

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

Bank of America N.A.

Index No. 725219/2023

Plaintiff,

v.

Ayman Gebrail, et. al.

Defendants.

**VERIFIED PRO SE
ANSWER TO
FORECLOSURE
COMPLAINT AND
COUNTERCLAIMS**
[Defendant: check this box if
you checked any item in the
“counterclaim” section
below]

Defendant Ayman Gebrail *Pro Se* answers the complaint in this proceeding as follows:

I generally deny each allegation of the Complaint, including any allegation that Plaintiff is the owner of the note and mortgage.

I plead the following Defenses and Counterclaims:

DEFENSES

FILED
APR 16 2024
COUNTY CLERK
QUEENS COUNTY

Lack of Standing: Plaintiff, upon information and belief, was not the legal owner of the note and/or mortgage, and did not otherwise have the right to enforce the mortgage, at the time it commenced this foreclosure lawsuit and therefore lacks standing.

Foreclosure Cause of Action: Plaintiff has not pleaded that it owns the note and mortgage, which is an element of a foreclosure cause of action, and it therefore has failed to plead a foreclosure cause of action.

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, upon information and belief, commenced this action more than six years after the debt became due, which defense also supports the separately pleaded counterclaim to cancel and discharge the mortgage under NY Real Property Actions and Proceedings Law § 1501(4).

Service of Process (NY Civil Practice Law and Rules § 308): I was not properly served with process in this action for the following reason(s): _____

I was never served with the complaint; it was served to an address that I have not lived at since 2017. I have lived at 108-10 65th Avenue, Apt 5-G, Forest Hills, 11375 for 3 ye

- Prior Pending Action** (NY Real Property Actions and Proceedings Law § 1301): Plaintiff impermissibly commenced this action because there is a prior pending action to recover all or part of the mortgage debt.
- No Default/Payment or Partial Payment:** I have paid, in whole or in part, the amounts claimed by Plaintiff, or the amounts claimed by Plaintiff are not due, or the loan is otherwise not in default.

Reverse Mortgages

- Reverse Mortgage--Notice Requirements:** Plaintiff failed to comply with the notice requirements under New York and/or federal law or failed to comply with contractual requirements of the reverse mortgage, which are conditions precedent to this foreclosure action.
- Reverse Mortgage—Failure to Specify Alleged Default:** The complaint is vague and does not specify the alleged default and/or the amount(s) plaintiff claims in this action.
- Reverse Mortgage—Foreclosure on a Reverse Mortgage for Property Charge Defaults is Against Public Policy:** The purpose of reverse mortgage loans under the Home Equity Conversion Mortgage (“HECM”) program is to assist senior citizens to stay in their homes, and reverse mortgage lenders have other remedies in the event of alleged failure to pay property charges. Plaintiff, accordingly, as a matter of equity and public policy, should not be permitted to foreclose.
- Reverse Mortgage—NY Real Property Law § 280-b:** Plaintiff and/or its predecessor-in interest, upon information and belief, violated the requirements of NY Real Property Law § 280-b, compliance with which is a condition precedent to commencing an action to foreclose on a reverse mortgage loan covered by that statute, mandating dismissal of this foreclosure action, which defense also supports the separately pleaded counterclaim for damages under NY Real Property Law § 280-b.

Predicate Notices/Conditions Precedent

- Notice of Default:** Plaintiff failed to comply with the requirements for the notice of default in my mortgage loan agreement, a condition precedent to this foreclosure action.
- 90-Day Notice Requirement** (NY Real Property Actions and Proceedings Law § 1304): Plaintiff failed to comply with the requirements of NY Real Property Actions and Proceedings Law § 1304, a condition precedent to this foreclosure action.

- 90-Day Notice Filing Requirement** (NY Real Property and Proceedings Law § 1306): Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1306, a condition precedent to this foreclosure action.
- Help for Homeowners in Foreclosure Notice Requirement** (NY Real Property Actions and Proceedings Law § 1303): Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1303, a condition precedent to this foreclosure action.

