

FILED

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2024 MAR 27 AM 9: 09
DORIS POULOS O'HARA
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CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
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FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF

RECEIVED

IN THE COURT OF COMMON PLEAS

Feb 20 2026

C/A No.: 2024-CP-21-00723

Lakeview Loan Servicing, LLC,
Plaintiff,

SC Court of Appeals

vs.

ANSWER TO COMPLAINT,

Allison Shavonne Smith; Alligator West Home
Owners Association,
Defendant(s).

AFFIRMATIVE AND ADDITIONAL DEFENSES,
COMPULSORY COUNTCLAIM

BCP No.: 24-41358

ANSWER TO COMPLAINT FOR FORECLOSURE OF REAL ESTATE MORTGAGE

Comes now the above-named Defendant, special appearance sui juris, in answering the allegations of the Plaintiff's complaint.

1. The allegation set forth in paragraph 1 is a legal conclusion for which no response is required.
2. The Defendant denies the allegation set forth in paragraph 2 of the Plaintiff's complaint.

Defendant claims all interest in the real estate at subject and does not have enough information to deny or admit if the Court has proper jurisdiction. The defendant does not understand this part of the allegation.

3. The Defendant admits in part of the allegation set forth in paragraph 3; that the subject of this action is located in the County of Florence, State of South Carolina but does not have enough

information to deny or admit if the Court has proper jurisdiction. The Defendant does not understand this part of the allegation.

4. The Defendant denies the allegation set forth in paragraph 4 of the Plaintiff's complaint.

There was a failure of lawful consideration for the Note and Mortgage and the Plaintiff has no right to title or interest in said premises. Defendant did not receive documentation confirming assignment of mortgage. Defendant documentation states Finance of America Mortgage LLC as the party in interest therefore, Defendant does not have enough information and belief the Plaintiff is the real party in interest. See Exhibit A.

5. The Defendant denies the allegation set forth in paragraph 5 of the Plaintiff's complaint.

Defendant endorsed a promissory note in which the lender promised to provide the Defendant \$270,990.00. Defendant did not receive what was promised, which voided the Note. This failure creates the Plaintiff as an imposter-fictitious payee with no legal right to enforce an instrument. The Note should state the true lender and terms to match. According to Federal Reserve Modern Money Mechanics, a promise to lend cannot be enforced to constitute a loan. Money must be loaned. See Exhibit A.

The extension of credit is not giving of value. See UCC §3-303:0; *Atkinson v. Englewood State Bank*, 141 Colo 436.

6. The Defendant denies the allegation set forth in paragraph 6 of the Plaintiff's complaint.

Once Allison Shavonne Smith endorsed the Note, the Note was turned into a cash item by the lender and paid in full. As there is no mention of any agreement between Mortgage Electronic Registration Systems, Inc. and Allison Shavonne Smith on Note, the lender never endorsed the Note to MERS. The Defendant did not secure the payment of said Note because Defendant was not the named owner of the note despite being the only party to endorse the Note. Because the Defendant is not the owner, the Deed of Trust is void. Once the Deed of Trust is void, then the lien against the Subject Property never existed and there is no standing to foreclose.

7. The Defendant denies the allegation set forth in paragraph 7 of the Plaintiff's complaint.

Plaintiff deceives by misrepresenting information, facts, and figures. Subject Mortgage was never submitted for recordation by Lakeview Loan Servicing, LLC on March 22, 2022.

8. The Defendant denies the allegation set forth in paragraph 8 of the Plaintiff's complaint.

Plaintiff's claim is barred because Plaintiff is not a real party in interest. Plaintiff does not allege a credible transfer of interest from the originator to itself. As of May 1, 2022, Assignment of Mortgage is invalid; MERS as nominee for Finance of America, did not have authority to act as nominee with such assignments, the MERS signatory, only has such authority is derived from the principal, and vice president of MERS may only assign the rights of their principal, Finance of America LLC, if valid Power of Attorney exist vesting such authority in the agent and if the principal still retains the requisite rights in the underlying loan that is delegating-any evidence as to either of these material facts necessary to validate the MERS assignment are nowhere to be found. The information presently available from the Plaintiff does not suggest sufficient evidence of standing to act regarding Subject Loan for which the Plaintiff is not the original lender.

