

IN TH COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

TAMARA TURNER
20526 BYRON ROAD
SHAKER HEIGHTS, OH 44122

And

PHILLIP TURNER
20526 BYRON ROAD
SHAKER HEIGHTS, OH 44122

And

MARY SWEENEY
315 OVERLOOK PARK DRIVE
CLEVELAND, OHIO 44110

And

JAMES UNGER
3158 MORLEY ROAD
SHAKER HEIGHTS, OHIO 44122

And

KELLY UNGER
3158 MORLEY ROAD
SHAKER HEIGHTS, OHIO 44122

Plaintiffs,

vs.

LERNER, SAMPSON & ROTHFUSS
120 EAST FOURTH STREET
8TH FLOOR
CINCINNATI, OH 45202

Defendant.

: CASE NO.

:
: JUDGE:

:
: **CLASS ACTION COMPLAINT**
: **PURSUANT TO RULE 23 OF THE**
: **OHIO RULES OF CIVIL**
: **PROCEDURE, FAIR DEBT**
: **COLELCTION PRACTICES ACT,**
: **SLANDER OF CREDIT, ABUSE OF**
: **PROCESS AND MALICIOUS**
: **PROSECUTION**

:
: **(JURY DEMAND ENDORSED**
: **HEREON)**

INTRODUCTION

1. Tamara Turner, Phillip Turner, Mary Sweeney, James Unger and Kelly Unger bring this suit on behalf of themselves and a class of similarly situated Ohio residents who have been hauled into Court to defend foreclosure cases filed by Defendant Lerner, Sampson & Rothfuss on behalf of parties who lacked standing to prosecute the individual foreclosure claims.

2. Plaintiffs' claims are simple - - Lerner, Sampson & Rothfuss ("LS&R") a large law firm has engaged in the pattern and of filing and prosecuting foreclosure actions notwithstanding the fact that their clients lack standing to bring such actions.

3. Defendant Lerner, Sampson & Rothfuss employs individuals who regularly execute Assignments of Mortgages on behalf of Mortgage Electronic Registration Systems ("MERS") without legal authority to do so.

4. Attorneys associated with or employed LS&R have engaged in the practice of filing false and/or misleading affidavits with the Cuyahoga County Court of Common Pleas in an effort to persuade the Court that the LS&R's client has standing to prosecute a foreclosure action as the real party in interest when such is clearly not the case.

5. The same problems affect other members of the putative class. As a result, hundreds, if not thousands, of Ohio homeowners are wrongfully being required to defend frivolous foreclosure actions and incur substantial legal fees when the Plaintiff lacked the standing to institute the foreclosure proceeding in the first instance.

6. Hundreds, if not thousands of Ohioans who lack the ability to secure counsel knowledgeable in real estate/foreclosure issues have lost their homes to LS&R clients when they are

totally unaware of the fact that LS&R's clients are not a real party in interest and lack the legal standing to prosecute, let alone prevail in a foreclosure proceeding.

7. Hundreds, if not thousands of Ohioans have needlessly filed bankruptcy when they received a copy of a foreclosure complaint filed by LS&R on behalf of a client who lacked standing to prosecute a foreclosure action.

8. Hundreds if not thousands of Ohio residents have voluntarily vacated their homes, the homes within which they raised their family, or were in the process of raising their family based upon the false belief that they were losing their home and had to abandon their home within twenty eight (28) days of the receipt of a foreclosure complaint, when the Plaintiff in the foreclosure action lacked the standing to institute the foreclosure complaint as they were not the real party in interest.

PARTIES

9. Tamara Turner, the wife of Phillip Turner is the record owner of the real property known for street numbering purposes as 20526 Byron Road, Shaker Heights, Ohio who relocated herself and her family to the home of her mother-in-law located at 24150 South Woodland, Shaker Heights, Ohio based upon the false belief that she had to turn her family's home over to LS&R when she was served with a foreclosure complaint.

10. Mary Sweeney is the owner of and resident of 315 Overlook Park Drive, Cleveland, Ohio.

11. James Unger and Kelly Unger are a married couple owners and residents of 3158 Morley Road, Shaker Heights, Ohio.

12. Lerner, Sampson & Rothfuss is a law firm and a debt collector as the term is defined in the Fair Debt Collection Practices Act.

