

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
C.A. NO. 10-

JUDY HOMEOWNER,)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN HOME MORTGAGE)
 SERVICING, INC., individually and as)
 successor-in-interest to Citi Residential Lending)
 and DEUTSCHE BANK)
 NATIONAL TRUST COMPANY, as Trustee)
 in trust for the Registered Holders of)
 AMERIQUEST MORTGAGE SECURITIES INC)
 Asset Backed Pass-Through Certificates,)
 Series 2005-R2,)
)
 Defendants.)

**VERIFIED COMPLAINT
AND REQUEST FOR
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Judith HOMEOWNER is a military veteran and single mother who, together with her four children, is facing homelessness and eviction from her home in Fitchburg, Massachusetts. Ms. HOMEOWNER’s home was foreclosed on in July 2009 by Defendant Deutsche Bank National Trust Company, as Trustee in trust for the Registered Holders of Ameriquest Mortgage Securities Inc Asset Backed Pass-Through Certificates, Series 2005-R2 (“Deutsche Bank”).

2. Ms. HOMEOWNER brings this action to set aside the foreclosure of her home, and to enjoin the Defendants from moving forward on their litigation to evict her from the home until her foreclosure-related claims can be fully litigated.
3. Ms. HOMEOWNER had been working with her servicer Citi Residential Lending, predecessor-in-interest to American Home Mortgage Servicing, Inc. (“AHMSI”) on a loan modification for over one year when the servicing rights were transferred to AHMSI. Ms. HOMEOWNER was repeatedly assured that she would not be foreclosed upon while her application for a loan modification was being considered, and that the scheduling of a foreclosure sale was a technicality. Ms. HOMEOWNER relied on AHMSI’s representations and did not take other steps to prevent the foreclosure. AHMSI and Deutsche Bank then allowed the foreclosure sale to proceed, without taking any action on the application for loan modification.
4. Plaintiff brings this action to set aside the foreclosure of her home, alleging claims of promissory estoppel, breach of contract, negligent misrepresentation and other violations. Defendants AHMSI and Deutsche Bank violated the duty of good faith and fair dealing and breached their fiduciary duty in violation of Massachusetts General Laws c. 93A, the Massachusetts Consumer Protection laws.
5. Plaintiff further seeks a preliminary injunction prohibiting the defendant Deutsche Bank and/or its agents from pursuing a summary process action, currently in the Housing Court, Worcester Division, to remove her from her home until the present issues have been adjudicated.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action and the Defendants pursuant to G.L. c.212 sec. 4, c. 214 sec. 1, 5, and c. 231A sec. 1.

PARTIES

7. Plaintiff Judy HOMEOWNER is a natural person who resides at 123 ANY STREET, Fitchburg, Worcester County, Massachusetts, with her four children, ages 3, 11, 13, and 20.
8. Defendant AHMSI is a residential mortgage servicer with a principal place of business at 1525 S. Belt Line Road, Coppell, Texas. AHMSI is successor-in-interest to Citi Residential Lending (“Citi”). AHMSI engages in the business of mortgage servicing on a regular basis in the Commonwealth of Massachusetts.
9. Defendant Deutsche Bank is a corporation with a principal place of business at 4600 Regent Boulevard, Suite 200, Irving, Texas. Pursuant to a power of attorney granted by Deutsche Bank to AHMSI, AHMSI acted as Deutsche Bank’s agent for loan modifications and foreclosure proceedings, including those related to Plaintiff Judy HOMEOWNER.

FACTUAL AND LEGAL BACKGROUND

10. From 2006 to 2007, the foreclosure rate in Massachusetts nearly tripled. In 2008, the number of foreclosure deeds filed (the final step in the foreclosure process) increased 62% over 2007. In 2009, while the overall rate of foreclosure deeds filed decreased, the foreclosure rate in Worcester County remained steady or increased. The rate of distressed single-family homes in Fitchburg increased 14% between 2009 and 2010.

