

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

_____,
Plaintiff,

v.

No. D-____-CV-____-_____

_____,
Defendant(s).

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

COMES NOW, the Defendant(s), _____, *pro se* and respectfully requests that Plaintiff's Motion for Summary Judgment be denied and in support state that the following genuine issues of material facts exist:

Defendant(s) further requests that the Court consider the following defenses (check those that apply):

____ I did not receive a letter from my servicer notifying me of the default, my right to cure the default, the date by which I needed to cure to avoid a foreclosure case, and/or notice that the loan would be accelerated by a certain date in violation of NMSA, 58-21A-6.

____ I have an FHA, VA, or USDA loan and I do not believe that the lender followed federal regulations related to loss mitigation prior to filing for foreclosure.

____ I took out this loan with a mortgage company named _____, but the Plaintiff in this case is named _____, and I dispute that they are entitled to enforce the note and/or mortgage and do not have proper standing to bring this law suit.

____ I was told by my lender to stop making payments on this loan and therefore I have defenses to the foreclosure equitable defenses.

____ I am making payments on a loan modification plan and therefore this law suit should not have been filed and I should not be required to pay attorney's fees and costs to Plaintiff and the case should be dismissed.

____ I tried to make payments on this loan but the lender returned them or refused to accept payment and therefore I have equitable defenses.

WHEREFORE, the Defendant(s) asks the Court to:

1. Deny the Plaintiff's Motion for Summary Judgment, and
2. Order the parties to mediation.

Defendant(s)/Counter claimants(s) further requests that the Court consider the following **Counterclaims** (check those that apply) against the Plaintiff as the principal to the servicer or as the servicer itself:

____ I did not receive a letter within five days of submitting a loss mitigation application to the servicer of my loan acknowledging receipt of my application and notifying me whether the application was complete or not, in violation of RESPA, 12 C.F.R. Section 1024.41 (b)(2).

____ I did not receive a letter from the servicer of my loan within 30 days of them having a complete loss mitigation application from me with a decision on all loss mitigation options available to me in violation of RESPA, 12 C.F.R. Section 1024.41 (c).

____ I submitted a complete loss mitigation application to the servicer of my loan and I was denied for a loan modification option but the servicer ____ did not send me a letter in writing, ____ did not state the specific reason for the denial and/or ____ did not advise me in the letter that I had the right to appeal the decision in violation of RESPA, 12 C.F.R. 1024.41(d). *Check those that apply.*

____ The servicer of my loan had a complete loss mitigation application from me under review prior to the filing of the foreclosure this is a violation of the dual-tracking restriction in RESPA, 12 C.F.R. 1024.41(f).

____ The servicer of my loan had a complete loss mitigation application from me more

than 37 days before a foreclosure sale was scheduled however, they filed a motion for summary judgment in violation of RESPA 12 C.F.R. 1024.41(g).

___ The servicer and/or Plaintiff made a false or misleading oral or written statement, knowingly made in connection with the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person in violation of the NM UPA, NMSA § 57-12-3. The facts related to this are (attach additional pages if necessary):

WHEREFORE, the Defendant(s)/Counter claimant(s) asks the Court to:

- Deny the Plaintiff's/Counter defendant's Motion for Summary Judgment;
 - Award Defendant/Counter claimant(s) actual damages;
 - Award Defendant/Counter claimant(s) statutory damages pursuant to 12 U.S.C. Section 2605(f), if applicable;
 - Award statutory damages pursuant to NMSA § 57-12-10(B) for a willful practice, if applicable,
 - Award Defendant/Counter claimant(s) their costs and any attorney's fees,
 - Order the parties to mediation, and
- Grant such other relief that the Court determines is just and reasonable.

Respectfully submitted,

Signature

Name (printed)

Mailing address

City, State, Zip Code

Telephone number

Signature

Name (printed)

Mailing address

City, State, Zip Code

Telephone number

Certificate of Service

I hereby certify that a copy of this Answer was mailed/faxed/hand-delivered (circle one) to the attorney for the Plaintiff on _____.
month/day/year

Signature

This form prepared by NMLA for pro se use.

This form prepared by NM Legal Aid for pro se use.

DO NOT FILE—INSTRUCTIONS PAGE

Disclaimer: The contents of this *pro se* Response and instructions do not constitute legal advice. Foreclosure is a complicated area of law and it is strongly recommended that you contact a licensed NM attorney for advice about your specific case.

If you are not represented by an attorney you have the option of filing a Response and Affidavit for yourself or *pro se*. You normally have **18 days** after being served with the Motion for Summary Judgment to file your Response and Affidavit. Failing to file a Response and Affidavit within the specified time period could result in a judgment being entered against you, so it is important that you file a Response and Affidavit in a timely manner.

Filling out the Response form:

1. Hand-write or type all of the information at the top of the first page of the Response (called the caption) exactly as it is written on the first page of the Complaint, being sure to notate the appropriate court, plaintiff and defendant names, and case number.
2. Next write in your name as Defendant and on the lines provided state why the mortgage company should not be allowed to foreclose on the property. You will need to state specific facts that give rise to issues that cannot be decided without a trial.
3. When you have written all of the information in double check everything and then sign and print your name, include your mailing address, and telephone number.
4. There is a Certificate of Service prepared at the bottom of your Response for your use. This certificate is a statement that you have mailed a copy of your Response to the Plaintiff's attorney. You should be sure to sign and date the Certificate of Service and mail out the copy of the Response on the date indicated on the certificate.
5. Make two copies of the *pro se* Response and your Affidavit; take the original and two copies to the district court clerk for filing. The Clerk will stamp all three documents. The Clerk will keep the original and return the two copies to you. Mail one of the copies to the attorney for the Plaintiff and keep one for your records.
6. When the Court schedules a hearing on the Motion for Summary Judgment, you should attend the hearing and explain your side of the case to the Judge.