

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR
MANATEE COUNTY, FLORIDA**

ROBERT PINZHOFFER,

Plaintiff,

v.

Case No. 09CA00713

SUNTRUST MORTGAGE, INC.,
SUNTRUST BANK,
ISLAND REAL ESTATE OF ANNA MARIA ISLAND, INC.
AND SUNCOAST REAL ESTATE, LLC,

Defendants.

_____ /

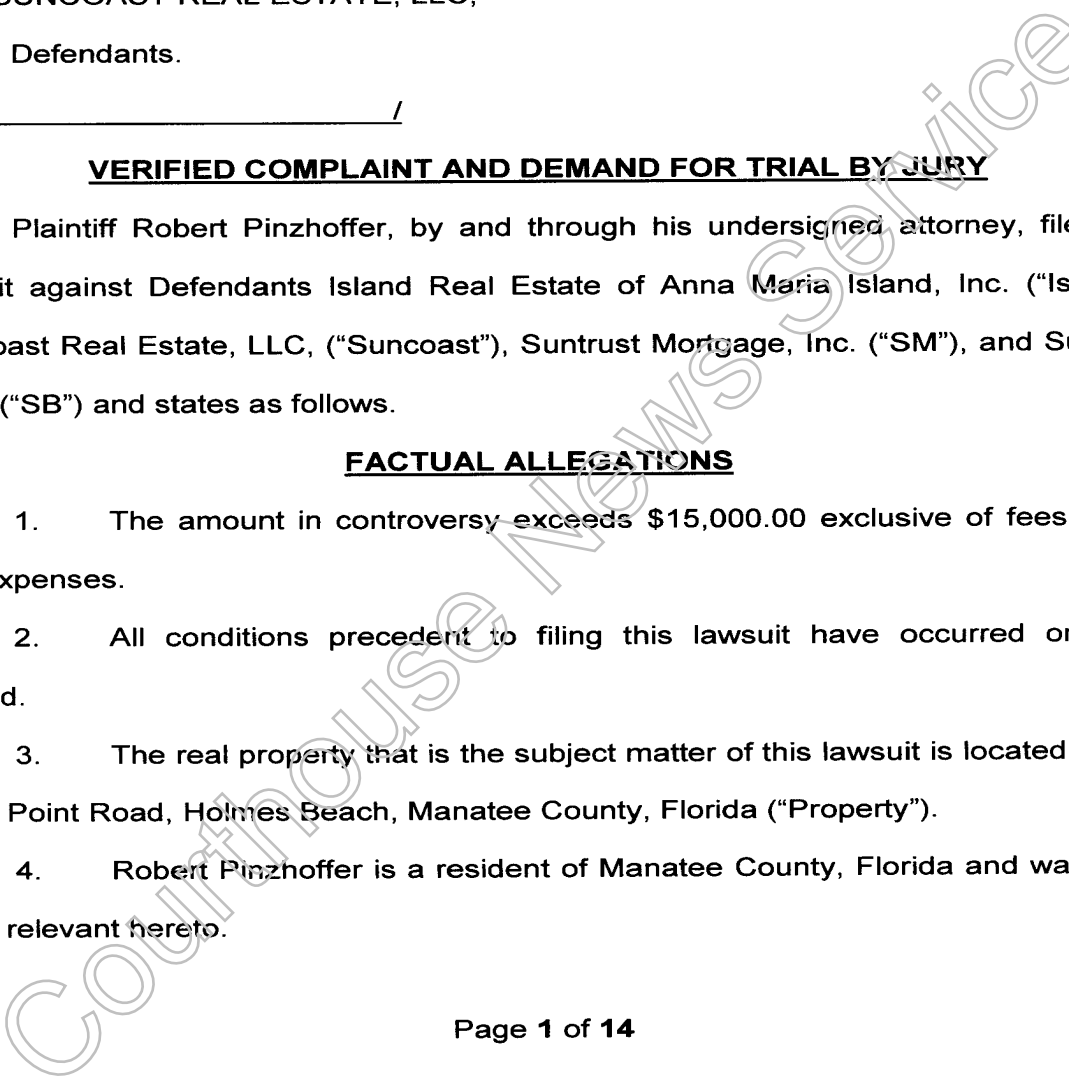
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MANATEE CO. FLORIDA
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VERIFIED COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff Robert Pinzhoffer, by and through his undersigned attorney, files this lawsuit against Defendants Island Real Estate of Anna Maria Island, Inc. ("Island"), Suncoast Real Estate, LLC, ("Suncoast"), Suntrust Mortgage, Inc. ("SM"), and Suntrust Bank ("SB") and states as follows.