11. In the past several years, Defendant Deutsche Bank and other lenders have rushed to foreclose on mortgages in Massachusetts without conducting appropriate and diligent investigation into whether the loan was in the process of modification.
12. Compounding this confusion is the frequent miscommunication between lenders and servicers, and even between different departments within the same servicing organization, such as between the loan modification and foreclosure departments. For example, some borrowers have received a loan modification offer *after* a foreclosure sale has been held prematurely. The U.S. Treasury Department has acknowledged the significance of this problem in its recent updates to the federal government loan modification program, adding penalties for lenders who take any steps towards foreclosure while a modification is pending.
13. A foreclosing mortgagee owe the mortgagor a duty of good faith and reasonable diligence in the foreclosure process. See Williams v. Resolution GGF OY, 417 Mass.377, 382-3 (1994).

Plaintiff's Facts

14. Ms. HOMEOWNER fell behind on her mortgage in 2007, following a difficult and contentious divorce. The divorce left Ms. HOMEOWNER with many unpaid bills and accumulating debt.
15. Around November 2007, Ms. HOMEOWNER received a "Notice of Intention to Foreclose" letter from her then-servicer Citi, predecessor-in-interest to AHMSI.
16. Ms. HOMEOWNER contacted Citi as soon as she received the foreclosure notice letter. Ms. HOMEOWNER explained her circumstances, and Citi immediately began working with her on a loan modification application.

17. Ms. HOMEOWNER worked with Citi on a loan modification over the next several months. Citi employees called Ms. HOMEOWNER periodically to request additional information, and she promptly provided the requested documentation, such as pay stubs and proof of benefits. Upon the advice of a Citi employee, Ms. HOMEOWNER began to save money towards a “down payment”, or lump sum payment, towards the loan arrearage.
18. Between November 2007 and summer 2008, Ms. HOMEOWNER called Citi frequently to check on the status of the loan application. Each time she called she spoke to a different representative, who told her that the application had not yet been assigned to a representative, and that someone would be contacting her.
19. In or around summer 2008, Ms. HOMEOWNER was informed that a foreclosure sale of her home had been scheduled. She immediately contacted Citi, and an employee told her that although a sale date had been scheduled, as long as she was in the process of a loan modification, Citi would continue to push the sale date back. The Citi employee told Ms. HOMEOWNER that this was the way things were done in order for Citi not to have to start over with the foreclosure process. The Citi employee told Ms. HOMEOWNER not to worry, because as long as the modification was in process, a foreclosure sale would not occur.
20. To the best of Ms. HOMEOWNER’s recollection, a foreclosure sale of her home was rescheduled at least twice during and after the summer of 2008. Each time, the Citi representative assured her that the foreclosure sale would be postponed as long as a loan modification was pending.

21. In or around late summer of 2008, Ms. HOMEOWNER was contacted by a Citi employee named Richard “Rick” Williams (“Mr. Williams”). Mr. Williams told Ms. HOMEOWNER that Citi had gathered the paperwork necessary to begin processing the loan modification application, and that he would be the person in charge of processing her application. Mr. Williams gave Ms. HOMEOWNER his direct telephone and fax numbers. Over the next several weeks, Mr. Williams requested some updated pay stubs from Ms. HOMEOWNER, which she promptly faxed to him.
22. In or around November 2008, Mr. Williams called Ms. HOMEOWNER to inform her that her application for a loan modification had been approved. They briefly discussed the terms of the new loan, and made arrangements for Ms. HOMEOWNER to meet a Citi representative to sign and notarize documents, execute a quitclaim deed, and for Ms. HOMEOWNER to pay Citi the nearly \$4000 she had saved towards the arrearage.
23. In early December 2008, Ms. HOMEOWNER’s father passed away suddenly from a heart attack. Ms. HOMEOWNER discovered her father’s body in his home. Ms. HOMEOWNER was extremely close with her father, and particularly following her divorce, she had come to rely heavily on him. He had provided some financial assistance to Ms. HOMEOWNER after her divorce, and he also played an active role in her children’s lives.
24. After her father’s death Ms. HOMEOWNER fell into a deep depression. She began to have difficulty sleeping, became withdrawn, lost a significant amount of weight rapidly, and was unable to get out of bed even to take care of her children. Her doctor prescribed her anti-depressants and sleeping pills, and had a psychiatrist check on her frequently.

