

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Marily Villanueva, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

No. 13-5429-CS-LMS

SECOND AMENDED COMPLAINT

ECF Case

Plaintiff Marily Villanueva, by her attorneys, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, as and for her Second Amended Class Action Complaint, alleges, with personal knowledge as to her own actions, and upon information and belief as to those of others, as follows:

Nature Of This Case

1. This action seeks to redress Defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") unlawful and systematic failure to timely present to the county clerks of New York State proof that mortgages have been satisfied.

2. N.Y. Real Prop. Acts: Law § 1921 and N.Y. Real Prop. Law § 275 unambiguously require that mortgagees like Defendant present to the proper county clerk a satisfaction of mortgage when a mortgagor has paid the entire principle and interest due on a mortgage. The statutes each provide that a mortgagee who fails to do so within 30 days is liable to the mortgagor for \$500; a mortgagee who fails to do so for more than 60 days is liable to the mortgagor for \$1000; and a mortgagee who presents a mortgage satisfaction more than 90 days late is liable to the mortgagor for \$1500.

3. These statutes are crucial mechanisms by which New York State ensures that the acquisition and transfer of real property occurs with efficiency and reliability. The purpose of the statutes is to provide a remedy for the violation of a mortgagors' right to a timely recorded satisfaction.

4. Defendant, mortgagee for at least tens of thousands of homes in New York, systematically fails to timely present mortgage satisfactions, and it is liable to Ms. Villanueva and all mortgagors in New York for whom it failed to timely present a satisfaction of mortgage.

Jurisdiction

5. Jurisdiction in this civil action is authorized pursuant to 28 U.S.C. § 1332(d)(2)(A), as minimal diversity exists, there are more than 100 Class members, some of whom are not citizens of New York State, and the amount in controversy is in excess of \$5 million.

6. This Court has personal jurisdiction over Defendant because Defendant is the mortgagee for tens of thousands of mortgages secured by real property within this District and the State of New York.

Parties

7. Plaintiff Marily Villanueva resides in Westchester County in New Rochelle, New York.

8. Defendant Wells Fargo Bank, N.A. is a full-service interstate bank that operates throughout the United States, including in New York State. The bank, headquartered in Sioux Falls, South Dakota, is a subsidiary of Wells Fargo & Company, a multinational banking and financial holding company that has the largest market capitalization of any bank in the U.S. Wells Fargo & Company is incorporated in Delaware and is headquartered in San Francisco,

California. Wells Fargo's mortgage division is based in Minneapolis, Minnesota and services over \$1.75 trillion in U.S. mortgages, making it the largest retail mortgage lender in the U.S.

Operative Facts

9. One of the unfortunate consequences of the consolidation of the banking industry is that lenders are increasingly located far from the communities in which they offer and provide mortgages. As a result, mortgagees like Defendant frequently fail to comply with their obligations to timely file mortgage satisfactions. Indeed, Defendant often files mortgage satisfactions months, if not years, after they are due, and sometimes not at all.

10. This is no mere procedural peccadillo. Title companies continue to work with buyers and lenders to provide clear title reports in spite of these "open" mortgages created by mortgagees who fail to timely present mortgage satisfactions. However, there is a real possibility that a large loss by a title company as a result of the widespread failure of banks to timely present mortgage satisfactions may disrupt the entire system for transferring residential property in New York State. The failure to timely present a mortgage satisfaction can also frustrate landowners who need a marketable title to complete a property sale.

11. To address lenders' failure present mortgage satisfactions in a timely manner, the New York Legislature amended N.Y. Real Prop. Acts. Law § 1921 and N.Y. Real Prop. Law § 275 to impose a progressively higher liability upon mortgagees in favor of mortgagors where the mortgage satisfaction is not timely presented for recording within 30 days. Such liabilities amount to \$500 after 30 days, \$1,000 after 60 days, and \$1,500 after 90 days under each statute.

12. N.Y. Real Prop. Acts. Law § 1921(9)(a) defines a "mortgagee" as "(i) the current holder of the mortgage of record or the current holder of the mortgage, or (ii) any person to

whom payments are required to be made or (iii) their personal representatives, agents, successors, or assigns.”

13. Ms. Villanueva obtained a mortgage from Wells Fargo Home Mortgage, Inc. for her property located at 25 Acorn Terrace in New Rochelle, New York. See Exhibit 1. Wells Fargo Home Mortgage, Inc. subsequently merged with Defendant Wells Fargo.

