1697-31

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT

LAKE COUNTY, ILLINOIS

WELLS FARGO FINANCIAL ILLINOIS, INC. )

Plaintiff, )

v. ) No. 11 CH 3405

)

MARSHA E. HUDSON; CITIBANK (South )

Dakota) N.A.; UNKNOWN OWNERS and )

NON-RECORD CLAIMANTS, )

Defendants. )

**ANSWER TO DEFENDANT, MARSHA HUDSON’S,**

**AFFIRMATIVE DEFENSES**

Plaintiff, WELLS FARGO FINANCIAL ILLINOIS, INC., by and through its attorneys, Noonan & Lieberman, Ltd., hereby submits its Answer to Defendant, MARSHA HUDSON’s, AFFIRMATIVE DEFENSES as follows.

**AFFIRMATIVE DEFENSE NUMBER 1**

**Violation of Illinois Consumer Fraud and Deceptive Practices Act**

1. That on April 28, 2007 the Defendant, MARSHA HUDSON, executed an Adjustable Rate Note (“the loan”) in the amount of $184,529.36 in favor of Wells Fargo Financial Illinois, Inc. a copy of which is herein incorporated as reference and attached the Plaintiff’s Complaint to Foreclose Mortgage as exhibit B.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 1 of Affirmative Defense Number 1.

2. That on April 28, 2007 the Defendant, MARSHA HUDSON, executed a Mortgage in favor of Wells Fargo Financial Illinois, Inc.; a copy of which is herein incorporated as reference and attached the Plaintiff’s Amended complaint to Foreclose Mortgage as exhibit A.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 2 of Affirmative Defense Number 1.

3. That the Plaintiff in this action seeks to foreclose on said Note and Mortgage.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 3 of Affirmative Defense Number 1.

4. That prior to April 28, 2007 the Defendant submitted to Wells Fargo Financial Illinois, Inc., a mortgage application for the purpose of obtaining a mortgage on their residential property.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 4 of Affirmative Defense Number 1.

5. That at all times relevant there was in effect 12 U.S.C. § 2600 et al., commonly referred to as the Real Estate Settlement Procedures Act (RESPA).

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 5 of Affirmative Defense Number 1.

6. That at all times relevant there was in effect 12 U.S.C. § 2604 which mandates the content and dissemination of a special information booklet to each mortgage applicant and directs the lender to tender to the applicant said booklet within 3 days of the submission of a mortgage loan application.

**ANSWER:** Plaintiff denies that Defendant has accurately paraphrased said statute. Further stating, Plaintiff neither admits nor denies whether RESPA governed this transaction as it states a legal conclusion.

7. That at all times relevant there was in effect 15 U.S.C. § 1601 et seq, commonly referred to as the Truth in Lending Act (TILA) which requires standardized disclosure within certain consumer credit transactions, including the transaction at issue.

**ANSWER:** Plaintiff denies that Defendant has accurately paraphrased said statute. Further stating, Plaintiff lacks sufficient knowledge whether TILA governed this transaction and therefore can neither admit nor deny same.

8. That to enforce TILA there was in effect Regulation Z, specifically 12 C.F.R. § 226.17(b) which state in relevant part:

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction.

**ANSWER:** Plaintiff admits Defendant’s paraphrasing in paragraph 8 but denies that provision’s relevancy to the matters at issue in this case.

9. That at no time subsequent to the submission of the Defendants’ mortgage application did they receive the special information booklet.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 9 of Affirmative Defense Number 1.

10. That the Plaintiff violated TILA, RESPA and the associated regulations of both.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 10 of Affirmative Defense Number 1.

11. That the aforementioned purposeful concealment of facts were facts of a material nature mandated by law to be made and were done so with the intent to induce reliance by the Defendants, to create payments and a financial burden upon the Defendant(s) they could not sustain, precipitate a default and foreclosure and thus grant the Plaintiff an interest in the security.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 11 of Affirmative Defense Number 1.

12. There was in effect at the times relevant herein 815 ILCS 505/2 which states in relevant part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, . . . are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

Consumer Fraud and Deceptive Business Practices Act 815 ILCS 505/2

**ANSWER:** Plaintiff admits Defendant’s paraphrasing in paragraph 12 but denies that provision’s relevancy to the matter at issue in this case.