FACTUAL BACKGROUND

The Foreclosure Crisis

13. Over the last three years, the United States has been in a foreclosure crisis. A congressional oversight panel has recently noted that one in eight U.S. mortgages is currently in foreclosure or default.¹

14. The number of Ohio properties with foreclosure filings in 2008 has increased significantly over the past several years.²

15. The bench and bar in Cuyahoga County, Ohio and other counties in Ohio have recognized an increasing problem with attorneys filing foreclosure actions wherein their clients lack standing to prosecute the foreclosure action.

16. Increased foreclosures and especially foreclosures actions wherein the Plaintiff lacks standing have detrimental effect not just on the homeowners who lose unique property and face homelessness, but also on the surrounding neighborhoods that suffer decreased property values and municipalities that lose tax revenue.

17. The foreclosure crisis is not over and it is fueled, as least in part, by “foreclosure mills” such as Defendant LS&R who routinely file foreclosure actions on behalf of parties who lack standing and who create and execute Assignments of Mortgages on behalf of MERS in an effort to

¹ Congressional Oversight Panel, Oct. 9, 2009 report at 3. Available at <http://cop.senate.gov/reports/library/report-100909-cop.cfm>.

² RealtyTrac Staff Foreclosure Activity Increases 81 Percent in 2008. Jan. 15, 2009. Available at <http://www.reatlytrac.com/contentmanagement/pressrelease.aspx?channelid=9&acct=0&itemid=5681>.

create a justiciable controversy when no such controversy exists between a homeowner and LS&R's client.

Tamara and Phillip Turner

18. Plaintiffs Tamara Turner, Philip Turner and their two (2) minor children resided at 20526 Byron Road, Shaker Heights, Ohio until Defendant LS&R filed a foreclosure action on behalf of Provident Funding Associates L.P. ("Provident") on October 16, 2009.

19. Under the mistaken belief that they had twenty (28) days to relocate from their home, Plaintiffs Tamara and Philip Turner relocated to live with Philip's mother.

20. The foreclosure complaint falsely alleged that LS&R's client Provident was the holder of a certain promissory note that afforded Provident standing to prosecute a foreclosure as the real party in interest.

21. On July 26, 2010, Defendant LS&R filed a document before the Cuyahoga County Court of Common Pleas in Case No. 706959 styled "Affidavit as to Real Party Interest wherein it was falsely stated, under oath, that Provident was a "real party in interest".

22. On November 9, 2010, the Cuyahoga County Court of Common Pleas ruled as follows:

MOTION OF THE DEFENDANTS PHILIP TURNER AND TAMARA TURNER TO DISMISS FOR PLAINTIFF'S LACK OF STANDING TO FILE THE FORECLOSURE IS GRANTED. PLAINTIFF DID NOT PRESENT EVIDENCE TO THE COURT THAT IT OWNED THE SUBJECT PROMISSORY NOTE AS OF THE DATE OF THE FILING OF ITS COMPLAINT IN THIS CASE AND COULD NOT, THEREFORE, PROVE THAT IT HAD STANDING TO FILE THIS CASE. SEE WELLS FARGO BANK V. JORDAN, 2009 OHIO 1092 (8TH DIST. CT. APP., MAR. 12, 2009). MERS COULD NOT ASSIGN THE NOTE AS IT NEVER HELD THE PROMISSORY NOTE. THERE IS NO EVIDENCE THAT THE ALLONGE WAS EVER AFFIXED TO THE NOTE. VIRTUAL BANK PURPORTS TO INDORSE THE NOTE TO THE PLAINTIFF, BUT THERE IS NO EVIDENCE

THAT VIRTUAL BANK HELD THE NOTE AT THE TIME OF INDORSEMENT. VIRTUAL BANK IS ALSO NOT THE PAYEE ON THE NOTE. COMPLAINT DISMISSED WITHOUT PREJUDICE. AS PLAINTIFF DID NOT HAVE STANDING TO FILE THIS CASE, THE COUNTERCLAIM IS ALSO DISMISSED WITHOUT PREJUDICE. (FINAL) COURT COST ASSESSED TO THE PLAINTIFF(S). CLDLJ 11/09/2010 NOTICE ISSUED.