14. Ms. Villanueva was required to make her mortgage payments to Wells Fargo.

15. On or about March 21, 2011, Ms. Villanueva’s mortgage was assigned by Wells Fargo to Deutsche Bank National Trust Company. See Exhibit 1.

16. After the assignment of her mortgage, Ms. Villanueva was still required to make her payments to Wells Fargo.

17. Moreover, after the assignment of her mortgage, Wells Fargo acted as Deutsche Bank National Trust Company’s agent in the administration of Plaintiff’s mortgage. See Exhibit 1.

18. On or about January 27, 2012, Ms. Villanueva sold the New Rochelle property to a married couple, Odin Fuhrman and Ariana Aguilar. On or before the same date, the mortgage on the New Rochelle property was satisfied and no authorized principal, interest or any other amounts were due or otherwise owed by law. The Bargain and Sale Deed evidencing this sale and the transfer of the deed to Mr. Fuhrman and Ms. Aguilar was recorded on February 8, 2012 in the Office of the Westchester County Clerk. See Exhibit 2.

19. Defendant Wells Fargo was the entity to whom payments were required to be made at the time that Ms. Villanueva satisfied the mortgage, and Wells Fargo was Deutsche Bank National Trust Company’s agent as it related to Ms. Villanueva’s mortgage at the time that Ms. Villanueva satisfied the mortgage. See Exhibit 1.

20. Wells Fargo Home Mortgage, the entity that submitted the Satisfaction of Mortgage on the New Rochelle property, is a division of Wells Fargo.

21. The Satisfaction of Mortgage was not recorded until March 28, 2012, sixty-one days after Ms. Villanueva's mortgage was actually satisfied. See Exhibit 1.

22. Defendant failed to present a certificate or discharge for recording within sixty days of the date upon which the full amount of principle and interest was paid on the mortgage, as evidenced by the fact that the Satisfaction of Mortgage was not recorded for sixty-one days after the discharge date.

23. Independently, Defendant also failed to arrange to have a certificate of discharge presented for recording to the recording officer of the county where the mortgage was recorded, as evidenced by the fact that the Satisfaction of Mortgage was not recorded for sixty-one days after the discharge date.

24. The Westchester County Clerk's office records satisfactions of mortgages expeditiously upon presentment.

25. Plaintiff Ms. Villanueva is not alone. In fact, based on a review of county records, Defendant routinely fails to timely present mortgage satisfactions. This failure appears to have occurred many thousands of times.

26. The deprivation of Plaintiff's right to have the public record cleared of the encumbering mortgage bearing her name in a timely manner is a tangible and concrete injury.

27. Indeed, banks and other lenders like Defendant have their mortgages recorded with the county clerk to ensure that others are aware of their interest in a property. It was just as important to Plaintiff that the document giving notice of the satisfaction of that interest was timely recorded. If there were not concrete injuries and risks associated with not having

mortgage documents timely recorded, then banks would not be so anxious to ensure that mortgages are recorded.

28. There are also direct and real world consequences to mortgagors whose liens are not released. Because it appeared that Plaintiff owed a substantial debt (when she did not), her credit and financial reputation were deleteriously affected. *See Deeter v. Crossley*, 26 Iowa 180, 182 (1868) (“The object of the statute is obvious. The record of the mortgage is constructive notice to the world of the existence of the debt and incumbrance. When this is paid, the statute has provided for a satisfaction on the record, so that the world may also know the fact of payment. Unsatisfied mortgages of record tend to affect the pecuniary standing and credit of the mortgagor in business circles.”); *Hall v. Hurd*, 40 Kan. 740, 21 P. 585, 586 (1889) (same); *Malarkey v. O’Leary*, 34 Or. 493, 499–500, 56 P. 521, 523 (1899) (“An unsatisfied mortgage of record is constructive notice of the existence of a debt, and necessarily tends to injuriously affect the pecuniary standing and credit of the mortgagor. When it is paid, the statute has provided for its satisfaction on the record, so that the fact of payment may be known to the world. The reasonableness of the requirement is apparent. To insure its observance, the mortgagee is required to acknowledge the satisfaction of a mortgage, when paid, in as public a manner as the mortgagor had acknowledged its existence, or suffer the statutory penalty.”); *Livingston v. Cudd*, 121 Ala. 316, 319, 25 So. 805, 806 (1899) (holding that “a mortgagor though he may have parted with his interest in the mortgaged property, still has a substantial interest in having an entry of satisfaction made upon its record . . .”).

