

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHANTAL SUTTON,

Plaintiff,

-against-

CITIMORTGAGE, INC.,

Defendant.
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No. 16 CIV. 1778

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Chantal Sutton, for her complaint, alleges, upon personal knowledge as to herself and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. One of the country’s largest mortgage servicers, CitiMortgage, Inc. (“Citi”) states on its website that it is “dedicated to making the dream of homeownership come true for a wide range of customers and partners across the country every day.” CitiMortgage – About Us, <https://www.citimortgage.com/Mortgage/Home.do?page=aboutus> (last visited March 7, 2016).

2. Acknowledging that “many homeowners across the country are having trouble making their mortgage payments,” Citi notes that it “is here to help” each homeowner “find a solution that works.” CitiMortgage – Homeowner Support, <https://www.citimortgage.com/Mortgage/displayHomeOwnerAssistance.do?page=overview> (last visited March 7, 2016).

3. But given an opportunity to help Chantal Sutton save her home, Citi has decided to disregard its own standards and the laws of the United States.

4. This action seeks to enforce Citi’s statutory duty to respond to its customers’ requests for information about their accounts and to rectify errors it makes in the servicing of

those accounts. If Citi's errors are left uncorrected, Ms. Sutton will ultimately lose her family home—all as a result of Citi's stubborn and illegal refusal to correct its mistakes.

5. Ms. Sutton did everything in her power to save her home after her husband's business faltered in 2010, in the wake of the economic recession. Although she ultimately fell behind on her mortgage, she successfully applied for a Home Affordable Modification Program ("HAMP") modification with Citi as soon as her family finances stabilized.

6. In processing the HAMP modification, but contrary to HAMP program requirements, Citi refused to extend the term of Ms. Sutton's loan, saddling her with an unaffordable balloon payment of \$197,730.14 due on March 1, 2019.

7. Recognizing that this type of modification would only temporarily forestall the loss of her home, before she signed the permanent modification agreement, Ms. Sutton implored Citi to extend the term of her loan so that she would not face the prospect of near certain default in five years. Citi refused, thus giving Ms. Sutton the Hobson's choice of either accepting the unconscionable modification agreement or immediately facing foreclosure. Ms. Sutton accepted the agreement.

8. Though strict rules govern how servicers are to modify loans under HAMP, Citi routinely flouts those rules.

9. Additionally, Citi routinely flouts the laws that govern the mortgage servicing industry, namely the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601-2617 ("RESPA"). Many of these RESPA rules were implemented to curtail the wayward practices prevalent in the servicing industry, which after the financial crisis, was plagued by "pervasive problems ... including the systemic violation of State foreclosure laws." Mortgage Servicing

Rules Under RESPA (Regulation X), 78 Fed. Reg. 10,695, 10,701 (Feb. 14, 2013) (codified in 12 C.F.R. § 1024).

10. Through a qualified written request (a “QWR”)—a mechanism under RESPA for correcting errors in the servicing of mortgage loan accounts—Ms. Sutton asked Citi to provide the modification to which she is entitled and which she should have received when Citi modified her loan.

11. Under RESPA and its implementing regulations, Citi must respond to QWRs alleging an error in the borrower’s mortgage loan account by conducting a reasonable investigation and either addressing the error or explaining why it does not believe the account is in error.

12. However, Citi did not properly investigate Ms. Sutton’s mortgage account for errors, even though Ms. Sutton demonstrated that Citi’s professed reason for refusing to extend the term of her loan was entirely unfounded.

13. Instead, Citi responded to the QWR with a series of obfuscations and evasions, refused to correct Ms. Sutton’s account, and failed to explain – as required by RESPA – why it had made no error.

14. As a result of Citi’s failure to correct her account, Ms. Sutton faces an unaffordable balloon payment that threatens her ownership of her family’s home.

JURISDICTION AND VENUE

15. This Court has original subject matter jurisdiction over Plaintiff’s RESPA claim pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the New York State law claim pursuant to 28 U.S.C. § 1367.

16. Venue in this district is proper under 28 U.S.C. § 1391(c) because Defendant conducts business and can be found in this district.

PARTIES

17. Plaintiff Chantal Sutton is a 62 year-old homeowner who owns the home located at 1594 East 18th Street, Brooklyn, New York, 11230 (“the Home” or “her Home”). Ms. Sutton lives there with her husband, her son and her daughter.

