

IN THE COUNTY COURT,
EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NO.: [REDACTED]

[REDACTED]

Plaintiff,

vs.

PROVIDENT FUNDING ASSOCIATES, L.P.,
AND JOHN DOE LOAN OWNER, INC.

Defendant.

SCOTT ELLIS
110 SEP -3 P 12:24
FILED IN HLB
CLERK OF CIR. CT.
BREVARD CO. FLA.

COPY - ORIGINAL WAS FILED

COMPLAINT

COMES NOW, the Plaintiff, [REDACTED] by and through the undersigned counsel, and
sues the Defendant, Provident Funding Associates L.P., and alleges:

1. This is an action for damages greater than \$5,000 and less than \$14,999.00, exclusive of interest, costs and attorney's fees..
2. At all times material hereto, Defendant Provident Funding L.P. (hereafter Provident) was a Limited Partnership incorporated in the State of California that was duly licensed to transact business in the State of Florida and maintained agents for the transaction of its customary business in Brevard County, Florida.
3. The Plaintiff is a resident of Brevard County, Florida and owns a home in Brevard County which is his and his spouse's primary residence
4. Provident Funding L.P., is a loan servicer that services the mortgage upon [REDACTED] (hereafter [REDACTED] primary residence. Provident Funding LP falls within the Securities and Exchange Commission's (SEC) definition of a loan servicer.
5. It its capacity as a loan servicer, Provident Funding, acts as a third party debt collector for the owner of mortgage on the [REDACTED] home. Provident Funding for purposes of the Fair Debt Collection Practices Act (hereafter FDCPA) is a debt collector.
6. The owner of the mortgage on the [REDACTED] home, Defendant, John Doe Loan Owner, Inc., is unknown because Provident Funding, unlawfully refused to furnish said information upon written request of [REDACTED]'s undersigned counsel.

7. On or about May 7, 2010, the Plaintiff, through his undersigned counsel sent correspondence to the Defendant via fax and U.S. Mail, that requested validation of the debt pursuant to the Fair Debt Collection Practices Act (hereafter FDCPA). The letter was also sent as a Qualified Written Request (QWR) pursuant to the Real Estate Settlement Practices Act (RESPA). A copy of the subject letter and fax confirmation are attached hereto as exhibit 1.

COUNT I – VIOLATION OF RESPA

8. RESPA establishes the requirements for how a mortgage loan servicer or lender must conduct its post-closing servicing of the loan.
9. Twelve 12 U.S.C. §2605(e) details the duties and statutory obligations of a loan servicer or lender in receiving and responding to borrower written inquiries.
10. Under RESPA if a servicer receives a qualified written request (QWR) the servicer must acknowledge receipt of the QWR within twenty (20) days.
11. A QWR is “a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.
12. The Subject correspondence was a QWR under RESPA because it
 - (a) Identified the subject borrower
 - (b) Identified the subject loan
 - (c) Identified the subject property
 - (d) Included a statement of the reasons the borrower believed the account to be in error., (i.e., payments not being credited and collection by entity other than original lender or servicer).
13. Pursuant to 12 U.S.C. §2605(e)(1)(A) a loan servicer SHALL provide a written response acknowledging receipt of the correspondence within 20 days.
14. The Defendant failed to acknowledge receipt of the Qualified Written Request (QWR) within twenty days.

15. Pursuant to 12 U.S.C. §2605(e)(2) not later than sixty days after receipt of the QWR and servicer shall:
 - (C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--
 - (i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and
 - (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower
16. The Defendant failed to provide the information requested in the qualified written request within sixty (60) days as required by RESPA
17. Pursuant to 12 U.S.C. §2605(f), Whoever fails to comply with any provision of RESPA shall be liable to the borrower for any amount equal to the sum of (a) any actual damages to the borrower and (b) any additional damages that the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section in the amount not to exceed \$1,000.00.
18. The Plaintiff was damaged by the Defendant's failure to comply with RESPA.

**COUNT II – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES
ACT (FCCPA)**

Plaintiff realleges paragraphs One to Seven as set forth above.

19. Mr. [REDACTED]'s financial obligation to pay the mortgage on his home is a consumer debt as defined by F.S. 559.55(1).
20. Mr. [REDACTED] is a "consumer" and "debtor" as defined by 559.55(2)
21. Provident Funding L.P. is a "Debt Collector" as defined by 559.55(6) or in the alternative is an "Out-of-state debt collector" as defined by 559.55(8)
22. John Doe Loan Owner Inc is a creditor within the meaning of 559.55(3)
23. By letters dated March 30, 2010 and May 7, 2010, Plaintiff's undersigned counsel put Provident on notice that Plaintiff was represented by counsel with respect to the mortgage on his primary residence.

24. Florida Statute 559.72 sets forth in pertinent part:
Prohibited Practices:
--In collecting consumer debts, no person shall:
(5) Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false;
- (14) Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts;
- (18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within a reasonable period of time to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication;
25. On August 23, 2010, Provident Funding left a handbill or notice attached hereto as Exhibit 2, on the doorstep of the [REDACTED] residence.
26. The handbill stated on its face "This is in connection with an attempt to collect a debt."
27. The handbill/flyer was not placed in an envelope and was left in a conspicuous place at the entrance of the [REDACTED] home where it was likely to have been seen by any person who arrived at the [REDACTED] home between the time the handbill was left and in the late evening when Mr. [REDACTED] opened his front door to let in a visitor.
28. Provident violated the FCCPA, because it or its agent left the notice AFTER provident was on notice that [REDACTED] had retained counsel.
29. Provident violated the FCCPA because the handbill contained Mr. [REDACTED]'s name and was published or posted in a manner where it could be viewed by the public.
30. As a result of the publication / posting of the handbill, [REDACTED] suffered embarrassment, anxiety, mental anguish and loss of reputation.
31. Pursuant to 559.77 [REDACTED] is entitled to his actual damages, together with statutory damages of up to \$1,000.00 for the violation.

