

08-1016-CD
GMAC Mort. Vs Tristan Kruse et al

FILED

JUN 03 2008

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William A. Shaw
Prothonotary/Clerk of Courts

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PHELAN HALLINAN & SCHMIEG, LLP
LAWRENCE T. PHELAN, ESQ., Id. No. 32227
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ONE PENN CENTER PLAZA, SUITE 1400
PHILADELPHIA, PA 19103
(215) 563-7000 178674

ATTORNEY FOR PLAINTIFF

GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
P.O. BOX 8300
FORT WASHINGTON, PA 19034

COURT OF COMMON PLEAS

CIVIL DIVISION

TERM

Plaintiff

v.

NO. 2008-1016-CO

CLEARFIELD COUNTY

TRISTAN KRUISE
A/K/A TRISTAN L.F.E. KRUISE
255 KYLERTOWN DRIFTING HIGHWAY
MORRISDALE, PA 16858

Defendant

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

GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
P.O. BOX 8300
FORT WASHINGTON, PA 19034

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

TRISTAN KRUISE
A/K/A TRISTAN L. F. E. KRUISE
255 KYLERTOWN DRIFTING HIGHWAY
MORRISDALE, PA 16858

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

3. On 08/05/2005 mortgagor(s) made, executed and delivered a mortgage upon the premises hereinafter described to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INCORPORATED AS A NOMINEE FOR HOMECOMINGS FINANCIAL NETWORK, INCORPORATED which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Mortgage Instrument No. 200514035. The PLAINTIFF is now the legal owner of the mortgage and is in the process of formalizing an assignment of same. The mortgage and assignment(s), if any, are matters of public record and are incorporated herein by reference in accordance with Pa.R.C.P. 1019(g); which Rule relieves the Plaintiff from its obligations to attach documents to pleadings if those documents are of public record.
4. The premises subject to said mortgage is described as attached.
5. The mortgage is in default because monthly payments of principal and interest upon said mortgage due 02/01/2008 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	\$86,008.31
Interest	\$2,703.51
01/01/2008 through 06/02/2008	
Attorney's Fees	\$1,250.00
Cumulative Late Charges	\$92.28
08/05/2005 to 06/02/2008	
Cost of Suit and Title Search	<u>\$550.00</u>
Subtotal	\$90,604.10
Escrow	
Credit	\$0.00
Deficit	\$55.44
Subtotal	<u>\$55.44</u>
TOTAL	\$90,659.54

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 6 of 1974 because the original mortgage amount exceeds \$50,000.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$90,659.54, together with interest from 06/02/2008 at the rate of \$17.67 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: Jaime McGuinness 90134
LAWRENCE T. PHELAN, ESQUIRE
FRANCIS S. HALLINAN, ESQUIRE
DANIEL G. SCHMIEG, ESQUIRE
MICHELE M. BRADFORD, ESQUIRE
JUDITH T. ROMANO, ESQUIRE
SHEETAL R. SHAH-JANI, ESQUIRE
JENINE R. DAVEY, ESQUIRE
LAUREN R. TABAS, ESQUIRE
VIVEK SRIVASTAVA, ESQUIRE
JAY B. JONES, ESQUIRE
PETER MULCAHY, ESQUIRE
ANDREW SPIVACK, ESQUIRE
JAIME MCGUINNESS, ESQUIRE
Attorneys for Plaintiff

LEGAL DESCRIPTION

All that certain lot of ground situate in the Township of Morris, County of Clearfield and Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at a stake corner on the North right-of-way line of State Highway Route 53 leading from Kylertown to Allport, said right-of-way line is 25.0 feet from the centerline thereof, said stake is also a corner of lands now or formerly of Roscoe and Frances Orwick; thence along the line of lands now or formerly of Roscoe and Frances Orwick, North Seven Degrees Twenty Eight Minutes East (N 7 Degrees 28 Minutes E) One Hundred Seventy-Five (175.0) feet to a stake corner; thence along the lands now or formerly of Floyd Hoffner, South Seventy-Three Degrees East (S 73 Degrees 00 minute E) One Hundred Twenty Five (125.0) feet to a stake corner; thence still along the lands now or formerly of Hoffner, South Seven Degrees Twenty Eight minutes West (S 7 Degrees 28 minutes W) One Hundred Seventy Five (175.0) feet to a stake corner on the right-of-way line of State Highway Route 53; thence along said right-of-way line, North Seventy Three Degrees West (N 73 Degrees 00 minute W) One Hundred Twenty Five (125.0) feet to a stake corner and place of beginning. Containing 0.5 acres, more or less.

BEING the same premises which Nellie E. Witmer, widow, by deed dated April 30, 2003 and recorded May 19, 2003 in Clearfield County at Instrument Number 200308511, granted and conveyed unto Eugene Thompson, a single man, one-half interest, and Tristan Kruise and Deborah Kruise, husband and wife, tenants by the entireties, one-half interest.

BEING the same premises which Eugene Thompson, a single man, by deed dated May 12, 2004 and recorded May 24, 2004 in Clearfield County at Instrument Number 200408247, granted and conveyed unto Tristan Kruise and Deborah Kruise, husband and wife, tenants by the entireties.

