

January 29 2013 10:08 AM

KEVIN STOCK
COUNTY CLERK
NO: 12-2-15705-2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

HOMESTREET BANK, a Washington state) Case No.
chartered savings bank,)

Plaintiff,)

v.)

**DEFENDANT JOYCE M. FEELEY'S
ANSWER AND COUNTER-CLAIMS
AND CROSS-CLAIMS**

MICHAEL M. RATCLIFFE, an unmarried)
individual; RATCLIFFE-BAKER)
INVESTMENT COMPANY, LLC, a)
Washington state limited liability company;)
and JOYCE M. FEELEY, an individual,)

Defendants.)

I. RELIEF REQUESTED

COMES NOW the Defendant, Joyce M. Feeley, by and through her attorney Patrick Hollister of the Law Offices of Kram & Wooster, P.S. and hereby moves the court for an order denying Plaintiff's request for judicial foreclosure and appointment of a receiver and seeks relief based upon the counterclaims and cross-claims further asserted.

II. ANSWER

1. Agreed

**DEFENDANT'S ANSWER AND COUNTER
CLAIMS**

- Page 1

Law Offices of
Kram & Wooster, P.S.
1901 South I Street
TACOMA, WASHINGTON 98405
(253) 572-4161 Tacoma. (253) 572-4167 Facsimile

- 1 2. Agreed
- 2 3. Agreed
- 3 4. Denied. Ratcliffe and Feeley remain married to this day. The couple was legally
- 4 separated as of 10/24/2010.
- 5 5. Agreed
- 6 6. Agreed
- 7 7. Defendant Feeley without knowledge or information sufficient to form a belief as
- 8 to the truth of this averment, Denied.
- 9 8. Agreed
- 10 9. Agreed
- 11 10. Agreed
- 12 11. Agreed
- 13 12. Agreed; however, Defendant Feeley reserves the right to request consolidation of
- 14 this complaint with other concurrent actions involving these parties or to remove
- 15 this case to federal court due to diversity of the parties and/or federal issues in
- 16 question.

17 **FACTS**

- 18 1. Agreed
- 19 2. Agreed
- 20 3. Agreed
- 21 4. Denied
- 22 5. Defendant Feeley without knowledge or information sufficient to form a belief as
- 23 to the truth of this averment, Denied.
- 24 6. Agreed
- 25 7. Agreed

- 1 8. Agreed
- 2 9. Agreed
- 3 10. Denied, the beneficiary is defined within the Deed of Trust as MERS.
- 4 11. Denied, MERS did not possess any authority to assign its beneficial interest.
- 5 12. Because Defendant Feeley does not agree an assignment was ever made, Denied
- 6 13. Denied
- 7 14. Agreed
- 8 15. Denied
- 9 16. Denied
- 10 17. Agreed
- 11 18. Defendant Feeley without knowledge or information sufficient to form a belief as
- 12 to the truth of this averment, Denied.
- 13 19. Agreed
- 14 20. Denied, the note states that the Note Holder has the right to costs and expense in
- 15 enforcing the Note; the Deed of Trust addresses only the rights of the Lender to
- 16 recover fees.

17 **FIRST CAUSE OF ACTION**

- 18 21. Denied
- 19 22. Denied
- 20 23. Agreed
- 21 24. Denied
- 22 25. Denied
- 23 26. Denied, there are no less than 7 other actions to seek satisfaction of an obligation
- 24 secured by the deed of trust.

25 **SECOND CAUSE OF ACTION**

- 1 A. A custodial receiver is not reasonably necessary in this situation because ample and
2 viable remedies exist that protect the legal and financial interests of all parties.
3 B. A custodial receiver is not appropriate in this circumstance because Homestreet
4 Bank does not have a probable property interest to assert that right.
5

6 **IV. COUNTERCLAIMS AND CROSSCLAIMS**

7 **IV.1 ADDITIONAL PARTIES, CROSSCLAIM DEFENDANTS**

- 8 1. Windermere Real Estate Services Company (“WSC”) is a Washington Limited Liability
9 Company with principle place of business in Seattle.
10 2. Windermere Real Estate South, Inc., is a Washington licensed corporation with principal
11 location of business in Seattle.
12 3. Windermere Mortgage Services Series, LLC., is a Delaware company licensed as a Series
13 Limited Liability Company with principle place of business in Seattle, Washington.
14 4. John R. Wagner, P.S., was a law office located in Seattle, Washington. The practice is
15 currently inactive.

