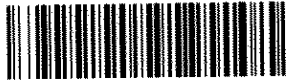


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

18-2-00464-23
ANAFCC 17
Answer Affirmative Defense and Counter or Cro
4248741



RECEIVED & FILED
MASON CO. CLERK
2018 NOV 15 P 2:15
SUPERIOR COURT OF WA.
SHARON K. FOGO
BY Bp 16 DEPUTY

**IN THE SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY**

WILMINGTON SAVINGS FUND
SOCIETY, FSB, AS TRUSTEE OF
STANWICH MORTGAGE LOAN
TRUST A,

Plaintiffs,

v.

THE ESTATE OF BARRY MORRIS;
THE UNKNOWN HEIRS,
DEVISEES AND ASSIGNEES OF
BARRY MORRIS; MAUREEN
ROSAS; LOUIS MORRIS;
JENNIFER SEACHRIST; REBECCA
L. GUY; TIMBERLAKE
COMMUNITY CLUB, INC.,
DYNAMIC COLLECTORS, INC.,
AND OTHER PERSONS OR
PARTIES UNKNOWN CLAIMING
ANY RIGHT, TITLE, LIEN, OR
INTEREST IN THE REAL
PROPERTY COMMONLY KNOWN
AS 230 E. STAVIS ROAD,
SHELTON, WA 98584;

Defendants.

NO. 18-2-00464-23

ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS OF
DEFENDANT TIMBERLAKE
COMMUNITY CLUB

17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I. ANSWER

Defendant Timberlake Community Club answers Plaintiff's Complaint as follows:

1. Admit.
2. Admit.
3. Deny for lack of knowledge as to Plaintiff's authority. Admit remainder.
4. Deny for lack of knowledge.
5. Deny for lack of knowledge.
6. Admit that at one time Barry Morris was the record owner of the subject property. Admit that Barry Morris is not a member of the United States Military; he is deceased. Deny remainder for lack of knowledge.
7. Admit as to Defendants Rosas, Morris and Seachrist; deny as to Defendant Guy. .
8. Admit that Defendant Timberlake Community Club claims a lien against the subject property as alleged. Deny that this lien claim is subsequent, subject and inferior to Plaintiff's Deed of Trust.
9. Deny that the Judgment referenced was against Defendant Barry Morris; it was against a different Barry Morris.
10. Deny priority for lack of knowledge, admit remainder.
11. Deny for lack of knowledge.
12. Deny for lack of knowledge.
13. Deny as to what Plaintiff is informed of or believes; admit remainder.
14. Deny for lack of knowledge.
15. Deny for lack of knowledge.

- 1 16. Deny for lack of knowledge.
- 2 17. Deny for lack of knowledge.
- 3 18. Deny for lack of knowledge.
- 4 19. Deny for lack of knowledge.
- 5 20. Deny for lack of knowledge.
- 6 21. Deny for lack of knowledge.
- 7 22. Deny for lack of knowledge.
- 8 23. Deny for lack of knowledge.
- 9 24. No response as to what Plaintiff seeks.
- 10 25. No response as to what Plaintiff seeks; deny as to priority of
- 11 Plaintiff's interests over the interests of Defendant Timberlake Community Club.
- 12 26. Same as 25.
- 13 27. No response as to what Plaintiff has been informed and/or believes;
- 14 admit use.
- 15 28. No response as to what Plaintiff has been informed and/or believes;
- 16 admit abandonment.
- 17 29. Deny that any determination of any Court is necessary to determine
- 18 that the interests of Timberlake Community Club are prior to the interests of
- 19 Plaintiff. In Mason County Superior Court cause no. 14-2-00531, the Plaintiff's
- 20 predecessor in interest and Defendant Timberlake Community Club agreed, in
- 21 the Agreed Order of Dismissal entered therein, that the interests of Timberlake
- 22 Community Club in the identical matters subject to Plaintiff's Complaint herein
- 23 are prior to the interests of Plaintiff's predecessor in interest, and the Court based
- 24 its dismissal on said Agreement. In addition, Plaintiff's predecessor in interest
- 25 paid the Timberlake lien current as of September 30, 2016, and acknowledged
- 26 that further assessments by Plaintiff would be forthcoming.
- 27

1 30. No response as to what Plaintiff seeks; deny that Plaintiff's interests
2 are prior to the interests of Defendant Timberlake Community Club.