FACTUAL ALLEGATIONS

1. The amount in controversy exceeds \$15,000.00 exclusive of fees, costs and expenses.
2. All conditions precedent to filing this lawsuit have occurred or been waived.
3. The real property that is the subject matter of this lawsuit is located at 603 North Point Road, Holmes Beach, Manatee County, Florida ("Property").
4. Robert Pinzhoffer is a resident of Manatee County, Florida and was at all times relevant hereto.



5. SunTrust Mortgage, Inc (“SM”) is a foreign corporation with offices at, inter alia, 7419 Manatee Avenue West, Bradenton, Florida 34209 and conducts business throughout the State of Florida.

6. SunTrust Bank (“SB”) is a foreign corporation with offices at, inter alia, 7419 Manatee Avenue West, Bradenton, Florida 34209 and conducts business throughout the State of Florida.

7. Suncoast Real Estate, LLC (“Suncoast”) is a Florida limited liability company with its principal place of business at 5402 Marina Drive, Holmes Beach, Florida 34217.

8. Island Real Estate of Anna Maria Island, Inc. (“Island”) is a Florida corporation with its principal place of business at 6101 Marina Drive, Holmes Beach, Florida 34217, and is the owner of the fictitious name “Island Real Estate Rentals”.

9. Venue is proper in Manatee County, because the defendants have offices located in Manatee County, Florida, and the causes of action arose at least in part in Manatee County, Florida, the Defendants transacted business in Manatee County, Florida, and the conduct alleged herein occurred in Manatee County, Florida.

10. Defendant Island provided services to Mr. Pinzhoffer as a licensed real estate brokerage and worked with Defendant Suncoast in connection with the sale of the Property to Mr. Pinzhoffer.

11. Defendant Suncoast worked with Defendant Island in connection with the sale of the Property to Mr. Pinzhoffer.

12. SB referred Mr. Pinzhoffer to SM for the purpose of providing him with a mortgage to purchase certain property located on Anna Maria Island, Manatee County, Florida.

13. During the application process for the mortgage loan, Mr. Pinzhoffer provided information to the defendants, including his assets and liabilities and the amount of income that he received each month.

14. The Defendants, including those that facilitated the purchase of the Property, fraudulently increased and grossly overstated Mr. Pinzhoffer's income and, as such, qualified Mr. Pinzhoffer for a higher loan than his verifiable income and assets would support.

15. The Defendants knew that the accounts listing assets were not in Mr. Pinzhoffer's name.

16. A mortgage dated September 1, 2006, was given by SMI to Mr. Pinzhoffer for the amount of Six Hundred Sixty Thousand Dollars (\$660,000.00 USD) ("Mortgage") to purchase the Property. A copy of the Mortgage is attached hereto as Exhibit A and incorporated herein by reference.

17. The Mortgage and related documents granted a security interest in the Property to SM and SB by way of its serving as collateral for same.

18. Mr. Pinzhoffer executed an "As Is Sale and Purchase Contract" in or about July 2006. A copy of the Purchase Contract is attached hereto as Exhibit B and incorporated herein by reference.

19. An employee of SM, Marty Jacobs, completed in full the Uniform Residential Loan Application that bears the date of September 1, 2006 ("Application"),

which is of even date as the Mortgage is dated. A copy of the Application is attached hereto as Exhibit C and incorporated herein by reference.

20. On Page 2 of the four page Application, Mr. Pinzhoffer's Assets are listed as two accounts, one account purportedly is with Ameritrade and the second account purportedly is with Wachovia.

21. The Ameritrade account with the account number 2222 contained the balance of Three Hundred Seventy-Eight Thousand Nine Hundred Seventy-Five Dollars (\$378,975.00 USD) ("Ameritrade Account").

22. The Wachovia account with the account number 1111 allegedly contained the balance of One Hundred Fifty-One Thousand Seventy-Four Dollars (\$151,074.00 USD) ("Wachovia Account").

23. On page 2 of the Application, the Total Monthly Payments are listed as One Hundred Eleven Dollars (\$111.00 USD) and Mr. Pinzhoffer's Total Liabilities are listed as Nine Thousand Seven Hundred Fifty-Five Dollars (\$9,755.00 USD).

24. Mr. Pinzhoffer's Net Worth on the Application is listed as Five Hundred Twenty Thousand Two Hundred Ninety-Four Dollars (\$520,294.00 USD).

