-signer"

e. The Notary, "Eugene Jaskewicz" is the notary for Judith T. Romano on several occasions, rendering his notarizations suspect;

15. Likewise, there is no note attached to the complaint, as required by law and rules of the State of New Jersey; nor is there any indication of the chain of assignments of the Note which occurred and allegedly ended up with plaintiff, so that there is no basis for the allegation in the complaint that Plaintiff is the holder of the note

16. Upon information and belief, the Government enterprise, Ginnie Mae, was the guarantor of the loan, and purchased it as part of a

securitization process, registered with Ginnie Mae under a Min. # 100508150903-2007, while Citimortgage, Inc. is listed as the servicer only, without any ownership or holder rights in the mortgage/mortgage note, and hence is not the real party in interest with standing to foreclose, at most it is the agent for an undisclosed principal ("the MBS investors") without disclosing its authority to act as agent for said principals in bringing this action.

17. That Citigroup, which upon information and belief was the parent corporation to Citimortgage, Inc. received "bailout" funds from the government of several billion dollars, of which several billion dollars was earmarked for Citimortgage, Inc., yet there is no indication of whether, and to what extent, these monies were used to reimburse the MBS security holders for "undivided" losses occasioned by defaults of all securitized loans, which should have resulted in a loss mitigation/offset to the monies sought herein by reason of defendants' alleged default of their mortgage obligations.

18. By reason thereof, and upon information and belief, in defense to this action there were multiple violations of the foregoing principles governing the validity and legality of note indorsement, procedures and practices through the chain of title for the underlying note, including that,

without limitation, that: (a) the Note was not a “negotiable instrument within the meaning of provisions of Article 3 of the UCC, as adopted by this State, since it becomes necessary to go outside the instrument, viz. to the Mortgage or other security agreement, in order to determine the rights and obligations of the parties; (b) one or more of the Note assignments was either not made; (b) the note transfer was not properly recorded; (c) those in alleged chain of title to the note, were by-passed; and/or (d) the note was not given by one or more of the parties in the chain of title for fair consideration; and/or was not accompanied by a valid endorsement of the Note Instrument as required by applicable sections of Article 3 of the Uniform Commercial Code, ; and (4) the Mortgage Assignment was not validly made in writing, as required by Article 9 of the UCC as adopted in this State, thereby not transferring a valid enforceable security interest to plaintiff and thereby not giving plaintiff a valid enforceable interest

19. By reason thereof, again contrary to the above principles set forth, upon information and belief, the Note and its assignments through negotiated indorsements was so denigrated and ineffective in said indorsements and transfers, including, without limitation, that it was not properly made to the order of the endorsee, and/or was otherwise forged or irregular, that the Note lost its legal character as a “negotiable instrument”

within the meaning of applicable provisions of Article 3 of the Uniform Commercial Code and other applicable state or federal law, By reason of all of the foregoing, plaintiff TRUST has no standing to bring this foreclosure action, since it does not have legal possession of the Note through proper transfers and endorsements

20. Alternatively, any purported transfer of any instrument, including the mortgage, to MERS, as alleged nominee for Citizens Bank was ineffective as a matter of law; since MERS is simply an entity that acts as a Registry for title to these instruments, and not a legal entity for any other purpose; hence the chain of title of the mortgage was effectively broken, so that in any event, Plaintiff Trust does not have legal possession of the Mortgage and Note and hence has no standing to bring this foreclosure action.

FIRST AFFIRMATIVE DEFENSE

21. Defendants hereby expressly incorporate into each of the following Affirmative Defenses and Counterclaims set forth below, the allegations and responses set forth above in paragraphs "1" through "20" inclusive, of Defendants' Answer as though fully set forth herein..

22. By reason thereof, plaintiff has failed to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

23. The Plaintiff has failed to join an indispensable party to this action, to wit, the actual owner of the Promissory Note and Mortgage or true party (ies) in interest.

