

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
GENERAL JURISICITION DIVISION

BANK UNITED, FSB,

Plaintiff,

CASE NO.: 08-1029-CI-7

vs.

DONALD A. KELLY, a widower,  
if living, and if deceased, et al.

Defendant.

FILED  
CLERK OF CIRCUIT COURT  
KEN BURKE  
2008 MAR 11 AM 10:28  
CIVIL COURT REC DEPT

**DEFENDANT'S ANSWER TO COMPLAINT FOR MORTGAGE FORECLOSURE**

COMES NOW the Defendant, DONALD A. KELLY, by and through his undersigned attorney, and files this, his Answer to the Petition filed herein and states:

**GENERAL ALLEGATIONS**

1. Admit
2. Deny

**COUNT I**

3. Admit
4. Without knowledge therefore denied
5. Admit as to July 1, 2007 payment, without knowledge and therefore denied as to remaining allegations
6. Without knowledge therefore denied
7. Without knowledge therefore denied

WHEREFORE, Defendant, DONALD A. KELLY, prays that this Honorable Court will enter its Order dismissing and/or denying the Complaint with Prejudice and costs assessed against Plaintiff.

**COUNT II**

8. Admit
9. Admit
10. Without knowledge therefore denied
11. Admit
12. Denied
13. Denied
14. Without knowledge therefore denied
15. Without knowledge therefore denied
16. Without knowledge therefore denied
17. Admit
18. Without knowledge therefore denied

WHEREFORE, Defendant, DONALD A. KELLY, prays that this Honorable Court will enter its Order dismissing and/or denying the Complaint with Prejudice and costs assessed against Plaintiff.

**AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to mitigate their damages as Defendant requested on several occasions to have the mortgage assigned to a qualified individual.
2. Plaintiff has failed to mitigate their damages as they refused to accept a deed in lieu of foreclosure.

**COUNTER CLAIM**

COMES NOW the Defendant/Counter Plaintiff, DONALD A. KELLY, and sues the Plaintiff/Counter Defendant, BANK UNITED, FSB and says:

1. This is an action to quiet title to real property owned by DONALD A. KELLY, the Defendant/ Counter Plaintiff, in fee simple and located at 1226 Jasmine Way, Clearwater, Florida 33756 and more fully described as follows:

Lot 11, Block "B", McVeigh Subdivision,  
A subdivision according to the plat or  
map therefore described in plat book  
30, at page(s) 83, of the Public  
Records of Pinellas County, Florida.

2. Defendant/Counter Plaintiff purchased the above described property in fee simple.
3. Defendant/Counter Plaintiff resides in Pinellas County, Florida.

4. Plaintiff/Counter Defendant is a corporation located in Miami Lakes, Florida.
5. Plaintiff/Counter Defendant claims a lien against the property adverse to Plaintiff.
6. Plaintiff/Counter Defendant claim is without any right whatsoever, and Plaintiff/Counter Plaintiff has no estate, right, title, lien or interest whatsoever in or to the property or any part of the property.
7. Plaintiff/Counter Defendant's claim is based on a certain mortgage to the property purportedly made and executed by Plaintiff to Defendant on February 14, 2006.
8. On February 27, 2006, this mortgage was recorded in the Office of the Clerk of Pinellas County.
9. The mortgage is invalid and unenforceable for the following reasons:
  - a. The mortgage was obtained fraudulently by Plaintiff/Counter Defendant;
  - b. The mortgage exceeded the value of the property;
  - c. The Defendant/Counter Plaintiff was taken advantage of due to his age which at the time was eighty-two (82) years;
  - d. The Defendant/Counter Plaintiff's wife at the time was ninety (90) years old and suffering from Alzheimer's Disease;
  - e. That the Defendant/Counter Plaintiff relied on the Plaintiff/Counter Defendant in entering into this purported mortgage as he was legally blind;
  - f. That the purported mortgage was an adjustable rate, forty (40) year mortgage unbeknownst to Defendant/Counter Plaintiff;
  - g. In reliance on Plaintiff/Counter Defendant's representatives Defendant/Counter Plaintiff entered into the purported mortgage and note;
  - h. Had Defendant/Counter Plaintiff known the actual terms and representations of Plaintiff/Counter Defendant were false, he never would have entered into the purported mortgage.
10. As a direct and proximate result of Plaintiff/Counter Defendant's fraud and deceit, Defendant/Counter Plaintiff has sustained financial damages.
11. The mortgage remains unsatisfied on record and constitutes a cloud on Defendant/Counter Plaintiff's title to the property.
12. Defendant/Counter Plaintiff has retained the undersigned and has agreed to pay him a reasonable fee for his service in this matter.

WHEREFORE Defendant/Counter Plaintiff, DONALD A. KELLY, demands judgment against the Plaintiff/Counter Defendant, BANK UNITED, FSB, declaring the mortgage null and void; cancelling the mortgage of record; granting exclusive possession of the property to Defendant/Counter Plaintiff; quieting title to the property in Defendant/Counter Plaintiff and against Plaintiff/Counter Defendant and all persons claiming under Plaintiff/Counter Defendant; and granting costs and fees related to this action and such other relief as the Court may deem proper.

**COUNT II**

**Fraud**

1. This is an action for damages in excess of \$15,000.00.
2. This action is based on a mortgage and note entered into regarding property located in Pinellas County, Florida.
3. The subject property is described in paragraph 1 of Count I.
4. Defendant/Counter Plaintiff realleges and reavers paragraphs 2-11 in haec verba.

WHEREFORE, Defendant/Counter Plaintiff, DONALD A. KELLY, demands judgment for damages against Plaintiff/Counter Defendant, BANK UNITED FSB.

**DEMAND FOR JURY TRIAL**

Defendant/Counter Plaintiff, DONALD A. KELLY, requests a trial by jury on all issues so triable.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was sent by Facsimile (305) 442-2389 AND U.S. Mail delivery to Neale J. Poller, Esquire, 550 Biltmore Way, #700, Coral Gables, Florida 33134 on this 10<sup>th</sup> day of March, 2008.



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