25. Mr. Pinzhoffer had no account numbered 1111 with Wachovia and no account numbered 2222 with Ameritrade. SM's employee fraudulently filled in and completed the application.

26. Any accounts with Wachovia and Ameritrade were not in the name of Robert Pinzhoffer but in the name of Peak Home Loans, LLC. SM fraudulently listed accounts, the account numbers, and the amounts listed thereon were caused to be

printed onto the application by SM and SB. Mr. Pinzhoffer had no assets totaling to those amounts with any entity.

27. Mr. Pinzhoffer is diagnosed with manic depressive bi-polar disorder. He is heavily medicated daily, and told the defendants of his mental incapacity.

28. Weeks before the Closing on the Property, Mr. Pinzhoffer disclosed to all of the defendants that he had bipolar disorder and that his monthly income was only One Thousand Twenty-Six Dollars (\$1,026.00 USD) and that was paid to him for his mental disability by the Social Security Administration.

29. Before the Closing, Mr. Pinzhoffer explained that he lacked the capacity to proceed with the Closing and he lacked the capacity to consummate the transaction.

30. Mr. Pinzhoffer never received any salary, dividend or distribution from the company, Peak Home Loans, LLC, and Mr. Pinzhoffer never provided any documentation to the defendants stating that he ever received any income from Peak Home Loans, LLC.

31. The lending guideline used by banks to determine whether a person can repay a loan is known as the 28% or 36% rule ("Rule").

32. Applying the Rule to the facts, the maximum amount that Mr. Pinzhoffer could afford was approximately Two Hundred Eight-Seven Dollars and 28 Cents (\$287.28 USD) per month.

33. Mr. Pinzhoffer's monthly payment is approximately twenty (20) times that amount permitted under the lending guidelines.

34. Unless otherwise explicitly stated, the counts in the complaint are against all defendants.

COUNT I - VOID OR VOIDABLE CONTRACT

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. At the time that Mr. Pinzhoffer signed the offer to purchase the Property and at all times thereafter through and after the Closing date, Mr. Pinzhoffer suffered from bi-polar disorder and was incapable of entering into the contract due to his disability.

37. Mr. Pinzhoffer was incapable of understanding the Purchase Contract and the Mortgage.

38. The Purchase Contract is void or voidable as a matter of law.

39. The Mortgage is void or voidable as a matter of law.

40. Mr. Pinzhoffer has no adequate remedy at law.

WHEREFORE, Plaintiff Robert Pinzhoffer requests this Court enter judgment (i) declaring the Mortgage and Contract and all agreements of any kind relating thereto to be null and void, (ii) ordering the Defendants to return all monies paid, whether directly or indirectly, to Mr. Pinzhoffer, (iii) cancellation of the security interest in the Property, (iv) the Defendants restore all benefits that each received to Mr. Pinzhoffer that resulted from the sale of the Property, and (v) for such other and further relief as this Court deems appropriate or as justice so requires.

COUNT II - FRAUD

41. Paragraphs 1 through 34 are incorporated herein by reference.

42. Unless otherwise noted, all of the Defendants made the following false statements before the Mortgage was approved and the Closing occurred.

- (a) The Defendants caused the Application to contain false information regarding Mr. Pinzhoffer's assets;
- (b) The Defendants caused the false information to be fraudulently submitted for the Mortgage;
- (c) The Defendants advised Mr. Pinzhoffer that the loan would not proceed and the Closing would not occur, because they would ensure that the application would subsequently be corrected.

43. Defendants knew that that statements made in the Applications and in the immediately preceding paragraph were false.

44. Defendants intent in making the false and materially misleading statements to induce Mr. Pinzhoffer to act and refrain from taking actions and to accept the terms of the loan transaction.

45. Mr. Pinzhoffer relied on the Defendants' false and misleading statements in consummating the loan transaction, which resulted in his financial injury by being unable to satisfy the terms of the loan.

46. By reason of the foregoing, Mr. Pinzhoffer has been damaged in an amount that must be determined by the court.

WHEREFORE, Plaintiff Robert Pinzhoffer requests this Court enter judgment awarding damages to Mr. Pinzhoffer for an amount in excess of \$15,000.00 for such other and further relief as this Court deems appropriate or as justice so requires.

