

**IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

SUNWOOD, INC.,

Case #: 05-2019-CA-0XXXX

Plaintiff,

v.

DOE INVESTMENTS, LLC,
OLGA A. DOE, AND ALL PERSONS
IN POSSESSION AT ABC Drive
DRIVE, TITUSVILLE, FLORIDA,

Defendants.

_____ /

FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Defendants DOE Investments, LLC, Olga DOE and Raul DOE hereby file their answer and affirmative defenses and state:

I. ANSWER

1. Paragraph 1 is admitted.
2. Denied. Defendant DOE Investments, LLC is a fraudulent entity that was created by Plaintiff and/or Plaintiff's agents, as tool to defraud Olga DOE. The mortgage was the result of fraudulent inducement and failure to of the Plaintiff and its agents and attorneys to comply with the federal Real Estate Settlement and Procedures Act (herein "RESPA") 12 U.S.C. § 2601, *et. seq.* and the federal Truth in Lending Act (herein "TILA") 15 U.S.C. § 1601, *et. seq.* Defendants are without knowledge as to whether the copy of the note and mortgage attached to the complaint are true and correct copies of the original thereof.
3. Denied for lack of information.

4. Admitted that the property is technically owned by Defendant DOE Investments, LLC. Denied that the property is possessed by DOE Investments, LLC. The property is possessed by Olga DOE, her husband Raul DOE and their 14 year old child and subsequent to the filing of this action a corrective quit claim deed was filed which places title back into Olga DOE.

5. Denied. Documentary evidence attached to the affidavit of Olga DOE, which was filed July 15, 2020, demonstrates that on or about October 17, 2019, Third Party Defendant Dane Stanish represented that the debt had been reinstated and was not in default.

6. Admitted.

7. Admitted that Olga DOE, Raul DOE and their child claim an interest in the property. Denied that the assignment of rents is valid as it was the product of fraudulent inducement, failure to disclose and misrepresentation.

8. Admitted.

9. Admitted and denied as set forth above.

10. Denied.

11. Denied. Plaintiff failed to comply with RESPA, TILA and the accompanying regulations.

12. Denied for lack of knowledge.

13. Admitted.

14. Admitted and denied as set forth above.

15. Denied. Plaintiff failed to comply with RESPA, TILA and accompanying regulations.

16. Denied. The guaranty was the result of fraudulently inducement and failure to provide required RESPA and TILA disclosures. Defendants are without knowledge as to whether the copy of the note and mortgage attached to the complaint are true and correct copies of the original thereof.

II. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE VIOLATION OF F.S. 687, et. seq. "USURY"

The subject loan is a consumer loan. The Complaint seeks \$80,000.00 in principal plus interest and late fees from August 1, 2018 to the present. (Complaint, para. 10 and 15). Interest is 10%, which is \$800.00 per month and late fees are charged at \$250/month with no grace period. (See Note). The complaint accelerated the debt. If a lender exercises an option to accelerate the loan, then the lender is only allowed to collect late charges that accrued up until the date of acceleration. *Fowler v. Amylene, Inc. v. First Federal Savings & Loan Association of Defuniak Springs*, 643 So. 2d 30 (Fla. 1st DCA 1994).

This amounts to civil and criminal usury and it is illegal in Florida. Florida Statutes section 687.071(1) provides that civil usury involves loans of \$500,000 or less with an interest rate greater than 18 percent and less than 25 percent. Florida Statutes section 687.071(2) provides that criminal usury involves any loan amount with an interest rate greater than 25 percent. Whether a loan is usurious is determined at the inception of the loan. *Velletri v. Dixon*, 44 So. 3d 187, 189 (Fla. 2d DCA 2010). Because the late fee of \$250 is based on the missed payment of \$800/month, that translates into a 31.25% interest rate. Because this sum is greater than both the civil usury and criminal usury statute, Plaintiff has engaged in both civil and criminal usury.

Specifically, Florida Statutes section 687.03(2)(c) expressly allows a lender to charge a late fee "on each installment which is in default for a period of not less than 10 days in an amount not in excess of 5 percent of such installment" and provides that such fee "shall not be deemed interest or a finance charge made incident to or as a condition to the grant of the loan or other extension of credit and shall not be included in determining the limit on charges, as provided in this section." What Plaintiff has done is called "loansharking" as interest over 25% is defined as such by Fla. Stat. § 687.071(1). Florida Statutes 687.071(1) states in part:

- (f) "Loan shark" means any person as defined herein who lends money unlawfully under subsection (2), subsection (3), or subsection (4).