29. The New York Supreme Court recently reaffirmed this principle in *Bank of Am., N.A. v. Glickman*, 43 Misc. 3d 1206(A), 990 N.Y.S.2d 436 (Sup. Ct. 2014), holding an

“unsatisfied mortgage clouds the property’s title and unsatisfied loan constitutes unresolved credit issues for [the mortgagor].”

30. As the Eight Circuit explained, when addressing a similar statute:

By the express terms of the statute the right to the penalty is given only to the mortgagor . . . similar statutes have been considered in other States. Some of them by their terms, as here, confine the right to the penalty to the mortgagor, while others give it to his assignees and heirs also. This difference is said to be attributable, in the first instance, solely to a regard to the credit of the mortgagor and is personal to him . . . “Unsatisfied mortgages of record tend to affect the pecuniary standing and credit of the mortgagor in business circles.”

Capps v. U.S. Bond & Mortgage Co., 274 F. 357, 358–59 (8th Cir. 1921) (quoting *Deeter*). See also *Henderson v. Allis-Chalmers Mfg. Co.*, 65 Idaho 570, 149 P.2d 133, 137–38 (1943) (“When the lien or mortgage has been wholly or partially satisfied by payment, fairness and justice to him demand that his credit be restored.”).¹

31. As Ronald Frogatt, a veteran title insurer with more than 8,000 closings under his belt, testified (against his title companies’ interest), an unsatisfied mortgage can have concrete and deleterious consequences in terms of Plaintiff’s credit and ability to obtain financing:

Q. . . . would there be any reason why the [sellers] would have wanted the mortgage satisfaction piece filed, based on your 30 years of experience?

A. Certainly.

Q. Okay. What’s the reason?

A. To have the mortgage cleared of record.

Q. And is there a benefit to them to have the mortgage cleared of record?

A. Yes.

Q. Because in subsequent refinances it would be a problem?

¹ “Wells Fargo on its own website acknowledges that amounts owed by an individual are looked at in credit scoring as the second most important factor in a FICO score.”

<https://www.wellsfargo.com/financial-education/basic-finances/financial-challenges/repair-credit/affect-credit-score/>. Moreover, the greater the debt of record, the lower the credit score of the person reflected as having the debt. Creditworthiness, access to credit, extension of credit, and costs of credit are directly affected by evaluations based on the consumer’s equity in property and total debt. See generally Robert B. Avery, Paul S. Calem, and Glenn B. Canner, “An Overview of Consumer Data and Credit Reporting,” Federal Reserve Bulletin (Feb. 2003) pp. 47-73. <http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf>.

A. Could be.

Q. In credit checks it could be a problem?

A. Could be.

Q. In buying a car or a house, it could be a problem?

A. Could be.

Garfinkel v. Household Finance Corporation et al., No. 685, 1997 WL 33783202, at *22 (Pa. Com. Pl.).

32. Moreover, “when defendant violated plaintiffs’ statutory right to a timely filed mortgage satisfaction notice, it created a ‘real risk of harm’ by clouding the titles to their respective properties . . . Because to the public, these mortgages appeared not to have been satisfied, plaintiffs could have realized that harm if they had, for example, tried to sell or encumber the subject property, or tried to finance another property and been subjected to a credit check. Through no fault of their own, plaintiffs would have faced unnecessary obstacles to their goals.” *Adler v. Bank of Am.*, No. 13-4866, 2016 WL 3944753, at *4 (S.D.N.Y. July 15, 2016).

33. This negative impact on credit has been held to be an injury in fact. *See Santangelo v. Comcast Corp.*, No. 15-0293, 2016 WL 464223, at *4 (N.D. Ill. Feb. 8, 2016) (“[E]ven if the Supreme Court were to conclude in *Spokeo* that a bare violation of the FCRA does not constitute an injury-in-fact” which it did not, “a depleted credit score is sufficient to constitute an injury-in-fact for the purposes of establishing Article III standing.”); *Binns v. Ocwen Loan Servicing, LLC*, No. 14-01764, 2015 WL 5785693, at *9 (S.D. Ind. Sept. 30, 2015) (“injuries to plaintiffs’ credit scores and reputations were considered intangible harms”); *Rothman v. U.S. Bank Nat’l Ass’n*, No. 13-03381, 2014 WL 4966907, at *5 (N.D. Cal. Oct. 3, 2014) (“Injury to a credit score is sufficient to constitute ‘actual damages’”).