24. By reason thereof, plaintiff has failed to state a cause of action upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

25. Upon information and belief, Plaintiff and/or its assignors/assignees, nominators/nominees, agents, principals, partners, investors etc. have been indemnified for the alleged loss through insurance and/or collateral agreements as it is common practice to place credit default swap deals on the securitized loan which, in essence, wagers and pays out on the default of the loan.

26. By reason thereof, plaintiff has failed to state a cause of action upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

27. For the foregoing reasons, Plaintiff's conduct, by and through the acts of one or more of its predecessors, the Assignor/Assignees of the Note for which it may be held liable, rendered the Complaint as being brought in bad faith, and/or with unclean hands, with knowledge that it

lacked standing to sue, and/or failed to state a cause of action upon which relief may be given, and therefore it constitutes an abuse of process entitling defendants to seek damages in an unspecified amount, to be determined at trial.

28. By reason thereof, plaintiff has failed to state a cause of action upon which relief may be granted.

FIFTH AFFIRMATIVE DEFENSE WITH COUNTERCLAIM

29. For the foregoing reasons, the action is frivolous as to these responding defendants as per the provisions of N.J.S.A. 2A:15-59, et. seq.

30. By reason thereof, plaintiff has failed to state a cause of action upon which relief may be granted.

31. By further reason thereof, defendant is entitled to damages as a result of plaintiff's violation of law, both compensatory and statutory, in an amount to be determined at trial.

SIXTH AFFIRMATIVE DEFENSE

32. For the foregoing reasons, Plaintiff's conduct, by and through the acts of one or more of its predecessors, the Assignor/Assignees of the Note for which it may be held liable, violated the Fair Foreclosure Act of New Jersey N.J.S.A. 2A:50-53 et seq.

33. By reason thereof, plaintiff has failed to state a cause of action upon which relief may be granted

SEVENTH AFFIRMATIVE DEFENSE WITH COUNTERCLAIM

34. Defendants, repeat and reallege each and every allegation contained in Paragraphs "1" through "37" as though fully set forth at length herein, and incorporated by reference herein, for as it relates to violations of the Fair Foreclosure Act alleged above:

35. This affirmative defense and counterclaim is being asserted pursuant to the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. §1692 et seq.

36. Upon information and belief, Plaintiff is, although not alleged in the complaint, an entity organized under the "laws of the State within the United States, and as is pertinent herein, is engaged in the business of collecting consumer mortgage debts and regularly collects consumer mortgage debts. It is accordingly a "debt collector" as defined in the FDCPA, 15 U.S.C. §1692a (6).

37. Alternatively, and upon information and belief, Plaintiff, is subject to the FDCPA because, as described below, it is a "creditor", which comes within the purview of the Federal Fair Debt collections Practices

38. FDCPA, 15 U.S.C. § 1692e provides in pertinent part:

“§ 1692e- False or Misleading Misrepresentations=

“A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

(2) The false representation of. . .

(A)The Character, amount or legal status of any debt.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt, or to obtain any information concerning a consumer.”

30. Plaintiff, having misrepresented itself as the true lender seeking collection of the mortgage indebtedness of the Islam Defendants, without identifying the true entity owning and/or possessing the Note, thereby subjecting Defendants to potential duplicate claims for the same indebtedness, constituted a “deceptive practice” within the meaning and purport of that subsection of FDCPA set forth in the preceding paragraph.

31. As well, plaintiff engaged in a deceptive practice in violation of this subsection by misrepresenting to Defendants that it was the present owner of the note, entitling it to bring a foreclosure action, when in fact it was not, thereby subjecting Defendants to potential duplicate claims for the same indebtedness, should it satisfy any indebtedness through this

foreclosure action, only to be faced with a later claim by the actual owner of the Note.

32. As such, plaintiff is in further violation of the FDCPA's preceding section, which forbids deceptive and unlawful practices in connection with the attempt to collect a debt within the meaning of FDCPA.

