

Commonwealth of Massachusetts

County of Hampshire

The Superior Court

A TRUE COPY
ATTEST

Henry J. Janowski, Jr.
CLERK MAGISTRATE

CIVIL DOCKET# HSCV2010-00143

Matthew McCourt, Phyllis McCourt,
Plaintiff(s)

vs.

Beneficial Massachusetts, Inc.,
Defendant(s)

SUMMONS AND RESTRAINING ORDER

To the above named Defendant(s): Beneficial Massachusetts, Inc.

You are hereby summoned and required to serve upon, plaintiff's attorney, **Richard S Ravosa Jr, Esquire of 236 Commercial Street Waterfront Lawyers Building Boston, MA 02109**, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

You are also required to file your answer to the complaint in the office of Clerk of this Court at Northampton either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that motion has been made in said action, as appears in the complaint, for a preliminary injunction.

And that a hearing upon such motion will be held at the court house at said **Northampton**, in said county, on **07/23/2010 A.D. at 02:00 PM**, in **CtRm 2- 3rd fl** at which time you may appear and show cause why such motion should not be granted.

In the meantime, until such hearing, **WE COMMAND YOU**, said Beneficial Massachusetts, Inc. and your agents, attorneys and counselors, and each and every one of them, to desist and refrain from commencing a foreclosure auction on plaintiffs' real property located at 125 School Street, Granby, Massachusetts (see Order for Temporary Restraining Order attached).

Witness, Barbara J. Rouse, Esquire, Chief Justice of the Superior Court at Northampton, Massachusetts this 13th day of July, 2010.

Henry J. Janowski, Jr.

Clerk

(AFFIX RETURN OF SERVICE ON BACK OF SUMMONS)

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

COMMONWEALTH OF MASSACHUSETTS 10 143
TRIAL COURT DEPARTMENT

HAMPSHIRE

SUPERIOR COURT
CIVIL ACTION
NO. 10-143

MATTHEW W. McCOURT and PHYLIS McCOURT

vs.

BENEFICIAL MASSACHUSETTS, INC.

ORDER FOR TEMPORARY RESTRAINING ORDER

As it appears that the defendant is a participant in the federal Making a Home Affordable Program; as the plaintiffs submitted their application for this program to the defendant on May 27, 2010 with a tax information supplementation the following day; as, it appears, no substantive review of the application was conducted; as the application was resubmitted at the defendant's invitation or assent on June 17, 2010, with no indication that the application would not receive substantive review; as, it appears, the plaintiff's application was denied summarily for failure to submit the application thirty days before the scheduled foreclosure sale of the defendants' home; as, it appears, that the foreclosure sale was not scheduled until June 18, 2010 and was scheduled for July 13, 2010, less than thirty days hence; as, therefore, notwithstanding that the source or authority for such a deadline is not apparent; it appears that the defendant was in the position to and did manipulate the scheduling of the sale within thirty days of the receipt of the resubmitted application so as to justify the summary denial of the application; and as the defendant has the obligation to be honest in its dealings with the plaintiffs so as not to purposefully injure them, *Shawmut Bank, N.A. v. Wayman*, 34 Mass.App.Ct. 20, 25 (1993), the plaintiffs have demonstrated a likelihood to succeed on the merits which when balancing the relative harms of

irreparable injury by loss of their home versus non-irreparable financial injury by delay of the foreclosure sale warrants that the Plaintiffs' Motion for Temporary Restraining Order be **ALLOWED** ex parte. In view of the financial straits of the plaintiffs that resulted in this situation and considering the financial information submitted in support of the instant motion, I find good cause to waive the requirement of security imposed by Mass. R. Civ. P. 65(c). A hearing on the plaintiffs' motion for a preliminary injunction will be held ~~Friday~~, July 23, 2010 at 2:00 p.m., unless the defendant moves otherwise pursuant to Mass. R. Civ. P. 65(a).



C. Brian McDonald
Justice of the Superior Court

July 13, 2010

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION No.

EMERGENCY MOTION

MATTHEW McCOURT)	
PHYLLIS McCOURT	)	PLAINTIFFS' MOTION FOR
Plaintiffs	)	TEMPORARY RESTRAINING
	)	ORDER OR PRELIMINARY
v.	)	INJUNCTION
)	
BENEFICIAL MASSACHUSETTS, INC.)	
Defendant)	

Now come the plaintiffs and bring this Motion pursuant to Mass. R. Civ. P. 65 and move this Honorable Court for a Temporary Restraining Order or Preliminary Injunction to immediately stop the foreclosure auction of the plaintiffs' real property located at 125 School Street, Granby, Massachusetts **scheduled for JULY 13, 2010 at 12:00PM.**

A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION IS WARRANTED TO ALLOW THE DEFENDANT A REASONABLE AMOUNT OF TIME TO EVALUATE PLAINTIFFS LOAN MODIFICATION APPLICATION BEFORE FORECLOSING ON THEIR HOME.

