

EXHIBIT D

**Pleadings and other relevant documents on file with the
Circuit Court of Mason County, West Virginia**

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

ALYSSA RUSSELL,

Plaintiff,

v.

CIVIL ACTION NO. 15-C-138

WELLS FARGO HOME MORTGAGE, INC.

Defendant.

	<u>Days to Answer</u>	<u>Type of Service</u>
Wells Fargo Home Mortgage, Inc.	<u>30</u>	<u>Secretary of State</u>

PLEASE RETURN ALL FILE STAMPED COPIES AND ALL ORIGINAL SUMMONSES TO
COUNSEL FOR PLAINTIFF(S) FOR SERVICE OF PROCESS

Please issue summons in the above-styled action as indicated.

Original and 1 copy of Complaint furnished herewith.

FILED IN NY OFFICE
2015 DEC - 9 PM 1:14
CLERK OF COURT
MASON COUNTY, WV

PLAINTIFF: Alyssa Russell	CASE NUMBER: 15-c-138
DEFENDANT: Wells Fargo Home Mortgage, Inc.	

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
// Asbestos	// Adoption	// Appeal from Magistrate Court
// Professional Malpractice	/X/ Contract	// Petition for Modification of Magistrate Sentence
// Personal Injury	// Real Property	// Miscellaneous Civil
// Product Liability	// Mental Health	// Other
// Other Tort	// Appeal of Administrative Agency	

III. JURY DEMAND: /X/ Yes // No

CASE WILL BE READY FOR TRIAL BY December 2016

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? // YES /X/ NO
IF YES, PLEASE SPECIFY:

- // Wheelchair accessible hearing room and other facilities
- // Interpreter or other auxiliary aid for the hearing impaired
- // Reader or other auxiliary aid for the visually impaired
- // Spokesperson or other auxiliary aid for the speech impaired
- // Other: _____

Attorney Name: Daniel T. Lattanzi, Esq.

Firm: Pepper & Nason

Address: 8 Hale Street
Charleston, WV 25301

Telephone: 304/346-0361

Representing:

/X/ Plaintiff // Defendant

Dated: December 8, 2015

Signature

D. Lattanzi

FILED IN CIVIL OFFICE
2015 DEC - 9 P 1:14
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

ALYSSA RUSSELL,

Plaintiff,

v.

CIVIL ACTION NO. 15-C-138

WELLS FARGO HOME MORTGAGE, INC.

Defendant.

COMPLAINT

1. In early 2015, Defendant Wells Fargo Home Mortgage, Inc. instructed Plaintiff Alyssa Russell not to make her monthly mortgage payments while it considered her for a loan modification. Now, Defendant refuses to assist Plaintiff with her mortgage and significant arrears have accrued on the loan. Plaintiff brings this action to save her home and for other relief.

PARTIES

2. Plaintiff: Plaintiff Alyssa Russell is a resident of Point Pleasant, Mason County, West Virginia

3. Servicer: Defendant Wells Fargo Home Mortgage, Inc. is a corporation doing business in West Virginia with its principal place of business at 1 Home Campus, MAC X2401-049, Des Moines, Iowa 50328. Defendant is the servicer of the mortgage loan.

STATEMENT OF FACTS

4. On March 31, 2006, Plaintiff entered into a loan agreement with Wells Fargo Bank, N.A. with a principal amount of \$73,800 and an adjustable interest rate payable over thirty years.

Instruction to Stop Making Payments

5. (a) In early 2015, Plaintiff contacted Defendant about modifying her home mortgage loan.

(b) A representative of Defendant instructed Plaintiff to not make payments on the mortgage while the modification was being processed. Plaintiff relied on this representation during the loan modification process.

(c) Plaintiff proceeded to provide Defendant with the necessary paperwork for loan modification assistance.

Improper Removal from Loan Modification Process

6. (a) In June 2015, Defendant requested that Plaintiff complete a new modification packet and resend certain documents, even though said packet and documents had previously been provided to Defendant.

(b) Plaintiff proceeded to provide the requested paperwork and documentation.

7. (a) In early July 2015, Plaintiff began receiving debt collection calls from Defendant.

(b) Plaintiff called Defendant and asked about the status of her loan modification. A representative of Defendant informed Plaintiff that her mortgage account had been removed from the loan modification program and placed into foreclosure status.

