

SUPREME COURT

County of _____: State of New York

v. Plaintiff,

Index No.: _____

Defendant(s).

**VERIFIED ANSWER TO
FORECLOSURE COMPLAINT**

Defendant _____ answers as follows:

General Denial.

- Plaintiff, upon information and belief, does not own the note and mortgage. Because ownership is an element of a foreclosure cause of action, Plaintiff has no right to foreclose.

I plead the following Defenses and Affirmative Defenses:

- Lack of Standing to Sue: Plaintiff does not have standing to sue because it was not the legal owner of the Note and/or Mortgage at the time it commenced this foreclosure lawsuit.

- I have no knowledge that the plaintiff was assigned my debt or there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law § 1302, high-cost and subprime home loans): Plaintiff failed to allege in the Foreclosure Complaint that it is the legal owner and holder of the Note and/or Mortgage or has the authority to foreclose.

- Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules § 308) for the following reason: _____
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- I did not receive the notice of default required by my mortgage agreement, and the mailing of this notice is a condition precedent to the foreclosure.

- 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law § 1304) were inadequate because (*check one or both if applicable*):

Two copies not delivered.

Foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.

- I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with the Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303).

- An active servicemember is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Servicemembers Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)

- Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)

I am eligible for the Home Affordable Modification Program (“HAMP”) because my loan is secured by a one-to-four unit property, coop, or condo, this is my principal residence, the loan was originated on or before January 1, 2009, and I cannot afford my monthly mortgage payments. The loan servicer failed to comply with HAMP for the following reason(s) (*check one or both if applicable*):

Chapter II, Section 3 of the MHA Handbook prohibited the servicer from referring my loan to foreclosure. To my knowledge, I have not been evaluated for HAMP or determined ineligible for the program; I did not fail a HAMP trial period plan; I have responded to all reasonable requests for information; and I have not refused help under the program.

Other reason: _____

Compliance with HAMP is a condition precedent to foreclosure and failure to comply with HAMP gives rise to equitable defenses to this action.

My loan is insured by the Federal Housing Administration (“FHA”). The loan servicer has not complied with regulations of the Department of Housing and Urban Development requiring pre-foreclosure and loss mitigation evaluation for FHA-insured mortgage loans. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.

Partial or Full Payment:

I have made payments in the amount of \$_____ which have not been properly credited and are not reflected in the Complaint.

Other explanation: _____

On information and belief, Plaintiff did not file a Request for Judicial Intervention (RJI) as required by Uniform Rule 202.12-a(b) and did not file the Affirmation required by AO/431/11.

On information and belief, Plaintiff’s Attorney did not file a Certificate of Merit as required by CPLR 3012-b attesting that he or she reviewed the facts of the case and based on a consultation with representatives of the plaintiff identified in the certificate and the attorney’s review of pertinent documents, including the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, and or any other instrument of indebtedness including modification, extension or consolidation, to the best of his or her knowledge, information or belief there is a reasonable basis for commencement of this action and that plaintiff is the creditor to enforce rights under such document.

As required by CPLR 3012-b, copies of the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, and any other instrument of indebtedness including modification, extension, and consolidation were not attached to the complaint nor the Certificate of Merit.

Other:

**OTHER FACTS CONCERNING YOUR MORTGAGE, YOUR HOME, OR OTHER DEFENSES OR
COUNTERCLAIMS (ATTACH ADDITIONAL PAGES IF NEEDED)**_____

Wherefore, Defendant requests that the Complaint be dismissed; that the relief requested by Defendant be granted in its entirety; that Defendant be granted costs and attorneys' fees if he or she retains counsel; and any other relief allowed by law and considered just by this Court.

DATE: _____

DEFENDANT'S NAME: _____

DEFENDANT'S ADDRESS: _____

DEFENDANT'S PHONE NO. _____

Appearing Pro Se

VERIFICATION

I, _____, being duly sworn, state that the within Answer is true to the best of my knowledge, except as to those matters alleged upon information and belief, which I believe to be true.

Defendant (Print Name)

Defendant (Signature)

Sworn to and subscribed before me this
____ day of _____, 20____

Notary Public

AFFIDAVIT OF SERVICE

I, _____, served the within Verified Answer on Plaintiff's attorney as follows (*attorney's name and address*):

_____.

I served the Verified Answer by the following method (*check all that apply*):

- first class mail
- certified mail
- certified mail, return receipt requested
- overnight delivery service
- facsimile
- personal delivery.

on the _____ day of _____, 20_____.

I am eighteen years or older and I am not a Defendant in this lawsuit.

Signature: _____

Print Name: _____

Sworn to and subscribed before me on this _____ day of _____, 20_____

Notary Public