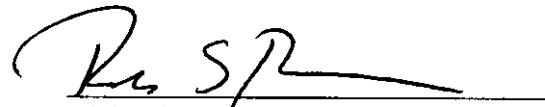
The essence of the plaintiffs' argument is that if the foreclosure auction occurs on July 13, 2010, the plaintiffs will permanently be divested of ownership of their home. The plaintiffs contend that the defendant, Beneficial Massachusetts, Inc., by working with plaintiffs' loan modification attorney, and not informing said attorney at the inception or at any point during the loan modification process that their loan modification application would be denied unless it was submitted 30 days prior to the foreclosure is the basis for the plaintiffs' claim that the defendant Beneficial has breached the covenant of good faith and fair dealing. Plaintiffs and their loan modification attorney worked

diligently to assemble all of the documents requested by defendant Beneficial and had to submit them to Beneficial in good faith assuming the information supplied would be reviewed for a loan modification, but instead was perfunctorily denied, apparently, without even being reviewed.

Wherefore, the plaintiffs request an oral hearing and move this Honorable Court for an ORDER:

1. That the defendant Beneficial Massachusetts, Inc., their agents, servants, attorneys, and auctioneers be forthwith temporarily restrained and preliminarily enjoined from commencing a foreclosure auction on plaintiffs' real property located at 125 School Street, Granby, Massachusetts scheduled for July 13, 2010, until such time as the plaintiffs' loan modification application can be properly evaluated by defendants and to allow the underlying complaint to be tried.
2. That this court grant such other and further relief as it may deem just and proper.

The Plaintiffs,
Matthew McCourt and
Phyllis McCourt
By their attorney,



Richard S. Ravosa, Esquire
Waterfront Lawyers Building
236 Commercial Street
Boston, MA 02109
(617) 720-1101
(617) 720-1104 fax
email: Mr.Ravosa@gmail.com
BBO No. 635846

Dated: July 12, 2010

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION No.

MATTHEW McCOURT)	
PHYLLIS McCOURT	)	PLAINTIFFS'
Plaintiffs	)	MEMORANDUM OF LAW
	)	IN SUPPORT OF THEIR
v.	)	MOTION FOR TEMPORARY
	)	RESTRAINING ORDER OR
BENEFICIAL MASSACHUSETTS, INC.	)	PRELIMINARY INJUNCTION
Defendant)	

Now come the plaintiffs and submit this Memorandum of Law in support of their Motion for Temporary Restraining Order or Preliminary Injunction, which is incorporated herein pursuant to Mass. R. Civ. P. 65 and moves this Honorable Court for a Temporary Restraining Order or Preliminary Injunction to immediately stop the foreclosure auction of the plaintiffs' real property located at 125 School Street, Granby, Massachusetts scheduled for July 13, 2010 at 12:00pm.

FACTUAL SUMMARY

The plaintiffs, Matthew McCourt and Phyllis McCourt, are husband and wife and reside at 125 School Street, Granby, Massachusetts, 01033. The defendant, Beneficial Massachusetts, Inc., is purportedly a duly organized Delaware corporation, with a registered agent in Massachusetts named as: C.T. Corporation System, 155 Federal Street, Suite 700, Boston, Massachusetts 02110.

On or about April 19, 2005, plaintiffs purchased the residence at 125 School Street, Granby, MA for \$254,000.00.

On or about December 7, 2006, plaintiffs gave defendant a mortgage in the amount of \$259,092.09; said mortgage being recorded in Hampshire County Registry of Deeds in Book 08977, Page 59.

Thereafter, plaintiff Matthew McCourt lost his truck driving job where he was making approximately seven hundred dollars per week and has since taken a part-time job and started a landscaping and handyman business to try to make ends meet. The plaintiffs have also been beset by unfortunate medical conditions that have increased their cost of living. Please see letter dated May 17, 2010 from Town & Country Legal Associates drafted by plaintiff's loan modification counsel, Attorney Brian R. Goodwin, which details the numerous hardships plaintiffs are faced with. Said letter was sent to defendant Beneficial as a part of plaintiffs' loan modification application and is attached hereto and marked as Exhibit "A."

Plaintiffs continued to fall further behind on their monthly mortgage payments owed to defendant and in an attempt to cure the arrearage owed to defendant, eventually filed a Chapter 13 Bankruptcy on or about May 20, 2009, Case No. 09-30856 in the U.S. Bankruptcy Court, District of Massachusetts. The Chapter 13 repayment plan proved to be too demanding for plaintiffs and plaintiffs have had to convert to a Chapter 7 to discharge their remaining liabilities.