3 31. Same as 30.

4 II. AFFIRMATIVE DEFENSES

5 1. **Res judicata.** Mason County Superior Court, in cause number 14-
6 2-00531-1, has already entered an Agreed Order of Dismissal of claims made in
7 this matter against Defendant Timberlake Community Club, including claims
8 regarding the priority of the interests of Plaintiff's predecessor in interest and
9 Defendant Timberlake Community Club, which Dismissal was based in part on
10 the Agreement of Plaintiff's predecessor in interest to the priority of Defendant
11 Timberlake's interests. In this prior matter there was a concurrence of subject
12 matter, cause of action, persons and parties, and the quality of persons for whom
13 the claim is now being made, all as provided for by controlling Washington law.
14 This Plaintiff was specifically aware of this prior proceeding, and Defendant
15 Timberlake Community Club has drawn the attention of the prior proceeding to
16 the attention of Plaintiff in this matter, with no response.

17 2. **Priority of Interests.** Plaintiff attempts to claim priority over all
18 interests of Defendant Timberlake Community Club. These include both all
19 recorded restrictive covenant and related interests, as well as the interests of this
20 Defendant in the collection of assessments as defined by its Bylaws. Defendant
21 Timberlake Community Club's restrictive covenants for Division no. 5 were
22 recorded on July 19, 1967 under Mason County Auditor's file number 22770.
23 These interests are without any possible dispute prior to the interests of Plaintiff,
24 and cannot be foreclosed upon in the instant lawsuit. These interests include not
25 only restrictions upon use, but also the affirmative restriction to pay
26 assessments, and the priority of this Defendant's claims against Plaintiff.

1 claims pursuant to RCW 11.40.051(1)(c). No family allowance is possible as
2 there is no surviving spouse or domestic partner, and there are no surviving
3 minor children. There can be no expenses of administration because there is no
4 administration of the Estate of the Decedent. Title to the subject property is
5 therefore vested for all purposes in the heirs or devisees of Barry Morris.

6 **1.3 Defendants – Individual and unknown.** Based on Plaintiff's
7 reasonable investigation, Plaintiff alleges that Barry Morris left three surviving
8 adult children: Maureen Rosas, Louis Morris and Jennifer Seachrist. Plaintiff
9 does not know if these heirs are married, or if their spouses have or claim any
10 interests in the subject property; they are denominated John Doe Rosas, Jane
11 Doe Morris, and John Doe Seachrist for the purposes of this pleading, to address
12 any such claims or interests. Plaintiff also does not know if any other unknown
13 persons claim any interests in the subject property. Defendants The Unknown
14 Heirs of Barry Morris and All Other Persons or Parties Unknown Claiming any
15 Right, Title, Estate, Lien or Interest in The Real Estate Described in the
16 Complaint Herein are all unknown, and are made Defendants herein because of
17 any interests any may have in the subject property, which, if any such interests
18 exist, are subordinate to the interests of Plaintiff.

19 **1.4 Defendants – Lots – In Rem Relief.** Delinquencies in assessment
20 payments constitute personal obligations of the owner/member; they also
21 constitute liens against the properties themselves. The lots that are subject to the
22 allegations of this Complaint are named as a Defendant for the purpose of
23 pleading Plaintiff's *in rem* lien foreclosure claims. Plaintiff is not by this
24 Complaint seeking personal judgments against the heirs of Barry Morris, or any
25 other individual Defendants, except as specified herein.