25. Shortly after her father's death, Mr. Williams called Ms. HOMEOWNER to schedule the meeting to finalize the loan modification. Ms. HOMEOWNER told Mr. Williams that her father had passed away, and that she was not feeling well. Mr. Williams expressed his sympathy and told her he would give her a call in a few weeks.
26. Around January 2009, Ms. HOMEOWNER's psychological condition had improved somewhat, and she returned to work.
27. Around February 4, 2009, Mr. Williams sent Ms. HOMEOWNER a letter requesting copies of her recent paystubs. Ms. HOMEOWNER faxed her updated paystubs to Mr. Williams.
28. Around February 2009, Mr. Williams called Ms. HOMEOWNER and left a message to let her know that the loan modification was again ready to be finalized.
29. Around February 2009, Ms. HOMEOWNER contacted Mr. Williams to arrange a time to finalize the loan modification. In that telephone conversation, Mr. Williams told Ms. HOMEOWNER that the loan had been sold to another bank, that he could not accept her lump sum money and would no longer be working on her modification. Mr. Williams told Ms. HOMEOWNER that her entire loan modification package would be passed to the new company, AHMSI. Mr. Williams assured Ms. HOMEOWNER that AHMSI would continue processing her modification, and instructed Ms. HOMEOWNER to wait for AHMSI to contact her about making the lump sum payment.
30. Relying on the instructions of Mr. Williams, Ms. HOMEOWNER waited for AHMSI to contact her. She did not hear anything until early July 2009, when she received a letter from AHMSI dated June 30, 2009, stating that her modification had been denied because

she had failed to return executed documents. See June 30, 2009 letter attached hereto as Exhibit A.

31. The same day she received the June 30, 2009 letter, Ms. HOMEOWNER called AHMSI and told them she did had never received any documents from AHMSI, and that her documents had been transferred by Citi, and that she had been waiting for AHMSI to contact her with a loan modification agreement to sign. An AHMSI employee told Ms. HOMEOWNER that AHMSI did not have any of her loan documents, and told Ms. HOMEOWNER to submit additional documents in order to process a loan modification. The AHMSI employee told Ms. HOMEOWNER that a foreclosure sale had been scheduled, and instructed her to call Ablitt Law Offices (“Ablitt”) to let them know that she was submitting a loan modification application so that Ablitt could postpone the foreclosure sale. The AHMSI employee gave Ms. HOMEOWNER a case number to reference and the telephone number for Ablitt.
32. The same day she spoke to the AHMSI employee, Ms. HOMEOWNER faxed the requested paperwork to AHMSI.
33. The same day she spoke to the AHMSI employee, Ms. HOMEOWNER called Ablitt. She was told that the employee handling her case was out of the office, so she left a message. The Ablitt employee called Ms. HOMEOWNER the following day and told her that her modification had been denied. Ms. HOMEOWNER explained to the Ablitt employee that there had been a misunderstanding during the transfer to AHMSI, that she had just submitted paperwork to AHMSI to continue her loan modification, and that the AHMSI employee had instructed her to call Ablitt. The Ablitt employee told Ms.

HOMEOWNER that he would contact AHMSI and verify that the loan modification was in progress, in order to postpone the foreclosure sale.