13. As a result of this violation the Defendants were injured to the extent that the loan was unaffordable, the Defendants could not make payments and the subject real estate is subject to foreclosure.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 13 of Affirmative Defense Number 1.

14. That the Consumer Fraud and Deceptive Practices Act is a statement of the public policy of this Honorable State.

**ANSWER:** Plaintiff neither admits nor denies the allegation set forth in paragraph 14 as it states a legal conclusion.

15. That the Plaintiff violated the Illinois Consumer Fraud and Deceptive Practices Act and it now attempts to enforce the terms of the loan obtained by fraud and deceit.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 15 of Affirmative Defense Number 1.

16. That it is contrary to the equitable policy of this Honorable State to allow the Plaintiff to enforce the terms of a note so deceptively obtained and the Plaintiff must be equitably estopped from enforcing the terms of the Note.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 16 of Affirmative Defense Number 1.

**AFFIRMATIVE DEFENSE NUMBER 2**

**Violation of the Illinois Consumer Fraud and Deceptive Practices Act**

1. That on April 28, 2007 the Defendant, MARSHA HUDSON executed an Adjustable Rate Note (“the loan”) in the amount of $184,529.36 in favor of Wells Fargo Financial Illinois, Inc., a copy of which is herein incorporated as reference and attached the Plaintiff’s Complaint to Foreclose Mortgage as exhibit B.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 1 of Affirmative Defense Number 2.

2. That on April 28, 2007, the Defendant, MARSHA HUDSON, executed a Mortgage in favor of Wells Fargo Financial Illinois, Inc., a copy of which is herein incorporated as reference and attached the Plaintiff’s Amended Complaint to Foreclose Mortgage as exhibit A.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 2 of Affirmative Defense Number 2.

3. Said Mortgage was executed by the Defendants to secure the loan identified above.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 3 of Affirmative Defense Number 2.

4. That on or about April 28, 2007, the Defendant was given an adjustable Rate Mortgage Loan with the associated mortgage at an initial interest rate of 8.63%.

**ANSWER:** Plaintiff denies that Defendant was “given” a Note. Further answering, Plaintiff states that Exhibit “B”, the Adjustable Rate Note, speaks for itself.

5. That said loan was secured by the Defendants’ principal residence with a term greater than one year.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 5 of Affirmative Defense Number 2.

6. That at the time of the closing there was in full force and effect the Truth in Lending Act, 15 U.C.S. § 1601 et seq., and Regulation Z, 12 C.F.R. § 226.19(b)(1) which dictated the requirement of certain disclosures for loans with an adjustable interest rate.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 6 of Affirmative Defense Number 2.

7. That the Defendant incorporates by reference the Truth in Lending Act, 15 U.C.S. § 1601 *et seq.,* and Regulation Z, 12 C.F.R. § 226.19(b)(1).

**ANSWER:** No answer required.

8. That 12 C.F.R. § 226.19(b)(1) required, among others, production of the Consumer Handbook on Adjustable Rate Mortgages (CHARM handbook) to the Defendants at the time the mortgage application form is received or before any non-refundable fee was required.

**ANSWER:** Plaintiff denies that Defendant has accurately paraphrased said statute. Stating further, Plaintiff lacks sufficient knowledge whether Regulation Z governed this transaction and therefore cannot admit nor deny same.

9. That the Defendants at no time were tendered the CHARM handbook nor any other disclosure mandated by 12 C.F.R. § 226.19(b)(1).

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 9 of Affirmative Defense Number 2.

10. That the Plaintiff violated the aforementioned disclosure requirement of the Truth in Lending Act, 15 U.C.S. § 1601 *et seq.,* and Regulation Z, 12 C.F.R. § 226.19(b)(1)-(2)(b)(xii).

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 10 of Affirmative Defense Number 2.

11. That the Plaintiff purposely and with foreknowledge manipulated the loan application process to qualify for the loan at issue.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 11 of Affirmative Defense Number 2.

12. That the Plaintiff, by and through its agent, purposely misled, and or concealed from, the Defendants, material facts when it purposely withheld federally mandated disclosures regarding adjustable interest rate mortgage loans.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 12 of Affirmative Defense Number 2.

13. That the aforementioned purposeful concealments of facts was made with the intent for the Defendants to rely upon such deception and to create payments and a financial burden upon the Defendant(s) they could not sustain thus precipitating default and foreclosure and thereby granting the Plaintiff an interest in the security.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 13 of Affirmative Defense Number 2.