26 **1.4 Defendants–Deed of Trust.**
27

1 1.4.1 A deed of trust was executed by Barry Morris, an unmarried man,
2 as borrower, which was recorded on July 27, 2007 under Mason County
3 Auditor's File no. 1901866. The legal description in this trust deed references
4 both lots 121 and 122, but only recites the parcel number for lot 121, 22018-53-
5 00121. This deed of trust shows that the lender is, "CitiFinancial, Inc." It recites
6 that the lender was organized and existing under the laws of Maryland, and gave
7 its address as 1520 Cooper Point Road SW 290, Olympia, WA 98502.
8 Citifinancial, Inc. maintained a registered agent for the service of process in
9 Washington State. However, on August 22, 2016, Citifinancial, Inc. filed with
10 the Washington Secretary of State a Statement of Withdrawal of Foreign
11 Registration, providing as required the address for service of process Citi Legal
12 Department - Kimberly Hall, 1000 Technology Drive, MS 140, O'Fallon, Mo,
13 63368. CitiFinancial, Inc. remains the record holder of the subject trust deed,
14 and remains as a Maryland corporation. On September 3, 2013, it filed with the
15 Maryland Secretary of State an Article of Amendment, changing its name from
16 CitiFinancial, Inc. to CFNA Receivables (MD), Inc.; this name has endured
17 through multiple mergers with other CFNA entities as filed with the Maryland
18 Secretary of State; and as such, it filed with the Maryland Secretary of State, on
19 September 29, 2016, a change in registered agent address so that its current
20 registered agent is The Corporation Trust Inc., at 14700 Citicorp Drive,
21 Hagerstown, MD 21742. However, the Maryland Secretary of State currently
22 shows this as the address for CFNA Receivables (MD), Inc.; and the resident
23 agent as The Corporation Trust Incorporated, 351 West Camden Street,
24 Baltimore, Md 21201. In addition, the Complaint in this matter alleges that
25 Plaintiff Wilmington Savings Fund Society, FSB, as Trustee of Stanwich
26 Mortgage Loan Trust A, "has the authority to exercise the interest in" the subject
27

1 deed of trust. Both CitiFinancial, Inc's. successor in interest, CFNA Receivables
2 (MD), Inc.; as well as Plaintiff; are named as Defendants in this Counterclaim
3 in order to ensure passage of clear title upon Sheriff's Sale.

4 1.4.2 By Assignment of Deed of Trust, recorded on March 19, 2018,
5 under Auditor's file number 2089613, CitiFinancial Servicing, LLC assigned the
6 beneficial interest in the subject deed of trust to Wilmington Savings Fund
7 Society, FSB as Trustee of Stanwich Mortgage Loan Trust A. At that time,
8 CitiFinancial Servicing, LLC had no interest in the subject property, and
9 apparently never has had any interest in the subject property. At the time of the
10 purported transfer, CitiFinancial, Inc. held record title, and it had already at that
11 time become, pursuant to the laws of the State of Maryland, "CFNA Receivables
12 (MD), Inc."

13 **1.5 Other Defendants.**

14 1.5.1 Rebecca L. Guy holds Judgment No. 04-9-01180-8 against Barry L.
15 Morris entered in Mason County Superior Court on December 23, 2004 under
16 Cause No. 04-5-00085-2. It is not known if Rebecca L. Guy is married; for the
17 purpose of this pleading it is assumed that she is not. This Judgment is time
18 barred.

19 1.5.2 Dynamic Collectors, Inc. holds Judgment No. 10-9-00893-3 against
20 Barry L. Morris entered in Mason County Superior Court on May 18, 2010
21 under Cause No. 10-2-00943-8. Based upon Plaintiff's reasonable investigation,
22 the judgment debtor in that matter is not Defendant Barry Morris, but a Barry L.
23 Morris who resided in Lilliwaup, also deceased, and Plaintiff so alleges.

24 1.5.3 Dynamic Collectors Inc. holds Judgment No. 12-9-00267-2 against
25 Barry L. Morris entered in Mason County Superior Court on April 3, 2012 under
26 Cause No. 12-2-00277-4. Based on Plaintiff's reasonable investigation, the
27

1 judgment debtor in that matter is Defendant Barry Morris, whose middle name
2 is "Lee." This Judgment is subordinate to the lien and lien foreclosure rights and
3 interests of Plaintiff.

