

SUPREME COURT OF THE STATE OF NEW YORK:
COUNTY OF GREENE

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NEWREZ LLC D/B/A SHELLPOINT MORTGAGE
SERVICING,

Index No. EF-2022-1

Plaintiff,

**ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIM**

-against-

JOHN PETERSEL; GIZELA PETERSEL; MORTGAGE
ELECTRTRONIC REGISTRATION SYSTEMS, INC.
ACTING SOLELY AS, NOMINEE FOR COUNTRYWIDE
HOME and JONE DOE AND JANE DOE #1 through #7,

Defendant(s).

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Defendant, JOHN PETERSEL (“Defendant,” “Mr. Petersel,” “Counterclaimant” or
“Homeowner”), by and through his undersigned counsel, as and for his Answer, Affirmative
Defenses and Counterclaim to the Complaint of NEWREZ LLC D/B/A SHELLPOINT
MORTGAGE SERVICING (“Plaintiff”), states as follows:

1. Deny knowledge with which to respond to the allegations contained in Paragraph 1 of the Complaint.
2. Deny knowledge with which to respond to the allegations contained in Paragraph 2 of the Complaint, and state that the document speaks for itself.
3. Deny knowledge with which to respond to the allegations contained in Paragraph 3 of the Complaint, except to state that the document speaks for itself and there is no “Schedule A” annexed to the Note attached as an exhibit to the Complaint.
4. Deny knowledge with which to respond to the allegations contained in Paragraph 4 of the Complaint, except to state that the document speaks for itself.

5. Deny the allegations contained in Paragraph 5 of the Complaint, and state that the Note and Mortgage are unenforceable.

6. Deny knowledge with which to respond to the allegations contained in Paragraph 6 of the Complaint, except to state that the document speaks for itself, and state that the Note and Mortgage are unenforceable.

7. Deny knowledge with which to respond to the allegations contained in Paragraph 7 of the Complaint, except to state that the document speaks for itself, and state that the Note and Mortgage are unenforceable.

8. Deny the allegations contained in Paragraph 8 of the Complaint, and state that the Defendants' default occurred no later than October 1, 2008, and the Mortgage was accelerated by the filing of a Summons and Complaint, Index No. 1616/2009, filed October 8, 2009. No payment was requested or due on February 15, 2016. No payment was made any time after October 1, 2008. Said action 1616/2009 was dismissed by this court by Order dated August 14, 2017, with Notice of Entry duly given and filed. No appeal was taken. On April 21, 2021, the holder of the Mortgage moved this court to vacate the dismissal, which was denied by this court by Decision and Order dated July 22, 2021. Notice of Entry was duly given and filed. No appeal was taken. The Mortgage was never decelerated following the 2009 acceleration, and, as such, the Note and Mortgage are well beyond the applicable six (6) year statute of limitations, and unenforceable.

9. Deny the allegations contained in Paragraph 9 of the Complaint, except to state that the document speaks for itself, and state that the Note and Mortgage are unenforceable, and Plaintiff's 2021 notices were without effect.

10. Deny the allegations contained in Paragraph 10 of the Complaint, except to state that

the document speaks for itself, and state that the Note and Mortgage are unenforceable, and Plaintiff's 2021 notices were without effect.

11. Deny the allegations contained in Paragraph 11 of the Complaint, except to state that the Note and Mortgage are unenforceable, and Defendant owes no money to Plaintiff.

12. Deny the allegations contained in Paragraph 12 of the Complaint, except to state that the document speaks for itself, the Note and Mortgage are unenforceable, and Defendant owes no money to Plaintiff.

13. Deny the allegations contained in Paragraph 13 of the Complaint, except to state that the document speaks for itself, the Note and Mortgage are unenforceable, and Defendant owes no money to Plaintiff, and as Plaintiff is and was on notice and had actual knowledge that the Note and Mortgage are unenforceable, at the time it commenced this action, Defendants are entitled to recover all costs, including reasonable attorneys' fees, disbursements and allowances provided by law.

14. Deny the allegations contained in Paragraph 14 of the Complaint.

15. Deny the allegations contained in Paragraph 15 of the Complaint.

16. Deny knowledge with which to respond to the allegations contained in Paragraph 16 of the Complaint.

17. Deny knowledge with which to respond to the allegations contained in Paragraph 17 of the Complaint.

18. Deny knowledge with which to respond to the allegations contained in Paragraph 18 of the Complaint.

19. Deny knowledge with which to respond to the allegations contained in Paragraph 19 of the Complaint.

20. Deny knowledge with which to respond to the allegations contained in Paragraph 20 of the Complaint.

21. Deny the allegations contained in Paragraph 21 of the Complaint, except to state that the Petersels' property located at 307 Drake Hill Road, Freehold, NY 12431 is comprised of four (4) parcels, designated S/B/L 52.00-2-10, 52.00-2-29, 52.00-2-30, and 52.00-2-31 respectively (sequentially, Lots "10," "29," "30," and "31," respectively), of which the subject mortgage(s) only encumbered Lot 10, and to state that the Note and Mortgage are unenforceable.

22. Deny the allegations contained in Paragraph 22 of the Complaint, except to state that Index No. 1616/2009 was filed in this court October 8, 2009 to foreclose on the subject Mortgage. Said action 1616/2009 was dismissed by this court by Order dated August 14, 2017, with Notice of Entry duly given and filed. No appeal was taken. On April 21, 2021, the holder of the Mortgage moved this court to vacate the dismissal, which was denied by this court by Decision and Order dated July 22, 2021. Notice of Entry was duly given and filed. No appeal was taken. The Mortgage was never decelerated following the 2009 acceleration, and, as such, the Note and Mortgage are well beyond the applicable six (6) year statute of limitations, and unenforceable. An action entitled Petersel v. BAC Home Loans Servicing, L.P., et al., Index No. 899/2018 to expunge the subject Mortgage(s), quiet title, and declare them unenforceable, was filed in this court September 27, 2018. In June 2019, defendant DiTech moved to dismiss the quiet title complaint as to them, which was denied with prejudice by Order dated October 24, 2019. Thereafter, the case was stayed by DiTech's Chapter 11 bankruptcy proceedings and the Covid-19 pandemic. The relief sought in the quiet title complaint may be granted in this action, rendering the quiet title action moot.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

23. Statute of Limitations (NY Civil Practice Law and Rules § 213(4)): Plaintiff may not sue on all or part of the Mortgage debt because Plaintiff commenced this action more than six (6) years after the debt was accelerated, which defense also supports the separately pleaded counterclaim to cancel and discharge the Mortgage under NY Real Property Actions and Proceedings Law §1501(4).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

24. Prior Pending Action (NY Real Property Actions and Proceedings Law § 1301): Plaintiff impermissibly commenced this action because at the time of the alleged default, there was a prior action to recover all or part of the Mortgage debt, and at the time this action was commenced, there was a prior pending action to cancel and discharge the Mortgage under NY Real Property Actions and Proceedings Law §1501(4).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

25. Excessive Interest (NY Civil Practice Law and Rules §5001(a)): Plaintiff has unreasonably delayed filing this action, or engaged in other dilatory conduct causing excessive interest to accrue which the Court may reduce or toll, as a matter of equity and pursuant to NY Civil Practice Law and Rules §5001(a).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

26. Unclean Hands and/or Unconscionability: This action is barred by the doctrine of unclean hands and/or unconscionability for the following reason(s): Plaintiff had actual knowledge that the Mortgage was unenforceable due to expiration of the Statute of Limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

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