

07-1922-CD
Wells Fargo vs Gary A. Lutzal

PHELAN HALLINAN & SCHMIEG, LLP
LAWRENCE T. PHELAN, ESQ., Id. No. 32227
FRANCIS S. HALLINAN, ESQ., Id. No. 62695
DANIEL G. SCHMIEG, ESQ., Id. No. 62205
ONE PENN CENTER PLAZA, SUITE 1400
PHILADELPHIA, PA 19103
(215) 563-7000 _____ 166033

ATTORNEY FOR PLAINTIFF

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715

COURT OF COMMON PLEAS

CIVIL DIVISION

Plaintiff

TERM

v.

NO. 07-1922-CD

CLEARFIELD COUNTY

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858

Defendants

CIVIL ACTION - LAW
COMPLAINT IN MORTGAGE FORECLOSURE

FILED Any pd. 85.00
m14:00/31
NOV 26 2007 6 cc Sheriff
(LW)

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

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715

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

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858

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

3. On 12/20/2004 mortgagor(s) made, executed, and delivered a mortgage upon the premises hereinafter described to PLAINTIFF which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Instrument No: 200420603. 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 08/01/2007 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	\$41,029.99
Interest	\$1,108.80
07/01/2007 through 11/21/2007 (Per Diem \$7.70)	
Attorney's Fees	\$1,325.00
Cumulative Late Charges	\$13.89
12/20/2004 to 11/21/2007	
Cost of Suit and Title Search	<u>\$550.00</u>
Subtotal	\$44,027.68
Escrow	
Credit	\$0.00
Deficit	\$871.69
Subtotal	<u>\$871.69</u>
TOTAL	\$44,899.37

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).

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$44,899.37, together with interest from 11/21/2007 at the rate of \$7.70 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 piece or parcel of land situated in the Township of Morris, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located on the West side of State Route 1009. Said point is also the Southeast corner of, now or formerly, B. Ferguson; thence along said road South twenty three degrees, thirty minutes East seventy seven and five tenths feet (77.5) to an iron pin; thence along lands of Clark Bloom South seventy two degrees, thirty four minutes, ten seconds West forty six and forty four hundredths feet (46.44) to the center of a party wall separating the home of Clark Bloom and the home of Dorothy E. Bloom; thence through the said party wall, South sixty seven degrees, one minute, thirty five seconds West thirty and fourteen hundredths feet (30.14) to the end of said wall; thence along land of Clark Bloom South seventy three degrees, fifty seven minutes West seventy three and fifty eight hundredths feet (73.58) to an iron pin; thence along lands of Clark Bloom North twenty three degrees thirty minutes West seventy seven and five tenths feet (77.5) to an iron pin on line of, now or formerly, B. Ferguson; thence along lands of same, North seventy two degrees eighty minutes five seconds East one hundred fifty feet (150.00) to an iron pin the place of beginning.

BEING the same premises granted and conveyed unto Donald H. Dinant, as to a one-half interest, and Kenneth Dinant, as to a one-half interest, as Tenants in Common, by Deed of Donald H. Dinant, and Kenneth L. Dinant dated July 25, 1996 and recorded July 26, 1996 in Clearfield County Record Book 1776, Page 82.

Harry J. Dinant and Margaret J. Dinant were granted life estates in that deed. The said Margaret J. Dinant died January 18, 2003 and the said Harry J. Dinant died March 22, 2004, thereby extinguishing their life estates.

BEING the same premises granted and conveyed unto Gary A. Lutz and Julie R. Lutz, husband and wife, from Donald H. Dinant and Charlene R. Dinant, husband and wife, and Kenneth Dinant, single, by deed dated 12/20/04 and recorded 12/27/04 in Clearfield County Instrument Number 200420602.

PARCEL NO: 124-Q10-705-00013.

PROPERTY BEING: 523 DEER CREEK 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 of 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 its knowledge, information and belief. Furthermore, counsel intends to substitute a verification from Plaintiff upon receipt.