9. The Defendant denies the allegation set forth in paragraph 9 of the Plaintiff's complaint.

Lakeview Loan Servicing, LLC did not lend Defendant any form of payment therefore, the note is void. Subject Mortgage was securitized and paid in full once Lakeview Loan Servicing, LLC acquired the Subject Mortgage from Finance of America Mortgage LLC. According to the Secretary of State UCC-11 search, there is no evidence of said perfected First lien on the Subject Property. Plaintiff has no standing to collect "repayment". See Exhibit B.

10. The Defendant denies the allegation set forth in paragraph 10 of the Plaintiff's complaint.

Defendant received failure of payment notices prior to the Plaintiff's commencement of foreclosure. The Defendant utilized resources given from Plaintiff and Plaintiff failed to respond. Terms of Subject Mortgage (Paragraph 22) and State or Federal Law were not followed. See Exhibit C. See Exhibit D. See Exhibit E.

11. The Defendant denies the allegation set forth in paragraph 11 of the Plaintiff's complaint.

The said Note and Subject Mortgage securing the same was the Defendant's promise to pay. Lender monetized thus said Note and turned it into a cash item, using the Deed of Trust as security for the Note. As a result, the lender did not loan its own assets, it loaned credit. This is fraud, failure of consideration, and constructive fraud done in conspiracy, an utterly void and without value transaction. There is no contract with the Plaintiff, and the Plaintiff has no entitlement without the production of the contract exhibiting all the necessary requirements of a contract by operation of law.

12. The Defendant denies the allegation set forth in paragraph 12 of the Plaintiff's complaint.

A notice according to the terms of the Subject Mortgage was not followed by the Plaintiff, therefore Defendant did not receive notice prior to the commencement of this action. The original Note was not provided prior to the filing of foreclosure. Defendant made several attempts to contact Plaintiff regarding any payment notices. Defendant summarized a true and correct breakdown of all payments sent to the Plaintiff. Plaintiff did not acknowledge Defendant's inquiries or claims. See Exhibit D

13. The Defendant denies the allegation set forth in paragraph 13 of the Plaintiff's complaint.

The Plaintiff demands a personal or deficiency judgement against the Defendant. Plaintiff has no standing to demand thus said judgment due to Lakeview Loan Servicing negligence and use of scheme to obtain financial gain by using false statements.

14. The Defendant denies the allegation set forth in paragraph 14 of the Plaintiff's complaint.

Defendant made the required payment in the amount of \$1,583.06 to Lakeview Loan Servicing, LLC on May 5, 2023. Instruments were received and cashed for full value. Defendant made several attempts to inquire about the alleged failed payment and other missing and/or non-applied payments for the following months. Defendant made attempts to contact Plaintiff via phone calls, emails, and mailed correspondences. Furthermore, Plaintiff refuses to acknowledge requested payment from Defendant dated in March causing the start of payments to seem as though they were not accounted for. Defendant is not responsible for the principal sum of \$265,797.02, attorneys' fees, taxes, insurance, nor any amount incurred for securing the property. Plaintiff has no rights to the property. See Exhibit F. See Exhibit G. See Exhibit H.

15. The Defendant does not have enough information to admit or deny the allegation set forth in Paragraph 15 of the Plaintiff's complaint.

AFFIRMATIVE DEFENSES AND ADDITIONAL DEFENSES

FIRST SEPARATE DEFENSE

Lakeview Loan Servicing, LLC falsely notified Defendant of Transfer of Mortgage from Finance of America Mortgage LLC, to itself on May 1, 2022. Upon Florence County records, the Subject Mortgage was held by MERS (Mortgage Electronic Registration System, Inc.), whom has no beneficial interest in the Subject Property, who then transferred the Subject Mortgage to Lakeview Loan Servicing, LLC on September 26, 2023. Because the Note follows the Mortgage in the state South Carolina, as of May 1, 2022, the Note and Subject Mortgage became invalid. MERS is not a lender. Plaintiff violated 12 CFR §1006.18, by falsely representing the legal status of the holder of the Note and Subject Mortgage. Lakeview Loan Servicing, LLC failed to properly record the assignment, and inform the Defendant of rightful information on the chain of transfers. 15 U.S.C §1641 (g). Lakeview Loan Servicing, LLC has no standing to foreclose. "Holding the Note" is not legally equivalent to "Owning the Note".