(g) “Loan sharking” means the act of any person as defined herein lending money unlawfully under subsection (2), subsection (3), or subsection (4).

(2) Unless otherwise specifically allowed by law, any person making an extension of credit to any person, who shall willfully and knowingly charge, take, or receive interest thereon at a rate exceeding 25 percent per annum but not in excess of 45 percent per annum, or the equivalent rate for a longer or shorter period of time, whether directly or indirectly, or conspires so to do, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Penalties for civil usury include forfeiture of double the interest that the lender actually charged and collected. See Fla. Stat. § 687.04, which states in part:

Penalty for usury; not to apply in certain situations.—Any person, or any agent, officer, or other representative of any person, willfully violating the provisions of s. 687.03 shall forfeit the entire interest so charged, or contracted to be charged or reserved, and only the actual principal sum of such usurious contract can be enforced in any court in this state, either at law or in equity; and when said usurious interest is taken or reserved, or has been paid, then and in that event the person who has taken or reserved, or has been paid, either directly or indirectly, such usurious interest shall forfeit to the party from whom such usurious interest has been reserved, taken, or exacted in any way double the amount of interest so reserved, taken, or exacted. However, the penalties provided for by this section shall not apply:

In the context of criminal usury, the civil remedy is forfeiture of the right to collect the debt. See Fla. Stat. § 687.071, which states:

(7) No extension of credit made in violation of any of the provisions of this section shall be an enforceable debt in the courts of this state.

SECOND AFFIRMATIVE DEFENSE VIOLATION OF FDCPA, FCCPA AND FS. 701.04

The subject loan is a consumer loan. Florida Statute 701.04 provides that “Within 14 days after receipt of the written request of a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the holder of a mortgage shall deliver or cause the servicer of the mortgage to deliver to the person making the

request at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage. Olga DOE attempted to refinance the loan and had a lender willing and able to lend her money. She received a payoff from attorney Stanish dated February 6, 2020 which included \$7,693.15 for accrued interest, which overstated interest and it overstated late fees, which late fees are usurious interest.

When Olga DOE's lender asked attorney Stanish to remove those illegal charges, he refused, causing Olga to be denied her loan to refinance the property. (See DOE Affidavit, paragraphs 14 - 20 and 22)

Plaintiff violated Florida's usury laws, F.S. 701.4, the federal Fair Debt Collection Practices Act (FDCPA) 15 USC 1692, et. seq., and the Florida Consumer Collection Practices Act 559.72, et. seq., (FCCPA) by including illegal sums in the payoff.

THIRD AFFIRMATIVE DEFENSE UNCLEAN HANDS

The subject loan is a consumer loan. In 2010, Olga DOE immigrated to the USA from Colombia. Her primary language is Spanish and at all relevant times she did not have a full understanding of the English language. In 2014 she purchased the subject home for her, her husband Raul DOE and their child to live in. She paid \$27,321.00 for the home. At the time of purchase, the home was placed into her name, she obtained title insurance in her name and paid property taxes in her name. The house needed substantial repairs so in 2018, she and Raul went on the internet and found Global Enterprise Services (herein "GES") was helping people get loans. She contacted GES and they sent her an application for a residential loan called a "UNIFORM **RESIDENTIAL** LOAN APPLICATION". She could not understand the document, but she signed it and sent it to GES even though she did not fill it out. On information and belief, GES provided that document to the title agent, to Sunwood, and to attorney Dane Stanish, which put them on notice that Olga was attempting to obtain a residential loan.

