

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

CARLOS MOTA,

Debtor.

Chapter 13

Case No. 10-13989 (SHL)

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CARLOS MOTA,

Plaintiff,

Adv. Proc. No. 13-01553 (SHL)

-against-

WELLS FARGO BANK, N.A., AND

HSBC BANK USA, NATIONAL ASSOCIATION,
AS TRUSTEE FOR WELLS FARGO ASSET
SECURITIES CORPORATION, MORTGAGE
PASS-THROUGH CERTIFICATES SERIES 2006-8,

Defendants.
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DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants Wells Fargo Bank, N.A. ("Wells Fargo") and HSBC Bank USA, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-8 (the "Trust," along with Wells Fargo, the "Defendants"), by and through their undersigned counsel, answer the Complaint, dated October 15, 2013 [ECF No. 1] (the "Complaint"), filed by Plaintiff Carlos Mota ("Plaintiff"), and state as follows:¹

¹ This Answer is timely pursuant to the deadline set on the record by this Court at the status conference held on October 3, 2013.

FOR A RESPONSE TO INTRODUCTION

1. To the extent paragraph 1.1 of the Complaint contains conclusions of law or otherwise characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 1.1 of the Complaint.

2. To the extent paragraph 1.2 of the Complaint contains conclusions of law or otherwise characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 1.2 of the Complaint.

3. To the extent paragraph 1.3 of the Complaint contains conclusions of law or otherwise characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 1.3 of the Complaint.

4. To the extent paragraph 1.4 of the Complaint contains conclusions of law or otherwise characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 1.4 of the Complaint.

5. To the extent paragraph 1.5 of the Complaint contains conclusions of law or otherwise characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 1.5 of the Complaint.

FOR A RESPONSE TO PARTIES

6. Defendants deny the allegations contained in paragraph 2.1 of the Complaint, except admit that Plaintiff is a debtor under chapter 13 of title 11 of the United States Code in a case that is presently pending before this Court (the "Chapter 13 Case").

7. To the extent paragraph 2.2 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 2.2 of the Complaint, except admit that Wells Fargo is a financial institution and/or a

mortgage servicer and/or an insured depository institute, that it has appeared through counsel in the Chapter 13 Case, and that John Stumpf is its Chief Executive Officer.

8. To the extent paragraph 2.3 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 2.3 of the Complaint, except admit that HSBC Bank USA, National Association, is a financial institution and Irene Dorner is its Chairman, President and Chief Executive Officer.

FOR A RESPONSE TO JURISDICTION

9. To the extent paragraph 3.1 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise admit the allegations contained in paragraph 3.1 of the Complaint.

10. To the extent paragraph 3.2 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise admit the allegations contained in paragraph 3.2 of the Complaint.

11. To the extent paragraph 3.3 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.3 of the Complaint.

12. To the extent paragraph 3.4 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.4 of the Complaint, except admit that this is a non-core proceeding and Defendants consent to the entry of a final order by the presiding United States Bankruptcy Judge.

FOR A RESPONSE TO VENUE

13. To the extent paragraph 3.5 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained paragraph 3.5 of the Complaint.

FOR A RESPONSE TO RELEVANT FACTS

14. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 3.6 of the Complaint, except admit Plaintiff's residence is the property located at 2564 Pearsall Avenue, Bronx, NY 10469 (the "Property").

15. Defendants deny the allegations contained in paragraph 3.7 of the Complaint, except admit that Plaintiff executed a promissory note in the original principal amount of \$461,600.00 originally payable to MLD Mortgage Inc. ("MLD").

16. Defendants deny the allegations contained in paragraph 3.8 of the Complaint, except admit Plaintiff is party to a mortgage dated April 13, 2006 which names MLD as the Lender and is recorded with the City of New York.

17. Defendants admit the allegations contained in paragraph 3.9 of the Complaint.

18. Defendants deny the allegations contained in paragraph 3.10 of the Complaint, except admit that Proof of Claim Number 3-1 was filed by Wells Fargo as servicer for the Trust.

19. The allegations in paragraph 3.11 of the Complaint are vague and ambiguous because Plaintiff has not specified in what capacity Steven J. Baum represented the Trust. Defendants otherwise deny the allegations contained in paragraph 3.11 of the Complaint.

20. To the extent paragraph 3.12 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in

paragraph 3.12 of the Complaint, except admit that Proof of Claim Number 3-1 was signed by Michelle Marans, Esq. of the law firm of Steven J. Baum, P.C.

21. To the extent paragraph 3.13 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.13 of the Complaint, except admit that Proof of Claim Number 3-1 attached a copy of a promissory note executed by Plaintiff and respectfully refers this Court to that document for the contents therein.

22. Defendants deny the allegations contained in paragraph 3.14 of the Complaint, except admit that Proof of Claim Number 3-1 attached a copy of a mortgage executed by Plaintiff and respectfully refers this Court to that document for the contents therein.

23. To the extent paragraph 3.15 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants deny the allegations contained in paragraph 3.15 of the Complaint, except admit that Proof of Claim Number 3-1 attached a document titled assignment of mortgage, dated August 13, 2010, and respectfully refers this Court to that document for the contents therein.

