

FILED

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

2002 FEB - 5 PM 2: 21
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
15 _____ D.C. & M

JOHN C. FILSON and)
ANGELA H. FILSON,)
)
Plaintiffs,)
)
V.)
)
WELLS FARGO HOME MORTGAGE, INC.,)
)
Defendant.)

NO. 02 - 296 - I
JURY DEMAND

AMENDED COMPLAINT

Come now the Plaintiffs, John C. Filson and Angela H. Filson and, pursuant to Rule 15, of the Tennessee Rules of Civil Procedure, file their amended Complaint against the defendant and state as follows:

1. Plaintiffs John C. Filson and Angela H. Filson ("the Filson's" or "plaintiffs" herein) are residents of Davidson County, Tennessee residing at 105 Windwood Circle, Nashville, Tennessee 37214.

2. Wells Fargo Home Mortgage, Inc. ("Wells Fargo" or "defendant" herein) is a California corporation registered to do business in Tennessee with its registered agent for service being Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203.

3. Venue is proper in Davidson County, Tennessee.

4. On or about October 1, 1993, plaintiffs John C. Filson and wife Angela H. Filson executed a Promissory Note and a Deed of Trust to Vedan M. Lackey, Jr., Trustee, for the benefit of Union Planters National Bank, in the amount of \$113,900.00. Said Deed of Trust being of record in Davidson County Register's Office, Book 9105, Page 30. The real property which is secured by the Deed of Trust is identified as Land in Davidson County, Tennessee and being:

Lot 88 on the final subdivision plat of Harborview, Phase I-A, Section 5 of record in Book 7900, Page 485, Register's Office for Davidson County, Tennessee, and is commonly known as: 105 Windwood Circle, Nashville, Tennessee 37214.

5. Plaintiffs John C. Filson and wife Angela H. Filson have at all times maintained a good payment history on the Promissory Note and Deed of Trust obligation up until the time of events which have given rise to this cause of action.

6. At some time subsequent to October 1, 1993, the defendant Wells Fargo Home Mortgage, Inc. took over the servicing of the mortgage debt secured by this Note and Deed of Trust

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originally payable to Union Planters National Bank. There is not any assignment on record, but upon information and belief, plaintiff believes Wells Fargo Home Mortgage, Inc. to be the holder in due course of the debt.

7. On or about March 10, 2001, the defendant, Wells Fargo made an offer to plaintiffs and proposed an automatic payment structure whereby the plaintiffs' monthly mortgage payment would be automatically deducted from their bank account every month and applied to their mortgage obligation.

8. On or about March 15, 2001, plaintiffs accepted this offer made by Wells Fargo Home Mortgage and agreed to have their monthly mortgage payment automatically deducted from their bank account at AmSouth Bank, Account No. 1004521607.

9. On August 3, 2001, Wells Fargo Home Mortgage, Inc. caused to be deducted from the plaintiffs' AmSouth bank account, the amount of \$970.97, which was the full amount of the plaintiffs' monthly mortgage obligation to Wells Fargo.

10. Wells Fargo Home Mortgage, Inc. received this money by wire transfer into Wells Fargo's bank account, but it was never applied towards the plaintiffs' loan balance nor was it correctly reflected on their payment history.

11. Wells Fargo Home Mortgage, Inc. subsequently breached their contractual obligations to automatically debit the plaintiffs' bank account for the months thereafter, wrongfully causing the plaintiffs' account to appear to be in default.

12. On November 19, 2001, plaintiffs caused to be delivered to Wells Fargo Home Mortgage, Inc., a check in the amount of \$2,874.00 representing three (3) mortgage payments for September, October and November. Said check was delivered by Federal Express priority overnight delivery and was received by Wells Fargo in Des Moines, Iowa on November 20, 2001.

13. On November 21, 2001, defendant Wells Fargo Home Mortgage wrongfully returned the payment delivered by the plaintiffs and returned all funds delivered to Wells Fargo Home Mortgage on the previous day.

14. On or about December 21, 2001, plaintiffs spoke with a customer service employee of the defendant named Tai Yin. Defendant's employee, Tai Yin confirmed with plaintiffs that the wire transfer of August 3, 2001 had in fact been received by Wells Fargo Home Mortgage, Inc. and that plaintiffs were not delinquent on the account at the time Wells Fargo breached their obligation

to further debit the account for payment of plaintiffs' mortgage.

15. On December 26, 2001, with full knowledge of their error, Wells Fargo Home Mortgage, Inc., intentionally, willfully, deliberately, and maliciously initiated foreclosure proceedings and caused a notice of trustee's sale to be published in the Nashville Record.

16. The publication claims that Robert M. Wilson, Jr. has been appointed substitute trustee, although no appointment has been filed of record, and said publication claims Robert M. Wilson, Jr. or his agent will foreclose and sell the property on February 6, 2002 on or about 10:00 a.m. at the Davidson County courthouse in Nashville, Tennessee.

17. Wells Fargo Home Mortgage, Inc. has refused to correct their error in the plaintiffs' account.

18. Wells Fargo has made statements concerning the Filson's account, written and oral, to third parties which are false, and with reckless disregard as to the truth of the things asserted.

19. As a direct and proximate result of defendant's mismanagement of plaintiffs' account and the subsequent publishing of the Notice of Foreclosure, plaintiffs have suffered embarrassment, emotional distress, financial burden, and loss of income.

20. If the defendant is allowed to foreclose, plaintiffs will suffer immediate, irreparable harm by the loss of their real property, and all their accumulated equity.