GES contacted Olga and told her they would lend her \$80,000.00 and all she had to do was drive to Miami to sign papers prepared by attorney Dane Stanish (see top left of first page of

note and mortgage). Mr. Stanish is counsel for the plaintiff in the instant action and the HUD-1 reveals he was paid \$1,895.00 for services he rendered to close the loan. She was not provided any disclosures prior to closing. During closing on the loan, no one gave disclosures to Olga or explained to her that she was executing a commercial loan, that she was personally guaranteeing that loan, that they were creating a fake Florida corporation called “DOE Investments, LLC”, that they were transferring her title in the home to the fake Florida corporation and that they were having her sign a federal form captioned “NON-APPLICABILITY OF TRUTH IN LENDING LETTER” which falsely stated that Regulation Z did not apply because the home was not her residence. The switch from a residential loan to a commercial loan allowed the parties to the HUD-1 to charge egregiously excessive loan fees in excess of \$5,000.00 on an \$80,000.00 loan, and it permitted the Lender to get a 12% interest rate when rates on residential loans at that time were 3.5%. (See DOE Affidavit filed July 15, 2020, paragraphs 9 - 13 and 23)

FOURTH AFFIRMATIVE DEFENSE HOEPA VIOLATIONS

The subject loan is a consumer loan. The mortgage loan is subject to the Home Ownership and Equity Protections Act of 1994 (HOEPA) 15 USC 1602, *et. seq.*, (High Cost Mortgage) as the Plaintiff is a creditor as defined by 1602(g) and a mortgage originator as defined by 15 U.S. Code § 1602(dd)(2), the subject property is a “dwelling” as defined by 1602(w) because it is a residential structure which contains one to four family housing units and the APR exceeded 6.5 points and the total points and fees exceed 5 percent of the total transaction amount (15 U.S. Code § 1602(bb)(1)(A)(i)) and the loan is a residential mortgage loan defined by 15 U.S. Code § 1602(dd)(5). The Lender violated HOEPA by not providing notice to Olga DOE that she had 3 days to cancel the loan (15 U.S. Code § 1635), that she could back out of the loan, that the loan constituted a mortgage on her home, by failing to provide her with the Annual Percentage Rate (APR), and by failing to advise that the loan included a balloon payment. **Olga DOE hereby rescinds the loan.** 15 U.S. Code § 1635.

**FIFTH AFFIRMATIVE DEFENSE
ECOA VIOLATIONS**

The subject loan is a consumer loan. In relevant part, the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f ("ECOA") "Regulation B" prohibits any creditor from discriminating against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex or marital status. A "creditor" under the act includes any person who regularly extends, renews, or continues credit. Id. § 1691a(e). A "person" is "a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association." Id. § 1691a(f). The creditor discriminated against Olga DOE by illegally converting her residential loan application into a commercial loan application without her knowledge or consent and despite the fact that the residence is a "dwelling" covered by the Act. The conversion of her residential loan application to a commercial loan application is an adverse action for which the creditor was required to provide notice to Olga DOE pursuant to 12 CFR § 1002.9. In discriminating against Olga DOE, the creditor knew her national origin was from Colombia and that she was a stay-at-home mother who did not work and had no income, yet it deemed her a guarantor under the loan and knowingly transferred title from her to a false, fraudulent company created by the Creditor or its agents.

**SIXTH AFFIRMATIVE DEFENSE
FAIR HOUSING ACT VIOLATIONS**

The subject loan is a consumer loan. Olga DOE is of a different nationality and she is female. Plaintiff violated the Fair Housing Act 42 U.S. Code § 3605 by taking her Uniform Residential Loan Application and instead of giving her a residential loan, it gave her a commercial loan which set different terms or conditions on the loan for her than she would have had if this was a consumer loan. The conversion of her residential loan application to a commercial loan application with exorbitant fees is a discriminatory housing practice under 42 U.S. Code § 3613(c).

**SEVENTH AFFIRMATIVE DEFENSE
TRID RULES VIOLATIONS**

The subject loan is a consumer loan. The Plaintiff violated TILA-RESPA integrated disclosures (TRID) at 12 § 1026.19(e), (f), and (g), § 1026.37 and § 1026.38. The Plaintiff charged fees prior to offering a loan estimate in violation of TRID rules, it failed to provide a Loan Estimate within 3 days after receiving Olga DOE's Uniform Residential Loan Application and it failed to provide a Closing Disclosure within 3 days prior to closing.

**EIGHTH AFFIRMATIVE DEFENSE
ABILITY TO REPAY RULE VIOLATIONS**

The subject loan is a consumer loan. 12 CFR § 1026.43 applies to any consumer credit transaction that is secured by a dwelling, as defined in §1026.2(a)(19). Under the rule, lenders must find out, consider, and document a borrower's income, assets, employment, credit history and monthly expenses. The Plaintiff did not find out, consider or document Olga DOE's income, assets, employment, credit history or monthly expenses. Olga DOE is an immigrant from Colombia who's primary language is Spanish and who is a stay-at-home mother with no income. The Plaintiff gave her a 2 year loan at 12% interest with interest only payments and a balloon payment defined by 12 CFR §1026.18(s)(5)(i), which was not disclosed on the loan documents. Plaintiff knew that Olga DOE had no ability to repay this loan, yet gave her the loan in violation of the Ability to Repay Rule.