On or about March 31, 2010, plaintiffs retained experienced loan modification counsel, Attorney Brian R. Goodwin to file a loan modification application with defendant Beneficial in the attempt to adjust the plaintiffs' financial obligations to defendant under the Making Home Affordable Program.

During the time period between March 31, 2010 and the present, the plaintiffs worked with Attorney Goodwin and supplied him with all the required documentation required by defendants in order to submit the loan modification application for consideration, including evidence of plaintiffs' income and other financial documentation. Attorney Goodwin forwarded defendants a letter of representation and authorizations from plaintiffs and followed up with phone calls to defendant to monitor the process, which resulted in the plaintiffs' loan modification application being submitted to defendants on June 17, 2010 via facsimile.

On or about June 18, 2010, defendants, through their foreclosure counsel, Korde & Associates, P.C., sent plaintiffs a certified letter dated June 18, 2010 notifying them of defendant Beneficial's intention to foreclose on plaintiffs' house on July 13, 2010 at 12:00PM. Said letter is attached and marked as Exhibit "B."

Subsequent to June 18, 2010, defendant informed plaintiffs' counsel that the foreclosure auction scheduled for July 13, 2010 could not be postponed because the loan modification application was received by defendant less than thirty days before the scheduled auction and that plaintiffs' loan modification application was summarily denied by defendant on June 18, 2010.

The loan modification application prepared by Attorney Brian Goodwin on behalf of the plaintiffs was apparently not even evaluated by defendant after defendant solicited the information from plaintiffs. Please see affidavit of Attorney Brian R. Goodwin attached and marked as Exhibit "C."

Plaintiffs contend that they were denied a fair opportunity to have their loan modification application reviewed, which if approved, would avoid the loss of their

home, where they reside with their young son and have also filed a complaint based on the defendants breach of the covenant of good faith and fair dealing. A copy of the Loan Modification Application that was submitted to defendant Beneficial is attached hereto and marked as Exhibit "D."

A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION IS WARRANTED TO ALLOW THE DEFENDANT A REASONABLE AMOUNT OF TIME TO EVALUATE PLAINTIFFS LOAN MODIFICATION APPLICATION BEFORE FORECLOSING ON THEIR HOME.

The essence of the plaintiffs' argument is that if the foreclosure auction occurs on July 13, 2010, the plaintiffs will permanently be divested of ownership of their home. The plaintiffs contend that the defendant, Beneficial Massachusetts, Inc., by working with plaintiffs' loan modification attorney, and not informing said attorney at the inception or at any point during the loan modification process that their loan modification application would be denied unless it was submitted 30 days prior to the foreclosure is the basis for the plaintiffs' claim that the defendant Beneficial has breached the covenant of good faith and fair dealing. Plaintiffs and their loan modification attorney worked diligently to assemble all of the documents requested by defendant Beneficial and had to submit them to Beneficial in good faith assuming the information supplied would be reviewed for a loan modification, but instead was perfunctorily denied, apparently, without even being reviewed.

In order to prevail on this claim, plaintiffs need to prove that the defendant's conduct was "taken in bad faith either to deprive a party of the fruits of labor already substantially earned or unfair leveraging of the contract terms to secure undue advantage"

See *Blue Hills Office Park LLC v. J.P. Morgan Chase Bank*, 477 F. Supp. 2d 366, 374-375 (D. Mass. 2007).

STANDARD OF REVIEW

In determining whether to issue injunctive relief, the Court must balance the moving party's chance of success on the merits and its risk of irreparable harm against any similar risk of irreparable harm to the opposing party. The touchstone of the analysis is the risk of such harm in light of the party's chance of success on the merits. The Court must balance the anticipated harm to the plaintiffs against the injury to the defendants. "What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. at 616-617, 405 N.E.2d 106. (1980).

Since the goal is to minimize the risk of harm, if the moving party can demonstrate both that the requested relief is necessary to prevent irreparable harm to it and that granting the injunction poses no substantial risk of such harm to the opposing party, a substantial possibility of success on the merits warrants issuing the injunction. *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. at 616-617, 405 N.E.2d 106, at 114, citing *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977).

This Court may also properly consider the affect upon the public good in considering whether to issue an injunction. *Petricca Construction Company v. Commonwealth.*, 640 N.E.2d 780, at 785, 37 Mass.App.Ct. 392 (Mass.App.Ct. 1994), citing *Edwards v. Boston*, 408 Mass. 643, 646-647, 562 N.E.2d 834 (1990). Indeed it is

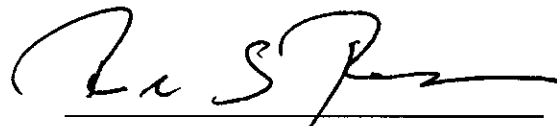
appropriate to do so in this case given the permanent divestiture of the plaintiffs' legal interest in their home.