24. Defendants admit the allegations contained in paragraph 3.16 of the Complaint.

25. To the extent paragraph 3.17 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.17 of the Complaint.

26. Defendants deny that Kennerty acted, in signing a mortgage assignment as agent for the nominee, to transfer any ownership over Plaintiff's mortgage loan. Defendants further deny that Kennerty, by signing a mortgage assignment, transferred control over Plaintiff's mortgage loan, and therefore deny the allegations in paragraph 3.18 of the Complaint.

27. Defendants deny the allegations contained in paragraph 3.19 of the Complaint.

28. Defendants deny the allegations contained in paragraph 3.20 of the Complaint.

29. Defendants deny the allegations contained in paragraph 3.21 of the Complaint.

30. To the extent paragraph 3.22 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.22 of the Complaint.

31. To the extent paragraph 3.23 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.23 of the Complaint.

32. Defendants admit the allegations contained in paragraph 3.24 of the Complaint.

33. To the extent paragraph 3.25 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.25 of the Complaint.

34. Defendants admit the allegations contained in paragraph 3.26 of the Complaint.

35. Defendants deny the allegations contained in paragraph 3.27 of the Complaint.

36. To the extent paragraph 3.28 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.28 of the Complaint, except admit that Carolyn Evans was employed by Wells Fargo. Defendants deny the allegations contained in paragraph 3.29 of the Complaint.

37. Defendants deny the allegations contained in paragraph 3.30 of the Complaint.

38. Defendants deny the allegations contained in paragraph 3.31 of the Complaint.

39. Defendants deny the allegations contained in paragraph 3.32 of the Complaint.

40. To the extent paragraph 3.33 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.33 of the Complaint.

41. To the extent paragraph 3.34 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.34 of the Complaint.

42. To the extent paragraph 3.35 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 3.35 of the Complaint.

43. Defendants deny the allegations contained in paragraph 3.36 of the Complaint.

44. Defendants deny the allegations contained in paragraph 3.37 of the Complaint, except admit that Proof of Claim Number 3-2 was filed on January 21, 2011.

45. Defendants deny the allegations contained in paragraph 3.38 of the Complaint.

46. Defendants admit the allegations contained in paragraph 3.39 of the Complaint.

47. Defendants deny the allegations contained in paragraph 3.40 of the Complaint.

48. Defendants deny the allegations contained in paragraph 3.41 of the Complaint.

49. Defendants deny the allegations contained in paragraph 3.42 of the Complaint.

50. Defendants deny the allegations contained in paragraph 3.43 of the Complaint.

51. Defendants deny the allegations contained in paragraph 3.44 of the Complaint.

52. Defendants deny the allegations contained in paragraph 3.45 of the Complaint.

53. Defendants deny the allegations contained in paragraph 3.46 of the Complaint.

54. Defendants deny the allegations contained in paragraph 3.47 of the Complaint.

55. Defendants deny the allegations contained in paragraph 3.48 of the Complaint.

56. Defendants deny the allegations contained in paragraph 3.49 of the Complaint.
57. Defendants deny the allegations contained in paragraph 3.50 of the Complaint.
58. Defendants deny the allegations contained in paragraph 3.51 of the Complaint.
59. Defendants deny the allegations contained in paragraph 3.52 of the Complaint.
60. Defendants deny the allegations contained in paragraph 3.53 of the Complaint.
61. Defendants deny the allegations contained in paragraph 3.54 of the Complaint.

FOR A RESPONSE TO THE FIRST CAUSE OF ACTION
(OBJECTION TO PROOF OF CLAIM)

62. Defendants respond to paragraph 4.1 of the Complaint by restating and realleging their responses to the allegations set forth in paragraphs 1.1 through 3.54 hereof as if fully set forth herein.

63. To the extent paragraph 4.2 of the Complaint characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.2 of the Complaint and specifically deny the allegations contained in subparagraphs 4.2(a) through 4.2(e) of the Complaint.

64. Defendants respond to paragraph 4.3 of the Complaint by restating and realleging their responses to the allegations set forth in paragraphs 1.1 through 4.2 hereof as if fully set forth herein.

65. Defendants deny the allegations contained in paragraph 4.4 of the Complaint.

66. To the extent paragraph 4.5 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.5 of the Complaint.

67. Defendants deny the allegations contained in paragraph 4.6 of the Complaint.

68. Defendants deny the allegations contained in paragraph 4.7 of the Complaint.

69. To the extent paragraph 4.8 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.8 of the Complaint.

70. Defendants deny the allegations contained in paragraph 4.9 of the Complaint.

71. To the extent paragraph 4.10 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.10 of the Complaint.

72. To the extent paragraph 4.11 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.11 of the Complaint.

73. To the extent paragraph 4.12 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.12 of the Complaint.

74. To the extent paragraph 4.13 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.13 of the Complaint.

75. Defendants deny the allegations contained in paragraph 4.14 of the Complaint.

76. To the extent paragraph 4.15 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.15 of the Complaint and respectfully refers this Court to the decision in *Warth v. Seldin*, 422 U.S. 490 (1975) and the United States Constitution for the contents therein.