34. Based on all of her communications with Ablitt, AHMSI, and Citi, as well as previous actions taken by AHMSI and its predecessor-in-interest Citi, such as the routine postponement of foreclosure sale dates and long delays in processing her loan modification, Ms. HOMEOWNER reasonably believed that AHMSI was processing her application for a loan modification diligently and in good faith, and would postpone her foreclosure until a decision had been reached.
35. At all times relevant, Ms. HOMEOWNER had the financial ability to make mortgage payments.
36. Ms. HOMEOWNER received a letter from AHMSI dated July 16, 2009, notifying her of a change in the adjustable interest rate on her mortgage. See July 16, 2009 letter attached hereto as Exhibit B.
37. Ms. HOMEOWNER received a letter from AHMSI dated July 20, 2009, requesting that she send in additional documents, including recent paystubs. Ms. HOMEOWNER immediately faxed the requested information. See July 20, 2009 letter attached hereto as Exhibit C.
38. Ms. HOMEOWNER did not hear from AHMSI again.
39. The next time Ms. HOMEOWNER heard anything regarding her home was in October 2009, when a "72 Hour Notice to Quit and Vacate Premises" letter was taped to her front door. The letter was sent by Dolan Connly, P.C., a law firm representing Deutsche Bank, which claimed to be the owner of the home.

40. Ms. HOMEOWNER called Dolan Connly and spoke to Attorney David Marsocci, who told her that a foreclosure sale on her home had taken place on July 16, 2009. Attorney Marsocci told Ms. HOMEOWNER that Deutsche Bank had purchased the home at the foreclosure auction. The attorney told Ms. HOMEOWNER that they might be able to give her some time to move.
41. Until the day she spoke with Attorney Marsocci, as referenced in the preceding paragraph, Ms. HOMEOWNER was not aware that a foreclosure auction had taken place on her home. She was shocked and distressed to learn that her home had been foreclosed on while she believed she was waiting for a modification, the terms of which had already been finalized. Ms. HOMEOWNER was stunned that she had not even had the opportunity to take any other action to stop the foreclosure.
42. As the Thanksgiving holidays approached, Ms. HOMEOWNER again fell into depression over her father's death. She began to experience difficulty sleeping and with daily activities. Her condition was significantly exacerbated by the stress of possible eviction of her and her four children from their home and their potential homelessness, and anger at the circumstances of the foreclosure.
43. Ms. HOMEOWNER's summary process trial was scheduled for November 27, 2009, in the Fitchburg session of the Worcester Division of the Housing Court Department.
44. Immediately prior to her court date, Ms. HOMEOWNER was unable to sleep for approximately 72 hours. On the day of court she had to take several prescription medications for severe migraines and chronic leg pain, and was having trouble breathing due to her asthma. Ms. HOMEOWNER wept uncontrollably throughout the court process. She was in disbelief that she was being evicted from her home.

45. Ms. HOMEOWNER was not represented by counsel at her November 27, 2009 court date. She entered housing court mediation and signed an agreement that she did not fully understand, in which she agreed to move out by March 1, 2010. Although in mediation she insisted that the bank did not have the right to evict her because the foreclosure was not valid, she did not believe she had any choice but to sign the agreement in mediation.
46. In March 2010, Ms. HOMEOWNER, through counsel, brought a motion to vacate the Housing Court agreement. Judge Diana Horan, First Justice of the Worcester Division of the Housing Court, granted Ms. HOMEOWNER's motion on March 5, 2010, to give Ms. HOMEOWNER an opportunity to pursue her foreclosure-related claims and seek injunctive relief in federal or Superior Court.
47. Ms. HOMEOWNER suffered severe anxiety, stress, and emotional distress as a result of the summary process action, faced with potential homelessness for her and her children. The Defendants' acts alleged in the preceding paragraphs were reckless, extreme, outrageous, and intended to cause emotional anguish and distress, and the Defendants knew or should have known that their acts would cause such distress.
48. Ms. HOMEOWNER will suffer irreparable injury if she and her children are evicted and forced to vacate their home as a result of the summary process action. She is currently making monthly payments for use and occupancy, as ordered by the Worcester Housing Court. Ms. HOMEOWNER requires injunctive relief in order to preserve the status quo, and prevent Defendants from pursuing the summary process action to remove Ms. HOMEOWNER and her family from the home, until the issues underlying the validity of the foreclosure have been litigated.

