

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

RORY HEWITT,

CASE NO.: **50 2009 CA 03604 6 XXXXHB**

Plaintiff,

CLASS REPRESENTATION

v.

LAW OFFICES OF DAVID J. STERN, P.A.,
and DAVID J. STERN, individually.

RECEIVED FOR FILING

OCT 23 2009

Defendants.

**SHARON R. BOCK
CLERK & COMPTROLLER
CIVIL DIVISION**

CLASS ACTION COMPLAINT

RORY HEWITT, on behalf of himself and all others similarly situated, by and through his undersigned counsel, brings this action against the Defendants LAW OFFICES OF DAVID J. STERN, P.A. and DAVID J. STERN, individually (hereinafter "Defendants") and respectfully alleges the following:

GENERAL ALLEGATIONS (JURISDICTION)

1. This is a Class Action for both damages in excess of Fifteen Thousand (\$15,000.00) Dollars and equitable relief.
2. Plaintiff, RORY HEWITT (hereinafter "HEWITT,") is a resident of Palm Beach County, Florida.
3. Defendant, LAW OFFICES OF DAVID J. STERN, P.A. (DJS, P.A.), is a Florida corporation authorized to do and doing business in Palm Beach County.
4. Defendant, DAVID J. STERN (STERN) is a lawyer licensed to practice law in the State of Florida. At all times material hereto, STERN was the 100% owner of DJS, P.A. and the lawyer responsible for the debt collection activities, including legal services, the policies regarding collection of fees and costs, and was in charge of the operations of DJS, P.A.

VENUE

5. Venue is proper in Palm Beach County, Florida, as the violations alleged by the Plaintiff occurred in Palm Beach County, Florida, where the Defendants, DJS, P.A. and STERN (hereinafter "Defendants") filed foreclosure actions against the Plaintiff, transmitted communications to the Plaintiff in order to collect debts, and collected debts and sought to collect debts to which they were not entitled.

CLASS REPRESENTATION ALLEGATIONS

6. Pursuant to Florida Rule of Civil Procedure 1.220, Plaintiff, RORY HEWITT, brings this claim on behalf of all persons within the State of Florida who have or had residential mortgages with COUNTRYWIDE HOME LOANS, INC. and who received a reinstatement letter during the time period from October 31, 2003 through the present in which Defendants sought to collect:

- (a) Amounts for service of process on persons identified by DJS, P.A. as "John Doe and Jane Doe, unknown tenants in possession" or "unknown spouse;" and/or;
- (b) Excessive and/or inappropriate costs for title search and/or title examination which Stern knew or should have known exceeded the reasonable value of said title work; and/or
- (c) Other charges, fees and costs which had not yet been incurred at the time Defendants demanded payment.

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 3 of 19

7. STERN himself was responsible for the policies of DJS, P.A. that sought to collect these amounts and charges, and STERN had knowledge that these amounts and charges were sought by DJS, P.A. and STERN approved these debt collection activities and was responsible for the debt collection activities of DJS, P.A.

8. This Class consists of all persons within the State of Florida who have or had residential mortgages with COUNTRYWIDE HOME LOANS, INC. and which, at any time from October 31, 2003 to the present, received a reinstatement letter during the time period from October 31, 2003 through the present in which Defendants sought to collect:

- (a) Amounts for service of process on persons identified by DJS, P.A. as "John Doe and Jane Doe, unknown tenants in possession" or "unknown spouse;" and/or
- (b) Excessive and/or inappropriate costs for title search and/or title examination which Stern knew or should have known exceeded the reasonable cost for said title work; and/or
- (c) Other charges, fees and costs which had not yet been incurred at the time Defendants demanded payment.

9. Numerosity: Plaintiff alleges that the persons from whom the Defendants claimed, attempted, threatened to collect, or collected charges in excess of the amounts allowed by law or not authorized by law, constitute a class so numerous that joinder of all members is impractical.