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



Francis S. Hallinan, Esquire
Attorney for Plaintiff

DATE: 11/21/07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715,

Plaintiff

vs.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858,

Defendants

No. 07 – 1922 – C.D.

ANSWER AND NEW MATTER

Filed on behalf of:
Defendants

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN, KUBISTA & RYAN LLP
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED
JAN 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

3cc
J.R. Ryan
OK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715,

Plaintiff

vs.

No. 07 – 1922 – C.D.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858,

Defendants

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 New Matter 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 New Matter or for any other claim or relief requested by the Defendants. 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
Market & Second Streets
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715,

Plaintiff

vs.

No. 07 – 1922 – C.D.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858,

Defendants

ANSWER AND NEW MATTER

NOW COMES, Gary A. Lutz and Julie R. Lutz, Defendants above named, and by their Attorneys, Belin, Kubista & Ryan, LLP, file their Answer and New Matter to the Complaint of the Plaintiff as follows:

ANSWER

1. Admitted.
2. Denied in that the correct address of the Defendants is 61 Douglas Drive, Morrisdale, PA 16858.
3. Admitted.
4. Admitted.
5. It is denied that the said mortgage is in default, for the reasons set forth in the New Matter of the Defendants set forth herein below.

6. It is denied that the said mortgage is in default, for the reasons set forth in the New Matter of the Defendants set forth herein below.

7. The averments of Paragraph 7 set forth conclusions of law to which no responsive pleading is required.

8. The averments of Paragraph 8 set forth conclusions of law to which no responsive pleading is required.

9. No response required.

10. Admitted.

WHEREFORE, Defendants request that Plaintiff's Complaint be dismissed and that judgment be entered in their favor and against the Plaintiff.

NEW MATTER

11. Paragraphs 1 through and including Paragraph 10 of Defendant's Answer are incorporated herein by reference as if set forth at length.

12. Under the terms of the loan documents referenced herein above, a portion of the monthly payment by the Defendants was to be placed into an escrow account by the Plaintiff for the purpose of paying the real estate taxes on the property which represents the collateral for said loan.

13. In November of 2005, Plaintiff erroneously sent an overpayment on the said real estate taxes in the amount of \$1,571.09 to the local tax collector.

14. Subsequently, and solely as the result of this overpayment, Plaintiff notified Defendants that the escrow account referred to above had been depleted, and that Defendants' monthly payments were to be increased in order to restore an adequate balance in said account.

15. Defendants, after determining that the overpayment had been made, advised that they could not afford the increased payment and further advised that Plaintiff should seek the funds from the tax collector.

16. Plaintiff failed and refused to remedy its error and continued to insist that Defendants make increased payments in order to avoid a default.

17. Eventually, Defendants sought the assistance of the Consumer Protection Division of the Pennsylvania State Attorney General's Office, which assisted Defendants in negotiating an agreement with the Plaintiff to resolve the matter.

18. A written agreement was prepared and was executed by the Defendants. A true and correct copy of said Agreement is attached hereto, marked Exhibit "A" and is incorporated herein by reference as if set forth at length.

19. Pursuant to the execution of the said Agreement, Plaintiff, through its agents and representatives, advised Defendants that foreclosure proceedings would not occur and that Defendants should resume making their normal payments.

20. Defendants believed at that point that the matter had been resolved, until they were served with the above captioned Complaint in Mortgage Foreclosure on or about December 26, 2007.

21. Defendants have in fact made their monthly payments as required and any disparity is the direct result of the error made by the Plaintiff in overpayment of the real estate taxes as aforesaid.

22. Plaintiffs have failed to correct the problem despite the efforts of the Defendants and the Attorney General's Office to address the matter.

23. Plaintiffs have breached the Agreement as set forth above, which was negotiated in good faith by the Defendants with the assistance of the Attorney General's Office.

24. As a result, Defendants are not in default as alleged, and believe and therefore aver that the Plaintiff is not entitled to a judgment.

WHEREFORE, Defendants request that judgment be entered in their favor and against the Plaintiff.

