

07-766-CD
Credit Based vs Samuel Miceli et al

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2007-766-CD

PHELAN HALLINAN & SCHMIEG, LLP
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154438

CREDIT BASED ASSET SERVICING
AND SECURITIZATION LLC
4828 LOOP CENTRAL DRIVE
HOUSTON, TX 77081-2226

Plaintiff

v.

SAMUEL MICELI
A/K/A SAMUEL W. MICELI, SR.
EDITH D. MICELI
54 DONAHUE ROAD
LUTHERSBURG, PA 15848

Defendants

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS

CIVIL DIVISION

TERM

NO. 07-766-CD

CLEARFIELD COUNTY

CIVIL ACTION - LAW
COMPLAINT IN MORTGAGE FORECLOSURE

FILED Atty pd. 8500
m/j:14/6/07
MAY 16 2007 sec Sheriff
(USA)
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service:
Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
100 South Street
PO Box 186
Harrisburg, PA 17108
800-692-7375

Notice to Defend:
David S. Meholick, Court Administrator
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
814-765-2641 x 5982

**IF THIS IS THE FIRST NOTICE THAT YOU HAVE
RECEIVED FROM THIS OFFICE, BE ADVISED THAT:**

**PURSUANT TO THE FAIR DEBT COLLECTION
PRACTICES ACT, 15 U.S.C. § 1692 et seq. (1977),
DEFENDANT(S) MAY DISPUTE THE VALIDITY OF THE
DEBT OR ANY PORTION THEREOF. IF DEFENDANT(S)
DO SO IN WRITING WITHIN THIRTY (30) DAYS OF
RECEIPT OF THIS PLEADING, COUNSEL FOR
PLAINTIFF WILL OBTAIN AND PROVIDE
DEFENDANT(S) WITH WRITTEN VERIFICATION
THEREOF; OTHERWISE, THE DEBT WILL BE ASSUMED
TO BE VALID. LIKEWISE, IF REQUESTED WITHIN
THIRTY (30) DAYS OF RECEIPT OF THIS PLEADING,
COUNSEL FOR PLAINTIFF WILL SEND DEFENDANT(S)
THE NAME AND ADDRESS OF THE ORIGINAL
CREDITOR, IF DIFFERENT FROM ABOVE.**

**THE LAW DOES NOT REQUIRE US TO WAIT UNTIL
THE END OF THE THIRTY (30) DAY PERIOD
FOLLOWING FIRST CONTACT WITH YOU BEFORE
SUING YOU TO COLLECT THIS DEBT. EVEN THOUGH
THE LAW PROVIDES THAT YOUR ANSWER TO THIS**

COMPLAINT IS TO BE FILED IN THIS ACTION WITHIN TWENTY (20) DAYS, YOU MAY OBTAIN AN EXTENSION OF THAT TIME. FURTHERMORE, NO REQUEST WILL BE MADE TO THE COURT FOR A JUDGMENT UNTIL THE EXPIRATION OF THIRTY (30) DAYS AFTER YOU HAVE RECEIVED THIS COMPLAINT. HOWEVER, IF YOU REQUEST PROOF OF THE DEBT OR THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR WITHIN THE THIRTY (30) DAY PERIOD THAT BEGINS UPON YOUR RECEIPT OF THIS COMPLAINT, THE LAW REQUIRES US TO CEASE OUR EFFORTS (THROUGH LITIGATION OR OTHERWISE) TO COLLECT THE DEBT UNTIL WE MAIL THE REQUESTED INFORMATION TO YOU. YOU SHOULD CONSULT AN ATTORNEY FOR ADVICE CONCERNING YOUR RIGHTS AND OBLIGATIONS IN THIS SUIT.

IF YOU HAVE FILED BANKRUPTCY AND RECEIVED A DISCHARGE, THIS IS NOT AN ATTEMPT TO COLLECT A DEBT. IT IS AN ACTION TO ENFORCE A LIEN ON REAL ESTATE.

1. Plaintiff is

CREDIT BASED ASSET SERVICING
AND SECURITIZATION LLC
4828 LOOP CENTRAL DRIVE
HOUSTON, TX 77081-2226

2. The name(s) and last known address(es) of the Defendant(s) are:

SAMUEL MICELI
A/K/A SAMUEL W. MICELI, SR.
EDITH D. MICELI
54 DONAHUE ROAD
LUTHERSBURG, PA 15848

who is/are the mortgagor(s) and/or real owner(s) of the property hereinafter described.

3. On 10/14/1999 mortgagor(s) SAMUEL MICELI AND EDITH D. MICELI made, executed, and delivered a mortgage upon the premises hereinafter described to MELLON BANK, N.A. which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Instrument No: 199917184. PLAINTIFF is now the legal owner of the mortgage and is in the process of formalizing an assignment of same. The mortgage and assignment(s), if any, are matters of public record and are incorporated herein by reference in accordance with Pa.R.C.P. 1019(g); which Rule relieves the Plaintiff from its obligations to attach documents to pleadings if those documents are of public record.
4. The premises subject to said mortgage is described as attached.
5. The mortgage is in default because monthly payments of principal and interest upon said mortgage due 01/10/2007 and each month thereafter are due and unpaid, and by the terms of said mortgage, upon failure of mortgagor to make such payments after a date specified by written notice sent to Mortgagor, the entire principal balance and all interest due thereon are collectible forthwith.