Given the foreclosure of the plaintiffs' home is July 13, 2010, there is insufficient time for plaintiffs to obtain any security for payment of costs or damages and plaintiffs contend there is good cause for waiving the requirement of security.

Wherefore, the plaintiffs request an oral hearing and move this Honorable Court for an ORDER:

1. That the defendant Beneficial Massachusetts, Inc., their agents, servants, attorneys, and auctioneers be forthwith temporarily restrained and preliminarily enjoined from commencing a foreclosure auction on plaintiffs' real property located at 125 School Street, Granby, Massachusetts until such time as the plaintiffs' loan modification application can be properly evaluated by defendants and to allow the underlying complaint to be tried.
2. That this Court grant such other and further relief as it may deem just and proper.

The Plaintiffs,
Matthew McCourt and
Phyllis McCourt
By their attorney,



Richard S. Ravosa, Esquire
Waterfront Lawyers Building
236 Commercial Street
Boston, MA 02109
(617) 720-1101
(617) 720-1104 fax
email: Mr.Ravosa@gmail.com
BBO No. 635846

Dated: July 12, 2010

TOWN & COUNTRY LEGAL ASSOCIATES

One South Avenue
Natick, Massachusetts 01760
Phone: (508) 655-3013
Fax: (508) 655-7035
BGoodwin.TownCountryLaw@gmail.com

May 17, 2010

Beneficial, Member HSBC Group
Attn: FAP Department
961 Weigel Drive
Elmhurst, IL 60126
VIA FACSIMILE (888-778-3811) and First Class Mail

Re: Beneficial Loan Number 16051088
Matthew J. and Phyllis Marie McCourt: 125 School St., Granby, MA 01033

To the FAP Department:

Please be advised that this office represents Matthew J. and Phyllis Marie McCourt 125 School Street in Granby, Massachusetts 01033. Please find attached with this letter, a power of attorney and letter of authorization allowing for the undersigned Brian R. Goodwin and Town & Country Legal Associates to act on behalf of the McCourts regarding the above referenced mortgage with Beneficial, Member HSBC Group ("Beneficial"). As explained below, the McCourts, as well as this office, are extremely interested in working with Beneficial to achieve a mutually agreeable loan modification to ensure a long-lasting and reciprocally satisfying relationship between the McCourts and Beneficial. Along these lines, please also find accompanying this letter the required documents as requested by Beneficial. If further information or documentation is required, please contact the undersigned.

I am writing this letter to explain the unfortunate set of circumstances that have forced the McCourts to require this assistance. While they have done everything in their power to make ends meet, given the present circumstances described below, the McCourts have unfortunately fallen short. Therefore, we would like you to consider working with us to modify the McCourts above referenced mortgage as the McCourts highest goal during these troubling times is to keep their family home. Obviously the McCourts would appreciate the opportunity to work with Beneficial to accomplish this goal.

There are a number of events and factors that have combined together to place the McCourts in their present circumstances. Like much of the nation, the McCourts have

fallen victim to the present state of the economy. Initially, Matthew lost his previous source of employment and has, to this date, been unable to bring himself back to the former level of his salary. This despite the fact Matthew has both taken on part time work and has fought to establish a self-employed business as a handyman/landscaper. Part of Matthew's issues have revolved around his having been diagnosed with Asperger's Syndrome, an unfortunate circumstance the McCourt's son has also been forced to deal with.

The McCourts have also seen their expenses dramatically increased. In addition to the extensive medical and psychiatric costs associated with Matthew and his son's previously mentioned affliction, Phyllis has been identified as a type 1 diabetic, hypothyroid disease and potentially Cushings Disease. She has also been diagnosed with high blood pressure, understandable under the McCourts situation. Due to all of these issues, the McCourts, in addition to the high medical costs, are forced to adhere to a strict diet, the cost of which has substantially increased their grocery bills. Unexpected repairs, including both on the home (e.g. a new furnace *twice*) and extensive car repairs, have left the McCourts' finances further strained.

Due to all of these events, all of the McCourts cash reserves were depleted, including any further funds they could raise through friends and family. These were all directed towards paying monthly expenses, including depleting any and all "emergency funds" the McCourts once may have maintained. This has led to the McCourts being forced to rely heavily upon credit, this 'escape valve' however, unfortunately backfiring and leading to the McCourts becoming further in debt. Due to these issues, the McCourts have fallen into the unlucky reality of filing for relief under Chapter 13 of the U.S. Bankruptcy Code. However, even this assistance was not enough and the McCourts are now converting their case under Chapter 7.

Due to all of these events, the McCourts have fallen further and further behind on their monthly expenses and fear they will continue to do so without some assistance. This fear encompasses their becoming delinquent on their mortgage, despite it being their full intention to pay what they owe. Therefore, as the McCourts have at this time exhausted all of their income and resources, they are turning to you for help. The McCourts, in an attempt to maintain their relationship with Beneficial and retain their family home, would appreciate if you would work with us to lower the delinquent amount owed, lower the monthly payment, lower the principal, and set a fixed, lower interest rate so the McCourts can keep their home and also afford to make amends with your financial institution.