10. The members of this Class will be easily ascertained from the records of the Defendants. These records will indicate that the Defendants charged improper amounts with regard to collection activities and/or foreclosure proceedings.

11. Commonality: Questions of law and fact which are common to each member of The Class that predominate over any questions affecting any individual members including, *inter alia*, the following:

- (a) Whether the Defendants claimed, attempted, or threatened to collect costs and other charges which were not authorized under Florida law;
- (b) Whether in connection with collection activities the Defendants sought to collect or attempted to collect amounts for costs and other charges which were unnecessary or invalid, and/or unreasonable;
- (c) Whether the Defendants in their collection activities charged borrowers or attempted to collect amounts which were not currently due and owing, or were not incurred; and
- (d) Whether the Defendants attempted to collect amounts for a title examination which were excessive and/or inappropriate

12. Typicality: The claim of the Class Representative is typical of the claims of each member of the Class in that Plaintiff alleges a common course of conduct by the Defendants towards members of the Class. Plaintiff and the other members of the Class were charged expenses and/or fees which were unreasonable, excessive, not currently

due and owing, for services not performed, and/or invalid under Florida law. Plaintiff and the other members of the Class seek identical remedies under identical legal theories, and there is no antagonism between Plaintiff's claim and those of the Class.

13. Adequacy: The Class Representative is a Florida resident who will fairly and adequately protect and represent the interest of each member of the Class. Additionally, the Class Representative is fully cognizant of his responsibilities as Class Representative, and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing this action.

14. Plaintiff also brings this action under Rule 1.220(b)(2) because the Defendants have acted or refused to act on grounds generally applicable to all members of the Class, thereby making final injunctive and/or declaratory relief concerning the Class as a whole appropriate. In the absence of appropriate injunctive and/or declaratory relief, the Defendants will continue to violate F.S. §§559.72 and 501.201. The Defendants' uniform conduct towards Plaintiff and other members of the Class make certification under Rule 1.220(b)(2) appropriate.

15. Plaintiff also brings this action under Rule 1.220(b)(3) because the questions of law and fact common to Class Representative's claim and the claims of each member of the Class predominate over any question of law or fact affecting only individual members of the Class. Additionally, the prosecution of separate claims, by or against individual members of the Class would create a risk which would, as a practical matter, be dispositive

of the interest of other members of the Class who are not parties to the adjudications, or would substantially impair or impede the ability of other members of the Class who are not parties to the adjudications to protect their interests. Class Representation is therefore clearly superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I
VIOLATION OF FLORIDA STATUTE CHAPTER 559
AGAINST LAW OFFICES OF DAVID J. STERN, P.A. AND
DAVID J. STERN, INDIVIDUALLY

16. Class Representative, RORY HEWITT, hereby adopts, realleges and reaffirms each and every allegation contained in paragraphs 1 through 15 of this Class Action Complaint and further alleges:

17. This is an action against Defendants, DAVID J. STERN, P.A. and DAVID J. STERN, individually for damages and declaratory and injunctive relief on account of their collection practices in violation of Florida Statutes §559.72.

18. COUNTRYWIDE HOME LOANS, INC., issued a mortgage to the Class Representative, RORY HEWITT and his wife, Holly Hewitt (see Exhibit "A").

Holly Hewitt died on March 27, 2009.

19. The mortgage provides:

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other

period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's Interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instruments, shall continue unchanged.

See Exhibit "A."

20. Prior to October 31, 2007, HEWITT received written communications from COUNTRYWIDE HOME LOANS, INC. stating that he was in default under provisions of his mortgage.

21. In response, Class Representative, RORY HEWITT, requested a reinstatement of the loan, pursuant to Paragraph 19 of the Mortgage.

