

IN THE CIRCUIT COURT OF THE 6th JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR PINELLAS COUNTY

BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loans Servicing, LP

Plaintiff,

-vs.-

[REDACTED] Husband and Wife;
Cornerstone Community Bank; 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 #: 09- [REDACTED]
Division #: 8

UNC:

COMPLAINT

Comes Now, Plaintiff, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP by and through its undersigned counsel, and files this foreclosure action against the above named Defendant(s), [REDACTED] Husband and Wife; Cornerstone Community Bank; 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, and states:

GENERAL ALLEGATIONS

1. This is an action at law and in equity to enforce a promissory note ("the Note") and to foreclose a mortgage ("the Mortgage") on real property located in Pinellas County, Florida.
2. This Court has jurisdiction based on Florida Statute §26.012.
3. Venue is proper because the property is located in Pinellas County, Florida.
4. On May 30, 2003, there was executed and delivered a Promissory Note and a Mortgage securing payment of said Note to the payee named thereon.
5. The Mortgage was recorded in Official Records Book [REDACTED] of the Public Records of Pinellas County, Florida, then owned by and in possession of mortgagee, a copy of the Note and Mortgage is attached hereto as composite Exhibit "A", and any subsequent re-recordings, modifications, and/or assignments thereof, if any.
6. Mortgage Electronic Registration Systems, Inc., as Nominee for America's Wholesale Lender is the original mortgagee on the subject mortgage.
7. Prior to the filing of this action, Plaintiff acquired the right to enforce the Note and Mortgage from the party entitled to enforce the Note and Mortgage.
8. The Plaintiff is the owner and holder of the Note and Mortgage or is the party entitled to enforce the subject Note consistent with Chapter 673 of the Florida Statutes.
9. The Mortgage of the Plaintiff is a lien superior in dignity to any prior or subsequent right, title, claim, lien or interest arising out of mortgagor or the mortgagor's predecessors in interest.

10. There has been a default under the covenants, terms and agreements of the Note and Mortgage in that the monthly installment due [REDACTED], and all subsequent installments, remain due and owing.

11. Plaintiff declares the full amount payable under the Note and Mortgage to be due.

12. A principal balance of [REDACTED] is due and owing to the Plaintiff, with interest from and after [REDACTED], and title search expense for ascertaining necessary parties to this action.

13. In order to protect its security, the Plaintiff may have advanced and paid Ad Valorem taxes, premiums on insurance required by the Mortgage and other necessary costs, or may be required to make such advances during the pendency of this action. Any such sum so paid will be due and owing Plaintiff.

14. All conditions precedent to the acceleration of this Mortgage Note and to foreclosure of the Mortgage have been fulfilled or have occurred.

15. The record legal title to the property secured by the Mortgage is now vested in Defendant(s), [REDACTED] Husband and Wife.

16. The Defendant(s) [REDACTED] is/are the makers of the subject Note and is/are personally liable for the debt owed thereunder, if not discharged in bankruptcy.

17. The Defendant(s) [REDACTED] Husband and Wife as Joint Tenants, executed the Mortgage.

18. The rights of the mortgagor(s), note makers(s), current titleholders, and any parties in possession are inferior to the rights of the Plaintiff in regards to the real property secured by said Note and Mortgage.

19. For purposes of collection and foreclosure, the Plaintiff has retained the undersigned attorney and is obligated to pay said attorney a reasonable fee for his services.

COUNT I
MORTGAGE FORECLOSURE

20. Plaintiff hereby realleges and incorporates herein all the allegations contained in the section titled General Allegations, set forth above.

21. That the Defendant, Cornerstone Community Bank, might have some claim or demand in the subject property by virtue of a Notice of Limitation, filed in Official Records Book [REDACTED], Page [REDACTED], and by virtue of a Mortgage in the amount of [REDACTED] dated on [REDACTED], filed in Official Records Book [REDACTED], of the Public Records of Pinellas County, Florida and all other rights, claims, liens, interest, encumbrances and equities, either recorded or unrecorded, if any in the subject real property. The above-described interest of said Defendant(s) in the subject property is inferior to the interest of the Plaintiff in said property.

22. That the Defendants, UNKNOWN PARTIES IN POSSESSION #1; UNKNOWN PARTIES IN POSSESSION #2, might have some claim or demand in the subject real property by virtue of possession, whether by tenancy from the record title holder or mere possession only.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter a judgment of foreclosure against the Defendants herein, foreclosing any and all interest in the subject Mortgage and any interest recorded after the Plaintiff's lis pendens, except for all real property taxes or special assessments in favor of Municipalities and Counties, and any interest subject to Florida Statutes §718.116 and §720.3085, if applicable; and if the proceeds of the sale are insufficient to pay Plaintiff's claim, a deficiency judgment, unless any defendant personally liable shall have been discharged from liability under the subject Note pursuant to the provisions

of the Bankruptcy Code 11 U.S.C. Section 101, et seq.; and award attorney fees, costs, interest, advances, and for such other and further relief as this court deems just and proper.

COUNT II
REESTABLISHMENT OF LOST NOTE

23. Plaintiff hereby realleges and incorporates herein all the allegations contained in the section titled General Allegations, set forth above.

24. This is an action to reestablish a Promissory Note under Florida Statute §673.3091.

25. On [REDACTED], at Pinellas County, Florida, there was executed and delivered to Mortgage Electronic Registration Systems, Inc., as Nominee for America's Wholesale Lender a Promissory Note and Mortgage in favor of Mortgage Electronic Registration Systems, Inc., as Nominee for America's Wholesale Lender, in the principal amount of [REDACTED].

26. Plaintiff is not in possession of the subject Promissory Note and Plaintiff cannot reasonably obtain possession of said Note because it is lost, stolen, or destroyed.

27. Plaintiff has the right to enforce the subject Note when lost or destroyed or Plaintiff has acquired the right to enforce the subject Note from the party who had the right to enforce it when it was lost or destroyed.

28. The loss of possession of the subject Note was not the result of a lawful transfer or due to lawful seizure.

29. Plaintiff will prove the terms and conditions of the subject Note.

30. Plaintiff will indemnify third parties against future unlawful enforcement of the subject Note.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment foreclosing the Mortgage; and enter an order reestablishing said lost document; and if

the proceeds of the sale are insufficient to pay Plaintiff's claim, a deficiency judgment, unless any defendant personally liable shall have been discharged from liability under the subject Note pursuant to the provisions of the Bankruptcy Code 11 U.S.C. Section 101, et seq., and award attorney fees, costs, interest, advances, and for such other and further relief as this court deems just and proper.

By: 
Thomas J. Hunt, Esq. **KIMBERLY A. HUMPHREY**
FL Bar # 20977 **FL BAR #8745**

SHAPIRO & FISHMAN, LLP
Attorneys for Plaintiff
10004 N. Dale Mabry Highway, Suite 112
Tampa, FL 33618
Telephone: (813) 880-8888
Fax: (813) 880-8800

This is an attempt to collect a debt and any information obtained will be used for that purpose.
09-146647