We truly hope that you will consider working with the McCourts as they are anxious to get this settled so they can move on in an attempt to regain stability in these unstable times. Please contact me as soon as possible if you require further information or documentation to assist in this process.

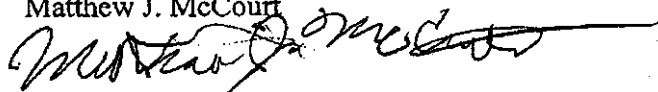
Beneficial
May 17, 2010
Page 3 of 3

Very truly yours,



Brian R. Goodwin, Esq.

Matthew J. McCourt



Phyllis Marie McCourt



cc: Matthew and Phyllis Marie McCourt

KORDE & ASSOCIATES, P.C.

SANJIT S. KORDE
JULIE A. RANIERI***
SUSAN W. CODY**
LAWSON WILLIAMS
STEPHANIE CAPONIGRO

Counsellors at Law
321 Billerica Road, Suite 210
Chelmsford, Massachusetts 01824-4100

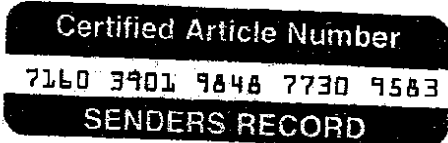
JOHN S. MCNICHOLAS*
PATRICIA M. WRIGHT
MICHELLE L. BEAU-REGARD
ANNA DAVOLIO
HEATHER PHIPPS

DUDLEY C. GOAR, OF COUNSEL
KATHRYN A. GOODFRIEND, OF
COUNSEL

*Also licensed in NH
**Also licensed in NH & RI
***Also licensed in NY

June 18, 2010

Matthew McCourt
125 School Street
Granby, MA 01033



Please reference our File #: 09-053071/ McCourt

RE: Beneficial Massachusetts Inc. vs. Matthew McCourt and Phyllis M. McCourt a/k/a
Phyllis Marie McCourt
Land Court Case No: 400525
Property Address: 125 School Street, Granby, MA 01033

Dear Sir/Madam:

You are hereby notified of the intention of Beneficial Massachusetts Inc. to foreclose by sale under the power of sale contained in a certain mortgage given by Phyllis M. McCourt a/k/a Phyllis Marie McCourt and Matthew McCourt to Beneficial Massachusetts Inc.. Enclosed you will find a copy of the Mortgagee's Sale of Real Estate that is being published in the Republican. The sale is scheduled for July 13, 2010 at 12:00PM on the premises.

The notice is provided to you because an examination of the record title shows you held an interest of record in the property thirty (30) days prior to the sale.

THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

If you (1) did not execute the Promissory Note relating to this mortgage; (2) are in bankruptcy; or (3) have been discharged in bankruptcy, this letter is for informational purposes only and is not intended as an attempt to collect a debt or an act to collect, assess or recover all or any portion of the debt from you personally.

Very truly yours,

Stephanie Caponigro

SC/km

LEGAL NOTICE
MORTGAGEE'S SALE OF REAL ESTATE

By virtue of and in execution of the Power of Sale contained in a certain mortgage given by Matthew McCourt and Phyllis M. McCourt a/k/a Phyllis Marie McCourt to Beneficial Massachusetts Inc., dated December 7, 2006 and recorded at Hampshire County Registry of Deeds in Book 8977, Page 59 for breach of conditions of said mortgage and for the purpose of foreclosing the same, the mortgaged premises located at 125 School Street, Granby, MA 01033 will be sold at a Public Auction at 12:00 PM on July 13, 2010, at the mortgaged premises, more particularly described below, all and singular the premises described in said mortgage, to wit:

The land on the easterly side of School Street in Granby, Hampshire County, Commonwealth of Massachusetts, more particularly bounded and described as follows: Beginning at the center line of School Street, opposite an iron pin and pile of stone which are located on the easterly side of said School Street at the northwesterly corner of land of Lillian Smith; Thence easterly through said iron pin and against land of said Lillian Smith, two hundred fifty (250) feet to an iron pin at land of Leroy A. Nutting; Thence northerly along land of said Leroy A. Nutting, one hundred (100) feet to an iron pin at other land of Leroy A. Nutting; thence westerly two hundred fifty (250) feet to the center line of said School Street; Thence southerly along the center line of said School Street, one hundred thirty (130) feet to the point of beginning.

For mortgagor's title see deed recorded with the Hampshire County Registry of Deeds in Book 8228, Page 321.

