

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

Mortgage Assets Management, LLC.
Plaintiff,

Index No.: 135161/2022

– against –

AFFIDAVIT OF SERVICE

Erick Mariano

Defendant.

I, Erick Mariano, served the Verified Answer to the
Name of person who mailed the envelope

Complaint on Plaintiff's attorney at:

Matthew Rothstein
Robertson, Anschutz, Schneid, Crane & Partners, PLLC
900 Merchants Concourse, Suite 310
New York, NY 11590

I served the Verified Answer by first class mail on _____.
Date papers were mailed

I am eighteen years or older and I am not a Defendant in this lawsuit.

STOP! Take this document to a Notary Public BEFORE signing it

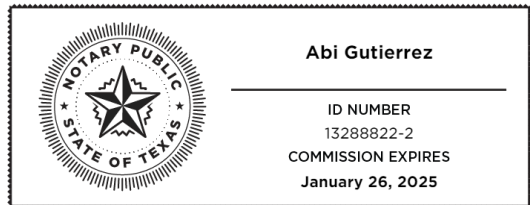
Erick Mariano
Signature

Erick Mariano
Print name

State of: Texas County: Ellis

Sworn to and subscribed before me this
27th day of April, 2024

Abi Gutierrez
Notary Public



Electronically signed and notarized online using the Proof platform.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND****Mortgage Assets Management, LLC.**

Plaintiff,

– against –

Erick Mariano

Defendant.

Index No.: 135161/2022

**VERIFIED ANSWER TO
FORECLOSURE COMPLAINT
AND COUNTERCLAIMS****Defendant, Erick Mariano answers as follows:****I plead the following Defenses and Counterclaims :****DEFENSES**

1. **Lack of Standing:** Plaintiff, upon information and belief, does not own the note and mortgage. Plaintiff therefore does not have standing to sue because it was not the legal owner of the note and/or mortgage at the time it commenced this foreclosure lawsuit.
2. **Foreclosure Cause of Action:** Plaintiff, upon information and belief, does not own the note and mortgage. Because ownership of the note and mortgage is an element of a foreclosure cause of action, Plaintiff has no right to foreclose.
3. **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):
 - Neither the Summons nor the Complaint were served on me.
4. **Payment or Partial Payment:** I have paid, in whole or in part, the amounts claimed by Plaintiff.

Reverse Mortgages

5. **Reverse Mortgage – NY Real Property Law § 280-b:** Plaintiff and/or its predecessor-in-interest, upon information and believe, violated the requirements of NY Real Property Law § 280-b, compliance with which is a condition precent to commencing an action to foreclose on a reverse mortgage loan covered by that statue, mandating dismissal of this foreclosure action, which defense also supports the separately please counterclaim for damages under NY Real Property Law § 280-b

Predicate Notices/Conditions Precedent

6. **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.
7. **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.
8. **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

9. **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:
 - 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.
- * * * * *
10. **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.
 11. **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.
 12. **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 by operation of the CPLR.
 13. **Action Commenced Against a Deceased Party:** This action is a nullity because it was commenced against Defendant Maxine Mariano-Doyle, Richard Doyle , and Richard Doyle after that party was already deceased and it should, therefore, be dismissed.

14. 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**15. Unclean Hand and/or Unconscionability:** This action is barred by the doctrine of unclean hands and/or unconscionability for the following reasons: Defense Statement Against Foreclosure Proceedings

To the Honorable Court,

I, Erick Mariano am submitting this statement to contest the foreclosure proceedings initiated by PHH. This challenge is predicated on significant procedural deficiencies, legal oversights, and violations of my consumer rights, which collectively render the foreclosure unjust and invalid.

1. ****Violation of the Truth in Lending Act (TILA)**:** The Truth in Lending Act mandates that borrowers be notified of any sale or transfer of their mortgage. In my case, I was not informed by the previous servicer, Champion Mortgage, nor by the current claimant, PHH, of the transfer. This failure to notify constitutes a clear violation of TILA, designed to protect consumers from such deceptive practices that could lead to significant financial and personal distress.

2. ****Lack of Standing**:** The failure to notify me of the mortgage transfer until several months into the process undermines the legitimacy of PHH's claim and raises serious questions regarding their standing to foreclose. This lack of timely and transparent communication deprived me of the opportunity to verify the claimant's legal standing and disrupted my ability to manage or contest the mortgage responsibilities effectively.

3. ****Procedural Mismanagement and Breach of Contract**:** I initiated contact with Champion Mortgage only two to three months following my mother's passing to begin the property sale process. It was then I learned of the mortgage transfer, though no details regarding the identity of the new holder were provided. This obfuscation continued for approximately seven to eight months, during which my repeated inquiries yielded no concrete information. This not only represents a breach of the mortgage contract but also a gross mismanagement of the mortgage servicing process, both of which have severely disadvantaged me in fulfilling my obligations

and intentions regarding the property.

4. ****Unfair and Deceptive Acts and Practices (UDAP)**:** The continued lack of clear communication and the failure to provide timely notifications by PHH constitute unfair and deceptive practices under state-specific UDAP laws. By the time I was informed of the mortgage transfer to PHH in May, I was already facing significant health challenges, which, compounded by the absence of critical information, left me unable to utilize the designated six-month period for selling the property.

5. ****Misrepresentation and Non-Adherence to Assurances**:** I was repeatedly assured that no foreclosure proceedings would commence until November 8, 2022, the first anniversary of my mother's death. Contrary to these assurances, foreclosure was initiated prematurely in August. During this critical period, I received no communication from PHH—no responses to my emails nor any postal correspondence—leaving me entirely uninformed about the foreclosure proceedings and unable to mount an appropriate response.

Given the above points, it is evident that the foreclosure proceedings initiated by PHH are fundamentally flawed and legally insufficient. I respectfully request that this court consider these factors and declare the foreclosure proceedings invalid or, at a minimum, allow a stay of proceedings until these severe concerns can be fully addressed and rectified.

I am prepared to provide further documentation and testimony to support these claims and welcome the opportunity for mediation or other resolution forms to address this matter equitably.

Respectfully submitted,

Erick Mariano

16. 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 reasons: The facts collectively illustrate that the lender, PHH, acted unfairly towards me due to several significant missteps:

1. ****Lack of Notification**:** I was not promptly informed about the transfer of the mortgage from Champion Mortgage to PHH. This essential information was withheld

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