22. Pursuant to the request for reinstatement, Defendants informed HEWITT through a written communication that as of October 31, 2007, the "following is a breakdown of the sums currently due and owing," in order to reinstate the loan:

Monthly Mortgage Payments	\$15,646.25
Late Charges	\$ 231.60
Property Inspections	\$ 175.00
Escrow Deficit	\$ 282.83
Title Work	\$ 470.00
NSF Charges	\$ 81.06
Clerk Filing Fee	\$ 256.60

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 8 of 19

Service of Process	\$ 180.00
Attorney Fees	\$1,200.00 EST.
Service/Mail (REQ'D BY LAW)	\$ 8.25

(See letter of October 31, 2007 attached hereto as Exhibit "B.")

23. The reinstatement letter was signed and sent out by a legal assistant. (See Exhibit "B" attached hereto.) The legal assistant followed the policies established and instructions given by STERN to sign and send the reinstatement letter to the Plaintiff. The legal assistant's acts specifically followed the policies established by STERN, and were performed with his knowledge, consent, and approval.

24. Further, the reinstatement letter that was sent out was a form letter that was prepared, developed, and/or approved by STERN.

25. It was alleged in the reinstatement letter dated October 31, 2007 that the Plaintiff owed a debt. The amounts sought in the reinstatement letter included a mortgage payment and late charges which were not "currently due and owing" as of October 31, 2007. The reinstatement letter was a letter communication sent to the Plaintiff by the Defendants. In addition, the title work charge, late charges, property inspection fees, service of process fees, and/or attorney's fees, were not currently due and owing as of October 31, 2007 and/or were unreasonable, excessive, invalid, not actually incurred, or were for services not performed. (See Exhibit "B" attached hereto.)

26. STERN was responsible for the policies of DJS, P.A. in its attempt to collect these amounts and charges, and STERN had knowledge that these improper amounts and

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 9 of 19

charges were being sought by DJS, P.A., and STERN approved and was responsible for these debt collection activities.

27. STERN and DJS, P.A. have engaged in the collection of consumer debts in Palm Beach County and throughout the State of Florida. Defendants have a longstanding business practice of charging fees and costs to borrowers who request reinstatement of their mortgage, amounts which are not incurred, are unreasonable and excessive, are not authorized by Florida law and/or claiming said amounts are currently due and owing, when said amounts are not currently due and owing, and Defendants have continued such practice.

28. STERN himself was and is responsible for the policy of charging fees and costs and other amounts which are not incurred, are unreasonable, excessive, not authorized by Florida law, and not currently due and owing. STERN knew that DJS, P.A. was attempting to collect these fees, costs, charges, and other amounts from Rory Hewitt and other borrowers, and STERN approved DJS, P.A.'s attempts to collect said amounts, and STERN was responsible for these debt collection activities.

29. In STERN AND DJS, P.A.'s business of collecting debts and in attempting to collect the debt, the Defendants have utilized the United States Postal Service, telephones, and other means and instrumentalities of interstate commerce.

30. Plaintiff is a "debtor" and a "consumer" as defined by F.S. §559.55(2).

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 10 of 19

31. The debt is a "consumer debt" as defined by F.S. §559.55(1).
32. STERN knew that he was attempting to collect a debt that was not legitimate, or was asserting a legal right when he knew that the right did not exist.
33. DJS, P.A. knew that it was attempting to collect a debt that was not legitimate, or was asserting a legal right when it knew that the right did not exist.
34. Defendants STERN and DJS, P.A. have violated the Florida Consumer Collection Practices Act. Specifically, Defendants have violated Fla. Stat. §559.72(9) by:
 - (a) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC., expenses and/or fees that were not incurred, were unreasonable, excessive, were in excess of the amount incurred, or were for services which were not performed;
 - (b) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC., expenses and/or fees to which they had no right and which they knew they had no right to charge;
 - (c) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC., expenses and/or fees which were not incurred, were unreasonable, excessive, or were not due, at a time when the mortgagors were compelled to pay the alleged fees in order to have their mortgages reinstated and thereby protect their homes from being foreclosed;

