

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JUAN C. CHAVEZ,)
)
 Plaintiff,)
)
 v.) Civil Action No. 12-cv-10691-WGY
)
 JPMORGAN CHASE BANK, N.A.)
)
 Defendant.)

AMENDED COUNTERCLAIM OF JPMORGAN CHASE BANK, N.A.

JPMorgan Chase Bank, N.A. (“Chase”) hereby asserts its Amended Counterclaim against the Plaintiff Juan C. Chavez as follows:

I. PARTIES

1. Plaintiff-in-Counterclaim JPMorgan Chase Bank, N.A. (“Chase”) is a federally chartered national banking association with a principal office at 1111 Polaris Parkway, Columbus, Ohio. At all times relevant hereto, Chase is/was the servicer of the Plaintiff’s mortgage loan.

2. Defendant-in-Counterclaim Juan Chavez (“Plaintiff or Chavez”) is an individual who upon information and belief resides at 11 Bartlett Avenue, Nantucket, Massachusetts.

II. FACTS

3. On March 30, 2006, Mr. Chavez executed a Promissory Note in favor of Washington Mutual Bank, FA (“WAMU”) in the amount of \$670,000.00 (the “Note”). WAMU subsequently endorsed the Note in blank. A true and accurate copy of the Note is attached hereto as Exhibit A.

4. The Note is secured by a Mortgage (the “Mortgage”) recorded against the real property owned by Mr. Chavez at 11 Bartlett Road, Nantucket, Massachusetts. A true and accurate copy of the Mortgage is attached hereto as Exhibit B.

5. Pursuant to a Mortgage Loan Purchase and Sale Agreement (“P&S”) by and between WAMU and Bank of America, N.A., WAMU sold the plaintiff’s Mortgage loan to Bank of America on or about January 26, 2007.
6. Pursuant to the P&S, WAMU retained servicing rights to the plaintiff’s Mortgage loan.
7. On September 25, 2008, the Office of Thrift Supervision (“OTS”) declared WAMU to be insolvent and appointed the Federal Deposit Insurance Corporation (“FDIC”) as Receiver for WAMU. The FDIC accepted the appointment as Receiver on September 25, 2008.
8. On the same day that the FDIC was appointed as Receiver of WAMU, it sold certain assets and certain liabilities of WAMU to Chase pursuant to a written Purchase and Assumption Agreement.
9. Chase acquired WAMU’s servicing rights in the plaintiff’s Mortgage loan as part of the asset sale from the FDIC.
10. On January 11, 2012, Chase formally assigned the Mortgage to Bank of America, N.A.. The assignment is recorded in the Nantucket County Registry of Deeds in Book 1312, Page 69. A true and accurate copy of the assignment is attached hereto as Exhibit C.
11. Chase continues to service the plaintiff’s Mortgage loan for Bank of America and is authorized to bring actions against borrowers for breach of their payment obligations.
12. At the time of execution of the Note and Mortgage, Mr. Chavez understood and agreed that the debt evidenced by the Note was secured by a first position lien on his primary residence at 11 Bartlett Avenue, Nantucket, Massachusetts.
13. By the terms of the Mortgage, it will not be released until all of the payments due under the Note are tendered by the borrower.

14. Mr. Chavez has not made timely payments on the Note and it is currently in default. The loan is due for the May 1, 2010 payment.

15. The Note and Mortgage contain provisions by which Mr. Chavez is responsible for reimbursing the Note holder for all reasonable attorneys' fees and court costs incurred for any legal action deemed necessary by the Note Holder or Note Servicer to preserve its rights and protect its security interest in the property.

16. As a result of Mr. Chavez's default and his refusal to bring the Note current, Chase has deemed it necessary to institute this legal action to preserve and protect the rights of the holder of the Note and Mortgage.

17. The outstanding principal balance due under the Note currently exceeds \$665,000.

III. COUNTS

Count I (Breach of Contract)

16. Chase incorporates by reference the allegations of paragraphs 1 through 15 as if set forth fully herein.

17. Mr. Chavez executed a Note on March 30, 2006 in the amount of \$670,000.00 that required him to pay a stated monthly payment until the expiration of the term of the Note or until the entire sum borrowed has been repaid.

14. The Note has not reached maturity and Mr. Chavez has not paid the balance that he borrowed under the terms of the Note.

15. Chase and/or the Bank of America have suffered damages as a result of Mr. Chavez's failure to comply with his contractual obligations under the Note and Mortgage.

WHEREFORE, Chase respectfully requests that this court grant it the following relief:

- a. enter judgment in its favor on Count I of the Counterclaim and against Mr. Chavez;
- b. award it all of its damages, interest, costs and attorneys fees on its claims for breach of contract;
- c. such other and further relief as this court deems just and proper.

JPMORGAN CHASE BANK, N.A.,

By its Attorneys,

/s/ Mary Ellen Manganelli

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Dated: _____, 2014

CERTIFICATE OF SERVICE

I, Mary Ellen Manganelli, hereby certify that a true and correct copy of the foregoing document was served upon the parties via this Court's CM/ECF system or, if not registered on this Court's CM/ECF system, then via first class mail, postage prepaid, on _____, 2014.

/s/ Mary Ellen Manganelli

Mary Ellen Manganelli