

STATE OF MAINE
CUMBERLAND, ss.

MAINE DISTRICT COURT
DISTRICT NINE
DIVISION OF NORTHERN CUMBERLAND

FEDERAL NATIONAL MORTGAGE
ASSOCIATION

Plaintiff

v.

NICOLLE M. BRADBURY

Defendant

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**DEFENDANT'S OPPOSING
STATEMENT OF MATERIAL
FACTS PURSUANT TO
M.R.Civ.P. 56(b)(2)**

Defendant responds to the Plaintiff's Statement of Material Facts (hereafter referred to as "πSMF") as follows:

1. QUALIFIED. Defendant admits that she signed a note date July 25, 2003, a photocopy of which is referred to in the Stephan Affidavit in ¶3 and attached thereto as Exhibit A, however Defendant denies that said Exhibit A had any endorsement upon it at the time of her execution. See πSMF and Stephan Affidavit ¶3.

2. DENIED. The Mortgage was not granted to GMAC Mortgage Corporation, but to Mortgage Electronic Registration System, Inc. See Stephan Affidavit ¶4, Exhibit B.

3. ADMITTED.

4. ADMITTED.

5. OBJECTION. Defendant objects to the statement contained in ¶5 of the πSMF on the grounds that it is not supported by admissible evidence in that:

a. The assertion in ¶7 of the Stephan affidavit that GMAC sent a default notice to Defendant is hearsay as the notice attached to the Stephan Affidavit is unsigned, does not disclose what entity was purporting to give the notice and there is nothing in the Stephan

Affidavit to show that he is in a position to have any personal knowledge of whether it was sent or who sent it.

b. There is no business record, such as a certificate of mailing, or other proof of mailing that shows that the purported default notice was sent or what entity it was sent by or what individual sent it.

6. OBJECTION. Defendant objects to the statement contained in ¶6 of the π SMF on the grounds that the statements in ¶¶ 7 & 8 of the Stephan Affidavit to support said statement are inadmissible hearsay. The Stephan affidavit, while purporting to be based upon personal knowledge, is in fact based entirely upon business records, and there is not a loan history or nor other business records attached to the Stephan Affidavit that supports the claim that Defendant is in default.

7. OBJECTION. Defendant objects to the statement contained in ¶7 of the π SMF on the grounds that the statements in ¶9 of the Stephan Affidavit to support said statement are inadmissible hearsay. The Stephan affidavit, while purporting to be based upon personal knowledge, is in fact based entirely upon business records, and there is not a loan history or nor other business records attached to the Stephan Affidavit that supports the claims as to the amounts due on the Mortgage.

DENIED. Defendant denies that the principal balance on the Note is \$74,343.47, denies that the accrued interest is \$3,867.06, and denies that the fees and costs claimed by Plaintiff are correct. See Stephan Affidavit ¶¶ 3, 7 & 9 and attached Exhibit A. The \$75,000 Note is dated July 25, 2003, is at an interest rate of 5.875% and is at a 30-year amortization rate. Yet Stephan claims in ¶7 of his affidavit that Defendant's payments are due for October 1, 2008 and after, meaning that over 5 years of payments were made which would have reduced

principal to less than \$70,000 at the 30-year amortization rate. Yet Stephan claims in ¶9 of his affidavit that principal of \$74,343.47 is due. The only late charge due on November 7, 2008, the date of the so-called default letter attached to the Stephan Affidavit as Exhibit D, was the 5% late charge provided for in the Note on the missed principal and interest payment of \$443.66 due on October 1, 2008 and this charge should have been not more than \$22.18, yet Exhibit D states that late charges due on that date are \$298.98 and therefore overstated the amount that Defendant had to pay to cure her default by over \$276.00. Plaintiff claims that late fees are now owed in the amount of \$512.28. See Stephan Affidavit, ¶9. If Defendant has missed her payments from October 1, 2008 through the date of the Stephan Affidavit, August 5, 2009, that would be eleven missed payments of principal and interest totaling \$4880.26 and the 5% late charge on that amount is \$244.13.

DATED: December 4, 2009

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