8. (a) Plaintiff contacted the representative who was handling her loan modification and asked why she had been removed from the loan modification program. The representative informed Plaintiff that Defendant had all of her paperwork and that she should not have been removed from the program.

(b) The representative of Defendant informed Plaintiff that Defendant would

remove her mortgage account from foreclosure status.

Failure to Credit Payments and Illegal Fees

9. Despite Defendant's representation about the status of Plaintiff's account, Defendant returned Plaintiff's July 2015 mortgage payment.

10. Defendant failed to credit Plaintiff's payments to her account from July through October 2015.

11. Defendant illegally charged late fees to Plaintiff's account, including but not limited to on the following dates:

- (a) November 16, 2012;
- (b) December 17, 2012;
- (c) January 16, 2013; and
- (d) January 16, 2014.

12. On information and belief, Defendant is furnishing information to credit reporting agencies regarding Plaintiff's indebtedness, despite Defendant's failure to apply her payments to her mortgage account in accordance with the terms of the mortgage note.

Damages

13. Defendant ultimately denied Plaintiff's loan modification request.

14. Plaintiff has suffered stress, annoyance, and inconvenience, including fear of loss of home.

COUNT I – MISREPRESENTATIONS IN DEBT COLLECTION

15. Plaintiff incorporates the preceding paragraphs by reference.

16. Defendant made misleading and deceptive representations in an effort to collect on a debt, including by instructing Plaintiff to refrain from making payments on her mortgage loan, in

violation of West Virginia Code § 46A-2-127.

17. Defendant engaged in unconscionable means to collect the debt in violation of West Virginia Code § 46A-2-128.

WHEREFORE, Plaintiff respectfully requests the following relief:

- (a) Actual damages;
- (b) Appropriate civil penalties pursuant to W. Va. Code § 46A-5-101(1) & 106;
- (c) Appropriate equitable relief;
- (d) Attorney fees and costs; and
- (e) Such other relief as the Court may deem appropriate and just.

COUNT II – ILLEGAL LATE FEES

- 18. Plaintiff incorporates the preceding paragraphs by reference.
- 19. Defendant charged late fees that were not due on a number of occasions.
- 20. Defendant assessed late fees in violation of West Virginia Code § 46A-3-112(3).

WHEREFORE, Plaintiff respectfully requests the following relief:

- (a) Actual damages;
- (b) Appropriate civil penalties pursuant to W. Va. Code § 46A-5-101(1) & 106;
- (c) Appropriate equitable relief;
- (d) Attorney fees and costs; and
- (e) Such other relief as the Court may deem appropriate and just.

COUNT III - ILLEGAL RETURN OF PAYMENTS

- 21. Plaintiff incorporates the preceding paragraphs by reference.
- 22. Defendant returned Plaintiff's payment in July 2015 and failed to credit the payment to the account in violation of W. Va. Code § 46A-2-115.

WHEREFORE, Plaintiff respectfully requests the following relief:

- (a) Actual damages;
- (b) Appropriate civil penalties pursuant to W. Va. Code § 46A-5-101(1) & 106;
- (c) Appropriate equitable relief;
- (d) Attorney fees and costs; and
- (e) Such other relief as the Court may deem appropriate and just.

COUNT IV - REFUSAL TO APPLY PAYMENTS

- 23. Plaintiff incorporates the preceding paragraphs by reference.
- 24. Defendant, in the course of attempting to collect on alleged claims from Plaintiff, refused to apply Plaintiff's payments to her account, in violation of West Virginia Code § 46A-2-115.

WHEREFORE, Plaintiff respectfully requests the following relief:

- (a) Actual damages;
- (b) Appropriate civil penalties pursuant to W. Va. Code § 46A-5-101(1) & 106;
- (c) Appropriate equitable relief;
- (d) Attorney fees and costs; and
- (e) Such other relief as the Court may deem appropriate and just.

COUNT V - BREACH OF CONTRACT

- 25. Plaintiff incorporates the preceding paragraphs by reference.
- 26. Plaintiff and Defendant are parties to a contract.
- 27. (a) The Deed of Trust for the mortgage loan at issue provides that Plaintiff has a non-discretionary duty to make payments pursuant to the terms of the Note and Deed of Trust and that pursuant to those payments, Plaintiff has the right to receive the benefit of the Note and Deed of

Trust, including the application of her payments to the loan balance, as well as the ability to perform her duties under the contract and retain her home from the trust in which it is held until the debt is paid in full. (See Deed of Trust ¶¶ 1, 2, 23.)