Furthermore, the Plaintiff is not the real party in interest, and is not authorized to bring this foreclosure claim because the prosecution of a foreclosure action is by the owner and holder of the Subject Mortgage and Note. Lakeview Loan Servicing, LLC alleges they are the owner of the Note, and presents a purported copy of a Note that states the lender and principal as Finance of America Mortgage LLC. The Plaintiff is not entitled to maintain this action for the true owner of the claim is a person other than Lakeview Loan Servicing, LLC. See Exhibit I.

SECOND DEFENSE

In the foreclosure document, Lakeview Loan Servicing, LLC falsely reported that \$9,766.65 was owed to reinstate the loan and stop the foreclosure process. From evidence submitted, Plaintiff has received well over the amount to be reinstated. Adding to the defense, the Plaintiff reported to the credit bureau that payments have been past due since February 1, 2023, in the amount of \$8,063. These are two very distinctive and inaccurate balances reported to the credit bureau. In pursuant to Fair Debt Collection Practices Act, 12 CFR §1006.18 (b)(2)(i), the Plaintiff has violated the regulation by demanding an inaccurate amount owed to reinstate the loan and reporting a different, inaccurate amount to the Credit Bureaus against the Defendant. See Exhibit J. See Exhibit K.

THRID DEFENSE

Lakeview Loan Servicing, LLC received notification via email, phone call, and disputing the Note, Subject Mortgage, and alleged missing payments. Defendant initiated payment research. Lakeview Loan Servicing, LLC failed to comply with the laws of the Federal Trade Commission by not properly investigating the requested research. Request for statement of accounts was not received. Plaintiff was negligent by failure to exercise performance of duty, to address specified circumstances. Lakeview Loan Servicing, LLC continued to force debt collection upon receiving the disputes, violating the 30-day period, and failing to validate the original creditor or lender, but falsely sending notices of themselves as the original lender USC § 808. See Exhibit O.

FOURTH SEPARATE DEFENSE

The Plaintiff did not pay fair and adequate consideration for the alleged Subject Mortgage and Note when it was purchased if it ever was properly purchased at all. Therefore, Plaintiff would be unjustly enriched if it were to receive the relief requested.

FIFTH SEPARATE DEFENSE

Defendant does not believe Lakeview Loan Servicing, LLC is the Holder in Due Course of the actual Note: Absent the original Note, Lakeview Loan Servicing, LLC cannot be the Holder in Due Course for said Note.

Accordingly, Lakeview Loan Servicing, LLC cannot lawfully and/or legally foreclose on Subject Property.

E.g., *First National bank v. Jerome Daly, IN THE JUSTICE COURT STATE OF MINNESOTA COUNTY OF SCOTT TOWNSHIPOF CREDIT RIVER, JUSTICE MARTIN V. MAHONEY (1968)*

SIXTH SEPARATE DEFENSE

Defendant never made any agreement to pay cost or attorneys' fees to Plaintiff under any circumstance, and therefore Plaintiff is not entitled to cost or attorney's fees in this action. Lakeview Loan Servicing, LLC has committed Mortgage Servicing Fraud in charging inspection fees, attorney fees, filing fees and other charges that are not authorized by or in conformity with the terms of Subject Note and Mortgage, a violation of USC § 808 (1).

SEVENTH SEPARATE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted.

EIGHTH SEPARATE DEFENSE

The Subject Mortgage and the Note at issue in the instant case have become part of a securitized trust and they are also governed by the terms of the Trust's Pooling and Service Agreement. Evidence by Pool number: CK8836. See Exhibit O.