34. Plaintiff was also at risk that Wells Fargo would attempt to initiate a foreclosure action or otherwise seek to collect on the mortgage, even though it was satisfied through the sale,

unless she could point to the recorded satisfaction as proof that she did not owe the debt. Wells Fargo was part and parcel of the “sloppy recordkeeping that began during the housing boom, when Wall Street built a quick-and-dirty back-office operation to process mortgages quickly so lenders could sell as many loans as possible. As the loans were later sold to investors, and then resold around the world, the back office system sidestepped crucial legal procedures.” *See* Michelle Conlin, “Old Mortgages Rise From The Dead, Haunt Homeowners,” Reuters (Jan. 26, 2012).

35. Using “affidavit slaves” or robo-signers, Wells Fargo and others sought to foreclose on as many houses as possible, and the result is that people whose mortgage was satisfied were nonetheless subject to foreclosure actions:

These “robo-signers” became a national sensation in the fall of 2010 when it was revealed that they faked titles, forged documents and backdated affidavits so they could make up for the bypassed procedures and foreclose on properties. They passed around notary stamps as if they were salt. They did all of this, they testified, without verifying a single word in any of the documents - as is required by law. And it was all done, they say, to foreclose on as many homeowners as fast as possible. No one collects statistics on wrongful foreclosures, or how many people are facing the phantom mortgage debts. But as the industry enters its fifth year of unwinding its mortgage morass, consumer groups, homeowner attorneys and foreclosure-fraud investigators say they are seeing more cases where people who don’t owe the banks a dime are getting ensnared in the same hell as those who have missed payments. They add that such problems are likely to intensify. Former industry employees have testified that they knowingly pushed through foreclosures on the wrong people. It all casts a pall over a housing market in worse condition than it was during the Great Depression. By some estimates, 12.5 percent of U.S. homes with mortgages are either in foreclosure or the loans are at least 30 days past due, representing about \$1 trillion in value. “This is an epic problem that the economy hasn’t even begun to digest,” said Florida foreclosure analyst Lisa Epstein. In some cases, mortgages that were supposed to die off in a refinancing are popping back up, while in others, the loans were paid in full.

Id.

36. Wells Fargo has been implicated in these widespread improper foreclosure actions. *Id. See e.g., Field, Abigail, Robo-Signing: Documents Show Citi and Wells Also*

Committed Foreclosure Fraud, AOL.NEWS (Oct. 2, 2010) (review of Wells Fargo’s signing and verification processes for foreclosure dependent documents revealed numerous inconsistencies and factual impossibilities); Curan, Catherine, *NY Federal Judge Slams Wells Fargo For Forged Mortgage Docs*, NYPOST (Jan. 31, 2015) (highlighting Wells Fargo wrongful foreclosure actions); *In re: Carrsow-Franklin*, 524 B.R. 33, 49 (Bankr. S.D.N.Y. 2015) (holding that Wells Fargo failed to demonstrate validity of documents necessary for foreclosure proceedings where there was “substantial evidence that Wells Fargo’s administrative group responsible for the documentary aspects of enforcing defaulted loan documents created new mortgage assignments and forged indorsements when it was determined by outside counsel that they were required to enforce loans.”); *Wells Fargo Bank, N.A. v. Hughes*, 897 N.Y.S.2d 605, 606 (N.Y. Sup. Ct. 2010) (Wells Fargo did not establish standing to commence foreclosure action where it failed to “attach a copy of an applicable assignment of mortgage and note, assuming one exists” or submit “an affidavit of merit from a representative from Wells Fargo, with knowledge, attesting to the delivery of the Note and Mortgage prior to the commencement of this action.”).

37. Moreover, Wells Fargo’s failure to timely record satisfactions, including Plaintiff’s satisfaction, drives up the transaction costs involved in sales, including Plaintiff’s. Because the bank who loaned money to Odin Fuhrman and Ariana Aguilar to purchase Plaintiff’s home could not be confident that the title was clear, it required expensive title insurance, driving up the cost of the home sale to the detriment of both Plaintiff as seller and the buyers. *See* R. Wilson Freymuth, *Why Mortgagors Can’t Get No Satisfaction*, 72 Mo. L. Rev 1159, 1164, 1166 (2007) (there is “a substantial bureaucratic and geographic gap between the mortgagor, the mortgagee, and the servicer . . . this gap problem forces the parties to incur additional transaction costs. Most frequently, title insurance provides a workable solution.”)