**COUNT III – VIOLATION OF UNFAIR AND DECEPTIVE TRADE PRACTICES ACT
SECTION 501.201 ET SEQ., F.S., (FDUTPA)**

47. Paragraphs 1 through 34 are incorporated herein by reference.

48. The Defendants' intentional acts of submitting a false Application for approval and their failure to communicate the Plaintiff's statements and correct the Application were false and misleading and damaged Mr. Pinzhoffer.

49. The Defendants, individually and/or through same's agents and/or brokers knew that the statements and terms that they filled in on the Application were false and knew that Mr. Pinzhoffer did not qualify for the loan and was not competent to enter into a contract to purchase the Property.

50. The Defendants intent in making the false statements and submitting the fraudulent application were to convince Mr. Pinzhoffer that he qualified for the Mortgage and for him to purchase the Property.

51. Mr. Pinzhoffer relied upon the Defendants' false statements in consummating the loan transaction, which resulted in the Defendants receiving financial gain, and Mr. Pinzhoffer being injured due to his inability to satisfy the terms of the Mortgage.

52. Mr. Pinzhoffer has been damaged in an amount that must be determined by the Court.

WHEREFORE, Plaintiff Robert Pinzhoffer requests this Court enter judgment awarding damages to Mr. Pinzhoffer for an amount in excess of \$15,000.00, for attorneys' fees, costs and expenses, and for such other and further relief as this Court deems appropriate or as justice so requires.

COUNT IV - RESCISSION

53. Paragraphs 1 through 34, and 48 through 52 are incorporated herein by reference.

54. By reason of the Mortgage set forth above Mr. Pinzhoffer and Defendants entered into a contract for a loan and pledged a security interest in the Property by way of the Mortgage as collateral for the Loan.

55. For the reasons set forth herein, the Defendants' conduct constitutes fraud and entitles Plaintiff to rescind the Mortgage and cancellation of said security interest and Mortgage on the Property.

56. Mr. Pinzhoffer stands ready to return any benefits that he received from the transaction to the Defendants.

57. Mr. Pinzhoffer has no adequate remedy at law.

WHEREFORE, Plaintiff Robert Pinzhoffer requests this Court enter judgment awarding damages to Mr. Pinzhoffer for an amount in excess of \$15,000.00, for attorneys' fees, costs and expenses, and for such other and further relief as this Court deems appropriate or as justice so requires.

COUNT V – FRAUD IN THE INDUCMENT

58. Paragraphs 1 through 34 are incorporated herein by reference.

59. This count is for fraud against Island and Suncoast.

60. Island and Suncoast knew that Mr. Pinzhoffer was incapable of paying for the Mortgage.

61. Island and Suncoast knew that Mr. Pinzhoffer suffered from a mental disability at the time that he submitted the offer for the contract to purchase the Property.

62. Island and Suncoast told Mr. Pinzhoffer to submit the offer and he could withdraw the offer, even if it were accepted to form a contract to purchase the Property.

63. Mr. Pinzhoffer relied upon the false statements of Island and Suncoast.

64. Island and Suncoast knew that their statements were false when they made them and intended for Mr. Pinzhoffer to rely upon them.

65. Island and Suncoast told Mr. Pinzhoffer that he would not be required to purchase the Property because they would advise SM and SB that he would not afford the Property due to his financial condition and situation.

66. Island and Suncoast told Mr. Pinzhoffer to submit the application to SM and SB and they would ensure that the Application was rejected and he would not be able to purchase the Property.

67. Island and Suncoast knew that their statements were false when they made them and intended for Mr. Pinzhoffer to rely upon them in his mental condition that was incapable of entering into a contract.

68. Mr. Pinzhoffer relied upon the false statements made by Island and Suncoast and was damaged by their intentional fraudulent statements, which they intended for Mr. Pinzhoffer relied upon and he did.

WHEREFORE, Plaintiff Robert Pinzhoffer requests this Court enter judgment awarding damages to Mr. Pinzhoffer for an amount in excess of \$15,000.00, for attorneys' fees, costs and expenses, and for such other and further relief as this Court deems appropriate or as justice so requires.

COUNT VI – FRAUD IN THE INDUCEMENT

69. Paragraphs 1 through 34 are incorporated by reference.

70. This count is against SM and SB.

71. SM and SB knew that Mr. Pinzhoffer could not qualify for the Mortgage to purchase the Property.

72. SM and SB fraudulently completed the Application to show assets that Mr. Pinzhoffer did not own.

73. Mr. Pinzhoffer told SM and SB that he could not qualify for the Mortgage due to his limited income.

74. SM and SB advised Mr. Pinzhoffer that the Application was corrected to show that he could not qualify for the Mortgage and had Mr. Pinzhoffer sign the Application.

