

6/16/06  
2006 JUL 25 PM 3:26IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIOALLEN-KEITH CONSTRUCTION CO.  
Plaintiff

CASE NO. CV 2006 05 3270

vs.

JUDGE HUNTER

ACCREDITED HOME LENDERS, INC, et al  
DefendantPLAINTIFF'S REPLY TO  
DEFENDANTS LITTON LOAN  
SERVICING, LP AND MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEM, INC'S MEMORANDUM  
IN OPPOSITION TO MOTION FOR  
DEFAULT JUDGMENT

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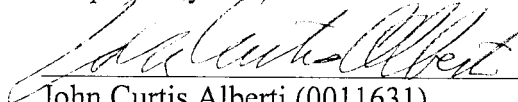
The failure of Defendants Litton Loan Servicing, LP (“Litton”) and Mortgage Electronic Registration Systems, Inc. (“MERS”) to respond to Plaintiff’s Complaint was not due to “excusable neglect” as claimed by Defendants. Defendants memorandum opposing default judgment offers no explanation for the failure to answer the summons in this case. Defendants counsel states, “For reasons unknown, the summons and Complaint did not arrive in Litton’s legal department to be referred to counsel until July 10, 2006.” (emphasis added). Litton, in fact, was notified of the legal dispute and of the actual filing of the Complaint long before July 10, 2006. On May 18, 2006, Plaintiff’s counsel faxed a letter (Exhibit “A”) to Litton to the attention of its legal department regarding the \$293,472.00 insurance check and asking to discuss a resolution of the dispute short of litigation. There was no response. On May 24, 2006, a time-stamped copy of the Complaint was faxed to Litton – attention legal department (Exhibit “B”). Again, there was no response.

A movant must do more than make bare allegations of excusable neglect to obtain relief, Kay v. Marc Glassman, Inc. (1996), 76 Ohio St. 3d 18, Rose Chevrolet, Inc. v. Adams (1988), 36 Ohio St. 3d 17, Here, the evidence shows that MERS simply washed its hands of any responsibility to respond to the Court summons because it was only a “nominee”, and that Litton

ignored not one, but two notices of the suit against it between May 24 and June 5, 2006. This rises to the level of "complete disregard for the judicial system" for which Defendants should be denied relief from their own neglect, see GTE Automated Elec. Inc. v. ARC Industries, Inc. (1976), 47 Ohio St. 2d 146; Rose Chevrolet, Inc. v. Adams, supra. These particular Defendants take regular advantage of the judicial system as plaintiffs in numerous foreclosures, and default judgments on those foreclosures. They should not be allowed to spurn that same system as defendants.

Plaintiff's motion for default judgment should be granted.

Respectfully submitted



John Curtis Alberti (0011631)

Attorney for Plaintiff

525 N. Cleveland-Massillon Rd.

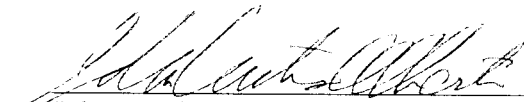
Akron, Ohio 44333

(330) 666-3833

E-mail [jcalberti@netzero.com](mailto:jcalberti@netzero.com)

PROOF OF SERVICE

A copy of the foregoing was sent via regular U.S. Mail, this 24<sup>th</sup> day of July 2006, to Pamela S. Petas, Attorney for Defendants, 120 E. Fourth St., 8<sup>th</sup> Floor, Cincinnati, Ohio 45202:



John Curtis Alberti

Attorney for Plaintiff

## John Curtis Alberti Co., L.P.A.

525 N. Cleveland-Massillon Rd. • Akron, Ohio 44333  
(330) 666-3833 • FAX: (330) 666-5021  
jcalberti@netzero.com

May 18, 2006

Litton Loan Servicing  
Houston, Texas

By Fax Transmission  
(713) 218-3646

Attention: Mr. Wyatt, Legal Department

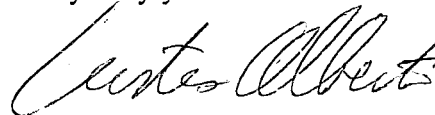
Re: Moira Mosher, Borrower; 1344 Valley Dr., Akron, Ohio  
Loan No. 11758760  
Fire Damage – Allen-Keith Construction, Contractor

Dear Mr. Wyatt:

I represent Allen-Keith Construction regarding reconstruction work they are performing on the above referenced property, which is your collateral for Moira Mosher's loan. Allen-Keith has been informed that Litton will not sign the payment agreement previously faxed to John Johnson and Susan Houston in your insurance claims department. Since Litton insists on depositing the insurance proceeds in its account, this agreement is the only assurance that Allen-Keith has that the proceeds from the \$293,472.83 insurance settlement check made payable jointly to Mosher, Litton and Allen-Keith, will be paid to Allen-Keith for the work done to restore your collateral to its pre-fire value.

The payment agreement is similar to one agreed to by First Franklin Loan Services on a similar project earlier this year after we filed suit against them. (See the Complaint enclosed). Hopefully litigation will not be necessary in this case. I left a message for you yesterday and as of this afternoon I have not had a return call. If I do not hear from you tomorrow, I will assume that Litton has no intention to cooperate in getting this issue resolved.

Very truly yours



Curtis Alberti

Enc.

cc: Allen-Keith Construction Company  
Accredited Home Lenders  
Mortgage Electronic Registration Systems, Inc.

John Curtis Alberti Co., L.P.A.

525 N. Cleveland-Massillon Rd.  
Akron, Ohio 44333  
(330) 666-3833  
FAX: (330) 666-5021

FAX TRANSMITTAL SHEET

DATE: May 24, 2006

TO: Litton Loan Servicing - Mr. Wyatt, Legal Dept.

RE: Moira Mosher, Borrower - Loan No. 11758760; Allen Keith Construction

FAX NO.: (713) 218-3646

FROM: Curtis Alberti

NUMBER OF PAGES INCLUDING COVER SHEET: 6

ADDITIONAL COMMENTS:

Copy of Complaint filed in Summit County Common Pleas Court by Allen Keith Construction against Litton Loan Servicing, et al follows.

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\_\_\_\_\_  
\_\_\_\_\_

IF YOU DID NOT RECEIVE ALL MATERIAL, PLEASE CALL (330) 666-3833

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