14. There was in effect at the times relevant herein 815 ILCS 505/2 which states in relevant part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, . . . are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

Consumer Fraud and Deceptive Business Practices Act 815 ILCS 505/2

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 14 but denies that provision’s application or relevancy to the matters at issue in this case.

15. As a result of this violation the Defendants were injured to the extent that the loan was unaffordable, the Defendants could not make payments and the subject real estate is subject to foreclosure.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 15 of Affirmative Defense Number 2.

16. That the Consumer Fraud and Deceptive Practices Act is a statement of the public policy of this Honorable State.

**ANSWER:** Plaintiff neither admits nor denies the allegation set forth in paragraph 16 as it states a legal conclusion.

17. That the Plaintiff violated the Illinois Consumer Fraud and Deceptive Practices Act and it now attempts to enforce the terms of the loan obtained by fraud and deceit.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 17 of Affirmative Defense Number 2.

18. That it is contrary to the equitable policy of this Honorable state to allow the Plaintiff to enforce the terms of a Note so deceptively obtained and the Plaintiff must be equitably estopped from enforcing the terms of the Note.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 18 of Affirmative Defense Number 2.

**AFFIRMATIVE DEFENSE NUMBER 2**

**Illinois Fairness in Lending Act Violation**

The document entitled “Defendants Marsha Hudson’s Answer to Plaintiff’s Complaint to Foreclose Mortgage” contains two Affirmative Defense Number 2.

1. That on April 28, 2007 the Defendant, MARSHA HUDSON executed an Adjustable Rate Note (“the loan”) in the amount of $184,529.36 in favor of Wells Fargo Financial Illinois, Inc., a copy of which is herein incorporated as reference and attached the Plaintiff’s Complaint to Foreclose Mortgage as exhibit B.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 1.

2. That on April 28, 2007, the Defendant, MARSHA HUDSON, executed a Mortgage in favor of Wells Fargo Financial Illinois, Inc., a copy of which is herein incorporated as reference and attached the Plaintiff’s Amended Complaint to Foreclose Mortgage as exhibit A.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 2.

3. Said Mortgage was executed by the Defendants to secure the loan identified above.

**ANSWER:** Plaintiff admits the allegations set forth in paragraph 3.

4. That the terms of the “loan” included, but were not limited to, a stated annual percentage rate of 8.63% and a monthly payment to include principal and interest of $1,371.04.

**ANSWER:** Plaintiff neither admits nor denies as Exhibit “B” (the Adjustable Rate Note) as the document speaks for itself.

5. That on or about April 28, 2008 the Defendant closed upon a prior loan secured by their residence.

**ANSWER:** Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on that basis denies such allegations.

6. That at all times relevant there was in effect the Illinois Fairness in Lending Act which states in relevant part:” No financial institution, in connection with or in contemplation of any loan to any person, may: . . . Engage in equity stripping or loan flipping.” 815 ILCS 120/2(3).

**ANSWER:** Plaintiff admits the existence of the statute but denies its application or relevancy to the matters at issue in this case.

7. That at all times relevant there was in effect the Illinois Fairness in Lending Act which states in relevant part:

“Loan flipping” means to assist a person in refinancing a loan secured by the person’s principal residence for the primary purpose of receiving fees related to the refinancing when i) the refinancing of the loan results in no tangible benefit to the person and (ii) at the time the loan is made, the financial institution does not reasonably believe that the refinancing of the loan will result in a tangible benefit to the person. 815 ILCS 120/2e

**ANSWER:** Plaintiff admits the existence of the statute but denies its application or relevancy to the matters at issue in this case.

8. That the Defendants would realize a financial benefit to the loan with the Plaintiffs only after 12 months.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 8.

9. That the Defendants received no tangible benefit to the loan with the Plaintiff.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 9.

10. That the Plaintiff had equal and thorough access to the loan documents and reasonably believed that the Defendants would receive no tangible benefit of the loan.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 10.

11. That as a direct and proximate result of the actions of the Plaintiffs in violating the Illinois Fairness in Lending the Defendants were injured in excess of $7,000.00.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 11.

12. That the Defendants are entitled to a set-off of any damages to which Plaintiff may be entitled.

**ANSWER:** Plaintiff denies the allegations set forth in paragraph 12.

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One of the Attorneys for Plaintiff

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