The premises will be sold subject to any and all unpaid taxes and other municipal assessments and liens, and subject to prior liens or other enforceable encumbrances of record entitled to precedence over this mortgage, and subject to and with the benefit of all easements, restrictions, reservations and conditions of record and subject to all tenancies and/or rights of parties in possession.

Terms of the Sale: Cash, cashier's or certified check in the sum of \$5,000.00 as a deposit must be shown at the time and place of the sale in order to qualify as a bidder (the mortgage holder and its designee(s) are exempt from this requirement); high bidder to sign written Memorandum of Sale upon acceptance of bid; balance of purchase price payable in cash or by certified check in thirty (30) days from the date of the sale at the offices of mortgagee's attorney, Korde & Associates, P.C., 321 Billerica Road, Suite 210, Chelmsford, MA 01824-4100 or such other time as may be designated by mortgagee. The description for the premises contained in said mortgage shall control in the event of a typographical error in this publication."

Other terms to be announced at the sale.

Beneficial Massachusetts Inc.

Korde & Associates, P.C.

321 Billerica Road

Suite 210

Chelmsford, MA 01824-4100

(978) 256-1500

(HFC 09-053071 /Mccourt)(06-15-10, 06-22-10, 06-29-10)(251956)

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION No.

MATTHEW McCOURT)
PHYLLIS McCOURT)
Plaintiffs)
)
v.)
)
BENEFICIAL MASSACHUSETTS, INC.)
Defendant)

AFFIDAVIT OF ATTORNEY BRIAN R. GOODWIN

I, Brian R. Goodwin, Esquire, am over the age of eighteen, have personal knowledge of the facts set forth herein and would be competent to testify thereto, and state that:

1. I am the attorney for the plaintiffs Matthew McCourt and Phyllis McCourt ("the plaintiffs") and represent them in connection with their loan modification application that was sent to defendant Beneficial Massachusetts, Inc., a member of HSBC (the defendant).
2. Upon information and belief, conversations with the Plaintiffs, and a review of documentation, on or about December 7, 2006, plaintiffs gave defendant a mortgage in the amount of \$259,092.09; said mortgage being recorded in Hampshire County Registry of Deeds in Book 08977, Page 59.
3. Upon my conversations with plaintiffs and the receipt of documents, upon information and belief the plaintiffs have suffered numerous hardships,

including both extensive losses in income and increased expenses, including a number of unfortunate medical conditions that have increased their cost of living. For more details, please see letter dated May 17, 2010 from Town & Country Legal Associates drafted by plaintiff's loan modification counsel, Attorney Brian R. Goodwin, attached to the Complaint and marked as Exhibit "A."

4. Upon information and belief, the plaintiffs have continued to fall further behind on their monthly mortgage payments and in an attempt to cure the arrearage owed to defendant, eventually filed a Chapter 13 Bankruptcy on or about May 20, 2009, Case No. 09-30856 in the U.S. Bankruptcy Court, District of Massachusetts. Upon information and belief, the Chapter 13 repayment plan has proved to be too demanding for plaintiffs and plaintiffs have thus had to convert to a Chapter 7 to discharge their remaining liabilities.
5. On or about March 31, 2010, plaintiffs retained myself as an experienced loan modification counsel with over a year of similar experience, to file a loan modification application with the defendant in an attempt to adjust the plaintiffs' financial obligations to defendant under the Making Home Affordable Program or other inhouse programs.
6. During the time period between March 31, 2010 and the present, the plaintiffs worked with me including supplying me with all the required documentation previously required by defendants in this matter and others, in order to submit the loan modification application for consideration,

including evidence of plaintiffs' income and other financial documentation. I initially forwarded to the defendants a letter of representation and authorizations from plaintiffs and followed up with phone calls to defendant to monitor the process, which resulted in the plaintiffs' loan modification application being submitted to defendants on May 27, 2010, with a follow up tax return submission the following day.

7. On June 17, 2010, after a follow up with the defendant, I refiled the plaintiffs package via facsimile and via first class U.S. postal mail to both defendants' loss mitigation department, and HSBC's (Beneficial's parent company), for which I have had previous dealings.
8. On or about June 18, 2010, defendants, through their foreclosure counsel, Korde & Associates, P.C., sent plaintiffs a certified letter dated June 18, 2010 notifying them of defendant's intention to foreclose on plaintiffs' house on July 13, 2010 at 12:00PM. Attached as Exhibit "B."
9. Subsequent to June 18, 2010, defendant informed me that the foreclosure auction scheduled for July 13, 2010 could not be postponed because the loan modification application was received by defendant less than thirty days before the scheduled auction and that plaintiffs' loan modification application was summarily denied by defendant on June 18, 2010. This included numerous conversations with "supervisors."
10. Upon information and belief, based upon numerous conversations with the defendant, the loan modification application prepared by myself on behalf

of the plaintiffs was not even evaluated by the defendant on its merits after defendant solicited the information from plaintiffs.

