

ORIGINAL

1 **COMP**
2 JULIE L. SANPEI, ESQ.
3 Nevada Bar No. 005479
4 BAILUS COOK & KELESIS, LTD.
5 400 South Fourth Street, Suite 300
6 Las Vegas, Nevada 89101
7 (702) 385-3788
8 Attorneys for PLAINTIFF MORSE ARBERRY

FILED

APR 27 10 32 AM '09

E. J. [Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

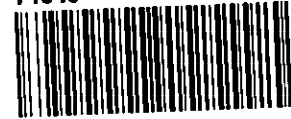
8 MORSE ARBERRY, an individual,
9 Plaintiff,

10 vs.

11 COUNTRYWIDE HOME LOANS, INC.,
12 a foreign corporation; COUNTRYWIDE
13 HOME LOANS SERVICING, LP, a
14 foreign limited partnership; RECONTRUST
15 COMPANY, a subdivision of
16 COUNTRYWIDE HOME LOANS, INC., a
17 foreign corporation; and DOES I-X,
18 inclusive,

19 Defendants.

A-09-588827-C
71046



CASE NO.: A-09-588827-C
DEPT. NO.: XXII

EXEMPT FROM ARBITRATION:
INVOLVES TITLE TO REAL
PROPERTY

17 **VERIFIED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

18 COME NOW, Plaintiff, MORSE ARBERRY, by and through his attorney of record, JULIE
19 L. SANPEI, ESQ., of the law firm of BAILUS COOK & KELESIS, LTD. and for his causes of
20 action, alleges as follows:

- 21 1. Plaintiff, MORSE ARBERRY ("Plaintiff" or "Arberry"), is now, and was at all times
22 relevant hereto, a resident of the County of Clark, State of Nevada.
- 23 2. Plaintiff is the owner of two parcels of real property located at 2735 Gazing Stars Street,
24 North Las Vegas, Nevada 89030, APN #139-16-711-018 and 2020 Fred Brown Drive, Las
25 Vegas, Nevada 89106, APN #139-21-211-018 (collectively "Property").
- 26 3. Defendant COUNTRYWIDE HOME LOANS, INC. ("Countrywide Mortgage"), is now and
was at all times relevant hereto, a foreign corporation licensed to conduct business in the
State of Nevada.

CLERK OF THE COURT

APR 27 2009

RESERVED

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- 1 4. Plaintiff is informed, believes and alleges that Defendant COUNTRYWIDE HOME LOANS
2 SERVICING, LP ("Countrywide Servicing"), is now and was at all times relevant hereto, a
3 foreign limited partnership licensed to conduct business in the State of Nevada.
- 4 5. Plaintiff is informed, believes and alleges that Defendant RECONTRUST COMPANY
5 ("Recontrust," and jointly with the foregoing Defendants, "Countrywide"), is now and was
6 at all times relevant hereto, a subdivision of Countrywide Mortgage and claims to be a Deed
7 of Trust trustee for the Property.
- 8 6. The true names or capacities, whether individual, corporate, associate or otherwise, of
9 Defendants, DOES I through X are unknown to Plaintiff who, therefore, sue said Defendants
10 by such fictitious names; Plaintiff is informed and believes thereon alleges that each of the
11 Defendants designated herein as DOE are responsible in some manner for the events and
12 happenings referred to and caused damages proximately to Plaintiff as herein alleged and that
13 Plaintiff will ask leave of this court to amend this Complaint to insert the true names and
14 capacities of DOES I through X when the same have been ascertained and join such
15 Defendants in this action. Further, Plaintiff designates all persons unknown claiming an
16 interest in the property as Defendants, DOES I through X, inclusive.
- 17 7. Countrywide Mortgage is the current mortgage lender for the Properties.
- 18 8. Countrywide Servicing, based on information and belief, is the mortgage loan administrator.
- 19 9. Over the past several months, Plaintiff was notified by Defendants that Countrywide alleges
20 his mortgage payments were behind and has begun foreclosures proceedings.
- 21 10. Plaintiff's attempts to resolve the situation have been rebuffed by Defendants who refuse to
22 participate in any resolution that does not involve him paying the full amount Defendants
23 claim is owed despite the fact that Plaintiff questions the accuracy of the accounting.
- 24 11. Moreover, Defendants will not accept what they deem to be "partial payments" to be applied
25 against undisputed sums.
- 26 12. Plaintiff therefore disputes Countrywide's accounting for the Property is correct and further
27 disputes that he was provided with appropriate notice of the foreclosure pursuant to statute
- 28 13. Defendants' unexplained and confusing accounting history as well as Plaintiff's belief that

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Defendants have not complied with NRS §107.080 has resulted in Plaintiff's initiation of this action.

14. Despite Plaintiff's concerns, which have been presented to Countrywide, Defendants have continued to proceed with the wrongful foreclosure against the Property and slander Plaintiff's good title.

15. Plaintiff hereby seeks a Temporary Restraining Order, Preliminary and Permanent Injunction preventing Countrywide from proceeding with their foreclosure unless and until all payments are properly credited to Plaintiff's accounts and a fully supportable accounting of Plaintiff's mortgages is provided, the mortgages are fully reinstated and until any and all slander to Plaintiff's title to the Property is withdrawn.