18. Defendant Citi was incorporated in Delaware and reincorporated in New York, with its principal executive office at 1000 Technology Drive, O’Fallon, Missouri, 63368. For more than two decades, Citi has serviced mortgage loans.

FACTUAL ALLEGATIONS

19. In 2001, Ms. Sutton and her husband, Edward Sutton, took out a 30-year mortgage to purchase the Home, a single-family house. Ms. Sutton stayed home to take care of their children while Mr. Sutton ran the family garment business.

20. With Mr. Sutton’s business doing well, on February 20, 2004, the Suttons refinanced their mortgage with Approved Funding Corporation. By refinancing into a mortgage with a 15-year term, the Suttons would be able to save on the interest charged over the life of this shorter-term loan and pay off their debt faster. The Suttons decided that Ms. Sutton would be the sole signatory to the note and mortgage.

21. Approved Funding Corporation is a mortgage lender that, in 2004, sold mortgage loans on the secondary market to investors. Generally, these mortgage loans were pooled together, typically into a trust, which would then issue securities, thereby creating a residential mortgage backed security (“RMBS”).

22. Aside from signing the closing documents, Ms. Sutton never had any contact with Approved Funding Corporation. Instead, she interacted with an entity known as a “mortgage servicer.”

23. A mortgage servicer acts as a middleman between a homeowner and the investors of a RMBS. The servicer accepts the homeowner’s monthly payments, credits the account, and, when the homeowner is behind on payments, negotiates modifications of the mortgage loan terms on behalf of the RMBS.

24. The relationship between the mortgage servicer of a RMBS and its investors is governed by a servicing agreement.

25. Upon information and belief, since at least 2012, the Sutton mortgage has been serviced by Citi.

26. In or around January 2010, with the economic recession still in full swing, Mr. Sutton's business began to falter.

27. Although their household income steadily declined, the Suttons stretched their budget to pay their mortgage until in or around June 2012. At that point, the Suttons were no longer able to make their monthly mortgage payment.

28. Soon after falling behind, Ms. Sutton applied to Citi for a mortgage loan modification.

29. In October 2013, after completing a trial modification plan, Ms. Sutton received a permanent loan modification from Citi.

30. In its correspondences regarding the permanent modification, Citi stated that it modified the loan under the HAMP program.

31. HAMP is a standardized loan modification program introduced by the U.S. Department of the Treasury (“Treasury”) in February 2009 to counteract the housing market crash that was triggered when the subprime lending bubble burst. Part of the “Making Home Affordable” program, HAMP was designed to help struggling homeowners avoid foreclosure and keep families in their homes.

32. Although not all mortgage servicers participate in HAMP, Citi is a current HAMP participant and was a HAMP participant in 2013 when it offered the Suttons a purported HAMP modification.

33. Participating servicers agree to follow the HAMP requirements found in the “Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages” (the “Handbook”).¹

34. Under these rules, a HAMP modification results in a monthly mortgage payment – inclusive of principal, interest, taxes and insurance – equal to 31 percent of the homeowner’s gross monthly income. This 31 percent of the homeowner’s gross monthly income is known as the “Target Payment.”

35. When modifying a loan under HAMP, the mortgage servicer changes the loan terms in a four-step sequence to reach the borrower’s Target Payment:

- (i) Step One - Capitalization: Arrears are capitalized by adding all accrued interest, costs and fees to the unpaid balance of the loan, creating a new modified principal balance.
- (ii) Step Two - Interest Rate Reduction: The interest rate is reduced in decrements of 0.125 percent, but not below two percent.

¹ The current version of this Handbook can be found at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_5.pdf.

(iii) Step Three - Term Extension: The loan term is increased in increments of one month, but not beyond 480 months.

(iv) Step Four - Principal Forgiveness or Forbearance: Up to 30 percent of the modified principal balance may be forgiven or forborne, the latter of which would create a non-interest bearing balloon payment due at the end of the loan term.

See the Handbook, v. 5.0, Ch. II § 6.3 (January 6, 2016).

36. This four-step process is known as “the HAMP Waterfall” and was designed to create an affordable and sustainable mortgage modification product that would keep homeowners in their homes.