BELIN, KUBISTA & RYAN LLP

A handwritten signature in black ink, appearing to read "Jerr", is written over a horizontal line.


John R. Ryan
Attorney for Defendants

We verify that the statements made in this Answer and New Matter are true and correct.

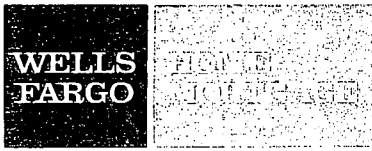
We understand that false statements herein are made subject to the penalties of Pa. C.S. 4904,
relating to unsworn falsification to authorities.



Gary A. Lutz



Julie R. Lutz



Wells Fargo Home Mortgage
MAC X2302-02J
1 Home Campus
Des Moines, IA 50328-0001

September 25, 2007

State of Pennsylvania
Department of Consumer Protection
Attn: Timothy B. Shirley
50 N Main Street
Doylestown, PA 18901

Dear Timothy B. Shirley:

RE: Gary A Lutz
Reference No. F-003023-2007

I have been asked to respond on behalf of Wells Fargo Home Mortgage to the above referenced complaint.

Wells Fargo Home Mortgage recognizes that it is Mr. Lutz's contention that property taxes for his residence were paid out of the escrow account for his mortgaged property located at 523 Deer Creek Road, Morrisdale, Pennsylvania. We further recognize that Mr. Lutz believes this disbursement increased the shortage in the escrow account on Mr. Lutz's mortgaged property, which subsequently increased his payment.

Wells Fargo Home Mortgage contacted Mr. Lutz's taxing authorities and confirmed that the \$1,571.09 disbursed from Mr. Lutz's escrow account on November 8, 2005, were not for taxes on his mortgaged property. However, as Wells Fargo Home Mortgage did advance funds on Mr. Lutz's behalf, it is still necessary for Wells Fargo Home Mortgage to recover our monies.

If Mr. Lutz also paid these property taxes, Wells Fargo Home Mortgage will need a front and back copy of his cancelled check to file a request with the taxing authority for a refund and the monthly mortgage payment will be adjusted accordingly. Enclosed with Mr. Lutz's copy of this letter is a self addressed, stamped envelope for his convenience.

If Mr. Lutz did not pay these taxes; he may remit a payment of \$1,571.09 as reimbursement, which will be applied to his mortgage account and his monthly mortgage payment adjusted accordingly. Mr. Lutz may forward his payment to my attention in the enclosed envelop.

If this proves to be financial hardship for Mr. Lutz, Wells Fargo Home Mortgage is willing to move the \$1,571.09 to the recoverable advance account for Mr. Lutz's mortgage loan and adjust his monthly mortgage payment accordingly. Mr. Lutz may reimburse Wells Farog Home Mortgage for the recoverable advance balance at his earliest convenience, or at the time the loan is paid in full.

Mr. Lutz
September 25, 2007
Page 2

If Mr. Lutz wishes to have the funds moved to the recoverable advance account, he will need to execute the enclosed Acknowledgement of Recoverable Balance document and returned it to me in the enclosed envelope.

As of the date of this letter Mr. Lutz's mortgage account is due for the July 1, 2007 mortgage installment. Enclosed is a mortgage loan payment history for your reference.

If you have any additional questions or need clarification regarding the information provided, please contact me directly at (800) 853-8516, extension 42378. I am available to assist you Monday through Friday, 7:00 a.m. to 4:00 p.m., Central Time.

Sincerely,



Kristi Blue
Executive Specialist

KB/709-0141501304

Enclosures (3)

cc/Encl: Mr. Gary A. Lutz
Ms. Julie R. Lutz
61 Douglas Lane
Morrisdale, PA 16858



Wells Fargo Home Mortgage
MAC X2302-02J
1 Home Campus
Des Moines, IA 50328-0001

September 25, 2007

Loan Number: 708-0141501304
Property Address: 523 Deer Creek Road
Morrisdale, PA 16858

Acknowledgement of Recoverable Balance

Wells Fargo Home Mortgage has advanced funds for the payment of my property taxes/insurance. By my signature below, I (Gary A. Lutz and Julie R. Lutz) authorize Wells Fargo Home Mortgage to move \$1,517.09 to the recoverable balance account on the above-referenced loan. I understand that the recoverable balance may remain on the loan until such time as the loan is paid in full, however I may pay it at any time. I understand that interest will not be charged on the \$1,517.09. I further acknowledge that the recoverable balance must be satisfied before the loan can be paid in full.

