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DIANA ZALESKI

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SUMMIT COUNTY
CLERK OF COURTS

COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Allen Keith Construction Co.,

Plaintiff,

-vs-

Accredited Home Lenders, et al.

Defendants.

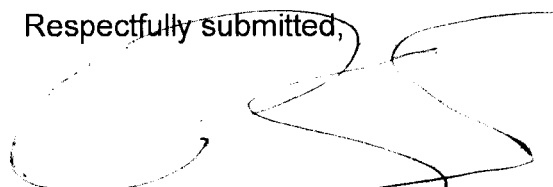
Case No. 2006 05 3270

Judge Judith Hunter

**DEFENDANTS LITTON LOAN SERVICING
LP'S AND MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC.'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AND MOTION FOR LEAVE
TO FILE ANSWER, INSTANTER**

Now come defendants, Litton Loan Servicing LP ["Litton"] and Mortgage Electronic Registration Systems, Inc. ["MERS"], through counsel, and oppose plaintiff's Motion for Default Judgment. Defendants further move for leave to file an Answer to the Complaint, instanter, the original of which is attached as Exhibit A. Defendants submit the following Memorandum in support.

Respectfully submitted,



Pamela S. Petas (~~9058627~~)
LERNER, SAMPSON & ROTHFUSS
Attorneys for Defendants
Litton Loan Servicing, LP and
Mortgage Electronic Registration Systems, Inc.
120 E. Fourth St., 8th Floor
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MEMORANDUM

On May 23 2006, plaintiff filed this action against defendants Accredited Home Lenders, Litton and MERS. Plaintiff alleges that Litton and MERS service and hold a mortgage on real estate at 1344 Valley Drive, Akron, Ohio. Plaintiff claims that Litton and MERS wrongfully refused to send a \$293,472.83 insurance check to plaintiff for repairs plaintiff allegedly made to the property when it was damaged by fire. On June 7, 2006, plaintiff dismissed the Complaint against Accredited.

The court docket appears to show that Litton and MERS signed for the summons and Complaint on June 5, 2006 and June 1, 2006, respectively. MERS, as nominee, is simply holder of the subject mortgage for recording purposes and holds no beneficial interest in the mortgage loan. Therefore, it referred the matter to Litton. For reasons unknown, the summons and Complaint did not arrive in Litton's legal department to be referred to counsel until July 10 2006.

Under Civ.R. 6(B), a court may grant a party additional time to file a responsive pleading after expiration of the deadline upon a showing of excusable neglect. Ohio courts have held that the inaction of a party is "excusable neglect" as long as the party does not show a "complete disregard for the judicial system." *Perry v. Gen. Motors Corp.* (10th Dist.1996) 113 Ohio App.3d 318, 320-21, 680 N.E.2d 1069, *citing Kay v. Marc Glassman, Inc.* (1996), 76 Ohio St.3d 18, 20, 665 N.E.2d 1102. Here, Litton's unintentional delay in referring this matter to counsel does not rise to the level of a complete disregard of the judicial system. Therefore, Litton and MERS have shown excusable neglect. Ohio courts favor disposition of cases on the merits, not procedural grounds. *Marion Production Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265, 271, 533

N.E.2d 325.

For the foregoing reasons, Litton and MERS request that this Court deny plaintiff's Motion for Default Judgment and grant defendants leave to file the attached Answer, instanter.

Respectfully submitted,

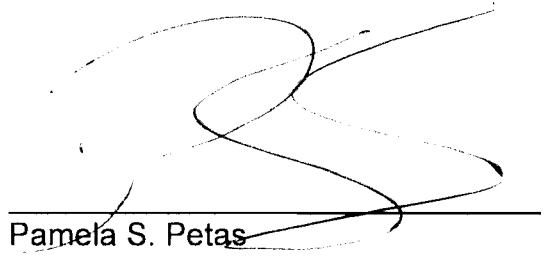


Pamela S. Petas (0058627)
LERNER, SAMPSON & ROTHFUSS
Attorneys for Defendants
Litton Loan Servicing, LP and
Mortgage Electronic Registration Systems, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing has been duly served upon all parties or counsel of record by ordinary U.S. mail, postage prepaid and facsimile this 17th day of July 2006.

John Curtis Alberti
525 N. Cleveland-Massillon Road
Akron, OH 44333



Pamela S. Petas

COURT OF COMMON PLEAS
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Allen Keith Construction Co.,

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Case No. 2006 05 3270

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**DEFENDANTS LITTON LOAN SERVICING
LP'S AND MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC.'S
ANSWER TO COMPLAINT**

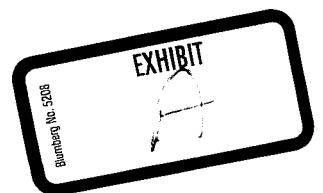
Now come Litton Loan Servicing, LP ["Litton"] and Mortgage Electronic Registration Systems, Inc. ["MERS"], through counsel, and for their Answer to the Complaint, state as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim against Litton and MERS upon which relief may be granted.