COUNT III – VIOLATION OF TILA

Plaintiff reallages paragraphs One to Seven above.

32. The Qualified Written Request sent on May 7, 2010 requested that Provident Funding disclose the identity of the current owner of the note and mortgage.
33. Provident is obligated disclose the identity of the owner of the note and mortgage under the amendments to the Truth In Lending Act.
34. John Doe Loan Owner Inc., is required to disclose its identity under TILA.
35. Provident is the agent of John Doe Loan Owner Inc.
36. Notice of the request for identity of the owner of the loan is imputed to the loan owner because notice to the agent of the loan owner is imputed to the loan owner.
37. Provident failed or refused to disclose the owner of the note.
38. John Doe Loan Owner Inc., failed or refused to disclose its identity.
39. Plaintiff is entitled to damages from Provident for its violations of TILA
40. Plaintiff is entitled to damages from John Doe Loan Owner Inc. for its violations of TILA.

WHEREFORE, the Plaintiff, [REDACTED], demands judgment for damages together with interest, costs and attorney's fees pursuant to Florida Statutes, §§559.77, RESPA 12 U.S.C. §2605, and TILA, legal assistants' fees pursuant to §57.104 Florida Statutes, and costs pursuant to §92.231, Florida Statutes and §57-041, Florida Statutes, and any and all further relief as this Court deems just and proper, and further demands a trial by jury on all issues.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Defendant herein through service of process.

SHUSTER & SABEN, LLC


RICHARD SHUSTER, ESQUIRE

Fla. Bar No.: 045713

540 North Harbor City Blvd

Melbourne, Florida 32935

Telephone: 321-622-5040

Attorneys for Plaintiff

THE LAW OFFICES OF
SHUSTER & SABEN, L.L.C.
540 NORTH HARBOR CITY BLVD.
MELBOURNE, FLORIDA 32935
PHONE (321) 622-5040 • FAX (321) 259-3255

May 7, 2010

VIA MAIL & FAX (707) 568-2737
Provident Funding
1235 North Dutton Ave., Suite E
Santa Rosa, CA 95401

Re: PROVIDENT FUNDING ASSOCIATES, L.P. ET AL.
v. [REDACTED], ET AL.
Case No.: [REDACTED]
Lender: PROVIDENT FUNDING ASSOCIATES, L.P.
Loan Nos. [REDACTED] and [REDACTED]

To Whom It May Concern:

Please be advised that our law firm represents [REDACTED] and [REDACTED] regarding your attempts to collect a debt allegedly owned to the above-referenced financial institution. As you may know, Provident Funding Associates, L.P. has already filed suit against our clients to foreclose, and this law firm is defending the subject lawsuit.

Pursuant to the Fair Debt Collection Practices Act and in behalf of our client we hereby dispute the validity of the debt and demand validation of same.

Please also let this letter serve as a qualified written request pursuant to RESPA.. Our client obtained a mortgage from PFG Loans, Inc. on June 26, 2006 and does not understand what, if any, ownership interest Provident Funding Associates, L.P. has in the subject note and mortgage. Our client believes that their payments have not been properly credited toward the balance due. As such, please furnish our office with the following:

- (1) The identity of the current owner of the note and mortgage;
- (2) The identity of all prior owners of the note and mortgage;
- (3) The date the current owner of the note and mortgage acquired the note and mortgage;
- (4) If the note and mortgage is owned by a trust please identify both the trustee of the subject trust and the trust itself;
- (5) Identify the current and all past servicers of the mortgage;

Provident Funding
May 7, 2010
Page Two

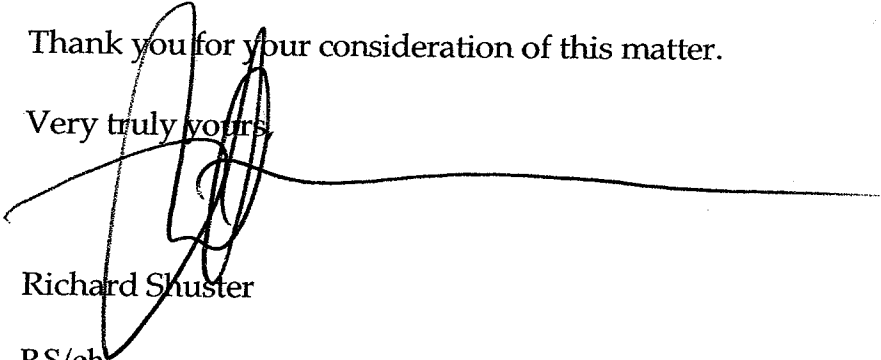
- (6) Provide a complete payment history.;
- (7) Explain the relationship (if any) between PFG Loans, Inc. and Provident Funding Associates, L.P.

All future contact relative to this debt must take place solely through this office.

For your reference, please also find enclosed written authorization to disclose the requested information.

Thank you for your consideration of this matter.

Very truly yours,



Richard Shuster

RS/ch
Enclosure

Date: 8-23-10

[REDACTED]

This is in connection with an attempt to collect a debt. Any information obtained will be used for that purpose. It is important that we talk with you.

← (FOLD HERE) →

Please call: Provident Funding
800 696 8199 return

[REDACTED] If this matter has been discussed with one of our staff in the last 10 days, or arrangements were made prior to that date, kindly ignore this request.

Thank You.

← (FOLD TOP OF SLIP AND SEAL ON THE LINE) →

**IMPORTANT CONFIDENTIAL
NOTICE**