Borrower's Signature:

Date:

*

Gary A. Lutz

*

Julie R. Lutz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715,

Plaintiff

vs.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858,

Defendants

No. 07 – 1922 – C.D.

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendants

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN, KUBISTA & RYAN LLP
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED NO CC
01/31/08
JAN 25 2008
LUT

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715,

Plaintiff

vs.

No. 07 – 1922 – C.D.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858,

Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served a certified copy of Answer and New Matter filed on behalf of GARY A. LUTZ and JULIE R. LUTZ, Defendants in the above captioned matter, on the following party by postage prepaid first-class United States mail, on the 25th day of January, 2008:

Francis S. Hallinan, Esquire
Phelan Hallinan & Schmieg, LLP
One Penn Center Plaza, Suite 1400
Philadelphia, PA 19103
Attorney for Plaintiff

BELIN, KUBISTA & RYAN LLP



John R. Ryan
Attorney for Defendant

PHELAN HALLINAN & SCHMIEG, LLP

BY: Francis S. Hallinan, Esquire

Identification No. 62695

One Penn Center Plaza

Suite 1400

Philadelphia, PA 19103

(215) 563-7000

Attorney For Plaintiff

WELLS FARGO BANK N.A.

v.

GARY A. LUTZ

JULIE R. LUTZ

*COURT OF COMMON
PLEAS*

CIVIL DIVISION

COURT NO. 07-1922-CD

CLEARFIELD COUNTY

PRAECIPE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

*Kindly substitute the attached verification for the verification originally filed with the complaint
in the instant matter.*

By: *Francis S. Hallinan*
Francis S. Hallinan, Esquire
Attorney for Plaintiff

Dated: *1/30/08*

FILED *no CC*
7/12/44/01
FEB 01 2008 *(GP)*

William A. Shaw
Prothonotary/Clerk of Courts

PHELAN HALLINAN & SCHMIEG, LLP

BY: Francis S. Hallinan, Esquire

Identification No. 62695

One Penn Center at Suburban Station

Suite 1400

Philadelphia, PA 19103

(215) 563-7000

Attorney For Plaintiff

WELLS FARGO BANK, N.A.

COURT OF COMMON PLEAS
CIVIL DIVISION

v.

CLEARFIELD COUNTY

GARY A. LUTZ

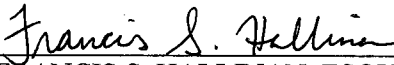
JULIE R. LUTZ

NO. 07-1922-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Praecipe to Substitute Verification was sent via first class mail to the following on the date listed below:

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858


FRANCIS S. HALLINAN, ESQUIRE
LAWRENCE T. PHELAN, ESQUIRE
DANIEL S. SCHMIEG, ESQUIRE
Attorney for Plaintiff

Dated: 1/30/08

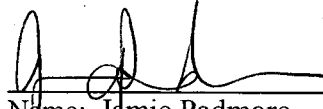
FILE: 166033

VERIFICATION

Vice President of Loan Documentation

Jamie Padmore hereby states that he/she is

of WELLS FARGO BANK N.A., servicing agent for Plaintiff in this matter, that he/she
is authorized to take this Verification, and that the statements made in the foregoing Civil Action in
Mortgage Foreclosure are true and correct to the best of his/her 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.



Name: Jamie Padmore

DATE: November 28, 2007

Title:

Vice President of Loan Documentation

Company: WELLS FARGO BANK N.A.