SECOND DEFENSE

2. Litton and MERS deny the allegations in paragraph 1 for want of knowledge or information sufficient to form a belief as to the truth thereof.
3. Litton and MERS admit the allegations in paragraphs 2 and 3 insofar as Accredited is a mortgage lender and MERS is holder of the mortgage as nominee for Accredited Home Lenders, its successors and assigns, for recording purposes only. MERS does not hold a beneficial interest in the mortgage loan.
4. Litton and MERS deny the allegations in paragraph 4. MERS is holder of the mortgage as nominee for Accredited Home Lenders, its successors and assigns, for recording purposes only.
5. Litton and MERS admit the allegations in paragraph 5 insofar as Litton is servicer of the mortgage loan and deny the remaining allegations.
6. Litton and MERS admit the allegations in paragraph 6.



7. Litton and MERS admit the allegations in paragraph 7 insofar as the subject property was damaged by fire and deny the remaining allegations for want of knowledge or information sufficient to form a belief as to the truth thereof.
8. Litton and MERS deny the allegations in paragraph 8 for want of knowledge or information sufficient to form a belief as to the truth thereof.
9. Litton and MERS deny the allegations in paragraph 9.
10. Litton and MERS admit the allegations in paragraph 10 insofar as the check of which a copy is attached to the Complaint as Exhibit B was issued and deny the remaining allegations for want of knowledge or information sufficient to form a belief as to the truth thereof.
11. Litton and MERS deny the allegations in paragraph 11 for want of knowledge or information sufficient to form a belief as to the truth thereof.
12. Litton and MERS deny the allegations in paragraph 12 that Litton is MERS' agent and deny the remaining allegations for want of knowledge or information sufficient to form a belief as to the truth thereof.
13. Litton and MERS deny the allegations in paragraph 13 that Litton is MERS' agent and deny the remaining allegations for want of knowledge or information sufficient to form a belief as to the truth thereof.
14. Litton and MERS admit the allegations in paragraph 14 that Litton instructed Mosher to deliver the check to Litton and deny the remaining allegations for want of knowledge or information sufficient to form a belief as to the truth thereof.
15. Litton and MERS deny the allegations in paragraph 15 for want of knowledge or information sufficient to form a belief as to the truth thereof.
16. Litton and MERS deny the allegations in paragraphs 16 and 17.
17. Paragraph 18 does not require a response.
18. Litton and MERS deny the allegations in paragraphs 19 and 20 for want of knowledge or information sufficient to form a belief as to the truth thereof.
19. Litton and MERS deny the allegations in paragraph 21.

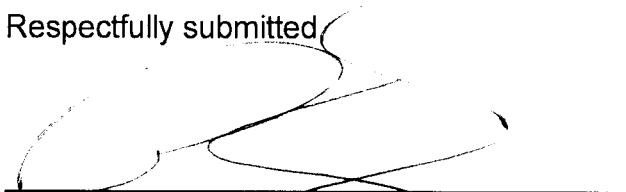
AFFIRMATIVE DEFENSES

20. Plaintiff's claims are barred by the doctrines of waiver, estoppel and release.
21. Plaintiff's claims are barred by the doctrine of laches.

- 22. Plaintiff's claims are barred by its superior knowledge of the conditions ultimately causing its losses, conditions which its failed to communicate to Litton and MERS.
- 23. Plaintiff has failed to join indispensable parties as required by Civ.R. 19.
- 24. Plaintiff's claims are barred by the applicable statutes of limitations or jurisdictional requirements.
- 25. The parole evidence rule bars defendant's claims to the extent that they arise from alleged oral representations or written communications contrary to the terms of the mortgage instrument(s) or insurance documents.
- 26. Plaintiff's claims are barred by its contributory or comparative negligence.
- 27. Plaintiff's claim for damages is barred or must be reduced to the extent that it has failed to mitigate its damages.
- 28. Process and service of process were and are insufficient.
- 29. Litton and MERS owed no fiduciary duty to plaintiff.

WHEREFORE, defendants pray that the Complaint be dismissed with prejudice at plaintiff's costs; that defendants recover their costs in defending the Complaint, including a reasonable award for their attorney fees; and that defendants be granted such other relief, legal and equitable, to which they may be entitled.

Respectfully submitted

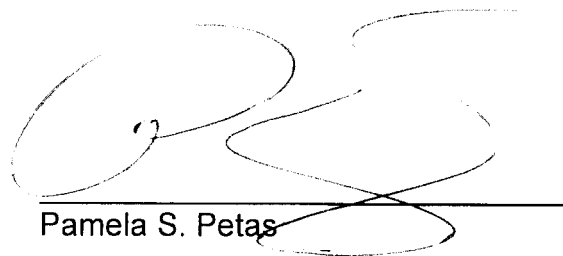


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