- (d) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC., expenses and/or fees which were not currently due and owing;
- (e) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC., mortgage payments and/or late charges which were not currently due and owing at the time;
- (f) Charging Class Representative, RORY HEWITT for "process service," which included amounts charged and collected for service of process on non-existent persons which were unnecessary and without lawful justification.
- (g) Charging Class Representative Rory Hewitt costs of \$ 470.00 for "title work" performed at an excessive cost by an affiliate of COUNTRYWIDE HOME LOANS, INC., when said title work could have been performed at a more reasonable cost.

35. STERN approved and was responsible for these debt collection policies and implemented them in the debt collection activities of DJS, P.A.

36. Due to these violations of Florida law by Defendants STERN and DJS, P.A. as set forth above, the Plaintiff seeks injunctive relief, as is required to preclude further

violations of the Florida Consumer Collection Practices Act by the Defendants as provided under Fla. Stat. §559.77.

37. Due to the violations of Florida law by the Defendants as set forth above, the Plaintiff has been damaged and is entitled to an award of statutory damages and to declaratory and injunctive relief.

38. On account of the foregoing violations, the Plaintiff has retained the undersigned attorneys and has agreed to pay them a reasonable fee for their services.

WHEREFORE, Plaintiff prays the Court award his damages and equitable relief, together with court costs and attorney's fees, pursuant to Florida Statutes §559.77(2), and such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

COUNT II
VIOLATION OF FLORIDA STATUTE CHAPTER 501
AGAINST LAW OFFICES OF DAVID J. STERN, P.A. AND
DAVID J. STERN, INDIVIDUALLY

39. Class Representative, RORY HEWITT, hereby adopts, realleges and reaffirms each and every allegation contained in paragraphs 1 through 15 of this Class Action Complaint and further alleges:

40. This is an action against Defendant, LAW OFFICES OF DAVID J. STERN, P.A. and DAVID J. STERN, INDIVIDUALLY, for damages and declaratory and injunctive relief on account of its unfair and deceptive business practices in violation of the Florida

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 13 of 19

Deceptive and Unfair Trade Practices Act, Chapter 501 of the Florida Statutes (hereinafter "The Act.")

41. COUNTRYWIDE HOME LOANS, INC., issued a mortgage to the Class Representative, RORY HEWITT and his wife, Holly Hewitt. (See Exhibit "A"). Holly Hewitt died on March 27, 2009.

42. The mortgage provides:

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's Interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instruments, shall continue unchanged. (See Exhibit "A" hereto.)

43. Prior to October 31, 2007, HEWITT received written communications from COUNTRYWIDE HOME LOANS, INC. stating that he was in default under provisions of his mortgage.

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 14 of 19

44. In response, HEWITT requested reinstatement of the mortgage, pursuant to Paragraph 19 of the Mortgage.

45. Pursuant to the request for reinstatement, Defendants informed HEWITT that as of October 31, 2007, the "following is a breakdown of the sums currently due and owing," in order to reinstate the mortgage loan:

Monthly Mortgage Payments	\$15,646.25
Late Charges	\$ 231.60
Property Inspections	\$ 175.00
Escrow Deficit	\$ 282.83
Title Work	\$ 470.00
NSF Charges	\$ 81.06
Clerk Filing Fee	\$ 256.60
Service of Process	\$ 180.00
Attorney Fees	\$1,200.00 EST.
Service/Mail (REQ'D BY LAW)	\$ 8.25

(See letter of October 31, 2007 attached hereto as Exhibit "B.")

46. The reinstatement letter was signed and sent out by a legal assistant. (See Exhibit "B" attached hereto.) The legal assistant followed the policies established and instructions given by STERN to sign and send the reinstatement letter to the Plaintiff. The legal assistant's acts specifically followed the policies established by STERN, and were performed with his knowledge, consent, and approval.

