

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

CASE NO.: 2011-SC-134

MCCLELLAN

V _____

Plaintiff,

vs.

CITIMORTGAGE, INC., A FOREIGN FOR PROFIT
CORPORATION, AND
JOHN DOE LOAN OWNER, INC.

Defendant.

FILED IN MLB
CLERK OF CIR. CT.
BREVARD CO. FL.

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MITCH NEEDELMAN

COMPLAINT

COMES NOW The Plaintiff, V _____ by and through the undersigned counsel,
sues the Defendant, CitiMortgage Inc. (hereafter CitiMortgage), and alleges::

1. This is an action for damages less than \$2499.00, exclusive of interest, costs and attorney's fees.
2. At all times material hereto, Defendant, CitiMortgage Inc. was a foreign for profit corporation with a principal place business in O'Fallon Missouri. CitiMortgage conducts business in State of Florida and maintained agents for the transaction of its customary business in 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. CitiMortgage is a loan servicer that services the mortgage upon V _____'s primary residence. CitiMortgage falls within the Securities and Exchange Commission's (SEC) definition of a loan servicer.
5. In the alternative, CitiMortgage owns the note and mortgage on Plaintiff's residence and is the owner of the debt and is not servicing the loan for a third party. The plaintiff is without knowledge as to whether CitiMortgage is the owner of the note and mortgage on Plaintiff's home or is merely a third party servicer because CitiMortgage failed to provide such information in response to the qualified written request submitted to by Plaintiff's counsel to the Defendant.

6. It its capacity as a loan servicer, Citimortgage, acts as a third party debt collector for the owner of mortgage on the Plaintiff's home. Citimortgage for purposes of the Fair Debt Collection Practices Act (hereafter FDCPA) is a debt collector.
7. The owner of the mortgage on the Plaintiff's home, Defendant, John Doe Loan Owner, Inc., is unknown because Citimortgage, unlawfully refused to furnish said information upon written request of plaintiff's undersigned counsel.
8. On or about October 26, 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

9. RESPA establishes the requirements for how a mortgage loan servicer or lender must conduct its post-closing servicing of the loan.
10. 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.
11. Under RESPA if a servicer receives a qualified written request (QWR) the servicer must acknowledge receipt of the QWR within twenty (20) days.
12. 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.
13. The Subject correspondence was a QWR under RESPA because it
 - (a) Identified the subject borrower
 - (a) Identified the subject loan
 - (b) Identified the subject property
 - (c) 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).

14. Prior to July 22, 2010, 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. The Dodd-Frank Financial Reform Bill amended RESPA to require acknowledgement of a QWR within 5 days. See <http://www.nclc.org/dodd-frank/nclc-rpts-ccu-jul-aug-2010-web.pdf>
15. The Defendant failed to acknowledge receipt of the Qualified Written Request (QWR) within five (5) days [the deadline for the subject case because the Dodd-Frank amendments apply] or within twenty days (under the prior deadlines). Further, to date the Defendant has never acknowledged receipt of the QWR.

16. Prior to July 22, 2010, 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

The Dodd Frank amendment subsequent reduced this time from answering the QWR to 30 days.

17. Citimortgage in addition to failing to acknowledge receipt of the QWR also failed to respond to the QWR within sixty (60) days as required by RESPA. No answer to the QWR was sent by CitiMortgage and CitiMortgage never advised who owned the subject note on Abbruzzese's home.
18. Prior to July 22, 2010, 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.

The Dodd Frank Amendment increased the amount of statutory damages on RESPA violation occurring after July 22, 2010 from \$1,000 to \$2,000.00.

19. The Plaintiff was damaged by the Defendant's failure to comply with RESPA.

WHEREFORE, the Plaintiff, V _____, 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, and the FDCPA 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.

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

Plaintiff realleges paragraphs One to Eight as set forth above.

20. Plaintiff's financial obligation to pay the mortgage on his home is a consumer debt as defined by F.S. 559.55(1).
21. The Plaintiff is a "consumer" and "debtor" as defined by 559.55(2)
22. CITIMORTGAGE, INC. 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)
23. John Doe Loan Owner Inc is a creditor within the meaning of 559.55(3)
24. After Citimortgage received the October 26, 2010 letter from Plaintiff's undersigned counsel CitiMortgage was on notice that Plaintiff was represented by counsel with respect to the mortgage on his primary residence. CitiMortgage was also placed on notice that Abbruzzese was represented by counsel by the notice of appearance filed by Abbruzzese's counsel in the foreclosure action filed by CitiMortgage against _____ in Brevard Case Number 05-2010-CA-0520 _____.
25. 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;

26. On or about September 22, 2010, CitiMortgage filed an action to foreclosure on Plaintiff's home.
27. On multiple occasions including but not limited to November 22, 2010 at 8:52 A.M, November 22, 2010 at 4:43 p.m., and December 1, 2010 at 4:11 p.m., CitiMortgage or its agents made telephone calls Plaintiff V _____ in violation of the FCCPA.
28. The above-referenced telephone calls were made to collect a debt.
29. CitiMortgage also violated the FCCPA, because it or its agent(s) made direct telephonic/written communication with Plaintiff after Citimortgage was on notice that Plaintiff had retained counsel.
30. Pursuant to 559.77 Plaintiff is entitled to his actual damages, together with statutory damages of up to \$1,000.00 for the violation.

WHEREFORE, the Plaintiff, V _____, 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, and the FDCPA 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.

COUNT III – VIOLATION OF TILA

Plaintiff reallages paragraphs One to Seven above.