WHEREFORE, plaintiffs pray:

1. That an immediate Restraining Order be issued against the defendant, Wells Fargo Home Mortgage, Inc., restraining them or any agent, servant, employee, or attorney from foreclosing or holding any sale on February 6, 2002 at 10:00 a.m. in Davidson County, Tennessee, attempting to sell the real property located at 105 Windwood Circle, Nashville, Tennessee 37214, and that the Defendant Wells Fargo be permanently enjoined from holding any foreclosure sale based on the present alleged default or delinquency.

2. That Wells Fargo Home Mortgage, Inc. show proof that they are the holder in due course of the debt in question.

3. That plaintiffs be given proper credit for the sum of money debited from their account in August of 2001, and be allowed to make the further payments, which have thus far been refused by the defendant, in order to make the full number of payments necessary to show the account as current.

4. That defendant's credit reporting of plaintiffs' account be corrected to eliminate any reporting of delinquency, or derogatory payment history.

5. That a jury be impaneled to hear this cause.

6. That plaintiffs be awarded damages against the defendant, Wells Fargo Home Mortgage, Inc. under the Tennessee Consumer Protection Act, Tennessee Code Annotated §47-18-101, *et seq.*, for fraudulent and deceptive business practice in the state of Tennessee and that plaintiffs be awarded treble damages in an amount to be shown to the Court.

7. That plaintiffs be granted judgment against Wells Fargo Home Mortgage, Inc. for breach of contract and failure to fulfill their obligations under the terms of the debit agreement executed in March, 2001.

8. That plaintiffs be granted judgment against Wells Fargo Home Mortgage, Inc. for intentional infliction of emotional distress, for lost earnings, and loss of income in an amount to be shown to the court.

9. That plaintiffs be awarded incidental, consequential, and compensatory damages based in contract, agency, and tort in an as yet undetermined sum not less than \$15,000.00.

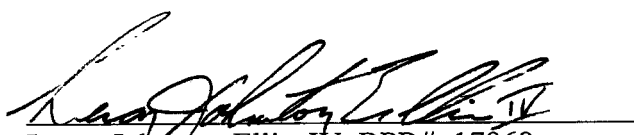
10. That plaintiffs be awarded punitive damages for the willful, deliberate and malicious attempt by defendant to wrongfully foreclose on the real estate owned by plaintiffs, in an amount not less than \$15,000.00.

11. That plaintiffs be awarded an as yet undetermined sum in the amount of at least \$5,000.00 in reasonable attorney's fees.

12. That plaintiffs be awarded an as yet undetermined sum for court costs and other incidental expenses incurred by plaintiffs in prosecuting the instant action.

13. For any other damages and relief to which the plaintiffs may be entitled.

Respectfully submitted,

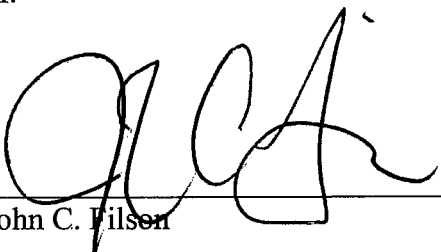

Leroy Johnston Ellis, IV, BPR#: 17968
Attorney for Plaintiffs

306 Gay Street, Suite 200
Nashville, Tennessee 37201
Phone: 615.256.5003
Fax: 615.256.5061

CLERK OF DISTRICT COURT
NASHVILLE
I HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF ORIGINAL INSTRUMENT FILED IN MY OFFICE.
THIS 0 DAY OF NOV 2006
CRISTL SCOTT, CLERK & MASTER
BY Carmen Fersell
DEPUTY
NASHVILLE

AFFIDAVIT

Come now the plaintiffs, John C. Filson and Angela H. Filson, first being duly sworn and make oath and say that the allegations in the foregoing Complaint based on the plaintiffs' personal knowledge are true, and the allegations based on information and belief are believed to be true to the best of their knowledge, information and belief.



John C. Filson

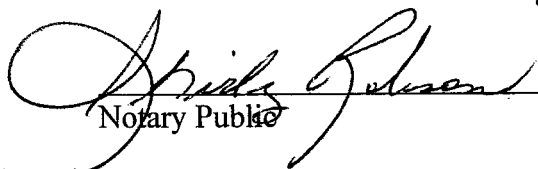


Angela H. Filson

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

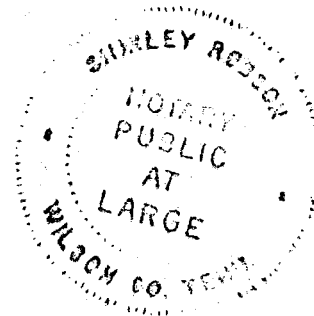
Personally appeared before me, the undersigned, a notary public in and for said county and state, John C. Filson and Angela H. Filson, to me known, or based upon satisfactory evidence proved to be the persons who executed the above Affidavit for the purposes therein contained.

Sworn to and subscribed before me this 5th day of February, 2002.



Notary Public

My Commission Expires: 9-24-05



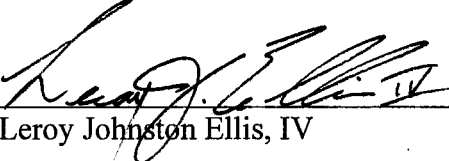
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded by U. S. Mail to the following persons:

Corporation Services Company
Registered Agent for
Wells Fargo Home Mortgage, Inc.
2908 Poston Avenue
Nashville, Tennessee 37203

Mr. Cade Cox
c/o Wilson & Associates, P.L.L.C.
Attorney for Defendant
1521 Merrill Drive, Suite D-220
Little Rock, Arkansas 72211

on this 5th day of February, 2002.



Leroy Johnston Ellis, IV