77. To the extent paragraph 4.16 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in

paragraph 4.16 of the Complaint and respectfully refers this Court to the decisions in *Coyne v. American Tobacco Company*, 183 F.3d 488 (6th Cir. 1999) and *Valley Forge Christian College v. Americas United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982) for the contents therein.

78. Defendants deny the allegations contained in paragraph 4.17 of the Complaint.

79. Defendants deny the allegations contained in paragraph 4.18 of the Complaint.

80. To the extent paragraph 4.19 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.19 of the Complaint and respectfully refers this Court to the decision in *In re Mims*, Case No. 10-14030 (MG) (October 27, 2010) for the contents therein.

81. Defendants deny the allegations contained in paragraph 4.20 of the Complaint.

82. Defendants deny the allegations contained in paragraph 4.21 of the Complaint.

83. To the extent paragraph 4.22 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 4.22 of the Complaint.

84. Defendants deny the allegations contained in paragraph 4.23 of the Complaint.

FOR A RESPONSE TO THE SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT)

85. Defendants respond to paragraph 5.1 of the Complaint by restating and realleging their responses to the allegations set forth in paragraphs 1.1 through 4.23 hereof as if fully set forth herein.

86. Defendants deny the allegations contained in paragraph 5.2 of the Complaint.

87. Defendants deny the allegations contained in paragraph 5.3 of the Complaint.

88. Defendants deny the allegations contained in paragraph 5.4 of the Complaint.

89. Defendants deny the allegations contained in paragraph 5.5 of the Complaint.

90. To the extent paragraph 5.6 of the Complaint characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 5.6 of the Complaint.

91. To the extent paragraph 5.7 of the Complaint characterizes Plaintiff's claims, no responsive pleading is required. Defendants otherwise deny the allegations contained in paragraph 5.7 of the Complaint.

FOR A RESPONSE TO THE THIRD CAUSE OF ACTION
(FRAUD ON THE COURT INCLUDING FALSE AND
FRAUDULENT PROOF OF CLAIM)

92. Defendants respond to paragraph 6.1 of the Complaint by restating and realleging their responses to the allegations set forth in paragraphs 1.1 through 5.7 hereof as if fully set forth herein.

93. Defendants deny the allegations contained in paragraph 6.2 of the Complaint and specifically deny the allegations contained in subparagraphs 6.2(a) through 6.2(d) of the Complaint.

94. Defendants deny the allegations contained in paragraph 6.3 of the Complaint.

95. Defendants deny the allegations contained in paragraph 6.4 of the Complaint.

96. Defendants deny the allegations contained in paragraph 6.5 of the Complaint.

97. Defendants deny the allegations contained in paragraph 6.6 of the Complaint.

98. Defendants deny the allegations contained in paragraph 6.7 of the Complaint.

99. To the extent paragraph 6.8 of the Complaint contains conclusions of law, no responsive pleading is required. Defendants otherwise admit the allegations contained in paragraph 6.8 of the Complaint.

100. Defendants deny the allegations contained in paragraph 6.9 of the Complaint.

FOR A RESPONSE TO THE WHEREFORE PARAGRAPH

101. Defendants deny that Plaintiff is entitled to the determinations or any other relief as requested in the unnumbered “WHEREFORE” paragraph following paragraph 6.9 of the Complaint.

GENERAL DENIAL

102. Defendants deny any and all allegations not specified above.

DEFENSES AND AFFIRMATIVE DEFENSES

First Defense

1. The Complaint fails to state a claim upon which relief can be granted.

Second Defense

2. Plaintiff’s claims and causes of action are barred, in whole or in part, by the statute of frauds.

Third Defense

3. Defendants possess defenses founded upon documentary evidence.

Fourth Defense

4. Plaintiff’s claims and causes of action are barred, in whole or in part, by the doctrine of unclean hands.

Fifth Defense

5. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrines of laches, estoppel, and waiver.

Sixth Defense

6. The Complaint is barred as any recovery would result in Plaintiff being unjustly enriched.

Seventh Defense

7. Plaintiff has not alleged or sustained any damages that were caused by Defendants or for which Defendants are, or could be, legally responsible.

Eighth Defense

8. Plaintiff failed to mitigate any damages he may have incurred.

Ninth Defense

9. Plaintiff's claims against Defendants are barred, in whole or in part, by the Parol Evidence Rule.

Tenth Defense

10. The Complaint is barred because Plaintiff entered into an enforceable, legal and binding mortgage and note.

Eleventh Defense

11. Defendants reserve the right to interpose any and all defenses available to them under federal and state law which may be later found applicable to this action as they become

available or apparent, or as they may be established during discovery and by the evidence in this case. Defendants reserve the right to amend this answer to assert such additional defenses.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request this Court enter judgment in their favor dismissing Plaintiff's Complaint with prejudice, and award Defendants costs and disbursements incurred in this action, including reasonable attorneys' fees, and grant Defendants such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 31, 2013

Respectfully Submitted,

HOGAN LOVELLS US LLP

By: /s/ Nicole E. Schiavo

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