PREMISES: 255 KYLERTOWN DRIFTING HIGHWAY

PARCEL: R09-000-012.2

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: 6-2-08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-1016-CD

GMAC MORTGAGE, LLC

vs

SERVICE # 1 OF 1

TRISTAN KRUISE aka TRISTAN L.F.E. KRUISE

COMPLAINT IN MORTGAGE FORECLOSURE

SERVE BY: 07/03/2008

HEARING:

PAGE: 104243

DEFENDANT:

TRISTAN KRUISE aka TRISTAN L.F.E. KRUISE

ADDRESS:

255 KYLERTOWN DRIFTING HIGHWAY
MORRISDALE, PA 16858

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

(CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

FILED

07/03/2008
JUN 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, 6/6/08 AT 11:03 AM PM SERVED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE ON TRISTAN KRUISE aka TRISTAN L.F.E. KRUISE, DEFENDANT

BY HANDING TO

Tristan Kruse

1 self

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

ADDRESS SERVED

255 Kyler town drifting Hwy Morrisdale

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE FOR TRISTAN KRUISE aka TRISTAN L.F.E. KRUISE

AT (ADDRESS) _____

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

I MAKE RETURN OF NOT FOUND AS TO TRISTAN KRUISE aka TRISTAN L.F.E. KRUISE

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy S. Kruse
Deputy Signature

S. Harper
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

GMAC MORTGAGE, LLC

Plaintiff

vs.

TRISTAN KRUISE A/K/A TRISTAN
LYNN KRUISE

Defendant(s)


: COURT OF COMMON PLEAS
:
: CIVIL DIVISION
:
: NO. 2008-1016-CD
:
: CLEARFIELD COUNTY
:
:
:

PRAECIPE 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: 7/9/08

PHS #: 178674

FILED *NO CC*
110-5261
JUL 11 2008 *6K*
William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

LSO Jeffrey Stephan
Limited Signing Officer hereby states that he/she is
of GMAC MORTGAGE, LLC, 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.

DATE: 6-6-08

Name: 

Title:

Jeffrey Stephan
Limited Signing Officer

Company: GMAC MORTGAGE, LLC

Loan: 0424980035

File #: 178674

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

GMAC MORTGAGE, LLC

Plaintiff

vs.

**TRISTAN KRUISE A/K/A TRISTAN
LYNN KRUISE**

Defendant(s)

: **COURT OF COMMON PLEAS**
:
: **CIVIL DIVISION**
:
: **NO. 2008-1016-CD**
:
: **CLEARFIELD COUNTY**
:
:
:

CERTIFICATE OF SERVICE

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

TRISTAN KRUISE A/K/A TRISTAN LYNN KRUISE
255 KYLERTOWN DRIFTING HIGHWAY
MORRISDALE, PA 16858

Phelan Hallinan & Schmieg, LLP
Attorney for Plaintiff

By: 
Francis S. Hallinan, Esquire

Date: 7/9/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104243
NO: 08-1016-CD
SERVICES 1
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: GMAC MORTGAGE, LLC
vs.
DEFENDANT: TRISTAN KRUISE aka TRISTAN L.F.E. KRUISE

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PHELAN	700682	10.00
SHERIFF HAWKINS	PHELAN	700682	31.13

FILED
013:03/04
SEP 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

Phelan Hallinan & Schmieg, LLP
1617 JFK Boulevard, Suite 1400
One Penn Center Plaza
Philadelphia, PA 19103
215-563-7000

Attorney For Plaintiff

GMAC MORTGAGE, LLC Plaintiff	:	Court of Common Pleas
	:	
vs	:	Civil Division
	:	
TRISTAN KRUISE A/K/A TRISTAN LYNN KRUISE Defendant	:	CLEARFIELD County
	:	
	:	No. 2008-1016-CD
	:	

PRAECIPE

TO THE PROTHONOTARY:

- ☒ Please withdraw the complaint and mark the action Discontinued and Ended without prejudice.
- ☐ Please mark the above referenced case Settled, Discontinued and Ended.
- ☐ Please Vacate the judgment entered and mark the action Discontinued and Ended without prejudice.
- ☐ Please mark the in rem judgment Satisfied and the action Discontinued and Ended.

Date: 7/23/12

PHELAN HALLINAN & SCHMIEG, LLP

By: [Signature]
John Michael Kolesnik, Esq., Id. No.308877
Attorney for Plaintiff

PHS # 178674

FILED No
101105781 CC
JUL 24 2012
William A Shaw
Prothonotary/Clerk of Courts
GIC

Phelan Hallinan & Schmieg, LLP
1617 JFK Boulevard, Suite 1400
One Penn Center Plaza
Philadelphia, PA 19103
215-563-7000

Attorney For Plaintiff

GMAC MORTGAGE, LLC
Plaintiff

Court of Common Pleas

vs

Civil Division

TRISTAN KRUISE
A/K/A TRISTAN LYNN KRUISE
Defendant

CLEARFIELD County

No. 2008-1016-CD

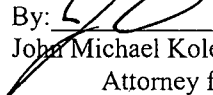
CERTIFICATION OF SERVICE

I hereby certify true and correct copies of the foregoing Plaintiff's Praecipe was served by regular mail to the person(s) on the date listed below:

TRISTAN KRUISE
A/K/A TRISTAN LYNN KRUISE
255 KYLERTOWN DRIFTING HIGHWAY
MORRISDALE, PA 16858

Date: 7/23/12

PHS # 178674

By: 
John Michael Kolesnik, Esq., Id. No. 308877
Attorney for Plaintiff