11. Upon information and belief, given my dealings with both the plaintiffs and the defendants, the plaintiffs were denied a fair opportunity to have their loan modification application reviewed, which if approved, and in which my experience in loan modifications very well should and could be, would avoid the loss of their home, where they reside with their young son.

Signed under the pains and penalties of perjury this 12th day of July, 2010.

A handwritten signature in black ink, appearing to read "B. R. S.", written over a horizontal line.

Brian R. Goodwin, Esquire

TOWN & COUNTRY LEGAL ASSOCIATE
ONE SOUTH AVENUE
NATICK, MASSACHUSETTS 01760
TEL. (508) 655-3013 FAX (508) 655-7035

FACSIMILE TRANSMITTAL SHEET

TO: Beneficial, Member HSBC Group	FROM: Brian R. Goodwin, Esq.
COMPANY:	DATE: JUNE 17, 2010
FAX NUMBER: (888) 629-8590	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: Matthew & Phyllis McCourt
RE: Property Address: 125 School Street Granby, MA 01033	YOUR REFERENCE NUMBER: Account No: 16051088

- URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please find following this cover, a power of attorney and letter of authorization allowing the undersigned to act on behalf of our clients in relation to the above referenced account with Beneficial. Furthermore, we are resending the McCourt's loan modification package to this newly provided fax number.

I hope this information will help us to come to a mutually beneficial loan modification for the McCourts and Beneficial.

Please contact the undersigned regarding any and all issues relative to this account, and/or I will myself be in touch shortly.

Thank you for your assistance in this matter,

Brian R. Goodwin

ATTORNEYS AND COUNSELORS AT LAW

RICHARD S. RAVOSA, ESQ. * ANTHONY G. KECK, ESQ. * BRIAN R. GOODWIN, ESQ.

TOWN & COUNTRY LEGAL ASSOCIATES

One South Avenue
Natick, Massachusetts 01760
Phone: (508) 655-3013
Fax: (508) 655-7035
BGoodwin.TownCountryLaw@gmail.com

May 17, 2010

Beneficial, Member HSBC Group
Attn: FAP Department
961 Weigel Drive
Elmhurst, IL 60126

Re: **Loan Number** **16051088**
 Property Address **125 School St., Granby, Massachusetts 01033**

To Whom It May Concern:

This letter shall serve as formal notice that the undersigned hereby authorize(s) Brian R. Goodwin and Town & Country Legal Associates to make inquiries about the captioned loan account and to attempt to resolve any issues with respect thereto.

You are authorized to release any information to them that they may seek.

Thank you for your cooperation

Very Truly Yours,


Matthew J. McCourt


Phyllis M. McCourt

TOWN & COUNTRY LEGAL ASSOCIATES

One South Avenue
Natick, Massachusetts 01760
Phone: (508) 655-3013
Fax: (508) 655-7035
BGoodwin.TownCountryLaw@gmail.com

May 27, 2010

Beneficial, Member HSBC Group
Attn: FAP Department
961 Weigel Drive
Elmhurst, IL 60126
VIA FACSIMILE (888-778-3811) and First Class Mail

HSBC Loss Mitigation
2929 Walden Avenue
Depew, NY 14043
VIA FACSIMILE (732) 352-7519 AND FIRST CLASS U.S. POSTAL MAIL

Re: Beneficial Loan Number 16051088
Matthew J. and Phyllis Marie McCourt: 125 School St., Granby, MA 01033

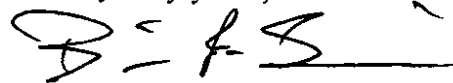
To the FAP Department:

Please be advised that this office represents Matthew J. and Phyllis Marie McCourt 125 School Street in Granby, Massachusetts 01033. Please find attached with this letter, a power of attorney and letter of authorization allowing for the undersigned Brian R. Goodwin and Town & Country Legal Associates to act on behalf of the McCourts regarding the above referenced mortgage with Beneficial, Member HSBC Group ("Beneficial"). Please accept for your review and consideration the enclosed loan modification package with the further documentation requested.

Both this office and the McCourts look forward to working with you in the hope we can come to a mutually beneficial arrangement where Beneficial and the McCourts can continue an ongoing, mutually beneficial relationship.

We truly hope that you will consider working with the McCourts as they are anxious to get this settled so they can move on in an attempt to regain stability and retain their family home. Please contact the undersigned with any questions, concerns, or requests for additional information.

Very truly yours,



Brian R. Goodwin, Esq.

cc: Matthew & Phyllis McCourt

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION No.