FIRST CLAIM FOR RELIEF

(Preliminary and Permanent Injunction)

16. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 15 above, as though fully set forth herein.

17. By virtue of Defendant's wrongful actions as stated herein, Plaintiff is entitled to a Preliminary and Permanent Injunction preventing Defendants from proceeding with the foreclosure against Plaintiffs' Property.

18. The Property involved is unique and absent an injunction, Plaintiff will have no adequate remedy at law.

19. If the foreclosure is allowed to proceed, Plaintiff will be irreparably harmed by the foreclosure sale.

20. It has become necessary for Plaintiff to engage the services of an attorney to commence this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs for damages.

SECOND CLAIM FOR RELIEF

(Declaratory Relief as Against All Defendants)

21. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 20 above, as though fully set forth herein.

22. Plaintiff seeks declaratory relief as to his rights under the mortgage loan agreements pursuant

1 to NRS 30.010 *et. seq.*, and requests a declaration (1) that Plaintiff has fully complied with
2 any and all conditions of their mortgage obligations with Defendants; (2) that he is in full
3 compliance in making all payments due thereon; (3) that the foreclosure commenced by
4 Defendants is wrongful and should be immediately withdrawn; and (4) that the mortgages
5 and Deeds of Trust should be fully reinstated.

6 23. Additionally, Plaintiff seeks an Order from this Court declaring that, by virtue of the
7 wrongful foreclosure commenced by Defendants, they are liable to the Plaintiff for any
8 damages resulting from such wrongful conduct.

9 24. It has become necessary for Plaintiff to engage the services of an attorney to commence this
10 action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs for damages.

11 **THIRD CLAIM FOR RELIEF**

12 **(Negligence)**

13 25. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through
14 24 above, as though fully set forth herein.

15 26. In the exercise of ordinary care, Defendants knew, or should have known, that Plaintiff was
16 not in breach of his financial obligations under his mortgage agreements and in failing to do
17 so, Defendants were negligent in crediting Plaintiff's payments and improperly calculating
18 amounts claimed to be due by Plaintiff.

19 27. It has become necessary for Plaintiff to engage the services of an attorney to commence this
20 action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs for damages.

21 **FOURTH CLAIM FOR RELIEF**

22 **(Breach of Contract)**

23 28. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through
24 27 above, as though fully set forth herein.

25 29. As a result of Defendants' breaches of all written and oral agreements made with Plaintiff,
26 the Plaintiff has incurred damages in an amount in excess of \$10,000.00.

27 30. It has become necessary for Plaintiff to engage the services of an attorney to commence this
28 action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs for damages.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Slander of Title)**

3 31. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through
4 30 above, as though fully set forth herein.

5 32. As a result of the wrongful foreclosure initiated by Defendants, the Defendants have
6 slandered the title to the subject Property owned by Plaintiff and Defendants are thus liable
7 for damages in excess of \$10,000.00.

8 33. It has become necessary for Plaintiff to engage the services of an attorney to commence this
9 action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs for damages.

10 **SIXTH CLAIM FOR RELIEF**

11 **(Unfair Lending Practices – NRS §598D)**

12 34. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through
13 33 above, as though fully set forth herein.

14 35. The Defendants are Lenders as defined by NRS §598D.050; Plaintiff is a borrower as defined
15 by NRS §598D.020, the Properties are homes as defined by NRS §598D.030; and the loan
16 at issue is a home loan defined by NRS §598D.040.

17 36. The Defendants violated NRS §598D.100 by failing to determine using commercially
18 reasonable means that Plaintiff had the ability to repay the loans on multiple properties.

19 37. Pursuant to NRS §598D.110, Plaintiff is entitled to this Court's order enjoining and/or
20 cancelling any foreclosure or trustee's sale of the Property.

21 38. Plaintiff is therefore entitled to recover three times Plaintiff's actual damages including
22 without limitation, loan fees and charges, Plaintiffs' down payment, loan payments in excess
23 of the fair rental value of the Property and improvements.

24 **SIXTH CLAIM FOR RELIEF**

25 **(Breach of the Covenant of Good Faith and Fair Dealing)**

26 39. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through
27 38 above, as though fully set forth herein.

28 40. Under Nevada law, every contract contains an implied covenant of good faith and fair

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dealing that imposes on the parties the obligation to deal with each other fairly and honestly.

41. The Defendants, in their treatment of Plaintiff, have breached the covenant of good faith and fair dealing by engaging in the following actions:

- a. Concealing from Plaintiff that Plaintiff was purchasing at an artificially inflated price largely as a result of the policies adopted by the Defendants and other lenders and that a severe decline in home prices was likely or inevitable;
- b. Concealing from Plaintiff that when home prices declined, Plaintiff would likely lose all equity in the Property and find it impossible to refinance with an affordable mortgage;
- c. Failing to negotiate in good faith with Plaintiff to modify the loan when the undisclosed terms of the loan and market conditions created largely by the Defendants made it impossible for Plaintiff to fully service the loan;
- d. Failing to advise Plaintiff that Plaintiff would only be able to refinance the Property and avoid foreclosure if property values continued to rise rapidly and/or in Plaintiff's income increased significantly.
- e. Adopting lending and foreclosure policies that, along with the parallel actions of other lenders, doomed Plaintiff's loan to foreclosure.