A Pooling and Servicing Agreement requires a mortgage show "unbroken chain of assignments" evidencing transfer of title from the originator of the loan to the trust. See e.g., Talcott Franklin & Thomas Nealon III, *Mortgage and Asset Backed Securities Litigation Handbook*, §5:105-5:118

Plaintiff failed to comply with applicable pooling and servicing agreement loan servicing requirements: 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 this Defendant pursuant to and in accordance with the Pooling and Servicing Agreement filed by Plaintiff with the Securities and Exchange Commission that controls and mortgage loan. Plaintiff's non-compliance with the condition 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 agreement under which the Plaintiff owns the Subject Mortgage.

NINTH SEPARATE DEFENSE

Two instruments were tendered, each totaling the amount of \$1,583.06. Written on the instruments was a conspicuous statement in which read "SC Code of Laws Title 36-3-311 Accord and Satisfaction by use of instrument. Please return if not accepted". The serial number of these instruments were 28696218467, 28696218478, 28696221617, 28696221628. Instruments were accepted and cash by Lakeview Loan Servicing, LLC. Because Lakeview Loan Servicing did not return the payment and cashed the instruments for its full value, The debt against the Defendant was to be discharged and deemed fully satisfied. The Plaintiff failed to follow the law and admit to acceptance. See Exhibit H.

TENTH SEPARATE DEFENSE

In January of 2023, an instrument was tendered in the amount of \$269,264.84. The instrument was accepted by Lakeview Loan Servicing, LLC and applied to the Defendant's account, showing a balance of \$0.00 owed. Lakeview Loan Servicing, LLC reversed the payment from the system, and stated the routing number was invalid. The instrument was never returned to the Defendant after allegedly being invalid. Lakeview Loan Servicing, LLC was informed that the instrument was processed incorrectly and inquiry of the instrument's whereabouts and processing were disregarded by the Plaintiff. See Exhibit L.

In return, Plaintiff requested a payment in the amount of \$694.42 (Serial number: 28114384656) to satisfy the month of January. Defendant sent the payment in the time frame requested. Plaintiff refused to recognize the letter stating the requested amount, and the payment, by holding the instrument and not cashing it for the full value. See Exhibit H.

ELEVENTH SEPARATE DEFENSE

Lakeview Loan Servicing, LLC was tendered a payment in the amount of \$280,000.00 in September of 2023. Plaintiff refused the payment, a violation in pursuant to UCC §3-603. If UCC does not apply, Plaintiff needs to show evidence. See Exhibit N.

TWELFTH SEPARATE DEFENSE

Plaintiff, its agents, and attorneys made illegal improper use of process. Plaintiff had no legal justification to bring this action to try to foreclose upon Defendant's property and Defendant was injured and irreparably harmed because of Plaintiff's action and that of its agents, and/or attorneys. Plaintiff and attorneys failed to answer Defendants affidavit within the 10 days required abusing process of Defendant's legal rights. See Exhibit M.

DEFENDANT'S COUNTERCLAIM

1. This is an action for declaratory and injunctive relief against Plaintiff.
2. Plaintiff failed to provide Defendant with proper Notice of Default and Intent to accelerate as required by and/or that complies with paragraph 22 of the Subject Mortgage.
3. Defendant has right to receive foreclosure prevention loan servicing from Plaintiff before commencement or initiation of this foreclosure action.

