

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

CASE NO.: 05-2016-CA- _____

I

Plaintiff,

vs.

CALIBER HOME LOANS, INC.,

Defendant,

_____ /

COMPLAINT

COMES NOW The Plaintiff, D _____ (hereafter C) by and through the undersigned counsel, sues the Defendant Caliber Home Loans, Inc. (hereafter Caliber), and alleges:

COMMON ALLEGATIONS

1. This is an action for damages greater than \$15,000.00, exclusive of interest, costs and attorney's fees.
2. At all times material hereto, Defendant, Caliber Home Loans, Inc. was a foreign corporation with a principal place business in Irving, Texas. .
3. The Plaintiff is a resident of Brevard County, Florida and owns a home in Brevard County which is her primary residence.
4. Caliber is a loan servicer that services the mortgage upon D _____ G _____ primary residence. Caliber falls within the Securities and Exchange Commission's (SEC) definition of a loan servicer.

(SEC) definition of a loan servicer.

5. Upon information and belief Caliber services the loan on behalf of the owner of the loan who is believed to be Federal Home Loan Mortgage Corporation.
6. In its capacity as a loan servicer, Caliber acts as a third party debt collector for the owner of mortgage on the Plaintiff's home. Caliber, for purposes of the Fair Debt Collection Practices Act (hereafter FDCPA) is a debt collector.
7. Caliber assumed servicing on the subject loan in 2015, from the prior loan servicer, Ocwen Loan Servicing, LLC.
8. Caliber assigned Loan Number 9 [redacted] 3 to the subject loan.
9. Prior to Caliber assuming servicing of the subject loan, Ocwen filed a foreclosure action against D [redacted] 3 under Brevard Circuit Court Case Number 05-201 [redacted] CA-0 [redacted] 7.
10. Ocwen, or in the alternative Caliber, through its counsel in the underlying foreclosure action obtained a final judgment against G [redacted] on or about July 1, 2015. At such time, a foreclosure sale was scheduled for September 2, 2015.
11. Prior to the scheduled foreclosure sale, [redacted] engaged Ocwen and Caliber in loss mitigation efforts and submitted a completed loss mitigation package to her then current loan servicer.
12. By motion filed August 26, 2015, counsel for Ocwen and Caliber moved to reschedule the foreclosure sale, and by order dated September 1, 2015 the Court rescheduled the foreclosure sale from September 2, 2015 to November 4, 2015.

13. On October 22, 2015, counsel for Caliber, again moved to reschedule the foreclosure sale, and in support thereof represented to the Court that "Plaintiff is currently reviewing the loan for a possible Home Affordable Modification Plan (HAMP)."
14. By Order dated October 28, 2015 the Court rescheduled the foreclosure sale from November 4, 2015 to January 6, 2016.
15. By letter dated November 12, 2015 Caliber advised G_____ that she was eligible for a trial loan modification under the Making Home Affordable Program, HAMP. A true and correct copy of the subject letter, and trial modification offer is attached hereto as Exhibit 2. *(There is no exhibit 1 to this complaint).*
16. G_____ accepted the trial modification offer, by making her first payment of \$_____ on or before December 1, 2015, as requested in the trial HAMP Offer, and made all payments required by the trial modification. Copies of several of her payments are included in Exhibit 2.
17. By Letter dated January 12, 2016, Caliber advised G_____ that her loan had been approved for a permanent loan modification at an interest rate of 3.375%. A true copy of the letter and pages 1 to 6 of the permanent loan modification offer are attached hereto as Exhibit 3.
18. G_____ accepted the loan modification agreement by executing the agreement and returning the document to Caliber.
19. On December 31, 2015, less than five business days before the January 6, 2016 scheduled sale date counsel for Caliber filed a motion to cancel the foreclosure sale that was scheduled for January 6, 2016.
20. The law firm of Brock & Scott were agents of Caliber and were the law firm the prosecuted the underlying foreclosure action.

21. Caliber's counsel, Brock & Scott never set a hearing on the motion to cancel sale, filed on December 31, 2015, to cancel the sale scheduled for January 6, 2016.
22. On January 6, 2016, the Court conducted a foreclosure sale. Plaintiff was the winning bidder.
23. Caliber accepted the final trial payment on January 7, 2016, after the foreclosure sale was conducted.
24. While G _____ was making her trial modification payments she was in regular telephonic contact with loss mitigation representatives of Caliber who repeatedly advised her that so long as she made her trial payments she did not need to worry about the foreclosure action and that the foreclosure action would be frozen and would not go forward while she was making loan modification payments.
25. On or about February 5, 2016, C _____ sent Caliber the executed final loan modification agreement which converted her trial modification into a permanent loan modification.
26. On February 26, 2016, C _____ called Caliber to make the payment due March 1, 2016 under the permanent loan modification. At such time she was advised by Caliber that her loan modification was denied because a foreclosure was completed on January 6, 2016.
27. C _____ felt immediate and severe anxiety over the probability that she could be ejected from her home by the sheriff at any time, and a feeling of helplessness and betrayal to the extent that she fully performed under the subject loan modification to keep her home and avoid a foreclosure sale, and Caliber and completely failed to comply with Caliber's obligations under the agreement and federal law.