4 **1.6 Military Service.** Plaintiff believes that no Defendants are on
5 active duty in the military service, or the National Guard, or are dependents of a
6 person who is on active duty in the military service or the National Guard,
7 pursuant to definitions of the same set forth in federal and state law. Plaintiff
8 will file herein an Affidavit of Military Service prior to seeking entry of any
9 default judgments.

10 **II. JURISDICTION AND VENUE**

11 This Complaint alleges actions taken and omitted regarding the subject
12 property located in Mason County, Washington. Venue and jurisdiction are
13 proper herein.

14 **III. SUBJECT PROPERTY**

15 **3.1 Description.** The properties that are the subject of this action are
16 legally described as follows:

17
18 Lot one hundred twenty one (121), Timberlake No. 5, Volume
19 6 of Plats, pages 145 to 149, records of Mason County,
20 Washington;

21 Parcel No. 22018-53-00121;

22 Site Address: 230 E. Stavis Road, Shelton, WA 98584; and

23 Lot one hundred twenty two (122), Timberlake No. 5, Volume
24 6 of Plats, pages 145 to 149, records of Mason County,
25 Washington;

26 Parcel No. 22018-53-00122;

27 Site Address: 230 E. Stavis Road, Shelton, WA 98584.

1 **3.2 Property Conditions.** The subject property is in violation of
2 Plaintiff's applicable property condition rules and regulations and Plaintiff
3 anticipates that such violations will continue and the condition of the subject
4 property will deteriorate over time due to, in part, its abandonment.

5 **IV. DUES AND ASSESSMENTS**

6 **4.1 Authority.** Article IX of the Timberlake Community Club Bylaws,
7 recorded on June 30, 2006 under Mason County Auditor's file number 1871457,
8 provides for dues and assessments to be levied and collected; that the obligation
9 to pay said amounts constitute liens against the property itself, along with all
10 charges, dues, assessments, expenses and fees reasonably incurred in enforcing
11 said liens; and that such liens are prior to other encumbrances.

12
13 **4.2 Article IX(F).** Article IX(F) defines "assessments" as:

14 1. General Annual Assessment. The Board of Directors shall
15 impose a general annual assessment on each lot or member within the
16 development.

17 2. Special Assessments. Special assessments for particular
18 expenses may also be imposed as specified in these Bylaws.

19 3. Other Charges. In addition to these general and special
20 assessments, the following charges may also be imposed, and are for the
21 purposes of the Bylaws also considered assessments:

22 a. Service Fees. The Board of Directors may in its discretion
23 impose direct fees for such goods and services as, for example, water
24 supply.

25 b. Fines. The Board of Directors may adopt a system for the
26 imposition of fines for violation of Timberlake covenants and/or rules;

27 c. Late Fees and Interest. The Board of Directors may add
reasonable late fees, and interest of not more than 12% per annum,
compounded annually, to any delinquent account and all assessments
related thereto;

 d. Expenses. If the Board of Directors is required to expend
any funds, with or without litigation, in pursuit of the collection of any
assessments, as defined herein, the correction of any violation of
Timberlake covenants and/or rules, or with regard to any dispute
concerning its actions and/or powers; all expenses, including but not

1 limited to attorney, accountant, other expert, title report and surveyor fees;
2 lot condition remediation costs; and all other costs of litigation, including
3 court and discovery expenses; and any and all other amounts reasonably
4 expended in the process of collection, dispute resolution or correction;
5 shall be paid by the member responsible.

6 **4.3 Assessments Imposed.** Assessments have been made against the
7 above-described property in accordance with the governing documents of
8 Timberlake Community Club.

9 **4.4 Assessments Defaults.** Defendants presently owe Plaintiff
10 assessments as defined by Plaintiff's governing documents, as well as related
11 fees and expenses to Plaintiff. Further such assessments may become due and
12 owing pending the final outcome of this action.

13 **4.5 Assessments Liens.** Pursuant to Plaintiff's governing documents,
14 the subject properties are subject to a lien for the amount of unpaid assessments
15 as defined therein.

16 V. CAUSES OF ACTION

17 **5.1** Plaintiff has the right to enforce its rules, including its covenants,
18 Articles of Incorporation, Bylaws, Resolutions, and other rules, as a Washington
19 State Homeowners' Association, and because the subject lots are burdened by
20 the same.