Mary Sweeney

23. Mary Sweeney is a single woman residing at 315 Overlook Park Drive, Cleveland, Ohio.
24. On January 5, 2010, LS&R filed a foreclosure complaint against Mary Sweeney wherein they falsely alleged that their client Bank of America was the holder of a certain promissory note and had standing to institute a foreclosure proceeding against Ms. Sweeney.
25. Among other false statements, LS&R alleged that their client BAC Home Loans Servicing had standing to prosecute a foreclosure action based upon an Assignment of Mortgage purportedly executed by Shellie Hill as Assistant and Vice President of MERS on December 30, 2009.
26. The Assignment of Mortgage had been filed of record prior to the filing of the Complaint.
27. The Assignment of Mortgage that LS&R later represented to be genuine and caused to be filed before the Office of the Cuyahoga County Recorder was defective and void as it was prepared by LS&R and executed by an LS&R clerical employee.
28. In a deposition conducted in Cincinnati, Ohio on September 20, 2010, Ms. Hill admitted that she is actually employed by LS&R, that she was merely listed as a vice president of MERS, had no real employment responsibilities with MERS and never spoke with anyone at MERS nor did she take direction from MERS as her job responsibilities are and were to LS&R.
29. On August 24, 2010, the Cuyahoga County Court of Common Pleas held as follows:

D1 MARY M. SWEENEY RENEWED MOTION TO DISMISS FILED 07/30/2010, IS GRANTED. THE ASSIGNMENT OF THE MORTGAGE TO PLAINTIFF WAS RECORDED AFTER THE FILING OF THE COMPLAINT AND IS NOT AT ISSUE. THE ISSUE IS WHETHER OR NOT PLAINTIFF HELD THE PROMISSORY NOTE ON THE DAY THE COMPLAINT WAS FILED. PLAINTIFF FAILED TO PRESENT ANY EVIDENCE THAT THE NOTE WAS TRANSFERRED TO PLAINTIFF PRIOR TO THE FILING OF THE COMPLAINT. AN UNDATED ALLONGE TRANSFERRING THE NOTE TO PLAINTIFF WAS ATTACHED TO THE AMENDED COMPLAINT. HOWEVER, PLAINTIFF FAILED TO PROVIDE AN AFFIDAVIT OR OTHER EVIDENCE INDICATING THAT IT HELD THE NOTE ON THE DATE THE COMPLAINT WAS FILED. PURSUANT TO WELLS FARGO BANK V. JORDAN, 2009-OHIO-1092, THE CASE IS DISMISSED WITHOUT PREJUDICE. FINAL. COURT COST ASSESSED TO THE PLAINTIFF(S). CLPAL 08/23/2010 NOTICE ISSUED.

James and Kelly Unger

30. James and Kelly Unger reside at 3158 Morley Road in Shaker Heights, Ohio with their three (3) minor children.

31. On May 29, 2007, LS&R filed a foreclosure complaint against James and Kelly Unger on behalf of Bank of New York (hereinafter "Unger I").

32. In Unger I, LS&R falsely alleged that its client Bank of New York had standing to prosecute a foreclosure action against the Ungers as a real party in interest.

33. LS&R's false statement that Bank of New York had standing was based upon an Assignment of Mortgage allegedly executed by Shellie Hill, a vice president of MERS.

34. On September 20, 2010, the deposition of Shellie Hill was taken in the matter styled *Bank of New York v. Unger* and assigned Case Number 711343 before the Cuyahoga County Court of Common Pleas ("Unger II").

35. During said deposition, it was learned that Shellie Hill was vice president of MERS in name only, that she did not take any direction from MERS and that she was actually employed by LS&R in a position that is essentially clerical in nature.

36. Ms. Hill further testified that LS&R would routinely prepare Assignments of Mortgages from MERS to their client for purposes of litigation.

37. Ms. Hill further testified that she executed Assignments of the Mortgage at the instruction of LS&R, she did not receive independent instruction to execute the Assignment from MERS nor did she take any independent steps to inquire regarding the propriety of executing the Mortgage Assignments.

38. On July 14, 2009, the Cuyahoga County Court of Common Pleas issued the following order in Unger I.

PURSUANT TO THIS COURT'S PRIOR ORDER, THE JUDGMENT AND DECREE OF FORECLOSURE ARE VACATED AND THE CASE DISMISSED FOR FAILURE TO PROVE STANDING TO FILE THE LAWSUIT. SEE WELLS FARGO BANK V. JORDAN, 2009 OHIO 1092 (8TH DIST. CT. APP., MAR. 12, 2009). (FINAL) COURT COST ASSESSED TO THE PLAINTIFF(S).