Class Action Allegations

38. Plaintiff brings this action on her own behalf and additionally, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a Class of:

All persons who were the mortgagor party to a mortgage secured by real property located in New York State for which the principle, interest and all other amounts due or otherwise owed was completely paid after August 2, 2007, and to which Wells Fargo was the mortgagee at the time the mortgage was satisfied, and for whom Defendant failed to present a certificate of discharge or satisfaction of mortgage within 30 days to the recording officer of the county where the mortgage was recorded. Excluded from the Class are Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant have or had a controlling interest, or which Defendant otherwise control or controlled; and any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendant.

39. This action is brought as a class action for the following reasons:

a. The Class consists of thousands, if not tens of thousands, of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

b. There are questions of law or fact common to the Class which predominate over any questions affecting only individual members, including:

i. whether Defendant failed to timely present certificates of discharge or satisfactions of mortgage;

ii. whether Defendant violated N.Y. Real Prop. Acts. Law § 1921;
and

iii. whether Defendant violated N.Y. Real Prop. Law § 275;

c. The claims asserted by Plaintiff are typical of the claims of the members of the Class;

d. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has retained attorneys experienced in class and complex litigation;

e. Prosecuting separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendant;

f. Defendant have acted on grounds that apply generally to the Class, namely failing to ensure that satisfactions of mortgages are timely presented; and

g. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, for at least the following reasons:

i. Absent a class action, Class members as a practical matter will be unable to obtain redress and Defendant's violations of its legal obligations will continue without remedy;

ii. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;

iii. When the liability of Defendant has been adjudicated, the Court will be able to determine the claims of all members of the Class;

iv. A class action will permit an orderly and expeditious administration of Class claims and foster economies of time, effort, and expense;

v. The lawsuit presents no difficulties that would impede its management by the Court as a class action, particularly as Defendant can identify all Class members using its computerized records; and

vi. Defendant have acted on grounds generally applicable to Class members, making class-wide monetary relief appropriate.

FIRST CAUSE OF ACTION
(Violation of N.Y. Real Prop. Acts. Law § 1921)

40. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-16 above as if fully set forth herein.

41. N.Y. Real Prop. Acts. Law § 1921 provides that:

After payment of authorized principal, interest and any other amounts due thereunder or otherwise owed by law has actually been made . . . a mortgagee of real property situate in this state, unless otherwise requested in writing by the mortgagor or the assignee of such mortgage, must execute and acknowledge before a proper officer, in like manner as to entitle a conveyance to be recorded, a satisfaction of mortgage, and thereupon within thirty days arrange to have the satisfaction of mortgage: (a) presented for recording to the recording officer of the county where the mortgage is recorded, or (b) if so requested by the mortgagor or the mortgagor's designee, to the mortgagor or the mortgagor's designee. Failure by a mortgagee to present a certificate of discharge for recording shall result in the mortgagee being liable to the mortgagor in the amount of five hundred dollars if he or she fails to present such certificate within thirty days, shall result in the mortgagee being liable to the mortgagor in the amount of one thousand dollars if he or she fails to present a certificate of discharge for recording within sixty days or shall result in the mortgagee being liable to the mortgagor in the amount of one thousand five hundred dollars if he or she fails to present a certificate of discharge for recording within ninety days.

42. N.Y. Real Prop. Acts. Law § 1921(9)(a) defines a "mortgagee" as "(i) the current holder of the mortgage of record or the current holder of the mortgage, or (ii) any person to whom payments are required to be made or (iii) their personal representatives, agents, successors, or assigns."

43. Because Defendant was the party to whom payments on Plaintiff's mortgage were required to be made, Defendant was a mortgagee when the mortgage was satisfied.

44. In addition, as Deutsche Bank National Trust Company's attorney in fact, Wells Fargo was Deutsche Bank National Trust Company's agent with respect to the mortgage, and Defendant was therefore a mortgagee when the mortgage was satisfied.

45. Defendant systematically fails to timely present certificates of discharge, as required by N.Y. Real Prop. Acts. Law § 1921.

46. Here, Defendant failed to present a certificate or discharge for recording within thirty days of the date upon which the mortgage was satisfied, as evidenced by the fact that the Satisfaction of Mortgage was not recorded for sixty-one days after the discharge date.

47. Independently, Defendant also failed to timely arrange to have a certificate of discharge presented for recording to the recording officer of the county where the mortgage was recorded, as evidenced by the fact that the Satisfaction of Mortgage was not recorded for sixty-one days after the discharge date.