37. If the loan servicer arrives at the Target Payment at any one step, it does not have to continue to the remaining steps. For example, if the Target Payment can be reached by merely reducing the interest rate to two percent, then the mortgage servicer does not have to extend the term of the loan or forbear principal. *Id.*

38. An exception exists to this four-step process if the relevant servicing agreement contains a provision restricting the mortgage servicer from conducting any one of the four steps enumerated above. *Id.*

39. If the servicing agreement contains such an “investor restriction” on any one of the four steps, the servicer may skip or modify that step, but it must still perform the other steps. *Id.* If such a restriction exists, the servicer must maintain evidence in the homeowner’s loan file documenting the restriction. *See* Handbook, v. 5.0, Ch. II § 6.5 (January 6, 2016).

40. The modification Citi offered Ms. Sutton capitalized her arrears (Step One) and reduced her interest rate (Step Two), as HAMP prescribes. Still unable to produce a modification

that reached her Target Payment, Citi should have extended the term of the mortgage (Step Three).

41. But contrary to HAMP, Citi left the term of the loan unchanged.

42. Instead, to reach Ms. Sutton's Target Payment, Citi amortized the modified loan over an extended term, but did not actually extend the term of the loan, creating a balloon payment due at the original maturity date.

43. Had Citi followed the HAMP Waterfall, it would have extended the term of Ms. Sutton's loan to approximately 377 months from the date of the modification. A HAMP-compliant modification would have fully amortized the principal over these 377 months and would have required no balloon payment at maturity.

44. As a result of Citi's failure to offer term extension, Ms. Sutton has a scheduled balloon payment of \$197,730.14 due on March 1, 2019.

45. Citi's failure to abide by the Handbook in the Sutton's case was not an isolated occurrence. According to Treasury, which implements and monitors HAMP, Citi has one of the worst records of servicer non-compliance with HAMP.² This institutional incompetence peaked in the second quarter of 2014, when Treasury disagreed with 15.2 percent of Citi's decisions regarding modification applications.³

46. Ms. Sutton was shocked and upset by the balloon payment requirement because she did not believe that she could ever afford such a large payment.

47. Because the permanent modification documents failed to explain why Citi did not extend the loan term, Ms. Sutton and her husband contacted Citi by telephone immediately after

² Office of the Special Inspector General for the Troubled Asset Relief Program, Quarterly Report to Congress (July 29, 2015), Page 109.

³ *Id.*

receiving these documents to ask if the loan could be modified in a way that did not result in a large balloon payment.

48. During that telephone call, a Citi representative said that the permanent modification it offered was the only modification available and that the Suttons could either accept the modification or face foreclosure.

49. On October 9, 2013, to avoid losing her Home, Ms. Sutton reluctantly signed the permanent modification agreement.

50. In February 2014, still fearful of the \$197,730.14 balloon payment due in a matter of years, Ms. Sutton sent a QWR to Citi alerting it to the unaffordable balloon payment and requesting information about the mortgage.

51. A QWR is a consumer protection tool created by RESPA. QWRs allow consumers to request information about their mortgage loan and alert servicers to errors in their accounts. RESPA requires that servicers respond to QWRs in a certain manner and within a certain time frame.

52. A QWR is one of the few ways a homeowner can hold a mortgage servicer accountable and ensure that the servicer follows servicing law and regulations.

53. The QWR sent by Ms. Sutton in February 2014 contained the following:

- a) notice that Ms. Sutton's account was in error because Citi had failed to provide term extension with the modification in accordance with HAMP, and
- b) a request for the identity of the owner of the mortgage.

54. In its February 28, 2014 response letter, Citi stated that Ms. Sutton's mortgage loan "is backed by a private investor, SASCO," and that, under SASCO's guidelines, Citi could not extend the maturity date of Ms. Sutton's loan.

55. In or around May 2014, in response to Citi's February 28, 2014 letter, Ms. Sutton submitted a second QWR requesting:

- a) SASCO's contact information, and
- b) the specific language in the SASCO servicing agreement that restricts mortgage loan term extension.

56. On May 29, 2014, Citi responded to Ms. Sutton's May 2014 QWR by specifying that the owner of the loan is SASCO 2004-15 but failed to provide the requested contact details. The letter contained no further information about the alleged restriction preventing term extension for mortgage loans owned by SASCO 2004-15. Citi also failed to provide the specific language in Citi's servicing agreement with SASCO 2004-15 that purportedly prohibits mortgage loan term extension.

57. SASCO 2004-15 stands for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2004-15. It is a RMBS and its servicing agreement is available through the Securities and Exchange Commission's online database, EDGAR.