39. On November 30, 2009, Bank of New York Mellon Trust Company filed a second foreclosure action against James and Kelly Unger ("Unger II").

40. Unger II was filed by another law firm, that was unfamiliar with the proceedings in Unger I and unaware of the circumstances surrounding the execution of the Assignment of Mortgage by Shellie Hill of LS&R falsely representing that she was a corporate officer of MERS.

41. On July 13, 2010 dismissed the complaint in Unger II for failure to prosecute.

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT

42. The federal government enacted the Fair Debt Collection Practices Act (“FDCPA”) after a congressional finding of abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors and that abusive debt collection practices contribute to a number of personal bankruptcies, to marital instability, to loss of jobs, and to invasions of individual privacy.

43. Plaintiffs are consumers as the term is defined in *15 USC §1692(a)(1)*.

44. Mortgage loans are debts as defined in *15 USC §1692(a)(5)*.

45. Defendant LS&R is a debt collector as the term is defined in *15 USC §1692(a)(6)*.

46. Defendant LS&R has used false, deceptive and/or misleading statements and evidence prosecuting foreclosure actions in violation of *15 USC §1692(e)*.

47. Defendant LS&R’s foregoing conduct constitutes an unfair and/or unconscionable act in the collection of a debt in violation of *15 USC §1692(f)*.

COUNT II
(FDCPA)

(SLANDER OF CREDIT)

48. Plaintiffs reallege each and every of the foregoing allegations as if fully rewritten herein at length.

49. Defendant has further manufactured and or sponsored false evidence in an effort to maintain legal actions without basis in fact.

50. The institution of legal proceedings without standing based upon false statements is violative of the FDCPA and operates as a slander upon the Plaintiffs individual creditworthiness.

COUNT III
(ABUSE OF PROCESS)

51. Plaintiffs reallege each and every of the foregoing allegations as if fully rewritten herein at length.

52. Defendant place into motion civil proceedings in proper form despite a lack of standing.

COUNT IV
(MALICIOUS PROSECUTION)

53. Plaintiffs reallege each and every of the foregoing allegations as if fully rewritten herein at length.

54. Defendant has initiated proceedings against these Plaintiffs, and others when the Defendant's clients lack standing.

55. The litigation has resolved in Plaintiffs' favor.

COUNT IV
**(CONSUMER SALES PROTECTION ACT – OHIO REVISED CODE
CHAPTER 1345)**

56. Plaintiffs reallege each and every allegation in paragraphs 1-55 above.

57. Plaintiffs are entitled to bring a private cause of action pursuant to Ohio Revised Code § 1345.09(D).

58. Plaintiffs are consumers under the definitions in Ohio Revised Code Chapter 1345.

59. Defendant LS&R in its efforts to foreclose on mortgages on behalf of entities lacking legal standing as the term is defined in Ohio Revised Code Chapter 1345.

60. The conduct of LS&R in commencing foreclosure proceedings when their clients lack standing are unfair, deceptive and unconscionable sales practices under O.R.C. §§ 1345.02 and 1345.03.

61. The Plaintiffs are entitled to recover actual economic damages plus in an amount not exceeding five thousand dollars each in noneconomic damages if this Court finds that Defendants' actions are unfair, deceptive, or unconscionable consumer transactions pursuant to Ohio Revised Code § 1345.09(A), and such appropriate relief as is allowed in Civil Rule 23 class actions pursuant to Ohio Revised Code § 1345.09(B).

COUNT VI
(COUNT FOUR: FRIVOLOUS LAWSUITS OHIO REVISED CODE § 2323.51)

62. Plaintiffs reallege each and every allegation in paragraphs 1-61 above.

63. The conduct of LS&R in filing lawsuits against the Plaintiffs, individually, wherein the LS&R client lacks standing amount to frivolous lawsuits, frivolous conduct, and frivolous actions, under Ohio law, including but not limited to Ohio Revised Code § 2323.51.

64. Plaintiffs are entitled to all relief allowed by applicable law.

COUNT VII
(CLASS ALLEGATIONS)

65. Plaintiffs reallege each and every allegation in paragraph 1-64 above.

66. This action is brought by the Plaintiffs on behalf of themselves and all Ohio homeowners who are defendants in foreclosure actions initiated by Defendants since January 5, 2006.