21 **5.2** Plaintiff has the right to injunctive relief requiring Defendants and
22 any others who hold or claim any title by and/or through Defendants to take no
23 further action on the subject lot without first seeking and obtaining project
24 approval from Plaintiff, and Plaintiff has the right to condition such approval on
25 the compliance with all applicable rules of Plaintiff, Mason County, and any
26 other regulatory authority with jurisdiction. Plaintiff further has the right to
27 injunctive relief requiring remediation of any and all improvements, structures,

1 and any other conditions on the subject lots that are in violation of Plaintiff's
2 rules. Plaintiff has a clear legal and equitable right and a well-grounded fear of
3 immediate invasion of that right. The acts complained of herein are or will
4 result in actual and substantial injury to Plaintiff, and the relative equities of the
5 parties, and the public interest, favor granting injunctive relief.

6 **5.3** Plaintiff has the right to lien the subject properties for unpaid
7 assessments as defined by Plaintiff's Bylaws and to foreclose the same in like
8 manner as a mortgage, the subject properties constituting security for the
9 payment of assessments; with adaptations as appropriate in the discretion of the
10 Plaintiff.

11 **5.4** Plaintiff's governing documents create a binding contract implied
12 in law between the Plaintiff and Defendants with respect to both restrictions on
13 the use of the lots; the obligation to pay assessments, expenses and fees; and the
14 creation and foreclosure of liens for the same. The applicable terms of this
15 contract are administered fairly and are within the scope of the corporate
16 functions outlined in its charter and bylaws

17 **5.5** Defendants have been unjustly enriched by the acceptance of
18 Plaintiff's amenities for which Defendants have not paid.

19 **VI. REDEMPTION AND HOMESTEAD RIGHTS**

20 The subject properties are improved and abandoned; Plaintiff shall
21 proceed to seek to restrict Defendants' redemption rights upon default pursuant
22 to RCW 61.12.093. Homestead rights do not apply in this matter. The purchaser
23 at sale is entitled to possession after sale.

24 **VII. NO OTHER ACTION**

25 No other suit or action has been instituted or is now pending to
26 foreclose these liens.

1 **VIII. CLAIMS OF DEFENDANTS**

2 The Defendants named in the caption of this pleading claim some right,
3 title, interest, lien or estate in and to the subject real properties, but to the best of
4 Plaintiff's knowledge, such claims and any right, title, interest, lien or estate in
5 and to said real properties, if any, are subordinate, inferior and subject to the
6 liens of the Plaintiff.

7 **IX. REQUEST FOR RELIEF**

8 Based on the foregoing, Plaintiff requests relief as follows:

9 **9.1 Quiet Title.**

10 Title to the subject properties should be quieted in Plaintiff as against any
11 claims of Defendants, where such relief is supported by law.

12 **9.2 Injunction.** Plaintiff should be granted injunctive relief requiring
13 remediation of any and all improvements and any other conditions on the subject
14 lot that are in violation of Plaintiff's rules, and any other applicable local, state
15 or federal rules.

16 **9.3 Lien Foreclosure.** This Complaint seeks foreclosure of Plaintiff's
17 lien against the subject property, *in rem*. It does not seek an individual judgment
18 against the individual Defendants, except insofar as any Defendant contests
19 Plaintiff's claims set forth herein. In such case, Plaintiff requests judgment to be
20 entered against any contesting Defendant for the entire amount of the
21 assessment delinquency as set forth in Plaintiff's Bylaws, including attorney fees
22 and costs; for deficiency judgment; and for supplemental judgment; as set forth
23 below.