LEGAL CLAIMS

COUNT I: BREACH OF CONTRACT

49. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.
50. The Defendant AHMSI's conduct as described herein constituted an enforceable commitment not to foreclose on Ms. HOMEOWNER's home while her request for a loan modification was being evaluated, thereby establishing a contract with Ms. HOMEOWNER.
51. Ms. HOMEOWNER relied and acted upon AHMSI's assurances by diligently responding to all of its requests related to the loan modification.
52. As of June 2010, Ms. HOMEOWNER had fully complied in all respects with AHMSI's application process and tendered all documents in connection with her application for a modification.
53. AHMSI breached its agreement to postpone the foreclosure by authorizing and/or failing to stop the foreclosure auction on July 16, 2009, while Ms. HOMEOWNER's loan modification was still pending, failing to respond to Ms. HOMEOWNER's modification application in good faith, and failing to exercise reasonable diligence in responding Ms. HOMEOWNER's application.
54. Upon information and belief, AHMSI was acting as agent for Deutsche Bank.
55. Ms. HOMEOWNER suffered damages as a result of AHSMI's breach of contract, including without limitation, the loss of ownership of her residence, loss of equity, the imposition of fees and costs associated with the foreclosure process, and emotional distress.

COUNT II: PROMISSORY ESTOPPEL

56. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

57. At the time Ms. HOMEOWNER learned that AHMSI had assumed servicing rights to her loan, Citi, predecessor-in-interest to AHMSI, assured her that her modification request would continue uninterrupted and that she would not be foreclosed while the modification was being considered.
58. In June and July 2009, Ms. HOMEOWNER submitted additional documentation in prompt response to AHMSI's requests for additional information related to her eligibility for a loan modification.
59. Ms. HOMEOWNER reasonably relied on AHMSI's promise that her home would not be foreclosed on before it acted on her application for a loan modification.
60. Ms. HOMEOWNER's reliance was reasonable in light of AHMSI's continuing requests for documentation in processing the loan modification.
61. Ms. HOMEOWNER was substantially harmed by her reliance on AHMSI's promises because she otherwise could have taken other actions to stop the foreclosure, and because she lost title to her home and is now facing eviction.
62. Enforcing AHMSI's promise not to foreclose is in the best interest of justice.

COUNT III: NEGLIGENT MISREPRESENTATION

63. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.
64. Through its statements and actions, AHMSI misrepresented to Ms. HOMEOWNER that it would act on her application for a loan modification.
65. AHMSI misrepresented that it would not foreclose on Ms. HOMEOWNER's home until it fully considered her request for a loan modification.
66. AHMSI's representations were made to Ms. HOMEOWNER in the course of its business, resulting in pecuniary loss to Ms. HOMEOWNER.

67. Ms. HOMEOWNER reasonably and justifiably relied on AHMSI's representations, in light of her exchanges with AHMSI including responding to specific document requests necessary to process a loan modification.
68. AHMSI failed to exercise reasonable care and competence in communicating to Ms. HOMEOWNER that despite engaging in a loan modification process, and contrary to its prior statements and actions, it would move forward with foreclosure.
69. AHMSI knew or should have known that borrowers such as Ms. HOMEOWNER would rely on its representations concerning applications for loan modifications and postponement of foreclosure sale dates.
70. Ms. HOMEOWNER was damaged by AHMSI's negligent misrepresentations.

COUNT IV: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

71. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.
72. There is an implied covenant of good faith and fair dealing in the interactions between Ms. HOMEOWNER and AHMSI in negotiating a new loan agreement.
73. There is an implied covenant of good faith and fair dealing in the interactions between Ms. HOMEOWNER and Deutsche Bank with respect to the foreclosure process.
74. AHMSI violated this covenant by (i) promising, representing and/or conducting business in such a way as to cause Ms. HOMEOWNER to believe that her home was not at risk of foreclosure while a loan modification was being negotiated; (ii) misrepresenting its intent to foreclose on Ms. HOMEOWNER's home, thus cutting off any opportunity for her to prevent it; (iii) failing to act in good faith.