MATTHEW McCOURT)
PHYLLIS McCOURT)
Plaintiffs)
)
v.)
)
BENEFICIAL MASSACHUSETTS, INC.)
Defendant)

COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

1. The plaintiffs, Matthew McCourt and Phyllis McCourt, are husband and wife and reside at 125 School Street, Granby, Massachusetts, 01033.
2. The defendant, Beneficial Massachusetts, Inc., is purportedly a duly organized Delaware corporation, with a registered agent in Massachusetts named as: C.T. Corporation System, 155 Federal Street, Suite 700, Boston, Massachusetts 02110.

SUMMARY OF FACTS

3. On or about April 19, 2005, plaintiffs purchased the residence at 125 School Street, Granby, MA for \$254,000.00.
4. On or about December 7, 2006, plaintiffs gave defendant a mortgage in the amount of \$259,092.09; said mortgage being recorded in Hampshire County Registry of Deeds in Book 08977, Page 59.

5. Thereafter, plaintiff Matthew McCourt lost his truck driving job where he was making approximately seven hundred dollars per week and has since taken a part-time job and started a landscaping and handyman business to try to make ends meet. The plaintiffs have also been beset by unfortunate medical conditions that have increased their cost of living. Please see letter dated May 17, 2010 from Town & Country Legal Associates drafted by plaintiff's loan modification counsel, Attorney Brian R. Goodwin, which details the numerous hardships plaintiffs are faced with. Said letter was sent to defendant Beneficial as a part of plaintiffs' loan modification application.
6. Plaintiffs continued to fall further behind on their monthly mortgage payments owed to defendant and in an attempt to cure the arrearage owed to defendant, eventually filed a Chapter 13 Bankruptcy on or about May 20, 2009, Case No. 09-30856 in the U.S. Bankruptcy Court, District of Massachusetts. The Chapter 13 repayment plan proved to be too demanding for plaintiffs and plaintiffs have had to convert to a Chapter 7 to discharge their remaining liabilities.
7. On or about March 31, 2010, plaintiffs retained experienced loan modification counsel, Attorney Brian R. Goodwin to file a loan modification application with defendant Beneficial in the attempt to adjust the plaintiffs' financial obligations to defendant under the Making Home Affordable Program.

8. During the time period between March 31, 2010 and the present, the plaintiffs worked with Attorney Goodwin and supplied him with all the required documentation required by defendants in order to submit the loan modification application for consideration, including evidence of plaintiffs' income and other financial documentation. Attorney Goodwin forwarded defendants a letter of representation and authorizations from plaintiffs and followed up with phone calls to defendant to monitor the process, which resulted in the plaintiffs' loan modification application being submitted to defendants on June 17, 2010 via facsimile.
9. On or about June 18, 2010, defendants, through their foreclosure counsel, Korde & Associates, P.C., sent plaintiffs a certified letter dated June 18, 2010 notifying them of defendant Beneficial's intention to foreclose on plaintiffs' house on July 13, 2010 at 12:00PM.
10. Subsequent to June 18, 2010, defendant informed plaintiffs' counsel that the foreclosure auction scheduled for July 13, 2010 could not be postponed because the loan modification application was received by defendant less than thirty days before the scheduled auction and that plaintiffs' loan modification application was summarily denied by defendant on June 18, 2010.

11. The loan modification application prepared by Attorney Brian Goodwin on behalf of the plaintiffs was not even evaluated by defendant on its merits after defendant solicited the information from plaintiffs.
12. Plaintiffs contend that they were denied a fair opportunity to have their loan modification application reviewed, which if approved, would avoid the loss of their home, where they reside with their young son.

COUNT ONE

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

13. Plaintiffs reaver the allegations contained in paragraphs one through twelve of this Complaint and incorporate same by reference hereto.
14. A covenant of good faith and fair dealing is incorporated into every Massachusetts contract as a matter of law.
15. The mortgage plaintiffs gave to defendants as referenced in this Compliant is a contract.
16. The defendants, by working with plaintiffs by and through their attorney to solicit a loan modification application from them and summarily denying said loan modification application based merely on the date it was received without even reviewing the merits of said loan modification application violates the covenant of good faith and fair dealing.
17. As a result of the defendants' breach, the plaintiffs have sustained and will continue to sustain damages, including financial losses, emotional distress, and the loss of their home to foreclosure.

WHEREFORE, plaintiffs, Matthew McCourt and Phyllis McCourt demand judgment against defendant Beneficial Massachusetts, Inc. on this count for all their damages, including interest, costs, attorneys fees and for such other relief that this Honorable Court may deem just.

THE PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS

The Plaintiffs,
Matthew McCourt
Phyllis McCourt
By their attorney,

A handwritten signature in black ink, appearing to read 'R. S. Ravosa', written over a horizontal line.

Richard S. Ravosa, Esquire
Waterfront Lawyers Building
236 Commercial Street
Boston, MA 02109
(617) 720-1101 tel
(617) 720-1104 fax
email: Mr.Ravosa@gmail.com
BBO No. 635846

Dated: July 12, 2010