(b) Defendant breached these provisions of the parties' agreement by instructing Plaintiff to cease making regular payments, causing her to default on her obligation and to accrue insurmountable indebtedness with the addition of accrued arrearage.

28. (a) The Deed of Trust provides a right to the borrower to reinstate the loan if the loan is accelerated upon default. (See Deed of Trust ¶¶ 19, 22.)

(b) Defendant breached these provisions of the parties' agreement by allowing Plaintiff's indebtedness to accrue after instructing her to cease making regular payments under the loan and by representing to Plaintiff that she need not worry about acceleration and foreclosure as Defendant was considering her for a loan modification, thereby giving Plaintiff the false impression that she need not take any measures to reinstate the loan.

(c) Defendant further breached these provisions of the Deed of Trust by interfering with Plaintiff's attempts to get current on her mortgage when it refused her payments.

29. In the Deed of Trust agreement between the parties, Defendant has an implied contractual duty to act in good faith in the performance of the contract such that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the benefit of their contract.

30. The Defendant breached its duty of good faith and thereby breached the contract by (a) allowing Plaintiff's indebtedness to unnecessarily accrue and interfering with Plaintiff's duty to perform and right to receive the benefit of the contract by instructing her not to make payments; (b) returning Plaintiff's payments; (c) refusing to apply payments to the account and causing substantial

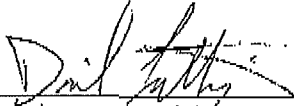
arrears to accrue, notwithstanding Plaintiff's ability to pay; and (d) otherwise servicing the Plaintiff's loan in bad faith.

WHEREFORE, Plaintiff respectfully requests the following relief:

- (a) Appropriate equitable relief;
- (b) Actual and punitive damages;
- (c) Attorney fees and costs; and
- (d) Such other relief as the Court deems equitable and just.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

ALYSSA RUSSELL,
By Counsel


Daniel T. Lattanzi (WVSB #10864)
Pepper & Nason
8 Hale Street
Charleston, WV 25301
Telephone: 304-346-0361
Facsimile: 304-346-1054

FILED IN MY OFFICE
2015 DEC -9 P 1:14
HARRISBURG DISTRICT COURT

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

ALYSSA RUSSELL,

Plaintiff,

v.

CIVIL ACTION NO. 15-C-138

WELLS FARGO HOME MORTGAGE, INC.

Defendant.

STIPULATION

1. Plaintiff stipulates that all of her alleged damages and all other relief including but not limited to equitable relief, declaratory relief, punitive damages, actual damages, and attorney fees and costs set forth in the Complaint are no greater than \$74,999.99.

2. To the extent any remedy awarded by the Court and/or jury, inclusive of attorney fees, declaratory relief, and equitable relief, would be in excess of a combined \$74,999.99,

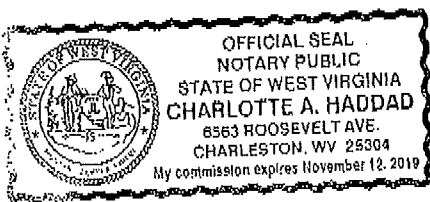
Plaintiff stipulates that she will not be entitled to recover said excess.

Alyssa Russell
Alyssa Russell

Daniel Lattanzi
Daniel Lattanzi

Taken, sworn to, and subscribed before me this 4 day of December, 2015.

My commission expires: November 13, 2019



Charlotte A. Haddad
Notary Public

FILED IN MY OFFICE
18th DEC - 9 P 1:14
CLERK OF COURT
MASON COUNTY
WEST VIRGINIA

SUMMONS

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

ALYSSA RUSSELL,

Plaintiff,

v.

CIVIL ACTION NO. 15-C-138

WELLS FARGO HOME MORTGAGE, INC.

Defendant.

To the above-named Party:

Wells Fargo Home Mortgage, Inc.
1 Home Campus
MAC X2401-049
Des Moines, IA 50328

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon DANIEL T. LATTANZI, Counsel for Alyssa Russell, whose address is 8 Hale Street, Charleston, West Virginia 25301, an answer, including any related counterclaim you may have, to the Counterclaim filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

Dated: 12-9-15

Brie Withers

CLERK OF COURT

Marya Stewson

By: Deputy Clerk