33. By reason thereof, plaintiff as failed to state a cause of action upon which relief may be granted

34. By reason thereof, Defendants are entitled to any and all damages provided for in FDCPA, including without limitation, compensatory damages for economic loss sustained in defending this action, loss of credit rating as a result of this foreclosure action, statutory damages allowable under FDCPA, including attorneys fees, and costs, plus punitive damages, all as assessed at a trial of this action.

EIGHTH AFFIRMATIVE DEFENSE

35. For the foregoing reasons, Plaintiff's conduct, by and through the acts of one or more of its predecessors, the Assignor/Assignees of the Note for which it may be held liable, is barred from seeking relief by reason of the "doctrine of unclean hands", by reason of its fraudulent and unlawful practices set forth herein.

36. By reason thereof, plaintiff as failed to state a cause of action upon which relief may be granted

NINTH AFFIRMATIVE DEFENSE WITH COUNTERCLAIM

37. For the foregoing reasons, Plaintiff's conduct, by and through the acts of one or more of its predecessors, the Assignor/Assignees, of the Note for which it may be held liable is barred from maintaining this action by the Doctrine of Unjust Enrichment.

38. By reason thereof, plaintiff has failed to state a cause of action upon which relief may be granted.

39. By reason thereof, defendants are entitled to damages in an amount to be determined at trial.

RESERVATION OF RIGHTS TO AMEND ANSWER

Defendants reserve the right to amend or supplement their Answer to Plaintiff's claims and to assert additional defenses at or before trial as additional information is obtained through investigation and discovery.

WHEREFORE, Defendants demand judgment against Plaintiff, as follows:

- a. An order and judgment dismissing the action, with prejudice;
- b. Awarding defendants actual, compensatory, and/or statutory Damages on defendants' counterclaim resulting from plaintiff's unlawful conduct in violation of the various laws, statutes rules and regulations set forth herein, as well as under common law, in an amount to be determined at trial;
- c. An Order of Rescission of the Mortgage and Note, returning all principal and interest payments made by Defendants and returning all closing costs paid by the borrowers;
- d. Awarding Defendants treble damages pursuant to the New Jersey Consumer Fraud Act;
- e. An Ordering the removal of the subject mortgage loan transaction from Defendants' credit report appearing on any database from all credit reporting agencies in the United States;
- f. An Order awarding Attorney's Fees and costs of bringing this action, with lawful interest' and;
- g. For all such and further relief as the Court deems equitable and just.

08-11 SANTOROMANO AS EXHIBIT TO OBJECTIONS

CERTIFICATION

I hereby certify that to the best of my information and belief, the matter in controversy is not the subject of any other action pending in any Court or of a pending Arbitration proceeding and none are contemplated herein between these individual plaintiffs and defendants. I hereby certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false that I am subject to punishment.

Dated: December 17, 2012

The Santoro Defendants
Appearing Pro Se
99 Manning Place
Keansburg, N.J. 07734
Tel.: (732)-241-4015

By:

JAMES T. SANTORO

GERALD C. SANTORO,

KAREN SANTORO

08-14 SANTORO ANS AS EXHIBIT TO OBJECTIONS

CERTIFICATE OF MAILING

I hereby certify that, upon behalf of all of the Santoro defendants:

1. A copy of the within Answer was filed within the time prescribed by the Rules of the Court, and/ or there is excusable default for not answering within the proscribed time, and no default for failure to answer has ever been alleged or taken by the Plaintiff, so it has suffered no prejudice if an answer is accepted at this time.

2. On January, 7, 2013. I, the undersigned, mailed to the below named law firm attorneys for plaintiff, by First Class Mail, a true copy of the within Answer at the following name and address:

Phelan Hallinan and Schmieg, P.C.
400 Fellowship Road, Suite 100
Mount Laurel, NJ 08054
(856) 813-5500
Attorneys for Plaintiff

I hereby certify that the statements made by me in this document are true. I am aware that if any are willfully false, I am subject to punishment.

Dated: January 7, 2013

/S/ _____
JAMES T. SANTORO