47. Further, the reinstatement letter that was sent out was a form letter that was prepared, developed, and/or approved by STERN.

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 15 of 19

48. It was alleged in the reinstatement letter dated October 31, 2007 that the Plaintiff owed a debt. The amounts sought in the reinstatement letter included a mortgage payment and late charges which were not "currently due and owing" as of October 31, 2007. The reinstatement letter was a letter communication sent to the Plaintiff by the Defendants. In addition, the late charges, property inspection fees, title work charge, service of process fees, and/or attorney's fees, were not currently due and owing as of October 31, 2007 and/or were unreasonable, excessive, invalid, not actually incurred, or were for services not performed. (See Exhibit "B" attached hereto.)

49. Defendant STERN prepared, developed, and/or approved the unlawful, misleading, unfair and deceptive letter that was sent to Class Representative, RORY HEWITT and all other borrowers who requested reinstatement of their mortgages as stated herein, and attempted to assess fees and expenses which were not incurred, not legitimate, were in excess of the amount incurred, unreasonable, excessive, were for services not performed, or which were not due and owing.

50. STERN and DJS, P.A. have engaged in the collection of consumer debts in Palm Beach County and throughout the State of Florida. Defendants have a longstanding business practice of charging fees and costs to borrowers who request reinstatement of their mortgage, amounts which are not incurred, are unreasonable and excessive, are not authorized by Florida law and/or claiming said amounts are "currently due and owing,"

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 16 of 19

when said amounts are not "currently due and owing," and Defendants have continued such practice.

51. STERN himself was and is responsible for the policy of charging fees and costs and other amounts which are not incurred, are unreasonable, excessive, not authorized by Florida law, and not currently due and owing. STERN knew that DJS, P.A. was attempting to collect these fees, costs, charges, and other amounts from Rory Hewitt and other borrowers, and STERN approved DJS, P.A.'s attempts to collect said amounts, and STERN was responsible for these debt collection activities.

52. Defendants STERN and DJS, P.A. are engaged in commerce in the State of Florida, as defined by §501.203(8), Florida Statutes, and are therefore subject to the provisions contained in §501.201 *et seq.*, Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

53. Class Representative, RORY HEWITT, is a "consumer" as defined by §501.203(7), Florida Statutes, and as such is entitled to the protection of FDUTPA.

54. Defendants STERN and DJS, P.A. violated Fla. Stat. §501.201 by:

- (a) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC., expenses and/or fees that were not incurred, were unreasonable, excessive, were in excess of the amount incurred, or were for services which were not performed;

- (b) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC..., expenses and/or fees to which they had no right and which they knew they had no right to charge;
- (c) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC..., expenses and/or fees which were not incurred, were unreasonable, excessive, or were not due, at a time when the mortgagors were in a position in which they had to pay the alleged fees in order to have their mortgages reinstated in order to protect their homes from being foreclosed;
- (d) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC..., expenses and/or fees which were not currently due and owing;
- (e) Charging Class Representative, RORY HEWITT, and other mortgagors of COUNTRYWIDE HOME LOANS, INC..., mortgage payments and/or late charges which were not currently due and owing at the time;
- (f) Claiming costs of \$ 470.00 for "title work" performed at an excessive cost by an affiliate of COUNTRYWIDE HOME LOANS, INC., when said title work could have been performed at a more reasonable cost;
- (g) Charging Class Representative, RORY HEWITT for "process service," which included amounts charged and collected for service of process on

HEWITT v. David Stern P.A. and David Stern Individually
Case Number 50 2009 CA
Class Action Complaint
Page 18 of 19

non-existent persons which were unnecessary and without lawful justification.

55. STERN approved and was responsible for these debt collection policies and implemented them in the debt collection activities of DJS, P.A.

56. As a result of Defendants STERN and DJS, P.A.'s violations of FDUTPA, Class Representative HEWITT has been aggrieved and is thus entitled to damages under the FDUTPA.