42. As a result of Defendants' breaches of the covenant of good faith and fair dealing, Plaintiff has suffered economic losses and have further suffered emotional distress that was reasonably foreseeable by the Defendants, all in an amount in excess of \$10,000.00.

SEVENTH CLAIM FOR RELIEF

(Breach of Special Relationship/Fiduciary Duty)

43. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 42 above, as though fully set forth herein.

44. The Defendants possessed substantially greater experience, expertise, and knowledge of residential mortgage lending and the residential real estate market than did Plaintiff, and Defendants were aware of their substantially greater expertise and knowledge in these areas.

45. The Defendants were further aware that there was a near total disparity in the bargaining

1 position of the parties, in which the Defendants were able to dictate, and did in fact, dictate
2 the terms of the loan agreement and the content of the loan documents.

3 46. As a result of the foregoing facts, the Defendants encouraged Plaintiff to rely on the
4 Defendants' superior knowledge and expertise in dealing whether to enter into a loan with
5 Defendants, Plaintiff did reasonably rely on the Defendants in entering into the mortgages,
6 and the Defendants were aware of this reliance.

7 47. As a result of the vastly disparate knowledge, experience and bargaining position of the
8 parties, a special relationship arose between the Defendants and the Plaintiff in which the
9 Defendants assumed a fiduciary duty toward Plaintiff to disclose all material facts relating
10 to the transaction, to protect Plaintiff's interests, and not to place Plaintiff in a loan that
11 would likely result in damage to Plaintiff while benefitting Defendants.

12 48. The Defendants breached their duties toward Plaintiff by misrepresenting or failing to
13 disclose material facts as stated herein, by failing to negotiate with Plaintiff in good faith to
14 modify the loan when the foreseeable inability of Plaintiff to service the loan arose.

15 49. The actions of Defendants were undertaken intentionally and with full awareness of the
16 anticipated damage to Plaintiff, or in conscious and callous disregard of those consequences.
17 As such, Plaintiff is entitled to recover punitive damages from Defendants in an amount to
18 be determined at trial.

19 50. The Defendants' breaches as set forth herein have damaged Plaintiff in an amount in excess
20 of \$10,000.00.

21 **EIGHTH CLAIM FOR RELIEF**
22 **(Deceptive Trade Practices)**

23 51. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through
24 50 above, as though fully set forth herein.

25 52. The Defendants engaged in deceptive trade practices by knowingly making false
26 representations to Plaintiffs in violation of NRS §598.0915 and NRS §598.0923.

27 53. The actions of Defendants were intentional or taken with callous disregard of the damage that
28 would result to Plaintiff. As such, Plaintiff is entitled to recover punitive damages in an

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amount to be determined at trial.

54. Pursuant to NRS §41.600(d), Plaintiff is entitled to recover damages from the Defendants in an amount in excess of \$10,000.00.

WHEREFORE, Plaintiffs seek judgment against Defendants as follows:

1. For a Temporary Restraining Order;
2. For a Preliminary and Permanent Injunction preventing the foreclosure against the Property;
3. For an Order declaring the mortgage and Deed of Trust upon which Plaintiff is obligated to not be in breach, but in full force and effect;
4. An Order be issued for an accounting of all sums paid;
5. For damages in excess of \$10,000.00;
6. For statutory damages in excess of \$10,000.00;
7. For punitive damages;
8. Any and all consequential damages caused by the acts of Defendants;
9. For reasonable attorney's fees and costs incurred by Plaintiffs;
10. For such other and further relief as the Court may deem just and proper.

DATED this 27 day of April, 2009.


BAILUS COOK & KELESIS, LTD.

By 
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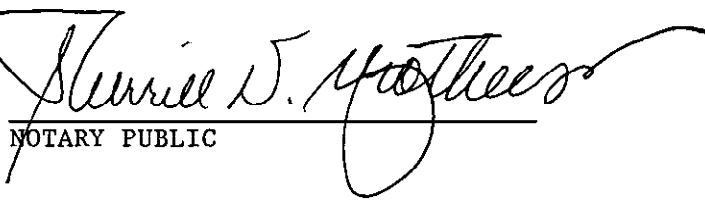
Attorneys for PLAINTIFF MORSE ARBERRY

1 VERIFICATION OF COMPLAINT

2 MORSE ARBERRY, Plaintiff, declares under penalty of perjury in the State of Nevada, that
3 he has read the foregoing Complaint for and knows the contents thereof and that the same are true
4 to his own knowledge except as to the matters therein stated to be alleged on information and belief,
5 and as to those matters he believes them to be true.

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8 
9 _____
10 MORSE ARBERRY

11 SUBSCRIBED AND SWORN to before me
12 on this 25th day of April, 2009 by
13 Morse Arberry.

14 
15 _____
16 NOTARY PUBLIC

