

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. Upon information and belief, Plaintiff failed to give proper notice to plaintiff and otherwise comply with the provisions of the Note and Mortgage.

WHEREFORE, Defendant demands judgment dismissing the complaint in its entirety, together with the costs and disbursements in this action and awarding such other and further relief as the Court may deem just and proper, including, but not limited to, defendants' litigation costs, expenses and attorneys' fees.

Dated: New Rochelle, New York
August 6, 2013

LAW OFFICE OF BARRY R. FERTEL


Barry R. Fertel

270 North Avenue – Suite 810
New Rochelle, NY 10801
(914) 740-4346
Attorney for Defendant Kejuan Muchita

To: FEIN, SUCH & CRANE, LLP
Attorneys for Plaintiff
747 Chestnut Ridge Road, Suite 200
Chestnut Ridge, NY 10977

SUPREME COURT OF THE STATE OF NEW YORK
FORECLOSURE SETTLEMENT CONFERENCE PART
COUNTY OF WESTCHESTER

-----X
WELLS FARGO BANK, N.A.,

Plaintiff,

-against-

KEJUAN MUCHITA,

Defendant.
-----X

FORECLOSURE
SETTLEMENT
CONFERENCE
CONDITIONAL ORDER
Index No.: 59582/2013

SCHEINKMAN, J.,

Appearances:

Plaintiff Fein, Such & Crane, LLP

Defendant Barry R. Fertel, Esq.

In accordance with the Rules of the Foreclosure Settlement Conference Part, and upon the Foreclosure Settlement Conference held by and before Erin Noelle Guven, Court Attorney-Referee, on April 14, 2014, the said Court Attorney-Referee herein reports that the parties have been directed as follows:

On or before May 19, 2014, defendant's attorney shall submit to plaintiff's attorney an application for modification of the mortgage loan at issue in the above-captioned foreclosure action;

On or before June 2, 2014, plaintiff shall review said application for completeness and advise defendant's attorney of any further documentation needed to complete the application so that plaintiff can make a determination offering or declining to offer defendant a loan modification plan;

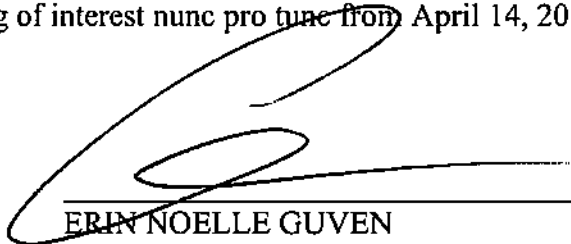
On or before June 9, 2014, defendant's attorney shall submit to plaintiff's attorney any further documentation as to the need for which defendant's attorney has been advised;

In the absence of good cause shown, defendant's failure to comply with these submission deadlines shall constitute failure to comply with defendant's obligation under the Uniform Civil Rules for The Supreme Court and The County Court (22 NYCRR 202.12-a [c][4]) to engage in settlement discussions and negotiations in good faith, as a result of which this action may be released from the Foreclosure Settlement Conference Part on the next scheduled date for appearance and with no further stay, regardless of the status of defendant's application;

If defendant complies with these submission deadlines, following timely receipt of all needed documentation as aforesaid, plaintiff shall review the application, make a determination offering or

declining to offer defendant a loan modification plan, and advise defendant's attorney of such determination on or before August 14, 2014;

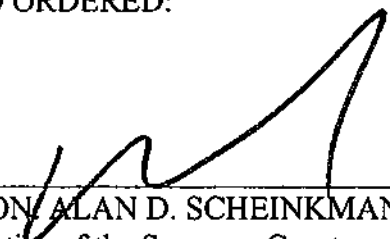
In the absence of good cause shown, plaintiff's failure to advise defendant's attorney of its determination offering or declining to offer defendant a loan modification plan in timely fashion shall constitute failure to comply with plaintiff's obligation under 22 NYCRR 202.12-a (c)(4) to engage in settlement discussions and negotiations in good faith, and may result in the imposition of sanctions against plaintiff including, but not limited to, the tolling of interest nunc pro tunc from April 14, 2014.



ERIN NOELLE GUVEN
Court Attorney-Referee

Dated: White Plains, New York
April 16, 2014

SO ORDERED:



HON. ALAN D. SCHEINKMAN
Justice of the Supreme Court



STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
DARONCO - WESTCHESTER COUNTY COURTHOUSE
111 DR. MARTIN LUTHER KING, JR., BOULEVARD
WHITE PLAINS, NEW YORK 10601
(914) 824-5100 FAX (914) 995-4111

Date: ~~September 23~~ September 23, 2014

**NOTICE TO RESUME PROSECUTION OF ACTION
AND TO FILE NOTE OF ISSUE**

Re: WELLS FARGO BC v. MUCHITA

Index Number: 59582113

Plaintiff is hereby directed pursuant to rule 3216 of the Civil Practice Law and Rules, that the prosecution of the above-referenced action must be resumed and that a note of issue must be served and filed herein within ninety (90) days after receipt of this notice.

In the event of plaintiff's failure to comply with this directive, plaintiff must appear in the Foreclosure Settlement Conference Part, Supreme Court, Westchester County, Daronco-Westchester County Courthouse, courtroom 1803, at 9:30 a.m., on September 10, 2015, and show justifiable excuse therefor. There shall be no adjournments. Plaintiff's failure to appear and show justifiable excuse on said date shall result in the dismissal of the complaint, upon the court's own initiative, for want of prosecution of the above-referenced action pursuant to CPLR 3216(a) and (e).

HON. ALAN D. SCHEINKMAN
Justice of the Supreme Court

Attorney(s)/Party(s) acknowledging receipt of Notice:

P: Christie Montero
(Print name)
Fein, Such & Crane LLP

D: Rp Nos Arana
(Print Name)

theJasmineBRAND.com