

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

Beverlie A. Roseberry,

vs.

GMAC Mortgage, LLC,
Ocwen Loan Servicing LLC,
Aldridge Pite, LLP a/k/a Aldridge Connors
LLP

Deutsche Bank National Trust Company,

Defendants.

ADV. NO. 16-01202-mg

In re GMAC Mortgage, LLC,

Case No. 12-12032-mg

CHAPTER 11

Jointly Administered

**ANSWER TO COMPLAINT TO DETERMINE LIENS AND NON-
DISCHARGEABILITY OF DEBT AND REQUEST FOR STAY OF FORECLOSURE
UNTIL THE VALIDITY OF THE NOTE CAN BE DETERMINED AND TO
DETERMINE NATURE, EXTENT AND VALIDITY OF LIEN AND DEBT AS VOID
PENDING OUTCOME OF LITIGATION**

DEFENDANT Deutsche Bank National Trust Company, solely as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2004-6 and Ocwen Loan Servicing, LLC (collectively, “*Creditors*”) hereby respectfully answer plaintiff Beverlie A. Roseberry’s (“Plaintiff”) Complaint to Determine Liens and Non-Dischargeability of Debt and Request for Stay of Foreclosure Until the Validity of the Note Can Be Determined and to Determine Nature, Extent and Validity of Lien and Debt as Void Pending Outcome of Litigation (ECF No. 1) (“*Complaint*”) as follows:



JURISDICTION AND VENUE

1. Denied. Paragraph “1” contains legal conclusions as to which no response is necessary. To the extent any response is required, the allegations in Paragraph “1” are denied.

2. Admitted. Inasmuch as the claims asserted herein are within the related-to jurisdiction of the Court, Creditors do not consent to the entry of final orders by the Court.

3. Denied. Paragraph “3” contains legal conclusions as to which no response is necessary. To the extent any response is required, the allegations in Paragraph “3” are denied.

4. Denied. Paragraph “4” contains legal conclusions as to which no response is necessary. To the extent any response is required, the allegations in Paragraph “4” are denied.

5. Denied. Paragraph “5” contains legal conclusions as to which no response is necessary. To the extent any response is required, the allegations in Paragraph “5” are denied. Furthermore, the allegations in paragraph “5” contradict the allegations in Paragraph “2”. To the extent any further response is required, this Court does not have the jurisdiction to enter final orders. That power to enter final orders in related-to matters is reserved to the District Court.

PARTIES

6. Admitted in part and denied in part. Admitted that the Plaintiff is the owner of 1641 White Oak Cove, Loganville, GA 30052. Except as so admitted, Creditors have no knowledge of the allegations set forth in Paragraph “6” of the Complaint, and on that basis deny each and every allegation set forth therein.

7. Denied. Creditors have no knowledge of the allegations set forth in Paragraph “7” of the Complaint, and on that basis deny each and every allegation set forth therein.

8. Admitted in part, denied in part. It is admitted that DBNTC is operated as a subsidiary of Deutsche Bank AG, and has an address at 60 Wall Street, New York, New York, but denies the remaining allegations contained in paragraph “8” of the Complaint.

9. Denied. Creditors have no knowledge of an entity called “Ocwen Loan Servicing Corp.” However, to the extent that Plaintiff are referring to Ocwen Loan Servicing, LLC (as named in the caption of the Complaint, Creditors deny that it is a Florida Corporation.

10. Denied. Creditors have no knowledge of the allegations set forth in Paragraph “10” of the Complaint, and on that basis deny each and every allegation set forth therein.

FACTS COMMON TO ALL COUNTS

11. Admitted in part, denied in part. Admitted that Plaintiff has requested a Loan Modification. Except as so admitted, all of the allegations in Paragraph “11” of the Complaint are denied.

12. Admitted in part, denied in part. Admitted that Ocwen has offered Plaintiff a loan modification. Except as so admitted, all of allegations set forth in Paragraph “12” of the Complaint are denied. Ocwen has offered Plaintiff a loan modification.