Loan: 0141501304

File #: 166033

FILED m/2:30 2m
MAR 31 2008
William A. Shaw
Prothonotary/Clerk of Courts
1cc a/cert of
disc issued to
Atty Hallinan

PHELAN HALLINAN & SCHMIEG, LLP
BY: FRANCIS S. HALLINAN, ESQUIRE
Identification No. 62695
One Penn Center at Suburban Station
1617 John F. Kennedy Boulevard, Suite 1400
Philadelphia, PA 19103-1814
(215) 563-7000

ATTORNEY FOR PLAINTIFF

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715
Plaintiff

COURT OF COMMON PLEAS

CIVIL DIVISION

v.

NO. 07-1922-CD

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858
Defendants

CLEARFIELD COUNTY

PRAECIPE

TO THE PROTHONOTARY:

- ☐ Please mark the above referenced case Discontinued and Ended without prejudice.
- ☐ Please mark the above referenced case Settled, Discontinued and Ended.
- ☐ Please mark Judgments satisfied and the Action settled, discontinued and ended.
- ☐ Please Vacate the judgment entered and mark the action discontinued and ended without prejudice.
- ☒ Please withdraw the complaint and mark the action discontinued and ended without prejudice.

Date:

3/27/08

Francis S. Hallinan

Francis S. Hallinan, Esquire

PHELAN HALLINAN & SCHMIEG, LLP
BY: FRANCIS S. HALLINAN, ESQUIRE
Identification No. 62695
One Penn Center at Suburban Station
1617 John F. Kennedy Boulevard, Suite 1400
Philadelphia, PA 19103-1814
(215) 563-7000

ATTORNEY FOR PLAINTIFF

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715
Plaintiff

COURT OF COMMON PLEAS

CIVIL DIVISION

v.

NO. 07-1922-CD

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858
Defendants

CLEARFIELD COUNTY

CERTIFICATION OF SERVICE

I hereby certify true and correct copies of the foregoing Plaintiff's Praecipe to Withdraw Complaint and mark the action discontinued and ended was served by regular mail on counsel for Defendant on the date listed below:

John R. Ryan, Esquire
Belin, Kubista & Ryan, LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830

Date: 3/27/08

By: Francis S. Hallinan
Francis S. Hallinan, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Wells Fargo Bank, N.A.

Vs.

No. 2007-01922-CD

Gary A. Lutz
Julie R. Lutz

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on March 31, 2008, marked:

Withdraw the Complaint and mak the action discontinued and ended without Prejudice

Record costs in the sum of \$85.00 have been paid in full by Francis S. Hallinan Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 31st day of March A.D. 2008.



William A. Shaw, Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 6 Services

Sheriff Docket # **103476**

WELLS FARGO BANK, N.A.

Case # 07-1922-CD

vs.

GARY A. LUTZ and JULIE R. LUTZ

TYPE OF SERVICE COMPLAINT IN MORTGAGE FORECLOSURE

SHERIFF RETURNS

NOW April 11, 2008 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE "NOT FOUND" AS TO GARY A. LUTZ, DEFENDANT. RR#2 BOX 47, MORRISDALE "NO SUCH ADDRESS".

SERVED BY: /

FILED

6/1:35 cm
APR 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 2 of 6 Services

Sheriff Docket # **103476**

WELLS FARGO BANK, N.A.

Case # 07-1922-CD

vs.

GARY A. LUTZ and JULIE R. LUTZ

TYPE OF SERVICE COMPLAINT IN MORTGAGE FORECLOSURE

SHERIFF RETURNS

NOW April 11, 2008 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE "NOT FOUND" AS TO JULIE R. LUTZ, DEFENDANT. RR#2 BOX 47, MORRISDALE "NO SUCH ADDRESS".