75. Deutsche Bank violated this covenant by failing to conduct a reasonable, diligent, good faith inquiry as to the status of Ms. HOMEOWNER's loan modification before conducting a foreclosure, and whether the foreclosure should in fact proceed.
76. Deutsche Bank violated this covenant by pursuing a summary process action against Ms. HOMEOWNER before conducting a reasonable, diligent, and good faith inquiry into its superior right of possession.
77. Ms. HOMEOWNER suffered damages as a result of AHMSI and Deutsche Bank's breaches, including without limitation by the loss of ownership of her residence, loss of equity, and fees and costs associated with the foreclosure process.

COUNT V: WRONGFUL FORECLOSURE BASED ON BAD FAITH

78. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.
79. The foreclosure of Ms. HOMEOWNER's home was conducted in bad faith.
80. AHMSI failed to comply with its express and implied promises to consider Ms. HOMEOWNER's application for a loan modification.
81. AHMSI failed to perform loan servicing functions consistent with its responsibilities to its customers.
82. AHMSI failed to honor its promise not to foreclose while considering Ms. HOMEOWNER's application for a loan modification.
83. AHMSI failed to act in a manner consistent with its contractual and common law obligations of good faith and fair dealing.
84. Deutsche Bank failed to act in a manner consistent with its contractual and common law obligations of good faith and fair dealing.

85. The foreclosure sale of the property was wrongful under state common law and the sale is therefore void or voidable.
86. Ms. HOMEOWNER is entitled to a declaratory judgment setting aside the foreclosure sale.
87. Ms. HOMEOWNER is entitled to an injunction requiring that Deutsche Bank and AHMSI take steps to restore legal title to the property to the same condition as if no foreclosure sale had ever occurred.
88. Ms. HOMEOWNER has suffered damages proximately caused by Deutsche Bank and AHMSI's wrongful foreclosure.

COUNT VI: UNFAIR AND DECEPTIVE BUSINESS PRACTICES - G.L. c. 93A

89. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.
90. At all relevant times, the Defendants were engaged in trade or commerce.
91. By engaging in the conduct complained of, the Defendants engaged in unfair and deceptive practices, in violation of G.L. c 93A, § 2.
92. The Defendants' unfair or deceptive acts or practices include, but not limited to:
 - a. Allowing the foreclosure of Ms. HOMEOWNER's home to proceed while the loan modification application was still pending;
 - b. Misrepresenting that the foreclosure would not proceed while the loan modification application was pending;
 - c. Failing to process Ms. HOMEOWNER's loan modification in good faith; and
 - d. Proceeding with judicial process to evict Ms. HOMEOWNER, when Defendant Deutsche bank should have known that it did not have a superior right of possession.

93. On or about April 6, 2010, Ms. HOMEOWNER sent a demand to the Defendants, pursuant to G.L. c. 93A § 9.
94. The Defendants failed to offer reasonable relief in response.
95. Ms. HOMEOWNER has suffered and continues to suffer actual and consequential damages, including emotional distress, as a result of the Defendants' conduct, in violation of G.L. c. 93A.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff Judy HOMEOWNER respectfully request that this Court:

- a. Issue a preliminary injunction preventing Defendant Deutsche Bank from pursuing the summary process action against Ms. HOMEOWNER until such time as the validity of the underlying foreclosure action has been fully adjudicated;
- b. Schedule a hearing on Ms. HOMEOWNER's request for a preliminary injunction;
- c. Issue declaratory and/or injunctive relief setting aside the foreclosure sale;
- d. Enjoin Defendants from continuing the unfair and deceptive practices described in this Complaint;
- e. Award damages, attorneys fees and costs on each claim set forth above;
- f. Award such other relief as it deems just, proper, necessary and equitable.

REQUEST FOR JURY TRIAL

The plaintiff hereby requests a trial by jury.

Respectfully Submitted
JUDY HOMEOWNER
By her attorneys,

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Ray Mestre, BBO
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VERIFICATION

I, Judy HOMEOWNER, have reviewed this complaint. It is true and correct in all respects. The documents attached to the Complaint are true and accurate copies. I make this statement under the pains and penalties of perjury.

Date:

Judy HOMEOWNER