24 A. Plaintiff should be awarded judgment *in rem* for the amount of the
25 assessments, charges, costs, expenses and fees, including attorney and expert
26 fees, due at the close of this matter, and all sums expended by Plaintiff in
27

1 collection thereof, including charges, costs, expenses and fees, including
2 attorney and expert fees, together with prejudgment interest thereon at 12% per
3 annum, and specifically to include the costs of all proceedings herein, as defined
4 by Plaintiff's governing documents;

5 B. Plaintiff's lien should be foreclosed, and if any judgment entered
6 herein is not paid immediately upon entry, the property subject to said lien
7 should be sold by the Sheriff of Mason County, Washington. The Court should
8 order the subject property sold pursuant to the terms of RCW chapter 61.12, and
9 the proceeds of such sale should be applied to the payment of the judgment,
10 post-judgment interest, and such additional similar charges or fees accumulating
11 post-judgment, and any additional charges as specified herein; all with interest
12 thereon;

13 C. Said sale should be conducted in accordance with statutory
14 provisions for foreclosures of mortgages as set forth in RCW chapter 61.12,
15 RCW 6.13.080(2), and elsewhere, including for execution as specified by RCW
16 61.12.090. No Affidavit of Judgment Creditor regarding personal property
17 should be required.

18 D. If any deficiency remains after the application of the proceeds of
19 such sale, no execution should issue according to law for any such deficiency
20 against the individual or other Defendants herein, except as specifically
21 provided herein at the option of Plaintiff in case of a contest to any part hereof.
22 Plaintiff's recorded restrictive covenants specify that the property may not be
23 used principally for agricultural or farming purposes. Any redemption period
24 should be limited to eight months.

25 E. By such foreclosure and sale, the rights of the Defendants and all
26 persons claiming by, through or under them, should be adjudged inferior and
27

1 subordinate to Plaintiff's lien and be forever foreclosed, except only for any
2 right of redemption as provided for by law;

3 F. The subject properties are abandoned and improved; therefore the
4 judgment should specify no rights of redemption, and no deficiency judgment
5 should be entered herein;

6 G. Title to the subject properties should be quieted in the purchaser at
7 the Sheriff's sale, except for applicable redemption rights, if any; the purchaser
8 at sale should be entitled to possession during any period of redemption that
9 may apply; and any Defendant who continues in possession after the Sheriff's
10 sale should be subject to ejectment, and proceedings for contempt if said
11 Defendant fails to comply; and

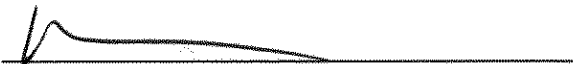
12 H. Plaintiff should have such other and further relief as the Court
13 deems equitable.

14 **9.4 Fees and Costs.** Plaintiff should be awarded judgment *in rem* for
15 the amount of the charges, costs, expenses and fees, including attorney and
16 expert fees, due at the close of this matter; and all sums expended by Plaintiff in
17 collection thereof, including charges, costs, expenses and fees, including
18 attorney and expert fees, together with prejudgment interest thereon at 12% per
19 annum, and specifically to include the costs of all proceedings herein, as defined
20 by Plaintiff's governing documents. In addition, Plaintiff should be awarded all
21 fees and costs of litigation, including attorney fees, pursuant to RCW
22 64.38.020(4) and 64.38.050, where merited.

23 **9.5 Supplemental Judgment(s).** From time to time, after the entry of
24 the initial judgment in this matter, Plaintiff should be awarded upon its Motion,
25 entry of supplemental judgment for the amount of additional assessments as
26 defined by Plaintiff's governing documents coming due, at any time after the
27

1 entry of the initial judgment in this matter, up through the close of this matter;
2 and all sums expended by Plaintiff in collection thereof, together with
3 prejudgment interest thereon at 12% per annum, including an accounting for
4 proceeds allocated to payment of the judgment from the sale upon execution of
5 the subject properties. In addition, the amounts specified in any such
6 supplemental judgments should include any amounts that Plaintiff reasonably
7 expends, between the initiation of this action and the final judgment entered
8 herein, to pay for property taxes imposed by Mason County, or for any other
9 purpose that benefits in any way the subject property, including but not limited
10 to all costs of remediation of property condition violations including but not
11 limited to those caused by any Defendants as specified at RCW 61.12.030.

12
13
14
15 DATED this 15th day of November, 2018.

16
17 
18 Robert D. Wilson-Hoss, WSBA #8620
19 Attorney for
20
21
22
23
24
25
26
27