SERVED BY: /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103476
NO: 07-1922-CD
SERVICE # 3 OF 6
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: WELLS FARGO BANK, N.A.
vs.
DEFENDANT: GARY A. LUTZ and JULIE R. LUTZ

SHERIFF RETURN

NOW, December 26, 2007 AT 2:20 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON GARY A. LUTZ DEFENDANT AT 61 DOUGLAS LANE, MORRISDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ASHLEE LUTZ, DAUGHTER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103476
NO: 07-1922-CD
SERVICE # 4 OF 6
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: WELLS FARGO BANK, N.A.
vs.
DEFENDANT: GARY A. LUTZ and JULIE R. LUTZ

SHERIFF RETURN

NOW, December 26, 2007 AT 2:20 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON JULIE R. LUTZ DEFENDANT AT 61 DOUGLAS LANE, MORRISDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ASHLEE LUTZ, DAUGHTER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 5 of 6 Services

Sheriff Docket # **103476**

WELLS FARGO BANK, N.A.

Case # 07-1922-CD

vs.

GARY A. LUTZ and JULIE R. LUTZ

TYPE OF SERVICE COMPLAINT IN MORTGAGE FORECLOSURE

SHERIFF RETURNS

NOW April 11, 2008 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE "NOT FOUND" AS TO GARY A. LUTZ, DEFENDANT. 523 DEER CREEK RD., MORRISDALE, "OCCUPIED" /RENTERS.

SERVED BY: /

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 6 of 6 Services

Sheriff Docket # **103476**

WELLS FARGO BANK, N.A.

Case # 07-1922-CD

vs.

GARY A. LUTZ and JULIE R. LUTZ

TYPE OF SERVICE COMPLAINT IN MORTGAGE FORECLOSURE

SHERIFF RETURNS

NOW April 11, 2008 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE "NOT FOUND" AS TO JULIE R. LUTZ, DEFENDANT. 523 DEER CREEK RD., MORRISDALE "OCCUPIED"/RENTERS.

SERVED BY: /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103476
NO: 07-1922-CD
SERVICES 6
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: WELLS FARGO BANK, N.A.
vs.
DEFENDANT: GARY A. LUTZ and JULIE R. LUTZ

SHERIFF RETURN

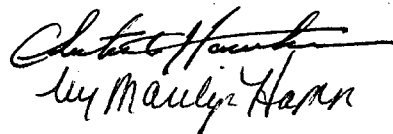
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PHELAN	645461	60.00
SHERIFF HAWKINS	PHELAN	64561	40.00

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

PHELAN HALLINAN & SCHMIEG, LLP
LAWRENCE T. PHELAN, ESQ., Id. No. 32227
FRANCIS S. HALLINAN, ESQ., Id. No. 62695
DANIEL G. SCHMIEG, ESQ., Id. No. 62205
ONE PENN CENTER PLAZA, SUITE 1400
PHILADELPHIA, PA 19103
(215) 563-7000

166033

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715

Plaintiff

v.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858

Defendants

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS

CIVIL DIVISION

TERM

NO. 07-1922-CD

CLEARFIELD COUNTY

CIVIL ACTION - LAW
COMPLAINT IN MORTGAGE FORECLOSURE

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 26 2007

Attest.

William E. Han
Prothonotary/
Clerk of Courts

File #: 166033

We hereby certify the
within to be a true and
correct copy of the
original filed of record

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. Meholic, 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

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715

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

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858

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

3. On 12/20/2004 mortgagor(s) made, executed, and delivered a mortgage upon the premises hereinafter described to PLAINTIFF which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Instrument No: 200420603. 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 08/01/2007 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	\$41,029.99
Interest	\$1,108.80
07/01/2007 through 11/21/2007 (Per Diem \$7.70)	
Attorney's Fees	\$1,325.00
Cumulative Late Charges	\$13.89
12/20/2004 to 11/21/2007	
Cost of Suit and Title Search	<u>\$550.00</u>
Subtotal	\$44,027.68
Escrow	
Credit	\$0.00
Deficit	\$871.69
Subtotal	<u>\$871.69</u>
TOTAL	\$44,899.37

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).