57. As a result of Defendants STERN and DJS, P.A.'s violations of FDUTPA, Class Representative HEWITT has been forced to retain undersigned counsel and has agreed to pay them a reasonable fee for their services.

WHEREFORE, Class Representative, RORY HEWITT, respectfully requests this Court enter an Order granting the following relief:

a. enter a declaratory judgment to the effect that the Defendants have engaged in unfair, unconscionable, and deceptive business practices, in violation of the FDUTPA as set forth in §501.211(1), Florida Statutes;

b. enter a prohibitive injunction enjoining the Defendants from further violations of the FDUTPA and further requiring the return of all ill gotten gains received by charging said amounts; and

c. award Class Representative, Rory Hewitt, damages pursuant to §501.211(2), Florida Statutes; and

d. award Class Representative, RORY HEWITT, reasonable attorneys' fees and costs incident to the bringing of this action, pursuant to §501.211 Florida Statutes.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

CERTIFICATE OF SERVICE

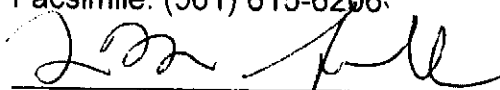
I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to Jeffrey Tew, Esq., Tew Cardenas, LLP, Four Seasons Tower, 15th Floor, 1441 Brickell Avenue, Miami, FL 33131 this 23rd day of October, 2009.

COUNSEL FOR PLAINTIFF

KIRK FRIEDLAND, ESQ.
250 S. Australian Ave. Suite 601
West Palm Beach, FL 33401
Telephone: (561) 655-8200
Facsimile: (561) 655-1389
FL BAR NO.: 218571

SILBER VALENTE & DAVIS
1806 Old Okeechobee Road
West Palm Beach, Florida 33409
Telephone: (561) 615-6200
Facsimile: (561) 615-6206

BY:



Louis M. Silber, Esquire
FL BAR NO.: 176031

This instrument was prepared by:

FMC MORTGAGE, INC.
6800 JERICHO TURNPIKE
SYOSSET, NY 11791

After Recording Return To:
FMC MORTGAGE, INC.

6800 JERICHO TURNPIKE
SYOSSET, NY 11791

LOAN NO.: 050912009

ESCROW NO.:
TITLE NO.: NSS-3733 -FL
PARCEL NO.:

NSS 3733-FL
10035770050912009

CFN 20060009468
OR BK 19762 PG 0571
RECORDED 01/05/2006 16:38:10
Palm Beach County, Florida
AMT 223,000.00
Deed Doc 780.50
Intang 446.00
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0571 - 586; (16pgs)

[SPACE ABOVE THIS LINE FOR RECORDING DATA]

MIN NO.: 10035770050912009S

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated DECEMBER 21, 2005, together with all Riders to this document.

(B) "Borrower" is
RORY HEWITT AND HOLLY HEWITT, HIS WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is
FMC MORTGAGE, INC.

Lender is a INCORPORATED organized and existing under the laws of New York. Lender's address is 6800 JERICHO TURNPIKE, SYOSSET, NY 11791

Initials

[Handwritten initials]

FLORIDA-Single Family-Fannie Mae/Freddie Mac
DOCUMENT SERVICES, INC. FORM MORTGAGE-3111

Page 1 of 15
ORIGINAL

Form 3010 1/01



(E) "Note" means the promissory note signed by Borrower and dated DECEMBER 21, 2005. The Note states that Borrower owes Lender TWO HUNDRED TWENTY THREE THOUSAND AND 00/100 Dollars (U.S. \$ 223,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2036.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|--|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Assumption Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Inter Vivos Trust Rider |
| <input type="checkbox"/> Other(s) [specify]: | | |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

LOAN NO.: 050912009

Initials 

FLORIDA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS

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Page 2 of 15

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