

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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Index No.: 537205/2023

MCLP ASSET COMPANY INC.,
Plaintiff,

ANSWER

-against-

ROY DIPAK A/K/A DIPAK K ROY, DISCOVER BANK;
CENTURY FINANCIAL SERVICES INC., NYS DEPT OF
TAXATION AND FINANCE, CACH LLC, NYC ENVIRONMENTAL
CONTROL BOARD ,NEW YORK CITY PARKING
VIOLATIONS BUREAU, JOHN DOE JANE DOE

Defendant.

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PLEASE TAKE NOTICE that defendants ROY DIPAK; (hereinafter referred to as the “Answering Defendant”) hereby appear in this proceeding and that the undersigned has been retained as attorney for the Answering Defendants and demands that you serve all papers upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE that the Answering Defendants hereby interpose the following answer to the Complaint herein.

1. The Answering Defendant denies knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, and 16 of the Complaint.
2. Admit the allegation in paragraphs # 2 of the Complaint.
3. The Answering Defendants **deny** each and every allegation contained in paragraphs 6, 14, 15, 20 and 21 of the Complaint and affirmatively alleges that each of the documents and instruments specified therein is invalid and unenforceable for the reasons hereafter alleged.
4. The Answering Defendants deny each and every allegation contained in the WHEREFORE clause of the Complaint and affirmatively realleges that each of the documents and instruments specified therein is invalid and unenforceable for the reasons hereafter alleged.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, AND FIRST COUNTERCLAIM, THE ANSWERING DEFENDANTS ALLEGE:

5. The Answering Defendants reassert and reallege paragraphs 1 through 4 as though fully set forth herein.
6. Because the broker fees charged by its brokers did not reflect services actually performed and/or bore no reasonable relationship to the market value of the services provided.
7. Therefore, the Answering Defendants are entitled to treble damages in an amount to be determined at trial.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, AND SECOND COUNTERCLAIM, ANSWERING DEFENDANTS ALLEGE:

8. Answering Defendants reassert and reallege paragraphs 1 through 7 as though fully set forth herein.
9. Plaintiff has failed to state a cause of action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE:

10. The mortgage, bond or note are unconscionable and thus voidable.

AS AND FOR AN FOURTH AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE:

11. Defendants reassert and reallege paragraphs 1 through 10 as though fully set forth herein.
12. Plaintiff should be estopped from seeking satisfaction of the note and mortgage because, upon information and belief, its misrepresentations induced Answering Defendants into entering the note and mortgage under their current terms.
13. Therefore, equity should preclude plaintiff from benefiting from such misrepresentation.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, ANSWERING
DEFENDANTS ALLEGE:**

14. Answering Defendants repeat and reallege paragraphs 1 through 12 as though fully set forth herein.
15. Answering Defendants are the subject premises and were not served with a mandatory pre-foreclosure notice to advise them of the possible solutions to avoid the instant foreclosure proceeding, as required by RPAPL Section 1303 & 1304.
16. As a result, plaintiff is liable to Answering Defendants for costs, disbursements and legal fees, including attorney's fees, in this action.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, ANSWERING
DEFENDANTS ALLEGE:**

17. Answering Defendants repeat and reallege paragraphs 1 through 15 as though fully set forth herein.
18. Answering Defendants were not served with a ninety (90) days notice prior to the commencement of the instant foreclosure proceeding as required by RPAPL Sections 1304 and 1302.
19. As a result, plaintiff is liable to Answering Defendants for costs, disbursements and legal fees, including attorney's fees, in this action.

**AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE, ANSWERING
DEFENDANTS ALLEGE:**

20. Answering Defendants repeat and reallege paragraphs 1 through 20 as though fully set forth herein.
21. Upon information and belief, the Plaintiff failed to send a notice of default acceleration as required by the mortgage and hence, the Plaintiff is in breach of its contractual obligations.
22. As a result, plaintiff is liable to Answering Defendants for costs, disbursements and legal fees, including attorney's fees, in this action.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE, ANSWERING
DEFENDANTS ALLEGE:**

23. Answering Defendants repeats and reallege paragraphs 1 through 23 as though fully set forth herein.

24. Plaintiff's causes of action are barred by the defenses founded upon documentary evidence.
25. As a result, plaintiff is liable to Answering Defendants for costs, disbursements and legal fees, including attorney's fees, in this action.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE, ANSWERING
DEFENDANTS ALLEGE:**

26. Answering Defendants repeat and reallege paragraphs 1 through 24 as though fully set forth herein.
27. The Court lacks personal jurisdiction over Plaintiff, because the Plaintiff failed to serve the Summons and Complaint in the manner provided by the New York Civil Practice Law and Rules (CPLR), in fact Plaintiff served at the incorrect address and the person served does not match the description of the Defendant and the first notice of the action was of the Notice of Pre-settlement conference from the Court.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE, THE ANSWERING
DEFENDANTS ALLEGE:**

28. Plaintiff has no standing to maintain the instant proceeding, because the underlying interest rate maybe usurious and unjust making the mortgage defective and invalid.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE, THE ANSWERING
DEFENDANTS ALLEGE:**

29. Answering Defendants repeat and reallege paragraphs 1 through 28 as though fully set forth herein.
30. Upon information and belief, plaintiff and/or its predecessor in interest has failed to comply with the contractual conditions precedent to commencing a mortgage foreclosure action by failing to deliver to defendant any of the notices and COVID-19 hardship declarations required under the subject mortgage, prior to the commencement of this action.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE, THE ANSWERING
DEFENDANTS ALLEGE:**

31. Answering Defendants repeat and reallege paragraphs 1 through 30 as though fully set forth herein.
32. Upon information and belief, plaintiff and/or its predecessor in interest has failed to comply with the contractual conditions precedent to commencing a mortgage foreclosure action by amongst other things, failing to provide and deliver the notices to all tenants and residents of the subject premises along with the hardship declarations as required pursuant to RPAPL §§ 1303(b), 1304, and 1306.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, AND SEVENTH COUNTERCLAIM, THE ANSWERING DEFENDANTS ALLEGE:

34. The Answering Defendant reasserts and realleges paragraphs 1 through 33 as though fully set forth herein.

35. Plaintiff lacks standing to being the instant action against ROY DIPAK because of [N.Y.C. Council Int. No. 1932-A](#) (2020). The law amends NYC administrative code by rendering unenforceable provisions in mortgages where the borrower's business was negatively impacted by COVID-19.

AS AND FOR AN FOURTEENTH AFFIRMATIVE DEFENSE, THE ANSWERING DEFENDANTS ALLEGE:

36. Plaintiff lacks standing to prosecute the claims herein since there was no privity between Plaintiff and Defendants.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE, THE ANSWERING DEFENDANTS ALLEGE:

37. The relief sought in the Complaint is barred by the principals of res judicata, collateral estoppel, accord, release and satisfaction.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE, THE ANSWERING DEFENDANTS ALLEGE:

38. The relief sought in the Complaint is barred by the statue of limitations and the doctrine of laches.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE, THE ANSWERING DEFENDANTS ALLEGE:

39. The Plaintiff failed to join all necessary parties.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE, THE ANSWERING DEFENDANTS ALLEGE:

40. The Complaint does not correctly identify the block and lot of the mortgaged premises.

AS AND FOR NINTEENTH AFFIRMATIVE DEFENSE, THE ANSWERING DEFENDANTS ALLEGE:

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