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$44,899.37, together with interest from 11/21/2007 at the rate of \$7.70 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 piece or parcel of land situated in the Township of Morris, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located on the West side of State Route 1009. Said point is also the Southeast corner of, now or formerly, B. Ferguson; thence along said road South twenty three degrees, thirty minutes East seventy seven and five tenths feet (77.5) to an iron pin; thence along lands of Clark Bloom South seventy two degrees, thirty four minutes, ten seconds West forty six and forty four hundredths feet (46.44) to the center of a party wall separating the home of Clark Bloom and the home of Dorothy E. Bloom; thence through the said party wall, South sixty seven degrees, one minute, thirty five seconds West thirty and fourteen hundredths feet (30.14) to the end of said wall; thence along land of Clark Bloom South seventy three degrees, fifty seven minutes West seventy three and fifty eight hundredths feet (73.58) to an iron pin; thence along lands of Clark Bloom North twenty three degrees thirty minutes West seventy seven and five tenths feet (77.5) to an iron pin on line of, now or formerly, B. Ferguson; thence along lands of same, North seventy two degrees eighty minutes five seconds East one hundred fifty feet (150.00) to an iron pin the place of beginning.

BEING the same premises granted and conveyed unto Donald H. Dinant, as to a one-half interest, and Kenneth Dinant, as to a one-half interest, as Tenants in Common, by Deed of Donald H. Dinant, and Kenneth L. Dinant dated July 25, 1996 and recorded July 26, 1996 in Clearfield County Record Book 1776, Page 82.

Harry J. Dinant and Margaret J. Dinant were granted life estates in that deed. The said Margaret J. Dinant died January 18, 2003 and the said Harry J. Dinant died March 22, 2004, thereby extinguishing their life estates.

BEING the same premises granted and conveyed unto Gary A. Lutz and Julie R. Lutz, husband and wife, from Donald H. Dinant and Charlene R. Dinant, husband and wife, and Kenneth Dinant, single, by deed dated 12/20/04 and recorded 12/27/04 in Clearfield County Instrument Number 200420602.

PARCEL NO: 124-Q10-705-00013.

PROPERTY BEING: 523 DEER CREEK 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 of 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 its knowledge, information and belief. Furthermore, counsel intends to substitute a verification from Plaintiff upon receipt.

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



Francis S. Hallinan, Esquire
Attorney for Plaintiff

DATE: 11/21/07

PHELAN HALLINAN & SCHMIEG, LLP
LAWRENCE T. PHELAN, ESQ., Id. No. 32227
FRANCIS S. HALLINAN, ESQ., Id. No. 62695
DANIEL G. SCHMIEG, ESQ., Id. No. 62205
ONE PENN CENTER PLAZA, SUITE 1400
PHILADELPHIA, PA 19103
(215) 563-7000

166033

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715

Plaintiff

v.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858

Defendants

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS

CIVIL DIVISION

TERM

NO. 07-1922-CD

CLEARFIELD COUNTY

CIVIL ACTION - LAW
COMPLAINT IN MORTGAGE FORECLOSURE

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and attested copy of the original
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NOV 26 2007

Attest.



William L. Shaw
Prothonotary/
Clerk of Courts

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PHELAN HALLINAN & SCHMIEG, LLP



By: /s/Francis S. Hallinan

LAWRENCE T. PHELAN, ESQUIRE

DANIEL G. SCHMIEG, ESQUIRE

FRANCIS S. HALLINAN, ESQUIRE

Attorneys for Plaintiff

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PARCEL NO: 124-Q10-705-00013.

PROPERTY BEING: 523 DEER CREEK 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 of 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 its knowledge, information and belief. Furthermore, counsel intends to substitute a verification from Plaintiff upon receipt.

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Francis S. Hallinan, Esquire
Attorney for Plaintiff

DATE: _____

11/21/07

PHELAN HALLINAN & SCHMIEG, LLP
LAWRENCE T. PHELAN, ESQ., Id. No. 32227
FRANCIS S. HALLINAN, ESQ., Id. No. 62695
DANIEL G. SCHMIEG, ESQ., Id. No. 62205
ONE PENN CENTER PLAZA, SUITE 1400
PHILADELPHIA, PA 19103
(215) 563-7000

166033

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715

Plaintiff

v.

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858

Defendants

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS

CIVIL DIVISION

TERM

NO. 07-1922-CD

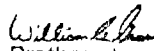
CLEARFIELD COUNTY

CIVIL ACTION - LAW
COMPLAINT IN MORTGAGE FORECLOSURE

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 26 2007

Attest.


Prothonotary/
Clerk of Courts

File #: 166033

We hereby certify the
within to be a true and
correct copy of the
original filed of record

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.

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Pennsylvania Bar Association
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Harrisburg, PA 17108
800-692-7375

Notice to Defend:
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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

WELLS FARGO BANK, N.A.
3476 STATEVIEW BOULEVARD
FORT MILL, SC 29715

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

GARY A. LUTZ
JULIE R. LUTZ
523 DEER CREEK ROAD
MORRISDALE, PA 16858

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

3. On 12/20/2004 mortgagor(s) made, executed, and delivered a mortgage upon the premises hereinafter described to PLAINTIFF which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Instrument No: 200420603. 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 08/01/2007 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	\$41,029.99
Interest	\$1,108.80
07/01/2007 through 11/21/2007 (Per Diem \$7.70)	
Attorney's Fees	\$1,325.00
Cumulative Late Charges	\$13.89
12/20/2004 to 11/21/2007	
Cost of Suit and Title Search	<u>\$550.00</u>
Subtotal	\$44,027.68
Escrow	
Credit	\$0.00
Deficit	\$871.69
Subtotal	<u>\$871.69</u>
TOTAL	\$44,899.37

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).

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$44,899.37, together with interest from 11/21/2007 at the rate of \$7.70 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 piece or parcel of land situated in the Township of Morris, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located on the West side of State Route 1009. Said point is also the Southeast corner of, now or formerly, B. Ferguson; thence along said road South twenty three degrees, thirty minutes East seventy seven and five tenths feet (77.5) to an iron pin; thence along lands of Clark Bloom South seventy two degrees, thirty four minutes, ten seconds West forty six and forty four hundredths feet (46.44) to the center of a party wall separating the home of Clark Bloom and the home of Dorothy E. Bloom; thence through the said party wall, South sixty seven degrees, one minute, thirty five seconds West thirty and fourteen hundredths feet (30.14) to the end of said wall; thence along land of Clark Bloom South seventy three degrees, fifty seven minutes West seventy three and fifty eight hundredths feet (73.58) to an iron pin; thence along lands of Clark Bloom North twenty three degrees thirty minutes West seventy seven and five tenths feet (77.5) to an iron pin on line of, now or formerly, B. Ferguson; thence along lands of same, North seventy two degrees eighty minutes five seconds East one hundred fifty feet (150.00) to an iron pin the place of beginning.

BEING the same premises granted and conveyed unto Donald H. Dinant, as to a one-half interest, and Kenneth Dinant, as to a one-half interest, as Tenants in Common, by Deed of Donald H. Dinant, and Kenneth L. Dinant dated July 25, 1996 and recorded July 26, 1996 in Clearfield County Record Book 1776, Page 82.

Harry J. Dinant and Margaret J. Dinant were granted life estates in that deed. The said Margaret J. Dinant died January 18, 2003 and the said Harry J. Dinant died March 22, 2004, thereby extinguishing their life estates.

BEING the same premises granted and conveyed unto Gary A. Lutz and Julie R. Lutz, husband and wife, from Donald H. Dinant and Charlene R. Dinant, husband and wife, and Kenneth Dinant, single, by deed dated 12/20/04 and recorded 12/27/04 in Clearfield County Instrument Number 200420602.

PARCEL NO: 124-Q10-705-00013.

PROPERTY BEING: 523 DEER CREEK 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 of 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 its knowledge, information and belief. Furthermore, counsel intends to substitute a verification from Plaintiff upon receipt.

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



Francis S. Hallinan, Esquire
Attorney for Plaintiff

DATE: _____

11/21/07

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COURT OF COMMON PLEAS

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NOV 26 2007

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Prothonotary/
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Attorney for Plaintiff

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