**NINTH AFFIRMATIVE DEFENSE
FRAUDULENT INDUCEMENT**

The subject loan is a consumer loan. Olga DOE was the titled owner of the subject property, she was a recent immigrant to the USA, her primary language was Spanish and she did not have a full understanding of English when the Plaintiff, by and through its agents and attorney, Dane Stanish, took advantage of her lack of understanding and lack of financial sophistication, they knew she resided in the home with her husband and child, and they deemed her residential loan application as a commercial loan application so that they could charge her

grossly excessive fees and interest on a note secured by the property and they had her personally guarantee the loan. To effectuate this scheme, they created a fake Florida corporation called DOE Investments, LLC, they had her retitle her property in the name of DOE Investments, LLC, and they had her falsely sign a federal form captioned a “NON-APPLICABILITY OF TRUTH IN LENDING LETTER” which falsely stated that Regulation Z did not apply because the home was not her residence.

TENTH AFFIRMATIVE DEFENSE
Lack of Standing

The subject loan is a consumer loan AND this is a residential foreclosure. Plaintiff did not have possession of the original, wet ink note when the action was filed.

ELEVENTH AFFIRMATIVE DEFENSE
Failure to State a Claim
Failure to Comply with F.S. 702.015

The subject loan is a consumer loan AND the instant action is a residential foreclosure. Plaintiff failed to comply with F.S. 702.015 and Plaintiff has violated the moratorium on foreclosures as set forth by the Florida Supreme Court and the Florida governor.

TWELFTH AFFIRMATIVE DEFENSE
Failure to State a Claim
Failure to Comply with F.S. 201.08

Plaintiff's note and mortgage do not evidence that the tax has been paid, in violation of Florida Statutes section 201.08, which provides that there shall be a tax of 35 cents on each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby, and a notation shall be made on the note, certificate of indebtedness, or obligation that the tax has been paid on the mortgage, trust deed or security agreement. The mortgage, trust deed, or other instrument shall not be enforceable in any court of this state as to any such advance unless and until the tax due thereon upon each advance that may have been paid thereunder has been paid.

"The case law is well established that, in an action to enforce a promissory note, the documentary taxes must be paid in order for the note to be enforceable in court." *WRJ Development, Inc., v. North Ring Limited*, 979 So.2d 1046, 1047 (3rd DCA 2008). "Once the court discovers that the documentary taxes have not been paid, the court must dismiss the action without prejudice, or upon proper motion abate the action for a time sufficient to enable the plaintiff to purchase documentary stamps and affix them to the note." *Somma v. Metra Electronics Corp.*, 727 So.2d 302, 305 (5th DCA 1999)

Failure to pay the documentary stamp tax precludes enforcement of the note prior to the payment of the tax. *Id.* See also Fla. Stat. 201.08(1)(b).

Here, the plaintiff filed what it alleged was the original Note and Mortgage. Neither document contains the required documentary tax stamp in clear violation of Florida law. Therefore, the Note remains unenforceable and the action must be dismissed.

III. CONCLUSION

For all of the foregoing reasons, Defendants DOE Investments, LLC, Olga DOE and Raul DOE request the Court deny relief to Plaintiff and award attorneys' fees and costs to Defendants.

IV. CLAIM FOR ATTORNEY'S FEES

Defendants hereby request they be awarded attorney's fees pursuant to the terms of the promissory Note and Mortgage, pursuant to Florida Statutes § 48.23(3), and also pursuant to Florida Statutes §§ 57.105(1) and 57.105(7). Wherefore, Defendant demands judgment against Plaintiff and requests the court deny Plaintiff's requested relief of foreclosure, and award reasonable attorney's fees and costs to Defendant and send Plaintiff forthwith without day.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by email this 18th day of February, 2021 to:

Dane T. Stanish, 3475 Sheridan Street, Suite 209, Hollywood, FL. 33021

Luis Huget, 3403 NW 82 Ave., Suite 210, Miami, FL. 33122
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