13. Denied.

COUNT 1 – VIOLATION OF FAIR DEBT COLLECTION ACT AND STATUTE OF LIMITATION EXPIRED TO COLLECT DEBT

14. Denied. Paragraph “14” contains legal conclusions as to which no response is necessary. To the extent any response is required, the allegations in Paragraph “14” are denied.

15. Admitted in part, denied in part. Admitted that Plaintiff seeks to recover damages and civil penalties. Except as so admitted, the allegations contained in Paragraph “15” of the Complaint are denied.

16. Denied. Insofar as Plaintiff alleges that she conducted her own investigations of a False Claim Act *qui tam* action, Creditors have no knowledge of the allegations set forth in Paragraph “16” of the Complaint, and on that basis deny each and every allegation set forth therein. With respect to the remaining allegations set forth in Paragraph “16” of the Complaint, Paragraph “16” contains legal conclusions as to which no response is necessary. To the extent any response is required, the remaining allegations in Paragraph “16” are denied.

17. Denied.

18. Denied. The allegations set forth in Paragraph “18” of the Complaint contain legal conclusions as to which no response is necessary. To the extent any response is required, the remaining allegations in Paragraph “16” are denied.

19. Denied.

COUNT II – FEDERAL FALSE CLAIMS ACT, 31 U.S.C. 3729(A)(1)(B)

DEFENDANTS’ ACTS VIOLATE THE FALSE CLAIMS ACT

20. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Without shifting the burden of proof, which at all times remains with Plaintiff, Creditors hereby allege that because the Causes of Action set forth in the Complaint are completely without merit, Plaintiff brings this Complaint in bad faith for no other purpose other than to harass Creditors.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the equitable doctrine of waiver because Plaintiff, through her own conduct, omissions, and statements, has waived any and all claims they might otherwise have had against Creditors.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by virtue of the expiration of the applicable statutes of limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is guilty of laches in that she knowingly delayed for an unreasonable time, or failed, under circumstances permitting and requiring diligence, to notify Creditors of the actions alleged in the Complaint, to the substantial detriment and prejudice of Creditors.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered any damages or legally cognizable harm.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the written mortgage and loan agreements that she entered into with Defendants.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiffs have not suffered any damages or legally cognizable harm caused by any action or inaction of Defendants.

NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate their damages, if any, and therefore any recovery awarded to Plaintiff should be barred or reduced by such amount.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Defendants complied with applicable law, including the Fair Debt Collection Practices Act ("FDCPA") and Federal Civil False Claims Act, 31 U.S.C. § 3729.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because of Plaintiff's own actions, negligence or legal fault, or that of Plaintiff's agents or a third-party.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because she has breached the terms of the loan modification, promissory note, and mortgage agreement.

THIRTEENTH AFFIRMATIVE DEFENSE

Assuming a violation occurred, which Defendants deny, such damages are limited to the actual damages suffered by Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs are entitled to any recovery, such recovery is required to be set off against the debt owed.

SIXTEENTH AFFIRMATIVE DEFENSE

If a violation of the FDCPA occurred, which Ocwen denies, such violation was not persistent and was not intentional.

SEVENTEENTH AFFIRMATIVE DEFENSE

If a violation of the FDCPA occurred, which Ocwen denies, such violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

WHEREFORE, Creditors respectfully request that the Court:

- A. Dismiss the Complaint with prejudice;
- B. Order that Plaintiff takes nothing by reason of the Complaint and that judgment be entered in Creditors' favor;
- C. Grant Creditors their costs and attorneys' fees associated with defending this action; and,
- D. Grant such other relief as the Court deems just and proper.

Dated: September 28, 2016

/s/ Brett L. Messinger

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*Counsel for Defendant Deutsche Bank
National Trust Company, solely as Trustee
for HarborView Mortgage Loan Trust
Mortgage Loan Pass-Through Certificates,
Series 2004-6 and Ocwen Loan Servicing,
LLC (collectively, "Creditors")*