28. Thereafter, Caliber sent a written denial of loan modification. In the denial, Caliber knowingly stated a false and pretextual reason for the denial of permanent loan modification Caliber's pretext was a false assertion that G _____ had rejected the loan modification. This assertion was false as G _____ by word and deed, accepted the permanent loan modification.

COUNT I: VIOLATION OF 12 C.F.R. 1024

Plaintiff realleges Paragraphs 1 to 28 as set forth above.

29. G _____ prior to October 28, 2015, submitted a complete or facially complete loss mitigation package to Caliber or in the alternative to the prior loan servicer Ocwen.

30. The complete or facially complete package submitted by G _____ gave rise to the Trial HAMP offer of November 12, 2015.

31. Code of Federal Regulations 12 C.F.R. 1024.41(g) provides in pertinent part:

(g) Prohibition on foreclosure sale. If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer;
or

- (3) The borrower fails to perform under an agreement on a loss mitigation option.
32. Caliber, when it was in possession of the complete or facially complete package and thereafter when Caliber had accepted the first loan modification payment, was prohibited from conducting a foreclosure sale.
33. At the hearing to reschedule the November 4, 2015 sale, Caliber violated 12 C.F.R. 1024(g) when it asked that the foreclosure sale be “rescheduled” rather than simply cancelled. Caliber should have asked for the foreclosure sale to be cancelled and not rescheduled or cancelled with a Case Management Conference (CMC) date set. The act requesting rescheduling i.e. a new foreclosure date violated 12 CFR 1024.41(g), which explicitly prohibits the loan servicer from moving for order of sale.
34. Caliber was prohibited from asking for a new sale date because had not at such time sent _____ notice that she was not eligible for any loss mitigation option under 1024.41.(g)(1).
35. Further G _____ NEVER rejected any loss mitigation option so that 12 CFR 1024(g)(2) is not an applicable defense.
36. Finally, at no time did G _____ fail to perform under 12 CFR 1024(g)(3).
37. Code of Federal Regulations 12 CFR 1024.41(a) provides:
- (a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in § 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in § 1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

38. C _____ sustained actual damages to the extent she retained counsel and has incurred and will continue to incur legal fees to obtain relief from the foreclosure judgment.\
39. G _____ will incur substantial additional damages if the judgment of foreclosure is not vacated.
40. G _____ has sustained actual damages in the form of duress, anxiety, fear of losing her home, embarrassment, shame, loss of time from her job, as a result of Caliber's failure to comply with 12 CFR 1024.41 and the wrongful foreclosure sale of her home.
41. Caliber has made a pattern and practice of failing to cancel foreclosure sales in Brevard County, in Florida and in the United States in circumstances where 12 CFR 1024.41 requires that foreclosure sales be cancelled.
42. G _____ has retained the undersigned counsel and seeks recovery of reasonable attorney's fees and costs, pursuant to 12 CFR 1024.41 and 12 United State Code 2605.

COUNT II: BREACH OF CONTRACT

Plaintiff realleges Paragraphs 1 to 28 as set forth above.

43. The Trial Modification and Permanent Modification letters and offers, constituted a written offer by Caliber.
44. G _____ accepted the written offers by signing the document, returning the permanent loan modification and making the trial payments as set forth in the trial offer.

45. Upon G _____ acceptance of the written offer, a contract was created between Caliber, the loan owner for who Caliber was an agent, and C _____
46. To the extent that Caliber accepted trial payments and acted in a matter consistent with a contract, Caliber is estopped from denying the existence of a binding contract by which the loan was modified.
47. Caliber breached the contract between Caliber, Lender and G _____ when it (a) refused to accept the payment due March 1, 2016, (b) completed the foreclosure sale, (c) failed to take any action to vacate the foreclosure sale, and (d) refused to provide C _____ with the benefit of the bargain.
48. G _____ has sustained damages from Caliber's breach of the Loan Modification Agreement.
49. G _____ is entitled to her reasonable attorney's fees incurred under the contract.

COUNT III VIOLATION OF THE FDCPA

Plaintiff realleges Paragraphs 1 to 28 as set forth above.

50. Caliber is a debt collector within the meaning of the FDCPA.
51. The subject loan is a consumer debt.
52. When Caliber began servicing the subject loan, the loan was in default.
53. United States Code 15 U.S.C. 1692(e) provides in pertinent part:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

54. Caliber made a false representation with respect to the subject debt when in denying permanent loan modification it falsely represented that G_____ had rejected loss mitigation options and rejected HAMP II. This representation was false.
55. Upon information and belief, Caliber made this false representation as a pretext reason for its failure to cancel the scheduled foreclosure sale which it never should have requested to be reset in the first place and for which it waited until the eleventh hour to seek cancellation.
56. C_____ sustained damages by this false statement.
57. G_____ thereafter appealed Caliber's denial of permanent loan modification.
58. G_____ incurred legal expenses for having her counsel submit an appeal of the wrongful denial of permanent modification.
59. C_____ sustained actual damages as a result of the false statement and violation of the FDCPA.
60. C_____ is further entitled to statutory damages of \$1,000 under 15 USC 1692k.

WHEREFORE, the Plaintiff, D_____ G_____ 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, FCCPA, 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.


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