75. SM and SB provided the falsified Application for Mr. Pinzhoffer to sign at the same time that the purchase of the Property was consummated and did not show it to him before the closing on the purchase of the Property.

76. SM and SB told Mr. Pinzhoffer that they would take care of the Application and ensure that it correctly reflected his own financial condition and they intended for him to rely upon their false statements.

77. Mr. Pinzhoffer relied upon the false and fraudulent statements made by SM and SB as SM and SB had intended him to do.

78. Mr. Pinzhoffer was damaged by the fraudulent actions of SB and SM.

WHEREFORE, Plaintiff Robert Pinzhoffer requests this Court enter judgment awarding damages to Mr. Pinzhoffer for an amount in excess of \$15,000.00, for attorneys' fees, costs and expenses, and for such other and further relief as this Court deems appropriate or as justice so requires.

COUNT VII – CIVIL CONSPIRACY

79. Paragraphs 1 through 34, 59 through 68, and 70 through 78 are incorporated herein by reference.

80. SM, SB, Island and Suncoast conspired to deceive Mr. Pinzhoffer and submit fraudulent documents to cause Mr. Pinzhoffer to purchase the Property that he was unqualified to purchase.

81. SM, SB, Island and Suncoast conspired to ensure that Mr. Pinzhoffer enter the Mortgage and purchase the Property when he was incapable of entering into any purchase contract and the Mortgage.

82. SM, SB, Island and Suncoast conspired to submit false and fraudulent documents and a falsified Application for Mr. Pinzhoffer to purchase the Property.

83. SM, SB, Island and Suncoast conspired for their own benefit to obtain commissions and other payments and benefits as a result of Mr. Pinzhoffer purchasing the Property.

84. SM, SB, Island and Suncoast performed multiple overt acts to further their conspiracy, including falsifying documents and making fraudulent representations and statements.

85. Mr. Pinzhoffer was damaged and continues to be damaged as a result of the fraudulent acts resulting from the conspiracy of SB, SM, Island, and Suncoast.

WHEREFORE, Plaintiff Robert Pinzhoffer requests this Court enter judgment awarding damages to Mr. Pinzhoffer for an amount in excess of \$15,000.00, for attorneys' fees, costs and expenses, and for such other and further relief as this Court deems appropriate or as justice so requires.

COUNT VIII – VIOLATION OF RESPONSE, 12 USC SECTION 2601 ET SEQ., AND HUD’S REGULATION X (24 CFR SECTION 3500)

86. Paragraphs 1 through 34, 59 through 68 and 70, through 78, and 80 through 85 are incorporated herein by reference.

87. The Defendants individually and/or through its brokers and/or agents provided Mr. Pinzhoffer with the Good Faith Estimate (“GFE”) with respect to the subject mortgage loan.

88. The GFE failed to timely provide the Pinzhoffer with full disclosure regarding the nature and the cost of the loan in violation of the RESPA, 12 U.S.C. §2601, et seq., 24 CFR section 3500 et seq.

89. In violation RESPA, 12 U.S.C. §2604(c), 24 CFR §3500.7(c), the Defendants failed to provide Mr. Pinzhoffer with a GFE disclosing the amount or range of settlement charges with respect to the subject loan within three days of the loan application.

90. In violation of RESPA, 12 U.S.C. §2604(c), 24 CFR §3500.7(c), prior to the closing of the subject loan, the Defendants failed to provide Mr. Pinzhoffer with a GFE disclosing the fact of, and the amount of any Yield Spread Premiums associated with the subject loan.

91. As a direct and proximate result of the Defendants violation of and/or failure to comply with the disclosure requirements of RESPA and HUD’s Regulation X as set forth above, Mr. Pinzhoffer been damaged.

WHEREFORE, Mr. Pinzhoffer demands judgment for damages against the Defendants for actual and/or consequential damages and attorneys’ fees and costs and

for such other and further relief as the Court deems appropriate and as justice so requires.

JURY TRIAL DEMAND

Mr. Pinzhoffer demands a trial by jury on all issues so triable.

VERIFICATION

I, Plaintiff Robert Pinzhoffer, have read the foregoing complaint and affirm that the statements are true and correct based upon my personal knowledge.


Robert Pinzhoffer

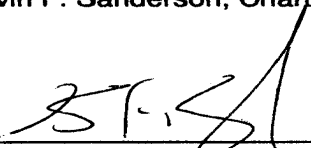
Respectfully submitted:

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