4. Defendant is being illegally subjected to this foreclosure action, being forced to defend the same and they are being charged illegal predatory court costs and related fees (inspection fees), and attorney fees. Defendant is having their credit slandered and negatively affected, all of which constitutes irreparable harm to the Defendant for the purpose of injunctive relief.
5. Plaintiff's non-compliance with the conditions precedent to foreclosure imposed on the Plaintiff is an actionable event that makes the filing of this foreclosure premature based on a failure of contractual and/or equitable condition precedent to foreclosure which denies Plaintiff's ability to carry out this foreclosure.
6. Plaintiff offered a modification increasing the Defendant's normal payment, which was a form of coercion and duress to commit the Defendant to a second mortgage and a higher payment in which they cannot afford.
7. Plaintiff overstated the reinstatement balance after failure to properly research the alleged missing payments and refusing to meet with Defendant and/or discuss payments via phone call. Defendant repeats having their credit irreparably slandered for the incorrect amount owed.
8. Plaintiff continues to claim, attempt, and threaten to enforce this mortgage debt through acceleration and foreclosure when the Plaintiff knows that such conduct is in bad faith and because the Plaintiff has charged and collected money from Defendant that they do not owe; deepening indebtedness and failure to meet the contractual and statutory conditions precedent before filing this action.
9. Lakeview Loan Servicing, LLC was engaged in "trade" and "commerce" as defined by SC Code of Laws Title 39-5-10 (b).
10. "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby unlawful" See 15 U.S. Code §45 (a)(1).
11. Lakeview Loan Servicing, LLC has violated the Act by engaging in unfair and deceptive acts and practices including but not limited to foreclosure action against the Defendant without having legal standing to do so and failing to investigate Defendant's claim and disputes.
12. As a direct result of Lakeview Loan Servicing, LLC unfair and deceptive practices, Defendant has been damaged. Specifically, Defendant has been threatened with loss of her homestead and equity because she was not given the fair opportunity to resolve alleged default before foreclosure was instituted and an additional layer of foreclosure cost added to the "delinquency" and reinstatement balance.

13. Pursuant to SC Code of Laws Title 15-32-510, Title 15-32-530 (a). Defendant reserves the right to amend this complaint to add a prayer for punitive damages upon showing evidence in record.

WHEREFORE, Defendant prays for offer of compromise and judgement against Plaintiff as follows:

1. Lakeview Loan Servicing, LLC to make the Defendant whole on all cost incurred by me, ab initio, from the date of inception of the original contract to the present, for what may be a fraudulent and unlawful transaction on part of Lakeview Loan Servicing, LLC. In return, the Defendant, Allison Shavonne Smith, would agree to relinquish all rights to the property at subject. For clarity sake, the Defendant, Allison Shavonne Smith, will agree to "walk away and completely" from the discussed property, if and only if, Lakeview Loan Servicing, LLC reimburses the Defendant totally and completely for all costs of said property including, without limitations, monthly payments, down payments, taxes, upgrades, etc. from the original date of the original purchases by me of the aforementioned party;
2. The opportunity for Lakeview Loan Servicing to discharge the contract, since the only fraudulent acts committed were by Lakeview Loan Servicing, LLC. Thus, requiring Lakeview Loan Servicing to consider contract "paid-in-full" and immediately release any and all encumbrances on said property to and deliver to me the deed post haste; U.C.C. §3-604(A) (i) (ii), Discharge by cancellation or renunciation.
3. Award the Defendant actual damages, statutory damages and punitive damages.
4. Equitable relief from foreclosure
5. Plaintiff's complaint be dismissed with prejudice.
6. Enjoin Lakeview Loan Servicing, LLC from charging foreclosure fees, attorney fees, and costs from commencing this action and enjoin Lakeview Loan Servicing, LLC from engaging in deceptive and unfair trade practices as provided by SC Code of Laws Title 39-5-140.
7. Order declaring the subject transaction be rescinded with the result that Plaintiff's security is void and unenforceable, therefore discharging or canceling Subject Mortgage of record, quieting title to the Property to the Defendant.

DEMAND FOR TRIAL BY JURY

Defendant hereby demands trial by jury.

Respectfully Submitted,

Allison Smith

Allison Shavonne Smith
3805 Bobcat Trail
Timmonsville, SC 29161
(843)616-0541

CERTIFIED: A TRUE COPY
Doris Poillou O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

CERTIFICATION OF SERVICE

I, Allison Shavonne Smith, hereby certify that on the 27th day of March in the year 2024, I mailed a true and certified correct copy of the above and foregoing answer and counterclaim to:

J. Martin Page
Bell Carrington Price & Gregg, LLC
COUNSEL FOR PLAINTIFF
339 Heyward Street, 2nd Floor
Columbia, SC 29201

Allison Smith

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