58. Contrary to Citi's statements, the servicing agreement between SASCO 2004-15 and Citi on file with the SEC does not prohibit extension of the term of a mortgage loan owned by SASCO 2004-15 and serviced by Citi. Thus, Citi was not prohibited from extending the term of Ms. Sutton's mortgage to 377 months, which would eliminate the \$197,730.14 balloon payment.

59. On August 1, 2014, MFY Legal Services, Inc. ("MFY"), acting on Ms. Sutton's behalf, sent a third QWR to Citi stating that Ms. Sutton's account was in error due to Citi's failure to provide a proper HAMP modification. This QWR included each of Citi's previous letters regarding the loan's investor and the servicing agreement. The QWR also explained that the servicing agreement did not have any language that would prevent Citi from offering term extension. A copy of this QWR is attached as Exhibit A.

60. In response, on August 27, 2014, Citi mailed a letter to MFY stating that it was "unable to alter agreed upon terms to a loan modification already in place once it's past our discretionary period." A copy of this response letter is attached as Exhibit B.

61. No rule or regulation relieves Citi of its duty to correct the error it made when it permanently modified Ms. Sutton's loan. The excuse Citi offered—that it could not alter the terms of accepted loan modifications—is not recognized under the Handbook, which governs HAMP, or Regulation X, which implements RESPA.

62. The present value of this balloon payment far exceeds the present value of the monthly payments Ms. Sutton would make over the life of the loan were Citi to correct its error and provide her with a HAMP modification that fully amortizes her principal.

63. If Ms. Sutton had not modified her loan in October 2013, and if Citi had then foreclosed on her home, Ms. Sutton would pay less in rent than she now pays each month towards her mortgage. Ms. Sutton incurs this extra housing expense because she wishes to keep her family home.

64. Ms. Sutton has suffered constant emotional distress since signing the permanent modification agreement. The looming balloon payment plagues her thoughts, and the ever-present fear of losing her home—an event so certain that Ms. Sutton knows the exact date—

leaves her with only a few hours of restless sleep a night. This insomnia so haunted her that one month after she executed the permanent modification agreement, Ms. Sutton was prescribed sleeping pills by her doctor. Listless days follow her sleepless nights. Headaches, bouts of crying, and fatigue fill her waking hours. Overwhelmed by the prospect of another imminent default, she struggles to maintain her home and care for her family. And this feeling of helplessness, of being unable to save the family home, embarrasses Ms. Sutton, an embarrassment only heightened when her children learned of the balloon payment and came to understand that their parents would likely lose their home in 2019.

FIRST CAUSE OF ACTION

VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT, 12 U.S.C. §§ 2601-2617

65. Ms. Sutton restates, realleges and incorporates by reference all foregoing paragraphs.

66. Under RESPA, if a servicer of a federally related mortgage loan receives a QWR from a borrower alleging an error, it must either “make appropriate corrections in the account of the borrower” or “after conducting an investigation, provide the borrower with a written explanation or clarification that includes ... a statement of the reasons for which the servicer believes the account of the borrower is correct ...” 12 U.S.C. § 2605(e)(2); *see also* 12 C.F.R. § 1024.35(e)(1)(i) (2015).

67. At all relevant times, Ms. Sutton’s loan was, and continues to be, a “federally related mortgage loan...” 12 U.S.C. § 2605(e). A federally related mortgage loan is defined to include, *inter alia*, “any loan (other than temporary financing such as a construction loan) which ... is secured by a first or subordinate lien on residential real property (including units of condominium and cooperatives) designed principally for the occupancy of from one to four

families” and “is made in whole or in part by any lender the deposits of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government...” *Id.* at § 2602(1); *see also* 12 C.F.R. § 1024.2(b) (2015).

68. At all relevant times, Citi was, and continues to be, a servicer under 12 U.S.C. § 2605(i)(2). *See also* 12 C.F.R. § 1024.2(b) (2015).

69. Ms. Sutton’s three written communications – sent to Citi in February 2014, May 2014 and August 2014 – qualify as QWRs under 12 U.S.C. § 2605(e) because they were each a “written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer” that included “the name and account of the borrower” and either “a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error” or “sufficient detail to the servicer regarding other information sought by the borrower.” 12 U.S.C. § 2605(e)(1)(B); *see also* 12 C.F.R. § 1024.35(a) (2015).