Real Estate Settlement Procedures Act

- Real Estate Settlement Procedures Act Early Intervention Requirement** (12 C.F.R. § 1024.39): Upon information and belief, Plaintiff violated the early intervention requirements of the Real Estate Settlement Procedures Act because (*check one or both if applicable*):
- Within 36 days of my delinquency, the loan servicer did not attempt to establish live contact with me to inform me about the availability of loss mitigation options.
- Within 45 days of my delinquency, the loan servicer did not send me a written notice that included contact information for the servicer, a description of loss mitigation options available from the servicer, information about applying for loss mitigation, and a website listing housing counselors.
- Real Estate Settlement Procedures Act Pre-Foreclosure Review Requirement** (12 C.F.R. § 1024.41): Plaintiff impermissibly filed this foreclosure during the pre-foreclosure review period because (*check one or both if applicable*):
- Plaintiff commenced this action before my loan was more than 120 days delinquent.
- I submitted a complete loss mitigation application to my loan servicer but Plaintiff commenced this action (1) before the loan servicer made a decision on that application, (2) before the time period to appeal the loan servicer's decision lapsed, or (3) before the loan servicer made a decision on an appeal I submitted in connection with the loss mitigation application.

FHA-Insured Loans

- FHA Pre-Foreclosure Requirements:** My loan is insured by the Federal Housing Administration. Upon information and belief, the loan servicer/mortgagee has not complied with regulations of the Department of Housing and Urban Development because the loan servicer/mortgagee did not do one or more of the following (*check all that are applicable*):
- Send me a notice of default before the end of the second month of my delinquency (24 C.F.R. § 203.602).
- Attempt to arrange a face-to-face interview with me before three full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.604).
- Evaluate me for loss mitigation before four full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.605).
- Wait until three full monthly installments due under the mortgage were unpaid before commencing this foreclosure action (24 C.F.R. § 203.606).

- Certificate of Merit Requirement** (NY Civil Practice Law and Rules § 3012-b): Upon information and belief, Plaintiff failed to comply with the Certificate of Merit requirements of NY Civil Practice Law and Rules § 3012-b.
- Request for Judicial Intervention** (NY Codes, Rules and Regulations Title 22, § 202.12-a(b)): Upon information and belief, Plaintiff did not file a Request for Judicial Intervention.
- Excessive Interest and Fees** (NY Civil Practice Law and Rules § 3408(f)): In a prior foreclosure action, Plaintiff failed to negotiate in good faith pursuant to CPLR 3408(f). This failure to negotiate in good faith has caused excessive interest and fees to accrue which Plaintiff, as a matter of equity and by operation of the CPLR, is not entitled to recover.
- Excessive Interest** (NY Civil Practice Law and Rules § 5001(a)): Plaintiff has unreasonably delayed filing this action, failed to file the Request for Judicial Intervention 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).
- Action Commenced Against a Deceased Party:** This action is a nullity because it was commenced against _____ after that party was already deceased and before a personal representative was appointed and it should therefore be dismissed.

Failure to Join Necessary Party: This action should be dismissed because of Plaintiff's failure to join a necessary party.

Coronavirus Foreclosure Moratoriums/Forbearance and Loss Mitigation Programs: Plaintiff failed to comply with federal or New York State law requiring forbearance and loss mitigation programs for borrowers affected or impacted by the Coronavirus pandemic, or it commenced this action in violation of federal or New York State law imposing moratoriums on the commencement of residential foreclosure actions, or otherwise in violation of any applicable Executive Order promulgated by the Governor of the State of New York or Administrative Orders promulgated by the Chief Administrative Judge of the State of New York.

Equitable Defenses

Unclean Hands and/or Unconscionability: This action is barred by the doctrine of unclean hands and/or unconscionability for the following reason(s):

Implied Covenant of Good Faith and Fair Dealing: Plaintiff or its predecessor-in-interest violated the covenant of good faith and fair dealing implied in all contracts and is barred from recovery in this action for the following reason(s):

Other Defenses or Counterclaims (*attach additional pages if needed*):
The status of this home is currently the subject of a divorce proceeding.

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