6. The following amounts are due on the mortgage:


Principal Balance	\$33,043.42
Interest	\$1,188.49
12/10/2006 through 05/15/2007 (Per Diem \$7.57)	
Attorney's Fees	\$1,250.00
Cumulative Late Charges	\$161.72
10/14/1999 to 05/15/2007	
Cost of Suit and Title Search	<u>\$750.00</u>
Subtotal	\$36,393.63
Escrow	
Credit	\$0.00
Deficit	\$0.00
Subtotal	<u>\$0.00</u>
TOTAL	\$36,393.63

7. If the mortgage is reinstated prior to a Sheriff's Sale, the attorney's fee set forth above may be less than the amount demanded based on work actually performed. The attorney's fees requested are in conformity with the mortgage and Pennsylvania law. Plaintiff reserves its right to collect attorney's fees up to 5% of the remaining principal balance in the event the property is sold to a third party purchaser at Sheriff's Sale, or if the complexity of the action requires additional fees in excess of the amount demanded in the Action.
8. Plaintiff is not seeking a judgment of personal liability (or an in personam judgment) against the Defendant(s) in the Action; however, Plaintiff reserves its right to bring a separate Action to establish that right, if such right exists. If Defendant(s) has/have received a discharge of personal liability in a bankruptcy proceeding, this Action of Mortgage Foreclosure is in no way an attempt to reestablish such personal liability discharged in bankruptcy, but only to foreclose the mortgage and sell the mortgaged premises pursuant to Pennsylvania Law.

9. Notice of Intention to Foreclose as set forth in Act 6 of 1974, Notice of Homeowner's Emergency Assistance Program pursuant to Act 91 of 1983, as amended in 1998, and/or Notice of Default as required by the mortgage document, as applicable, have been sent to the Defendant(s) on the date(s) set forth thereon, and the temporary stay as provided by said notice has terminated because Defendant(s) has/have failed to meet with the Plaintiff or an authorized consumer credit counseling agency, or has/have been denied assistance by the Pennsylvania Housing Finance Agency.
10. This action does not come under Act 91 of 1983 because the mortgage premises is not the principal residence of Defendant(s).
11. Plaintiff hereby releases EDITH D. MICELI from liability for the debt secured by the mortgage.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$36,393.63, together with interest from 05/15/2007 at the rate of \$7.57 per diem to the date of Judgment, and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.

PHELAN HALLINAN & SCHMIEG, LLP

By: 
/s/Francis S. Hallinan
LAWRENCE T. PHELAN, ESQUIRE
DANIEL G. SCHMIEG, ESQUIRE
FRANCIS S. HALLINAN, ESQUIRE
Attorneys for Plaintiff

LEGAL DESCRIPTION

ALL THAT CERTAIN PROPERTY SITUATED IN THE TOWNSHIP OF BRADY IN THE
COUNTY OF CLEARFIELD AND COMMONWEALTH OF PENNSYLVANIA, BEING
MORE FULLY DESCRIBED IN A DEED DATED 01/13/1992 AND RECORDED 01/22/1992,
AMONG THE LAND RECORDS OF THE COUNTY AND STATE SET FORTH ABOVE, IN
DEED VOLUME 1438 AND PAGE 554. TAX MAP OR PARCEL ID NO.: 107-C07-69
ADDRESS: RURAL RTE 1 BOX 54, LUTHERSBURG, PA 15848

PREMISES BEING: 54 DONAHUE ROAD

VERIFICATION

FRANCIS S. HALLINAN, ESQUIRE hereby states that he is attorney for PLAINTIFF in this matter, that Plaintiff is outside the jurisdiction of the court and or the Verification could not be obtained within the time allowed for the filing on the pleading, that he is authorized to make this verification pursuant to Pa. R. C. P. 1024 (c) and that the statements made in the foregoing Civil Action in Mortgage Foreclosure are based upon information supplied by Plaintiff and are true and correct to the best of his knowledge, information and belief.

The undersigned understands that this statement is made subject to the penalties of 18 Pa. C.S. Sec. 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "F. S. Hallinan", written over a horizontal line.

FRANCIS S. HALLINAN, ESQUIRE
Attorney for Plaintiff

DATE: 5/13/07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102800
NO: 07-766-CD
SERVICE # 1 OF 2
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: CREDIT BASED ASSET SERVICING AND SECURITIZATION LLC
vs.
DEFENDANT: SAMUEL MICELI aka SAMUEL W. MICELI SR. & EDITH D. MICELI

SHERIFF RETURN

NOW, May 30, 2007 AT 2:30 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON SAMUEL MICELI aka SAMUEL W. MICELI SR. DEFENDANT AT 54 DONAHUE ROAD, LUTHERSBURG, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO EDITH MICELI, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

FILED
OCT 08 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102800
NO: 07-766-CD
SERVICE # 2 OF 2
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: CREDIT BASED ASSET SERVICING AND SECURITIZATION LLC
vs.
DEFENDANT: SAMUEL MICELI aka SAMUEL W. MICELI SR. & EDITH D. MICELI

SHERIFF RETURN

NOW, May 30, 2007 AT 2:30 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON EDITH D. MICELI DEFENDANT AT 54 DONAHUE ROAD, LUTHERSBURG, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO EDITH MICELI, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102800
NO: 07-766-CD
SERVICES 2
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: CREDIT BASED ASSET SERVICING AND SECURITIZATION LLC
vs.
DEFENDANT: SAMUEL MICELI aka SAMUEL W. MICELI SR. & EDITH D. MICELI

SHERIFF RETURN

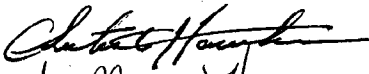
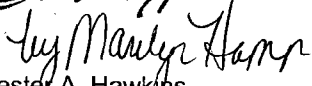
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PHELAN	597497	20.00
SHERIFF HAWKINS	PHELAN	597497	56.98

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff