

08-937-CD

Wells Fargo vs Wayne Gibbons et al

FILED *Atty pd*
5/12/2008 *\$95.00*
MAY 20 2008 3CC Sheriff

William A. Shaw
Prothonotary/Clerk of Courts

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
MICHELE M. BRADFORD, ESQ., Id. No. 69849
JUDITH T. ROMANO, ESQ., Id. No. 58745
SHEETAL SHAH-JANI, ESQ., Id. No. 81760
JENINE R. DAVEY, ESQ., Id. No. 87077
LAUREN R. TABAS, ESQ., Id. No. 93337
VIVEK SRIVASTAVA, ESQ., Id. No. 202331
JAY B. JONES, ESQ., Id. No. 86657
PETER MULCAHY, ESQ., Id. No. 61791
ANDREW SPIVACK, ESQ., Id. No. 84439
JAIME MCGUINNESS, ESQ., Id. No. 90134
ONE PENN CENTER PLAZA, SUITE 1400
PHILADELPHIA, PA 19103
(215) 563-7000 178259

ATTORNEY FOR PLAINTIFF

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

Plaintiff
v.

WAYNE C. GIBBONS
NANCY L. GIBBONS
37 RAY BOONE ROAD
PURVIS, MS 39475

Defendants

COURT OF COMMON PLEAS
CIVIL DIVISION
TERM
NO. 08-937-CD
CLEARFIELD COUNTY

CIVIL ACTION - LAW
COMPLAINT IN MORTGAGE FORECLOSURE

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:
Daniel J. Nelson, 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:

WAYNE C. GIBBONS
NANCY L. GIBBONS
37 RAY BOONE ROAD
PURVIS, MS 39475

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

3. On 08/16/1995 WAYNE C. & ROBERT R. & BETTY F. GIBBONS made, executed and delivered a mortgage upon the premises hereinafter described to CONSUMER FIRST MORTGAGE, INC. which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Mortgage Book No. 1697, Page 127. By Assignment of Mortgage recorded 04/12/2007 the mortgage was assigned to PLAINTIFF which Assignment is recorded in Assignment of Mortgage Instrument No. 200705890. 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 01/01/2008 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	\$43,670.64
Interest	\$1,266.58
12/01/2007 through 05/15/2008	
Attorney's Fees	\$1,250.00
Cumulative Late Charges 08/16/1995 to 05/15/2008	\$77.46
Cost of Suit and Title Search	<u>\$550.00</u>
Subtotal	\$46,814.68

Escrow	
Credit	\$0.00
Deficit	\$16.26
Subtotal	<u>\$16.26</u>
TOTAL	\$46,830.94

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. This action does not come under Act 6 of 1974 because the original mortgage amount exceeds \$50,000.
10. This action does not come under Act 91 of 1983 because the mortgage is FHA-insured.
11. Plaintiff hereby releases ROBERT R. GIBBONS and BETTY F. GIBBONS from liability for the debt secured by the mortgage.
12. By virtue of the death of ROBERT R. GIBBONS on 1/19/04 and BETTY F. GIBBONS on 6/1/05, WAYNE C. and NANCY L. GIBBONS became sole owner of the mortgaged premises as surviving tenant by the entireties or surviving joint tenant with right of survivorship.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$46,830.94, together with interest from 05/15/2008 at the rate of \$7.63 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:

Judith T. Romano 58745
LAWRENCE T. PHELAN, ESQUIRE
FRANCIS S. HALLINAN, ESQUIRE
DANIEL G. SCHMIEG, ESQUIRE
MICHELE M. BRADFORD, ESQUIRE
JUDITH T. ROMANO, ESQUIRE
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JAY B. JONES, ESQUIRE
PETER MULCAHY, ESQUIRE
ANDREW SPIVACK, ESQUIRE
JAIME MCGUINNESS, ESQUIRE

Attorneys for Plaintiff

LEGAL DESCRIPTION

ALL those two certain lots of ground situate in the Second Ward of Clearfield Borough, Clearfield County, Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on Park Avenue and corner of an alley; thence South along the line of said alley one hundred and seventy-two (172) feet to another alley; thence West along line of said last mentioned alley eighty (80) feet to a post; thence North by a line parallel with the first above mentioned alley and equally distant therefrom, one hundred and seventy-two (172) feet to a post on Park Avenue; thence East by line of said Park Avenue eighty (80) feet to post at alley and place of beginning. Being eighty (80) feet front on said Park Avenue and extending back in depth one hundred and seventy-two (172) feet.

THE SECOND THEREOF: Known as Lot No. 127, in Block 'H' in the Betts Addition to the Borough of Clearfield, aforesaid, having a frontage of fifty (50) feet on Park Avenue and extending in depth one hundred and seventy-two (172) feet to an alley; said Lot being bounded on the North by an alley; on the East by line of Lot No. 130; on the South by line of Park Avenue and on the West by an alley.

Being further described in the assessment records of Clearfield County as Tax Map No. K08-228-00005.

BEING the same premises as was conveyed to the Mortgagors herein by Deed of Rodney A. Eisenhower, et ux dated August 16, 1995 and entered for record in the Recorder's Office of Clearfield County in Deed & Records Book Volume 1697, Page 123.

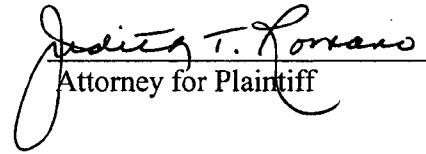
PREMISES: 415 PARK AVENUE

PARCEL: K08-228-00005

VERIFICATION

I hereby state that I am the 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 I am 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 my 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.



Attorney for Plaintiff

DATE: 5-16-08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-937-CD

WELLS FARGO BANK, N.A.

VS

WAYNE C. GIBBONS & NANCY L. GIBBONS

COMPLAINT IN MORTGAGE FORECLOSURE

SERVE BY: 06/19/2008

HEARING:

PAGE: 104192

SERVICE # 1 OF 3

DEFENDANT: WAYNE C. GIBBONS

ADDRESS: 415 PARK AVE.
CLEARFIELD, PA 16830

ALTERNATE ADDRESS CAN NOT ACCEPT FOR NANCY L. GIBBONS

SERVE AND LEAVE WITH: DEFENDANT/AAR

FILED

07/29/08
JUN 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS

VACANT

OCCUPIED

ATTEMPTS

5-300 SN/H/LORE

Lives in MS

6/6/08

SHERIFF'S RETURN

NOW, _____ AT _____ AM / PM SERVED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE ON WAYNE C. GIBBONS, DEFENDANT

BY HANDING TO _____ / _____

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED _____

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE FOR WAYNE C. GIBBONS

AT (ADDRESS) _____

NOW 6/6/08 AT 923 A / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO WAYNE C. GIBBONS

REASON UNABLE TO LOCATE Lives in M.S.

SWORN TO BEFORE ME THIS

DAY OF 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy S. A. Hawkins
Deputy Signature

S. A. Hawkins
Print Deputy Name

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

MAY 20 2008

Attest.

William E. Shanahan
Prothonotary/
Clerk of Courts

PHELAN HALLINAN & SCHMIEG, LLP
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(215) 563-7000 178259

ATTORNEY FOR PLAINTIFF

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FORT MILL, SC 29715

Plaintiff
v.

COURT OF COMMON PLEAS

CIVIL DIVISION

TERM

NO. 08-937-CD

CLEARFIELD COUNTY

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

WAYNE C. GIBBONS
NANCY L. GIBBONS
37 RAY BOONE ROAD
PURVIS, MS 39475

Defendants

CIVIL ACTION - LAW
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WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$46,830.94, together with interest from 05/15/2008 at the rate of \$7.63 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: Judith T. Romano 58745

LAURENCE T. PHELAN, ESQUIRE
FRANCIS S. HALLINAN, ESQUIRE
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JAIME MCGUINNESS, ESQUIRE

Attorneys for Plaintiff

LEGAL DESCRIPTION

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THE FIRST THEREOF: BEGINNING at a post on Park Avenue and corner of an alley; thence South along the line of said alley one hundred and seventy-two (172) feet to another alley; thence West along line of said last mentioned alley eighty (80) feet to a post; thence North by a line parallel with the first above mentioned alley and equally distant therefrom, one hundred and seventy-two (172) feet to a post on Park Avenue; thence East by line of said Park Avenue eighty (80) feet to post at alley and place of beginning. Being eighty (80) feet front on said Park Avenue and extending back in depth one hundred and seventy-two (172) feet.

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Being further described in the assessment records of Clearfield County as Tax Map No. K08-228-00005.

BEING the same premises as was conveyed to the Mortgagors herein by Deed of Rodney A. Eisenhower, et ux dated August 16, 1995 and entered for record in the Recorder's Office of Clearfield County in Deed & Records Book Volume 1697, Page 123.

PREMISES: 415 PARK AVENUE

PARCEL: K08-228-00005

VERIFICATION

I hereby state that I am the 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 I am 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 my 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.


J. Daniel T. Lorusso
Attorney for Plaintiff

DATE: 5-16-08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-937-CD

WELLS FARGO BANK, N.A.

VS

WAYNE C. GIBBONS & NANCY L. GIBBONS

COMPLAINT IN MORTGAGE FORECLOSURE

SERVE BY: 06/19/2008

HEARING:

PAGE: 104192

DEFENDANT: NANCY L. GIBBONS

ADDRESS: 415 PARK AVE.

CLEARFIELD, PA 16830

ALTERNATE ADDRESS CAN NOT ACCEPT FOR WAYNE C. GIBBONS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

530-081111000

FILED

02/29/08
JUN 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, 6/6/08 AT 6:49:20 AM / PM SERVED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE ON NANCY L. GIBBONS, DEFENDANT

BY HANDING TO Nancy Gibbons, self

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 415 Park Ave Clfd

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE FOR NANCY L. GIBBONS

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO NANCY L. GIBBONS

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy S. Hunter
Deputy Signature

S. Hunter
Print Deputy Name

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-937-CD

WELLS FARGO BANK, N.A.

VS
WAYNE C. GIBBONS & NANCY L. GIBBONS

COMPLAINT IN MORTGAGE FORECLOSURE

SERVE BY: 06/19/2008 HEARING: PAGE: 104192

DEFENDANT: NANCY L. GIBBONS
ADDRESS: 602 HANNAH ST.
CLEARFIELD, PA 16830

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS

5-30-08 1/4

does not live 6-6-08
there anymore for a yr.

SHERIFF'S RETURN

NOW, 16/6/08 AT 920 AM / PM SERVED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE ON NANCY L. GIBBONS, DEFENDANT

BY HANDING TO Nancy Gibbons self

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 415 Park Ave Clfd.

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE FOR NANCY L. GIBBONS

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO NANCY L. GIBBONS

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy S. Hunter
Deputy Signature
S. Hunter

Print Deputy Name

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

ATTORNEY FOR PLAINTIFF

WELLS FARGO BANK, N.A.

vs.

WAYNE C. GIBBONS
NANCY L. GIBBONS

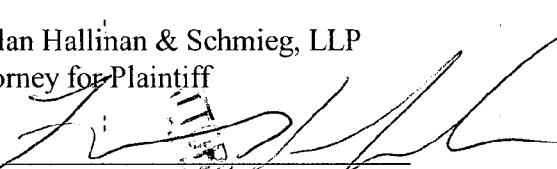
Plaintiff : COURT OF COMMON PLEAS
: CIVIL DIVISION
: NO. 08-937-CD
: CLEARFIELD COUNTY
Defendant(s) :
:

PRAECLPICE TO SUBSTITUTE VERIFICATION
TO CIVIL ACTION COMPLAINT
IN MORTGAGE FORECLOSURE

TO THE PROTHONOTARY:

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

Phelan Hallinan & Schmieg, LLP
Attorney for Plaintiff

By: 
Francis S. Hallinan, Esquire

Date: 6/12/08

FILED
M 1:31 p.m. 6K
JUN 16 2008

NO CC
William A. Shaw
Prothonotary/Clerk of Courts
(6K)

VERIFICATION

Nicole Miles hereby states that he/she is
Vice President of Loan Documentation
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: Nicole Miles

DATE: 05/16/2008

Title:
Vice President of Loan Documentation

Company: WELLS FARGO BANK N.A.

Loan: 8446253166

File #: 178259

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

ATTORNEY FOR PLAINTIFF

WELLS FARGO BANK, N.A.

: COURT OF COMMON PLEAS

Plaintiff

: CIVIL DIVISION

vs.

**WAYNE C. GIBBONS
NANCY L. GIBBONS**

: NO. 08-937-CD

Defendant(s)

: CLEARFIELD COUNTY

:

:

:

:

:

CERTIFICATE OF SERVICE

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

NANCY L. GIBBONS
415 PARK AVENUE
CLEARFIELD, PA 16830-2113

WAYNE C. GIBBONS
37 RAY BOONE ROAD
PURVIS, MS 39475-4156

Phelan Hallinan & Schmieg, LLP
Attorney for Plaintiff

By: _____
Francis S. Hallinan, Esquire

Date: 6/12/08

PHELAN HALLINAN & SCHMIEG, LLP
Suite 1400
1617 JFK Boulevard
Philadelphia, PA 19102
(215) 562-7000
Fax: (215) 563-3352

June 12, 2008

Office of the Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 15853

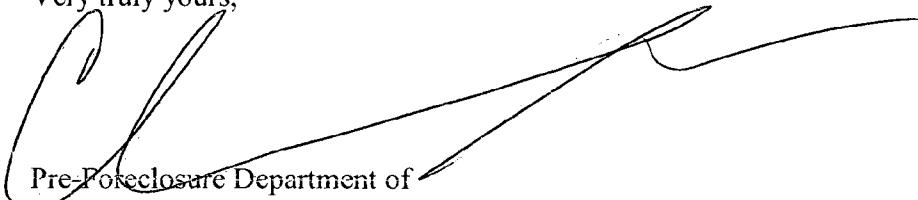
Re: WELLS FARGO BANK, N.A. vs. WAYNE C. GIBBONS, et al.
No. 08-937-CD
Our File No. 178259 - 8446253166

Dear Sir/Madam:

Enclosed please find Plaintiff's Praeclipe To Substitute Verification relative to the above matter.

Kindly file the original of record and return a time-stamped copy of the Praeclipe in the enclosed self-addressed, stamped envelope.

Very truly yours,


Pre-Foreclosure Department of
Phelan Hallinan & Schmieg, LLP

Enclosure(s)

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

WELLS FARGO BANK, N.A. : No. 2008-937-CD
3476 STATEVIEW BOULEVARD :
FORT MILL, SC., : Type of Case: Civil
Plaintiff :
: :
v. : Type of Pleading:
: Entry of Appearance
WAYNE C. GIBBONS :
NANCY L. GIBBONS, :
Defendants :
: :
: :
: :
: :
: :
: : Filed on Behalf of:
: Nancy L. Gibbons,
: Defendant
: :
: : Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
: :
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537

FILED 3cc
0192671 Atty Bell
JUL 07 2008

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., :
Plaintiff :
v. : No. 2008-937-CD
: :
WAYNE C. GIBBONS :
NANCY L. GIBBONS, :
Defendants :
:

ENTRY OF APPEARANCE

Kindly enter my appearance on behalf of Nancy L. Gibbons, solely, one of the Defendants
in the above captioned matter.

Respectfully Submitted,


F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
PA. I.D. No. 30183

Date: July 7, 2008

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

WELLS FARGO BANK, N.A. :
3476 STATEVIEW BOULEVARD :
FORT MILL, SC., :
Plaintiff :
v. : No. 2008-937-CD
: :
WAYNE C. GIBBONS :
NANCY L. GIBBONS, :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Entry of
Appearance upon the following person by first class mail, postage pre-paid addressed as follows:

Judith T. Romano, Esquire
Phelan Hallinan & Schmieg, LLP
One Penn Center Plaza, Suite 1400
Philadelphia, PA 19103

Wayne C. Gibbons
37 Ray Boone Road
Purvis, MS. 39475

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant, Nancy L. Gibbons

Date: July 7, 2008

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

WELLS FARGO BANK, N.A. : No. 2008-937-CD
3476 STATEVIEW BOULEVARD :
FORT MILL, SC., : Type of Case: Civil
Plaintiff :
v. :
WAYNE C. GIBBONS : Type of Pleading:
NANCY L. GIBBONS, : Answer, New Matter
Defendants : and Counterclaim to
Plaintiff's Complaint
: Filed on Behalf of:
: Nancy L. Gibbons,
: Defendant
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537

FILED 3 CC
07/07/2008 Atty Bell
JUL 07 2008

William A. Shaw
Prothonotary/Clerk of Courts
(6X)

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

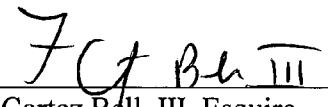
WELLS FARGO BANK, N.A.	:
3476 STATEVIEW BOULEVARD	:
FORT MILL, SC.,	:
Plaintiff	:
	:
v.	:
	No. 2008-937-CD
	:
WAYNE C. GIBBONS	:
NANCY L. GIBBONS,	:
Defendants	:

NOTICE TO PLEAD

TO THE WITHIN PLAINTIFF: WELLS FARGO BANK, N.A.:

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim filed on behalf of Defendant, Nancy L. Gibbons, within twenty (20) days from service hereof or a judgment may be entered against you.

By,


F. Cortez Bell, III, Esquire
Attorney for Defendant
Nancy L. Gibbons

Date: July 7, 2008

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

WELLS FARGO BANK, N.A.	:	
3476 STATEVIEW BOULEVARD	:	
FORT MILL, SC.,	:	
Plaintiff	:	
	:	
v.	:	No. 2008-937-CD
	:	
WAYNE C. GIBBONS	:	
NANCY L. GIBBONS,	:	
Defendants	:	

ANSWER, NEW MATTER AND COUNTERCLAIM TO PLAINTIFF'S COMPLAINT

NOW comes the Defendant, Nancy L. Gibbons, by and through her attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth her Answer, New Matter and Counterclaim to Plaintiff's Complaint and avers as follows:

ANSWER

1. Paragraph One of the Plaintiff's Complaint is admitted.

2. Paragraph Two of the Plaintiff's Complaint is admitted in part and denied in part. It would be admitted that the Defendant, Nancy L. Gibbons is a Grantee on a Deed as to the real property which is the subject of the above captioned Mortgage Foreclosure action. It would be specifically denied that said Nancy L. Gibbons is a mortgagor as to any mortgage as to the subject real property nor has said Nancy L. Gibbons ever resided at 37 Ray Boone Road, Purvis, MS 39475. Strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

3. Paragraph Three of the Plaintiff's Complaint is admitted to the extent stated.

4. Paragraph Four of the Plaintiff's Complaint is admitted.

5. Paragraph Five of the Plaintiff's Complaint can neither be admitted nor denied. After reasonable investigation, the Defendant, Nancy L. Gibbons, is without sufficient knowledge, information or belief to form a basis to respond the said averments as such is solely within the knowledge and control of the Plaintiff and the Defendant, Wayne C. Gibbons. To the extent that a response would be required, the Defendant, Nancy L. Gibbons, would deny the averments of Paragraph Five of the Plaintiff's Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

6. Paragraph Six of the Plaintiff's Complaint can neither be admitted nor denied. After reasonable investigation, the Defendant, Nancy L. Gibbons, is without sufficient knowledge, information or belief to form a basis to respond the said averments as such is solely within the knowledge and control of the Plaintiff and the Defendant, Wayne C. Gibbons. To the extent that a response would be required, the Defendant, Nancy L. Gibbons, would deny the averments of Paragraph Six of the Plaintiff's Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

7. Paragraph Seven of the Plaintiff's Complaint can neither be admitted nor denied. After reasonable investigation, the Defendant, Nancy L. Gibbons, is without sufficient knowledge, information or belief to form a basis to respond the said averments as such is solely within the knowledge and control of the Plaintiff and the Defendant, Wayne C. Gibbons. To the extent that a response would be required, the Defendant, Nancy L. Gibbons, would deny the averments of Paragraph Seven of the Plaintiff's Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

8. Paragraph Eight of the Plaintiff's Complaint can neither be admitted nor denied. After

reasonable investigation, the Defendant, Nancy L. Gibbons, is without sufficient knowledge, information or belief to form a basis to respond the said averments as such is solely within the knowledge and control of the Plaintiff and the Defendant, Wayne C. Gibbons. To the extent that a response would be required, the Defendant, Nancy L. Gibbons, would deny the averments of Paragraph Eight of the Plaintiff's Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

9. Paragraph Nine of the Plaintiff's Complaint can neither be admitted nor denied. After reasonable investigation, the Defendant, Nancy L. Gibbons, is without sufficient knowledge, information or belief to form a basis to respond the said averments as such is solely within the knowledge and control of the Plaintiff and the Defendant, Wayne C. Gibbons. To the extent that a response would be required, the Defendant, Nancy L. Gibbons, would deny the averments of Paragraph Nine of the Plaintiff's Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

10. Paragraph Ten of the Plaintiff's Complaint can neither be admitted nor denied. After reasonable investigation, the Defendant, Nancy L. Gibbons, is without sufficient knowledge, information or belief to form a basis to respond the said averments as such is solely within the knowledge and control of the Plaintiff and the Defendant, Wayne C. Gibbons. To the extent that a response would be required, the Defendant, Nancy L. Gibbons, would deny the averments of Paragraph Ten of the Plaintiff's Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

11. Paragraph Eleven of the Plaintiff's Complaint can neither be admitted nor denied. After reasonable investigation, the Defendant, Nancy L. Gibbons, is without sufficient knowledge, information or belief to form a basis to respond the said averments as such is solely

within the knowledge and control of the Plaintiff and the Defendant, Wayne C. Gibbons. To the extent that a response would be required, the Defendant, Nancy L. Gibbons, would deny the averments of Paragraph Eleven of the Plaintiff's Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

12. Paragraph Twelve of the Plaintiff's Complaint is admitted in part and denied in part. It would be admitted as to the deaths of Robert R. Gibbons and Betty F. Gibbons and as a result thereof that the premises are now jointly titled in the names of Wayne C. Gibbons and Nancy L. Gibbons, by operation of law. It would be denied as to whether the property is still under a mortgage. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

WHEREFORE the Defendant, Nancy L. Gibbons would respectfully request that your Honorable Court deny judgment in any fashion in favor of the Plaintiff as against the Defendant, Nancy L. Gibbons as she is not a mortgagor as to the subject premises and that the Plaintiff's Complaint be dismissed with prejudice and the Court award the Defendant, Nancy L. Gibbons, counsel fees, costs and expenses associated with regard to the defense of the instant matter.

NEW MATTER

NOW comes the Defendant, Nancy L. Gibbons., by and through her attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth her New Matter to Plaintiff's Complaint and avers as follows:

13. The averments of Paragraphs One through Thirteen of the Answer to Plaintiff's Complaint are incorporated herein as if set forth in full at this point.

14. That the Defendant, Nancy L. Gibbons, is not now nor has she ever been a mortgagor as to the real property which is the subject and basis of the instant Mortgage Foreclosure action.

15. That the Defendant, Nancy L. Gibbons and the Defendant Wayne C. Gibbons are divorced individuals.

16. That as such the Defendant, Nancy L. Gibbons does not in any fashion act as the agent for, the power of attorney for or in any fashion can she be deemed to have consented to being the recipient of service of the instant Mortgage Foreclosure Complaint on behalf of the Defendant, Wayne C. Gibbons.

17. That the docket in the above captioned matter evidences that the Clearfield County Sheriff made personal service upon the Defendant, Nancy L. Gibbons not only in her own right as a named Defendant in the above captioned matter but additionally by serving an additional copy upon her for purposes which remain unknown. Said docket reflects no service on the Defendant, Wayne C. Gibbons.

18. As the Defendant, Nancy L. Gibbons is not now nor has she ever been a mortgagor as to the original Mortgage dated August 16, 1995 and as assigned to the Plaintiff as recorded on April 12, 2007, said Defendant, Nancy L. Gibbons, can not legally be named as a party Defendant in the instant Mortgage Foreclosure Complaint or action.

19. That the naming of the Defendant, Nancy L. Gibbons, as a Defendant in a Mortgage Foreclosure action has and/or will result in an adverse effect on her credit reports and credit rating should the action proceed and Judgment be entered against her on the basis of a mortgage foreclosure.

WHEREFORE the Defendant, Nancy L. Gibbons would respectfully request that your Honorable Court deny judgment in any fashion in favor of the Plaintiff as against the Defendant, Nancy L. Gibbons as she is not a mortgagor as to the subject premises and that the Plaintiff's Complaint be dismissed with prejudice and the Court award the Defendant, Nancy L. Gibbons,

counsel fees, costs and expenses associated with regard to the defense of the instant matter which has been improperly brought.

COUNTERCLAIM

NOW comes the Defendant, Nancy L. Gibbons, by and through her attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth her Counterclaim to Plaintiff's Complaint and avers as follows:

20. The averments of Paragraphs One through Nineteen of the Answer and New Matter to Plaintiff's Complaint are incorporated herein as if set forth in full at this point.

21. That as a direct result of the filing of the instant Mortgage Foreclosure action, the Defendant, Nancy L. Gibbons has had to secure the services of instant counsel to represent her in regard to the defense of the instant matter.

22. That the retainer of instant counsel is in the amount of One Thousand Dollars (\$1,000.00) with the services of instant counsel to be billed against the retainer at the rate of \$125.00 per hour until expended and then thereafter at the same rate.

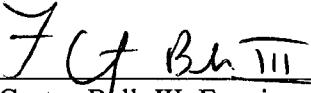
23. That as the retaining of counsel was as a direct result of the naming of the Defendant, Nancy L. Gibbons, as a named Defendant in a Mortgage Foreclosure action for a mortgage that said Nancy L. Gibbons was not a signatory thereon such has resulted in the expenditure of funds by said Defendant which she should not have had to expend.

24. That as the retaining of counsel was as a direct result of the naming of the Defendant, Nancy L. Gibbons, as a named Defendant in a Mortgage Foreclosure action for a mortgage that said Nancy L. Gibbons was not a signatory thereon, the Defendant, Nancy L. Gibbons has been required to expend funds in order to protect her credit report and credit rating which she would not normally be required to expend absent the filing of the instant mortgage foreclosure

complaint.

WHEREFORE the Defendant, Nancy L. Gibbons, would respectfully request that your Honorable Court grant judgment in favor of the Defendant, Nancy L. Gibbons and against the Plaintiff, Wells Fargo Bank, N.A. in the initial amount of \$1,000.00 plus any additional amounts expended in defense of the instant action plus any additional costs associated with regard to the defense of this action..

Respectfully Submitted,


F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
PA. I.D. No. 30183

Date: July 7, 2008

VERIFICATION

I, Nancy L. Gibbons, verify that the statements made within the foregoing Answer, New Matter and Counterclaim are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 7-7-08

Nancy L. Gibbons

Nancy L. Gibbons

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

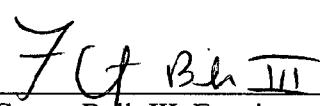
WELLS FARGO BANK, N.A.	:	
3476 STATEVIEW BOULEVARD	:	
FORT MILL, SC.,	:	
Plaintiff	:	
	:	
v.	:	No. 2008-937-CD
	:	
WAYNE C. GIBBONS	:	
NANCY L. GIBBONS,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer, New Matter and Counterclaim to Plaintiff's Complaint upon the following person by first class mail, postage pre-paid addressed as follows:

Judith T. Romano, Esquire
Phelan Hallinan & Schmieg, LLP
One Penn Center Plaza, Suite 1400
Philadelphia, PA 19103

Wayne C. Gibbons
37 Ray Boone Road
Purvis, MS. 39475


F. Cortez Bell, III, Esquire
Attorney for Defendant, Nancy L. Gibbons

Date: July 7, 2008

FILED *m10:56 AM* NO CC
JUL 24 2008 (SIC)

William A. Shaw
Prothonotary/Clerk of Courts

PHELAN HALLINAN & SCHMIEG, LLP
BY: Lauren R. Tabas, Esquire
Identification No.: 93337
One Penn Center at Suburban Station, Suite 1400
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1814
(215) 563-7000

Attorney for Plaintiff

Wells Fargo Bank, N.A.
Plaintiff

COURT OF COMMON PLEAS
Clearfield County
CIVIL DIVISION

vs.

Wayne C. Gibbons
Nancy L. Gibbons
Defendants

No. 08-937-CD

PLAINTIFF'S REPLY TO NEW MATTER OF DEFENDANT NANCY L. GIBBONS

Plaintiff, Wells Fargo Bank, N.A., by its attorney, Lauren R. Tabas, Esquire, hereby files the within Reply to New Matter of Defendant Nancy L. Gibbons and in support thereof states as follows:

13. Plaintiff incorporates herein by reference the averments of paragraphs one (1) through twelve (12) of its Complaint as if set forth herein at length.
14. Admitted in part. Denied in part. It is admitted that Nancy L. Gibbons is not a party to the Mortgage that is the subject of the instant mortgage foreclosure action. However, Defendant Nancy L. Gibbons is a real owner of the mortgaged premises as evidenced by the Deed, a copy of which is attached hereto, made part hereof and marked as Exhibit A. Nancy L. Gibbons has been named as a Defendant pursuant to Pa.R.C.P. 1144(a).
15. Admitted.

16. Denied. The averments contained in paragraph sixteen (16) are denied as conclusions of law to which no response is necessary.

17. Denied. The averments contained in paragraph seventeen (17) are denied as conclusions of law to which no response is necessary. By way of further response, Plaintiff is still attempting to personally serve Wayne Gibbons with the mortgage foreclosure complaint.

18. Denied. The averments contained in paragraph eighteen (18) are denied as conclusions of law to which no response is necessary. By way of further response, pursuant to Pa.R.C.P. 1144(a)(3) Defendant, Nancy L. Gibbons, as a real owner of the Property, is an indispensable party and must be named as a Defendant to the mortgage foreclosure action.

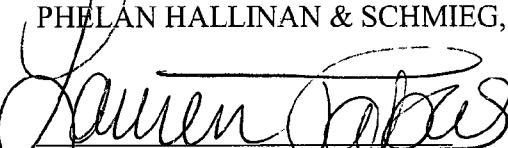
19. Denied. The averments contained in paragraph nineteen (19) are denied as conclusions of law to which no response is necessary.

WHEREFORE, Plaintiff respectfully requests that the Court grant the relief as requested in Plaintiff's Complaint and requests dismissal of Defendant's Counterclaim with prejudice.

Date: 7/02/08

Respectfully submitted,
PHELAN HALLINAN & SCHMIEG, LLP

BY:


Lauren R. Tabas, Esquire
Attorney for Plaintiff

VERIFICATION

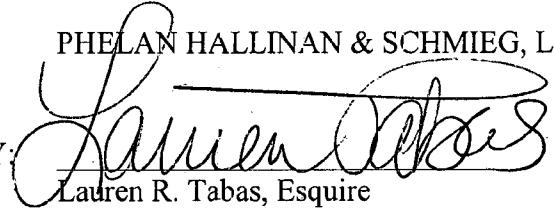
Lauren R. Tabas, Esquire, hereby states that she is the attorney for the Plaintiff in this action, that she is authorized to make this verification, and that the statements made in the foregoing Reply to New Matter are true and correct to the best of her knowledge, information and belief.

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

Date: 7/22/08

BY:

PHELAN HALLINAN & SCHMIEG, LLP



Lauren R. Tabas, Esquire

Attorney for Plaintiff

One Penn Center Plaza, Suite 1400

Philadelphia, PA 19103-1814

(215) 563-7000

PHELAN HALLINAN & SCHMIEG, LLP
BY: Lauren R. Tabas, Esquire
Identification No.: 93337
One Penn Center at Suburban Station, Suite 1400
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1814
(215) 563-7000

Attorney for Plaintiff

Wells Fargo Bank, N.A.
Plaintiff

COURT OF COMMON PLEAS
Clearfield County
CIVIL DIVISION

vs.

Wayne C. Gibbons
Nancy L. Gibbons
Defendants

No. 08-937-CD

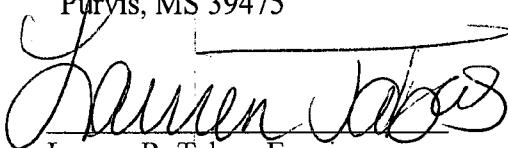
CERTIFICATION OF SERVICE

I certify that a true and correct copy of Plaintiff's Reply to New Matter of Defendant Nancy L. Gibbons was sent via first class mail to the person listed below on the date indicated:

F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

Date: 1/22/08

Wayne C. Gibbons
37 Ray Boone Road
Purdy, MS 39475


Lauren R. Tabas, Esquire
Attorney for Plaintiff

PLAINTIFF
WELLS FARGO BANK, N.A.

AFFIDAVIT OF SERVICE
CLEARFIELD COUNTY

PHS # 178259

DEFENDANT
WAYNE C. GIBBONS
NANCY L. GIBBONS

TEAM4/jmr
COURT TERM:
COURT NO.: 08-937-CD

SERVE WAYNE C. GIBBONS AT:
37 RAY BOONE ROAD
PURVIS, MS 39475-4156

TYPE OF ACTION
XX Mortgage Foreclosure
XX Civil Action

7/16/2008
JUL 31 2008
1 cent to Ann
William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 31 2010

William A. Shaw
Clerk of Courts

FILED

JUL 31 2010

William A. Shaw
Clerk of Courts

SERVED

Served and made known to Wayne C. Gibbons, Defendant on the 2 day of July, 2008, 12:25pm
at _____, o'clock __. M., at _____, in the manner described below:

Defendant personally served.

Adult family member with whom Defendant(s) reside(s).

Relationship is _____.

Adult in charge of Defendant's residence who refused to give name or relationship.

Manager/Clerk of place of lodging in which Defendant(s) reside(s).

Agent or person in charge of Defendant's office or usual place of business.

_____ an officer of said Defendant's company.

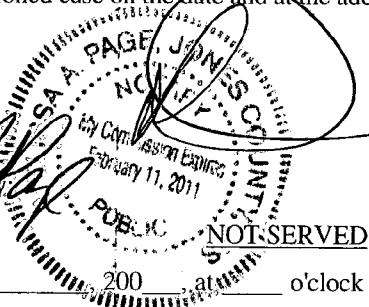
Other: _____.

Description: Age 35+ Height 5'9" Weight 160 Race W Sex M Other _____

I, Davy Keith, a competent adult, being duly sworn according to law, depose and state
that I personally handed a true and correct copy of the Foreclosure Complaint in the manner as set
forth herein, issued in the captioned case on the date and at the address indicated above.

Sworn to and subscribed
before me this 3 day
of July, 2008.

Notary: Mississippi



Met defendant at
parking lot, Michaels
Hwy 98 4400 Hardy
St. Hattiesburg MS
39402

On the _____ day of _____, 200_____, at _____ o'clock __. M., Defendant NOT FOUND
because:

Moved Unknown No Answer Vacant

Other:

Sworn to and subscribed
before me this _____ day
of _____, 200_____. By:

Notary:

ATTORNEY FOR PLAINTIFF
DANIEL G. SCHMIEG, ESQUIRE
I.D.#62205
One Penn Center at Suburban Station
1617 John F. Kennedy Blvd., Suite 1400
Philadelphia, PA 19103-1814
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08-80810

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JUL 31 2008
William A. Shaw
Prothonotary/Clerk of Courts

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Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

PHELAN HALLINAN & SCHMIEG, LLP
BY: Lauren R. Tabas, Esquire
Identification No.: 93337
One Penn Center at Suburban Station, Suite 1400
1617 John F. Kennedy Boulevard
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(215) 563-7000

Attorney for Plaintiff

Wells Fargo Bank, N.A.
Plaintiff

COURT OF COMMON PLEAS
Clearfield County
CIVIL DIVISION

vs.

Wayne C. Gibbons
Nancy L. Gibbons
Defendants

No. 08-937-CD

PRELIMINARY OBJECTIONS TO DEFENDANT'S COUNTERCLAIMS

Plaintiff, Wells Fargo Bank, N.A., by and through its counsel, Lauren R. Tabas, Esquire hereby files its Preliminarily Objections to Defendant's Counterclaim and avers as follows:

I. FACTUAL BACKGROUND

1. On August 16, 1995, Wayne C. Gibbons, Robert R. Gibbons and Betty F. Gibbons made, executed and delivered a mortgage to Plaintiff upon the premises described as 415 Park Avenue, Clearfield, PA 16830 (hereinafter "Subject Premises") which Mortgage is recorded in the Office of the Recorder of Clearfield County in Mortgage Book No. 1697, Page 127. A true and correct copy of the Mortgage is attached hereto, made part hereof and marked as Exhibit A.

2. On or about August 16, 1995, Wayne C. Gibbons and Nancy L. Gibbons executed a deed conveying title to the Subject Premises to Wayne C. Gibbons and Nancy L. Gibbons, husband

and wife, as tenants by the entireties and as joint tenant with right of survivorship as to Robert R. Gibbons and Betty F. Gibbons, husband and wife as tenant by the entireties. A true and correct copy of the Deed is attached hereto, made part hereof and marked as Exhibit B.

3. By virtue of the death of Robert R. Gibbons on January 19, 2004 and Betty F. Gibbons on June 1, 2005, Wayne C. Gibbons and Nancy L. Gibbons became sole owner of the mortgaged premises as surviving tenant by the entireties or surviving joint tenant with right of survivorship.

4. The mortgage is in default for failure to tender monthly mortgage payments due January 1, 2008 and each month thereafter. By the express terms of the mortgage, upon default on such payments, the entire debt is immediately collectable.

5. Plaintiff filed its Complaint in Mortgage Foreclosure on May 20, 2008. A true and correct copy of the Complaint in Mortgage Foreclosure is attached hereto, made part hereof and marked as Exhibit C.

6. On or about July 7, 2008, Defendant, Nancy L. Gibbons filed her Answer with New Matter and Counterclaims to Plaintiff's Complaint in Mortgage Foreclosure. A true and correct copy of Defendant's Answer with New Matter and Counterclaim to Plaintiff's Complaint in Mortgage Foreclosure is attached hereto, made part hereof, and marked as Exhibit D.

7. Defendant's Counterclaims allege that she has suffered injuries as a result of erroneously being named a Defendant to the foreclosure action.

II. FAILURE OF A PLEADING TO CONFORM TO RULE PURSUANT Pa.R.C.P. 1028(a)(2), 1028(a)(4) AND 1148

8. Plaintiff incorporates herein by reference paragraphs one (1) through six (6) of Plaintiff's Preliminary Objections as if set forth herein at length.

9. Pursuant to Pa.R.C.P. 1028 (a) (2), a preliminary objection may be filed by any party to a pleading for the failure of a pleading to conform to the law or rule of court.

10. Pa.R.C.P. 1028(a)(4) allows a party to file preliminary objections to a pleading for

legal insufficiency of that pleading.

11. Defendant's Counterclaims are all inappropriate and should be dismissed under Pennsylvania Law.

12. All Defendant's Counterclaims arise from occurrences which happened after the Mortgage was executed on August 16, 1995.

13. None of the Defendant's Counterclaims are incident to the creation of the mortgage obligation which is the subject of this mortgage foreclosure action.

14. Pa. R.C.P. 1148 provides that a Defendant may only plead a Counterclaim which "arises from the same transaction or occurrence" from which the Plaintiff's cause of action arose. The Pennsylvania Superior Court has repeatedly held that a counterclaim in a mortgage foreclosure action, which does not pertain to the creation of the Mortgage, must be dismissed. Cunningham v. McWilliams, 714 A.2d 1054; Chrysler First Business Credit Corp. v. Gourniak, 411 Pa. Super 259, 601 A.2d 338 (1992); Overly v. Kass, 382 Super. Ct. 108, 554 A.2d 970 (1989); Mellon Bank, N.A. v. Joseph, 267 Pa. Super. 307, 406 A.2d 1055 (1979). The Superior Court has even held that this Rule must be interpreted narrowly and a Counterclaim based on facts, which occurred after the default is certainly not based on facts pertaining to the creation of the Mortgage and must be dismissed. Gourniak, 601 A.2d 341-2.

15. Defendant's Counterclaims pertain to being named as a Defendant to this foreclosure action, clearly not pertaining to the creation of the Mortgage and therefore should be stricken.

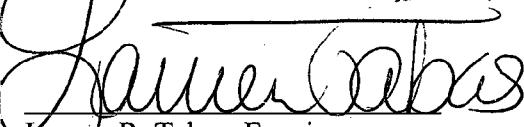
16. Furthermore, Defendant's Counterclaims must be dismissed since they seek a money judgment.

17. Under Pennsylvania Law, the foreclosure action is strictly *in rem* and may not include an action *in personam* to enforce personal liability. Newtown Village Partnership v. Kimmel, 424 Pa. Super 53, 55, 621 A.2d 1036, 1037 (1993). Signal Consumer Discount

Company v. Babuscio, 257, Pa. Super. 101, 109, 390 A.2d 266, 270 (1978). Pennsylvania Rule of Civil Procedure 1041 (a). The restriction against claiming money judgments in a foreclosure action applies equally to Plaintiff and Defendants. Newtown Village Partnership v. Kimmel, 424 Pa. Super 53, 55, 621 A.2d 1036, 1037 (1993).

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order sustaining Plaintiff's Preliminary Objections to Defendant's Counterclaim and dismissing Defendant's Counterclaim with prejudice.

Date: 1/22/08

Respectfully submitted,
PHELAN HALLINAN & SCHMIEG, LLP
BY: 
Lauren R. Tabas, Esquire
Attorney for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP
BY: Lauren R. Tabas, Esquire
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(215) 563-7000

Attorney for Plaintiff

Wells Fargo Bank, N.A.	Plaintiff
vs.	
Wayne C. Gibbons	
Nancy L. Gibbons	
	Defendants

COURT OF COMMON PLEAS
Clearfield County
CIVIL DIVISION

No. 08-937-CD

PLAINTIFF'S BRIEF IN SUPPORT OF ITS PRELIMINARY OBJECTIONS

I. FACTS

On August 16, 1995, the Wayne C. Gibbons, Robert R. Gibbons and Betty F. Gibbons made, executed and delivered a mortgage to Plaintiff upon the premises described as 415 Park Avenue, Clearfield, PA 16830 (hereinafter "Subject Premises") which Mortgage is recorded in the Office of the Recorder of Clearfield County in Mortgage Book No. 1697, Page 127.

On or about August 16, 1995, Wayne C. Gibbons and Nancy L. Gibbons executed a deed conveying title to the Subject Premises to Wayne C. Gibbons and Nancy L. Gibbons, husband and wife, as tenants by the entireties and as joint tenant with right of survivorship as to Robert R. Gibbons and Betty F. Gibbons, husband and wife as tenant by the entireties.

By virtue of the death of Robert R. Gibbons on January 19, 2004 and Betty F. Gibbons on June 1, 2005, Wayne C. Gibbons and Nancy L. Gibbons became sole owner of the mortgaged premises as surviving joint tenant with right of survivorship. Therefore, Robert R. Gibbons and Betty F. Gibbons were released from liability for the debt secured by the mortgage.

The mortgage is in default for failure to tender monthly mortgage payments due January 1, 2008 and each month thereafter. By the express terms of the mortgage, upon default on such

payments, the entire debt is immediately collectable.

Plaintiff filed its Complaint in Mortgage Foreclosure on May 20, 2008. On or about July 7, 2008, Defendant, Nancy L. Gibbons filed her Answer with New Matter and Counterclaims to Plaintiff's Complaint in Mortgage Foreclosure. Defendant's Counterclaims allege that she has suffered injuries as a result of being erroneously named a Defendant to the foreclosure action.

II. DEFENDANT'S COUNTERCLAIM SHOULD BE DISMISSED

Defendant filed a Counterclaim to Plaintiff's Complaint. However, the Counterclaim is inappropriate and should be stricken with prejudice. The Pennsylvania Superior Court has repeatedly held that a Counterclaims in a mortgage foreclosure action, which does not pertain to the creation of the Mortgage, must be dismissed. Cunningham v. McWilliams, 714 A.2d 1054. Chrysler First Business Credit Corp. v. Gourniak, 411 Pa.Super. 259, 601 A.2d 338 (1992). Overly v. Kass, 382 Super, Ct. 108, 554 A.2d 970 (1989). Mellon Bank, N.A. v. Joseph, 267 Pa.Super. 307, 406 A.2d 1055 (1979).

These holdings are based on Pennsylvania Rule of Civil Procedure 1148. The Superior Court has held that this Rule must be interpreted narrowly. Gourniak, 601 A.2d at 341. The Superior Court has also held that, in a mortgage foreclosure action, a Counterclaims based on facts, which occurred after the default is certainly not based on facts pertaining to the creation of the Mortgage and must be dismissed. Gourniak, 601 A.2d at 342. Since Defendant's Counterclaim pertains to Defendants failure to make payments, Defendant's Counterclaim clearly does not pertain to the creation of the loan, the Counterclaim should be stricken with prejudice.

In addition, under Pennsylvania Law, the foreclosure action is strictly in rem and may not include an action in personam to enforce personal liability. Newtown Village Partnership v. Kimmel, 424 Pa. Super 53, 55, 621 A.2d 1036, 1037 (1993). Signal Consumer Discount Company v. Babuscio, 257, Pa. Super. 101, 109, 390 A.2d 266, 270 (1978). Pennsylvania Rule of Civil Procedure 1041 (a). However, a foreclosure complaint must contain a demand for the

amount due as a foreclosure judgment must be entered for a specific dollar amount. Landau v. West PA National Bank, 445 Pa. 217, 282 A.2d 335 (1971). Pennsylvania Rule of Civil Procedure 1147(6).

The restriction against claiming money judgments in a foreclosure action applies equally to Plaintiff and Defendants. Newtown Village Partnership v. Kimmel, 424 Pa. Super 53, 55, 621 A.2d 1036, 1037 (1993). Accordingly, since Defendant's Counterclaim seeks a money judgment, it is not permissible under Pennsylvania Law and must be dismissed.

III. CONCLUSION

For the reasons set forth herein and in Plaintiff's Preliminary Objections, Defendant's Counterclaim is meritless and have been interposed for the purpose of delay only. Plaintiff respectfully requests that this Honorable Court enter an Order sustaining Plaintiff's Preliminary Objections to Defendant's Counterclaim and dismissing Defendant's Counterclaim with prejudice.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order sustaining Plaintiff's Preliminary Objections to Defendant's Counterclaim and dismissing Defendant's Counterclaim with prejudice.

Respectfully submitted,

PHELAN HALLINAN & SCHMIEG, LLP

BY:

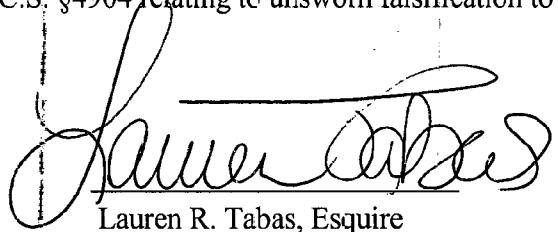

Lauren R. Tabas, Esquire
Attorney for Plaintiff

Date: 1/22/08

VERIFICATION

Lauren R. Tabas, Esquire, hereby states that she is the attorney for Plaintiff in this action, that she is authorized to make this verification, and that the statements made in the foregoing Plaintiff's Preliminary Objections to Defendant's Counterclaim are true and correct to the best of her knowledge, information, and belief. The undersigned understands that this statement herein is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

7/22/06
Date


Lauren R. Tabas, Esquire
Attorney for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP
BY: Lauren R. Tabas, Esquire
Identification No.: 93337
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1617 John F. Kennedy Boulevard
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(215) 563-7000

Attorney for Plaintiff

Wells Fargo Bank, N.A.
Plaintiff

vs.

Wayne C. Gibbons
Nancy L. Gibbons
Defendants

COURT OF COMMON PLEAS
Clearfield County
CIVIL DIVISION

No. 08-937-CD

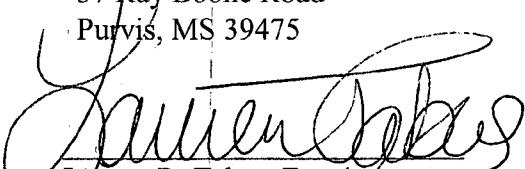
CERTIFICATION OF SERVICE

I certify that a true and correct copy of Plaintiff's Preliminary Objections to Defendant's Counterclaims was sent via first class mail to the person listed below on the date indicated:

F. Cortez Bell, III, Esquire
318 East Locust Street
F.O. Box 1088
Clearfield, PA 16830

Date: 7/22/08

Wayne C. Gibbons
37 Ray Boone Road
Purvis, MS 39475


Lauren R. Tabas, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104192
NO: 08-937-CD
SERVICES 3
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: WELLS FARGO BANK, N.A.
VS.
DEFENDANT: WAYNE C. GIBBONS & NANCY L. GIBBONS

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PHELAN	695189	30.00
SHERIFF HAWKINS	PHELAN	695189	33.00

FILED
03:15 pm
SEP 22 2008
CH

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

____ Day of _____ 2008



Chester A. Hawkins
Sheriff

PHELAN HALLINAN & SCHMIEG, LLP
BY: LAUREN R. TABAS, ESQUIRE
Identification No. 93337 ATTORNEY FOR PLAINTIFF
One Penn Center at Suburban Station
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(215) 563-7000
Wells Fargo Bank, N.A.

Plaintiff : Court of Common Pleas
vs. : Civil Division
Nancy L. Gibbons : Clearfield County
Wayne C. Gibbons : 08-937-CD
Defendant :

JOINT PRAECIPE TO WITHDRAW COMPLAINT
AND WITHDRAW COUNTERCLAIM

TO THE PROTHONOTARY:

Plaintiff hereby withdraws its Complaint filed in the above captioned matter without prejudice. Defendant hereby withdraws her Counterclaim filed in the above-captioned matter without prejudice.

Please mark this case discontinued and ended.

DATE: 11/30/09

PHELAN HALLINAN & SCHMIEG, LLP
BY: Lauren Tabas
Lauren R. Tabas, Esquire
Attorney for Plaintiff

DATE: 11-10-2009

BY: F. Cortez Ball, III
F. Cortez Ball, III, Esquire
Attorney for Defendant

PHS#: 178259

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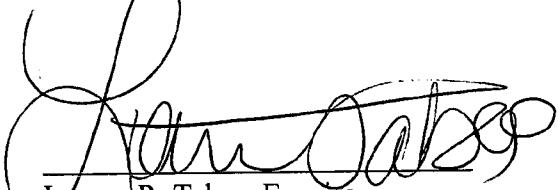
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Praeclipe to Withdraw Complaint and Counterclaim was served upon the following by first class mail, postage prepaid, at the address and on the date listed below:

F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

Wayne C. Gibbons
37 Ray Boone Road
Purvis, MS 39475

DATE: 12/10/09


Lauren R. Tabas, Esquire
Attorney for Plaintiff