

08-2294-CD

First Horizon Home al vs M. Kawa Jr.

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FILED *Atty Pd. \$5.00*
m 10:14 AM
DEC 01 2008 *ICC Sheriff*

William A. Shaw
Prothonotary/Clerk of Courts

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SHEETAL SHAH-JANI, ESQ., Id. No. 81760
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ONE PENN CENTER PLAZA, SUITE 1400
PHILADELPHIA, PA 19103
(215) 563-7000 190308

ATTORNEY FOR PLAINTIFF

FIRST HORIZON HOME LOANS, A DIVISION OF
FIRST TENNESSEE BANK NATIONAL
ASSOCIATION
4000 HORIZON WAY
IRVING, TX 75063

COURT OF COMMON PLEAS
CIVIL DIVISION
TERM

NO. *08-2294-CD*
CLEARFIELD COUNTY

MICHAEL R. KAWA, JR
1084 WEST HANNAH STREET
HOUTZDALE, PA 16651-1907

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.

Notice to Defend:
Daniel J. Nelson
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

Lawyer Referral Service:
Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
100 South Street
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

1. Plaintiff is

FIRST HORIZON HOME LOANS,
A DIVISION OF FIRST TENNESSEE
BANK NATIONAL ASSOCIATION
4000 HORIZON WAY
IRVING, TX 75063

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

MICHAEL R. KAWA, JR
1084 WEST HANNAH STREET
HOUTZDALE, PA 16651-1907

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

3. On 06/13/2003 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. 200312073. 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 07/01/2008 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	\$44,802.73
Interest	\$1,228.20
06/01/2008 through 11/25/2008	
(Per Diem \$6.90)	
Attorney's Fees	\$1,250.00
Cumulative Late Charges	\$97.20
06/13/2003 to 11/25/2008	
Mortgage Insurance Premium /	\$75.00
Private Mortgage Insurance	
Cost of Suit and Title Search	<u>\$750.00</u>
Subtotal	\$48,203.13

Escrow	
Credit	\$0.00
Deficit	\$1,107.91
Subtotal	<u>\$1,107.91</u>
TOTAL	\$49,311.04

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.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$49,311.04, together with interest from 11/25/2008 at the rate of \$6.90 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: 

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 *86657*
PETER MULCAHY, ESQUIRE
ANDREW SPIVACK, ESQUIRE
JAIME MCGUINNESS, ESQUIRE

Attorneys for Plaintiff

LEGAL DESCRIPTION

ALL those two certain pieces or parcels of land, located, lying and being in Woodward Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

THE FIRST THEREOF: Beginning at a post near the Township Road leading from Houtzdale to Madera, formerly known as Puseyville; thence North Twenty-one degrees East (N 21 degrees E) One Hundred Fifty (150 feet) feet to a post; thence North Sixty-nine degrees West (N 69 degrees W) One Hundred (100 feet) feet to post; thence South Twenty-one degrees West (S 21 degrees W) One Hundred Fifty (150 feet) feet to post near the above-named Township Road; thence along said Road South Sixty-nine degrees East (S 69 degrees E) One Hundred (100 feet) feet to post and place of beginning, and known as Lots Nos. 44 and 45 in the Plan of Lots in the Western Extension of the Borough of Houtzdale. Being further identified by Clearfield County Assessment Map No. 130-M14-407-00012.

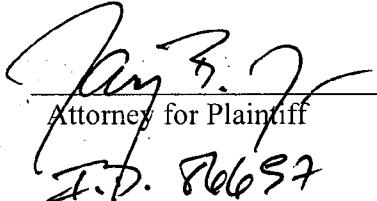
THE SECOND THEREOF: Beginning at a post on the Township Road leading from Houtzdale to Madera; thence North Twenty-one degrees East (N 21 degrees E) One Hundred Fifty (150 feet) feet to a post; thence North Sixty-nine degrees West (N 69 degrees W) Fifty (50 feet) feet to a post; thence South Twenty-one degrees West (S 21 degrees W) One Hundred Fifty (150 feet) feet to a post; thence South Sixty-nine degrees East (S 69 degrees E) Fifty (50 feet) feet to a post, the place of beginning, and being known and designated as Lot No. 43 in the General Plan of the Village of West Houtzdale. Being further identified by Clearfield County Assessment Map No. 130-M14-407-00007. EXCEPTING AND RESERVING, nevertheless, such exceptions and reservations as are contained in prior deeds in the chain of title. BEING the same premises granted and conveyed unto Kay Carol Kawa and Michael R. Kawa, by deed of Kay Carol Kawa, dated November 7, 1996, and entered for record in the Office for the Recording of Deeds of Clearfield County, Pennsylvania, in Deed Book Volume 1804, Page 343, on November 21, 1996.

PARCEL NO: M14-407-00012
PROPERTY ADDRESS: 1084 WEST HANNAH STREET

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 the 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
I.D. 86697

DATE: 11/25/08

FILED

DEC 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-2294-CD
FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL ASSOCIATION
vs
MICHAEL R. KAWA, JR.

COMPLAINT IN MORTGAGE FORECLOSURE

SERVE BY: 12/31/2008 HEARING: PAGE: 104997

DEFENDANT: MICHAEL R. KAWA, JR.
ADDRESS: 1084 WEST HANNAH STREET
HOOTZDALE, PA 16651-1907

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: AM VACANT OCCUPIED

ATTEMPTS 12-4-08- 11:12- N/H 12-9-08- 1:49^{pm} - N/H

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DEC 17 2008
S
William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, 12-15-08 AT 2:36 AM / PM SERVED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE ON MICHAEL R. KAWA, JR., DEFENDANT

BY HANDING TO Michael R. Kawa Jr, Det.

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

ADDRESS SERVED 1084 West Hannah St.
Houtzdale, Pa. 16651

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT IN MORTGAGE FORECLOSURE FOR MICHAEL R. KAWA, JR.

AT (ADDRESS) _____

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

I MAKE RETURN OF **NOT FOUND** AS TO MICHAEL R. KAWA, JR.

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF 2008

So Answers: CHESTER A. HAWKINS SHERIFF

BY:

James F. Davis
Deputy Signature

James F. Davis
Print Deputy Name

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104997
NO: 08-2294-CD
SERVICES 1
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
ASSOCIATION
VS.
DEFENDANT: MICHAEL R. KAWA, JR.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PHELAN	752377	10.00
SHERIFF HAWKINS	PHELAN	752377	81.18

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FILED
01245cm
MAR 24 2009

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

Day of 2008



Chester A. Hawkins
Sheriff