31. The Qualified Written Request sent on October 26, 2010 requested that CitiMortgage disclose the identity of the current owner of the note and mortgage.
32. CitiMortgage is obligated disclose the identity of the owner of the note and mortgage under the amendments to the Truth In Lending Act.
33. John Doe Loan Owner Inc., is required to disclose its identity under TILA.
34. CitiMortgage is the agent of John Doe Loan Owner Inc.
35. 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.
36. CitiMortgage failed or refused to disclose the owner of the note.
37. John Doe Loan Owner Inc., failed or refused to disclose its identity.

38. Plaintiff is entitled to damages from CitiMortgage for its violations of TILA

39. Plaintiff is entitled to damages from John Doe Loan Owner Inc. for its violations of TILA.

WHEREFORE, the Plaintiff, V _____, 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, and the FDCPA 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 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

Toll Free: 877-511-7829

Fax Number: 321-259-3255

Attorney for Defendants

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	4159
DESTINATION ADDRESS	14807537832
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	10/26 17:26
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RESULT	OK

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

October 26, 2010

VIA MAIL & FAX (480)753-7832
 CitiMortgage, Inc.
 P. O. Box 660065
 Dallas, TX 75266-0065

Re: **CITIMORTGAGE, INC. v. V** _____
 Case No.: 05-2010-CA-0477 _____
 Our Clients: V _____ and _____
 Property Address: _____ NW, Palm Bay, FL 32907
 Your File: 20045836 _____
 Original Lender: Mortgage America, Inc.
 Current Lender: Unknown

To Whom It May Concern:

Please be advised that our law firm represents V _____ and _____
 _____ regarding your attempts to collect a debt allegedly owed to the above-
 referenced financial institution. As you may know, CitiMortgage, Inc. has already filed
 suit against our clients to foreclose on a first mortgage, and this law firm is defending the
 subject lawsuit.

Pursuant to the Fair Debt Collection Practices Act and on behalf of our clients, 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 and recent
 amendments to TILA. Our clients obtained a mortgage from Mortgage America, Inc. on
 July 12, 2007, and they do not understand what if any responsibility interest CitiMortgage

Exhibit 1

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

October 26, 2010

VIA MAIL & FAX (480)753-7832
CitiMortgage, Inc.
P. O. Box 660065
Dallas, TX 75266-0065

Re: CITIMORTGAGE, INC. v. V _____
Case No.: 05-2010-CA-0477 _____
Our Clients: V _____
Property Address: _____ NW, Palm Bay, FL 32907
Your File: 20045836 _____
Original Lender: Mortgage America, Inc.
Current Lender: Unknown

To Whom It May Concern:

Please be advised that our law firm represents V _____ and _____
_____ regarding your attempts to collect a debt allegedly owed to the above-
referenced financial institution. As you may know, CitiMortgage, Inc. has already filed
suit against our clients to foreclose on a first mortgage, and this law firm is defending the
subject lawsuit.

Pursuant to the Fair Debt Collection Practices Act and on behalf of our clients, 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 and recent
amendments to TILA. Our clients obtained a mortgage from Mortgage America, Inc. on
July 13, 2007, and they do not understand what, if any, ownership interest CitiMortgage,
Inc. has in the subject Note and Mortgage. Our clients believe that their payments have
not been properly credited toward the balance due and that the late fees charged were
excessive. Our clients also believe that CitiMortgage should have considered them for
HAMP modification.

As such please furnish our office with the following:

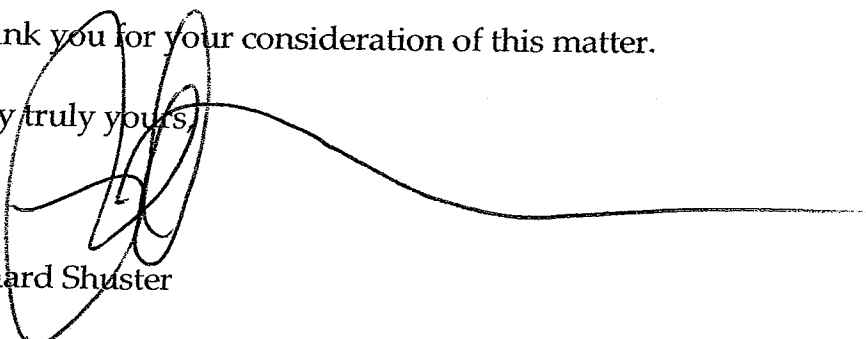
- (1) The identity of the current owner of the Note and Mortgage.
- (2) The identity of all prior owners of the Note and Mortgage.
- (3) The date the current owner of the Note and Mortgage acquired the Note and Mortgage.
- (4) If the Note and Mortgage is owned by a trust please identify both the trustee of the subject trust and the trust itself.
- (5) Identify the current and all past servicers of the Mortgage.
- (6) Provide a complete payment history.
- (7) Provide documentation of when the current owner of the Note acquired the Note, the entity from which the Note was acquired, and the amount of consideration paid for the loan.
- (8) Specify the interest rate utilized for each installment due under the Mortgage.
- (9) Please state whether our client was evaluated for loan modification under HAMP.
- (10) Please provide copies of any HAMP application received and all correspondence and log notes concerning the application for HAMP.
- (11) Please identify the interest rate used for determining the amount of any HAMP trial payment.
- (12) If our clients were placed in a Trial HAMP state the reason why the trial HAMP was not made permanent.
- (13) If the trial HAMP was not made permanent based on "missing documentation" please identify what documents were missing and state the date the servicer notified the borrower and specifically advised what additional documents were needed.

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

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

Thank you for your consideration of this matter.

Very truly yours,



Richard Shuster

RS/ch
Enclosure