48. The Westchester County Clerk's office records satisfactions of mortgages expeditiously upon presentment.

49. Defendant's failure to timely present Plaintiff's mortgage satisfactions for recording impacted Plaintiff's credit and subjected Plaintiff to various financial risks discussed above.

50. Moreover, Plaintiff, like all mortgagors in every state of the union, has the right to have a timely certificate of discharge of mortgage recorded in the county in which the mortgage itself was recorded. As set forth above and throughout, the deprivation of that right by an untimely recorded discharge causes a concrete injury to the mortgagor, against whom an encumbering mortgage is still recorded in the public record, even in the absence of any additional harm.

51. By reason of the foregoing, Defendant has violated N.Y. Real Prop. Acts. Law § 1921, and as described above, Plaintiff suffered a concrete injury as a direct result. Defendant is liable to Plaintiff and the other members of the Class for the statutory damages that are due.

SECOND CAUSE OF ACTION
(Violation of N.Y. Real Prop. Law § 275)

52. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-16 above as if fully set forth herein.

53. N.Y. Real Prop. Law § 275 provides that:

Whenever a mortgage upon real property is due and payable, and the full amount of principal and interest due on the mortgage is paid, a certificate of discharge of mortgage shall be given to the mortgagor or person designated by him or her, signed by the person or persons specified in section three hundred twenty-one of this chapter. The person signing the certificate shall, within thirty days thereafter, arrange to have the certificate presented for recording to the recording officer of the county where the mortgage is recorded. Failure by a mortgagee to present a certificate of discharge for recording shall result in the mortgagee being liable to the mortgagor in the amount of five hundred dollars if he or she fails to present such certificate within thirty days, shall result in the mortgagee being liable to the mortgagor in the amount of one thousand dollars if he or she fails to present a certificate of discharge for recording within sixty days and shall result in the mortgagee being liable to the mortgagor in the amount of one thousand five hundred dollars if he or she fails to present a certificate of discharge for recording within ninety days.

54. Because Defendant was the party to whom payments on Plaintiff's mortgage were required to be made, Defendant was a mortgagee when the mortgage was satisfied.

55. In addition, as Deutsche Bank National Trust Company's attorney in fact, Wells Fargo was Deutsche Bank National Trust Company's agent with respect to the mortgage, and Defendant was therefore a mortgagee when the mortgage was satisfied.

56. Defendant systematically fails to timely present certificates of discharge, as required by N.Y. Real Prop. Law § 275.

57. Here, Defendant failed to present a certificate or discharge for recording within thirty days of the date upon which the mortgage was satisfied, as evidenced by the fact that the Satisfaction of Mortgage was not recorded for sixty-one days after the discharge date.

58. Independently, Defendant also failed to arrange to have a certificate of discharge presented for recording to the recording officer of the county where the mortgage was recorded, as evidenced by the fact that the Satisfaction of Mortgage was not recorded for sixty-one days after the discharge date.

59. The Westchester County Clerk's office records satisfactions of mortgages expeditiously upon presentment.

60. Defendant's failure to timely present Plaintiff's mortgage satisfactions for recording impacted Plaintiff's credit and subjected Plaintiff to various financial risks discussed above.

61. Moreover, Plaintiff, like all mortgagors in every state of the union, has the right to have a timely certificate of discharge of mortgage recorded in the county in which the mortgage itself was recorded. As set forth above and throughout, the deprivation of that right by an untimely recorded discharge causes a concrete injury to the mortgagor, against whom an encumbering mortgage is still recorded in the public record, even in the absence of any additional harm.

62. By reason of the foregoing, Defendant has violated N.Y. Real Prop. Law § 275 and as described above, Plaintiff suffered a concrete injury as a direct result. Defendant is liable to Plaintiff and the other members of the Class for the statutory damages that are due.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendant as follows:

A. Certifying this action as a class action, with a Class as defined above;

B. On Plaintiff's First Cause of Action, awarding against Defendant statutory damages that Plaintiff and the other members of the Class are due as a result of Defendant's actions;

C. On Plaintiff's Second Cause of Action, awarding against Defendant statutory damages that Plaintiff and the other members of the Class are due as a result of Defendant's actions;

D. Awarding prejudgment interest on all amounts awarded;

E. Awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit; and

F. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by jury.

Dated: August 26, 2016
White Plains, New York

Respectfully submitted,

By: /s/ D. Greg Blankinship
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