67. Plaintiffs sue on their own behalf and on behalf of class of persons under *Rule 23(A)* of the Ohio Rules of Civil Procedure.

68. Plaintiffs do not know the identities of the members of the proposed class, since such information is in the exclusive control of the Defendant. Plaintiffs believe that the class encompasses thousands of individuals whose identities can be reasonably ascertained from the Defendant's books and records and from the books and records of the Common Pleas Court State of Ohio. In Cuyahoga County alone, the Defendant has instituted the following amounts of foreclosure: Has instituted 3,430 foreclosures in 2006, 5,135 foreclosures in 2007, 5,071 in 2008, 4,622 foreclosures in 2009 and through December 23, 2010 Defendant has instituted 4,134 foreclosures.

69. On information and belief Defendant have filed a proportionate number of foreclosures in other Ohio counties.

70. Therefore, the proposed class is so numerous that individual suit of all members is impractical.

71. Based on the values of the properties at issue, Plaintiffs believe that the amount in controversy exceeds 15 Million Dollars.

72. All members of the class have been subject to and effected by the same conduct. The claims are based on form pleadings, internal business practices of the Defendant that include but are not limited to creation of in house of documents transferring mortgage deeds and promissory notes

without any independent verification of their authenticity, and the creation of affidavits without any independent knowledge of their authenticity.

73. Filing complaints without having an attorney review and verify the truthfulness of the pleadings.

74. We have questions of law in fact that are common to the class and predominate over any questions affecting individual members of the class. These questions include and not limited to the following:

- a. Whether or not Defendant filed foreclosures when they knew or should have known that they did not represent the real party in interest.
- b. Whether the Defendant violated the rules of professional responsibility relating to the review and verification of the pleadings filed in foreclosure cases in the State of Ohio.
- c. Whether the Defendant's business practices of filing complaints without representing the real party in interest violated the Fair Debt Collection Practices Act.
- d. Whether the Defendant's violation of the Fair Debt Collection Practices Act violated the Ohio Consumers Sales Practices Act.
- e. Whether or not the Defendant engaged in a systematic process of malicious prosecution or abuse of process.
- f. Whether the Court can order the Defendant to pay damages and what the proper measure of damages is and also whether the Court can enter an injunctive relief.

75. Claims of the individual named Plaintiffs are typical of the claims of the class and do not conflict with interest of other members of the class and both the Plaintiffs and other members of the class and both the Plaintiffs and other members of the class were subject to the same conduct.

76. The individual named Plaintiffs will fairly and adequately represent the class that they are committed to the vigorous prosecution of the class' claims and have retained attorneys who are qualified to pursue this litigation having experience in class actions and particularly, consumer protection class actions.

77. The prosecution of separate actions by or against individual members of the class will create a risk of inconsistent and bearing a adjudication with respect to individual members of the class which will establish incompatible standards of conduct for the opposing party.

78. The prosecution of separate actions by individual members of the class will create a risk of adjudication with respect to individual members which be a practical manner dispositive of the interest of others not parties to the adjudications.

79. The questions of law or fact common to the members predominate over any questions effecting only individual members. A class action is superior to any other methods available for the fair and efficient adjudication of this controversy.

80. A class action regarding issues in this case does not create any problems of manageability.

81. This is a punitive class action that meets both requirements of Ohio Civil Rule 3(B)(2) and 23(B)(3).

82. The Defendant has acted or has refused to act on grounds that apply generally to the filing of injunctive relief or corresponding to claritory relief is appropriate respecting the class as a whole.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request this Court rule for the Plaintiffs and against Defendant LS&R on all claims:

- a. For a finding that the Defendant defamed the Plaintiffs;
- b. For a finding that the Defendant violated O.R.C. Chapter 1345;
- c. For certification of the Class;
- d. For a finding that the Defendant violated 15 U.S.C. §§ 1692-1692p;
- e. Such relief at law or in equity for the Class that will protect its interests in this action;
- f. For the maximum relief allowed by law;
- g. For an injunction to prevent future injurious conduct by the Defendant;
- h. For a finding that the Defendant filed frivolous civil actions and committed frivolous conduct and frivolous acts;
- i. For sufficient monetary damages to make each Plaintiff whole;
- j. For attorney fees and costs, statutory relief, and such other relief Plaintiff is entitled at law or in equity.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully Submitted,

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