70. In its response to Ms. Sutton’s third QWR sent on August 1, 2014, Citi did not correct Ms. Sutton’s account by extending the maturity date of her loan, even though HAMP requires that Citi extend the term of Ms. Sutton’s loan and Citi faced no prohibition on doing so. Nor did Citi provide Ms. Sutton with a written statement of the reasons why it believed the account was correct. Having failed to either correct the account or explain why the account was correct, Citi’s response to the August 1, 2014 QWR violated 12 U.S.C. § 2605(e)(2).

71. Upon information and belief, Citi did not conduct a reasonable investigation into the error alleged in Ms. Sutton’s August 1, 2014 QWR.

72. Additionally, if a servicer receives a QWR stating that the borrower’s account is in error, and it determines that no error occurred, the servicer must include in its response “a

statement of the borrower's right to request documents relied upon by the servicer in reaching its determination" and "information regarding how the borrower can request such documents..." 12 C.F.R. § 1024.35(e)(1)(i)(B) (2015).

73. In violation of 12 C.F.R. § 1024.35(e)(1)(i)(B), Citi's responses to both the February 2014 QWR and the August 2014 QWR do not include statements that Ms. Sutton is entitled to request the documents that Citi relied upon, nor do they include information regarding how Ms. Sutton could request those documents.

74. As a result of Citi's failure to comply with RESPA, Ms. Sutton has suffered and continues to suffer actual damages:

- a) Ms. Sutton has suffered the financial damage of having a balloon payment of over \$197,730.14 due on March 1, 2019 rather than paying this sum over an extended term;
- b) Ms. Sutton has suffered the financial damage of making monthly mortgage payments in excess of the rent she otherwise would pay, towards a home that she will ultimately lose to foreclosure if Citi does not extend the term of the loan;
- c) Ms. Sutton has suffered emotional distress as a result of the uncertainty of her situation and because the looming balloon payment threatens her long-term ownership of her Home; and
- d) Ms. Sutton has suffered incidental costs related to the sending of correspondence to Citi, such as postage and travel to her attorney's office.

75. Upon information and belief, Citi's repeated refusal to comply with RESPA in response to Ms. Sutton's three QWRs is part of a pattern and practice of noncompliance with this Act.

76. Ms. Sutton is therefore entitled to actual damages, additional damages, and reasonable attorney's fees, including litigation expenses and costs. 12 U.S.C. § 2605(f).

SECOND CAUSE OF ACTION

VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW § 349

77. Ms. Sutton restates, realleges and incorporates by reference all foregoing paragraphs.

78. New York General Business Law § 349 prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state . . ." where that conduct is consumer oriented.

79. Here, Citi's deceptive conduct includes (1) failing to provide Ms. Sutton with the HAMP modification that she is entitled to, one that extends the term of her loan; (2) misrepresenting to Ms. Sutton that this was the best modification that Citi could provide; and (3) using the QWR process to further deceive Ms. Sutton by (i) misrepresenting the reason for the balloon payment in response to Ms. Sutton's QWRs and (ii) improperly refusing to extend the term of the loan as required under HAMP, after Ms. Sutton alerted Citi to this error.

80. Citi committed the above-described acts willfully and/or knowingly.

81. Citi's acts and practices are consumer oriented and have had and will continue to have a broad impact on consumers at large.

82. Citi's wrongful and deceptive acts have caused injury and damage to Ms. Sutton and unless enjoined, will cause further irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- i. Enter judgment against Defendant Citi and in favor of Plaintiff Chantal Sutton on the Causes of Action in this Complaint;
- ii. Enter judgment declaring that the acts and practices of Defendant complained of herein constitute a violation of RESPA;
- iii. Enter judgment declaring that the acts and practices of Defendant complained of herein constitute a violation of New York General Business Law § 349;
- iv. Award injunctive relief compelling Defendant to correct the error Plaintiff identified in her QWR by extending the term of her loan;
- v. Award Plaintiff actual damages and interest thereon in the amount to be determined at trial;
- vi. Award Plaintiff additional damages in the amount to be determined at trial;
- vii. Award Plaintiff reasonable costs and litigation expenses of this action as set forth above;
- viii. Award Plaintiff reasonable attorney's fees; and
- ix. Award such other further relief as the Court deems just and proper.

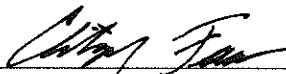
JURY TRIAL DEMANDED

Plaintiff requests a jury on all claims so triable.

Dated: March 9, 2016
New York, New York

Respectfully Submitted,

MFY LEGAL SERVICES, INC.

By:  _____

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