16 **IV.2 FACTUAL BACKGROUND**

17
18 **A. Homestreet Does Not Have Standing to Seek Foreclosure**

- 19 1. On February 2, 2007, Windermere Mortgage Services Series, LLC., licensed as a Delaware
20 Series LLC, executed a promissory note to defendant Michael Ratcliffe.
21 2. On the signature page of this note is a stamp that states:

22 “PAY TO THE ORDER OF
23 _____
24 WITHOUT RECOURSE
25 WINDERMERE MORTGAGE SERVICES SERIES LLC
DATE: _____
BY: _____
Linda M. Johnson Funder

1
2 See Petitioner's Exhibit A.

- 3 3. Handwritten in the first space is the name "Home Street Bank." In the space after "date" is
4 hand written "2 2 2007". In the "By" space is an illegible writing.
- 5 4. The stamp is not notarized. There is no explanation of the purpose of the stamp, what is to
6 be "paid". There is no indication that the creator of that stamp or the individual filling it out
7 intended to transfer any legal right other than this undefined "payment." There is no record
8 of any consideration for this suggested payment or any other legitimate business purpose for
9 the payment.
- 10 5. Effective 3/1/2007, Windermere Mortgage Services Series, LLC., transferred its interest in
11 servicing the loan to Homestreet Bank. No other legal rights were transferred.
- 12 6. Because no rights of the Lender were transferred, Homestreet Bank does not possess the right
13 to direct foreclosure or assignment of a receiver.
- 14 7. This Deed of Trust showed the Grantee's to be 1) Windermere Mortgage Services Series
15 LLC, A Delaware Series Limited Liability Company; and 2) Chicago Title Company.
- 16 8. This Deed of Trust designated the Lender as Windermere Mortgage Services Series LLC,
17 and the Trustee as Chicago Title Insurance Company.
- 18 9. This Deed of Trust designated MERS as "the beneficiary under this Security Instrument,"
19 and specifying further that MERS holds the legal title to the interests granted by the
20 Borrower. See Petitioner Exhibit B pages 2 and 4.
- 21 10. The Deed of Trust does not assign MERS any authority to unilaterally transfer its beneficial
22 rights as the holder of legal title to the Milton property.
- 23 11. Because MERS has no authority to transfer its legal title any unilateral assignment by MERS
24 is unenforceable.
- 25

1 **B. Execution of the Deed of Trust is Legally Flawed Due to Duress**

2 12. On January 30, 2007, a Deed of Trust was executed as “signed under duress” by Defendant
3 Feeley.

4 13. Petitioner, through its executive and agent Richard Bennion refused to issue the loan with
5 any qualifier on the signature of Ms. Feeley.

6 14. Mr. Bennion was fully aware that Ms. Feeley was having marital problems with her husband,
7 co-Defendant Michael Ratcliffe.

8 15. The down payment offered for acquisition of the Milton property was community property
9 and Ms. Feeley did not want to risk her community property.

10 16. Mr. Bennion exerted substantial pressure through Windermere Mortgage Services Series and
11 Mr. Ratcliffe to compel Ms. Feeley to return and re-sign the deed of trust without any
12 qualifier.

13 17. On February 2, 2007, Mr. James Cathcart, attorney representing Ms. Feeley in her dissolution
14 of marriage action against Mr. Ratcliffe, corresponded with Demco Law Firm placing them
15 and their clients on notice that Ms. Feeley was under tremendous pressure to sign the deed of
16 trust without qualifier. The correspondence cited verbal abuse and threats to her life. Demco
17 was notified that Ms. Feeley was in fear of her life, and that any signature would be under
18 duress and would not relinquish any community interest she has in the properties, proceeds
19 or assets involved in the transaction; and that regardless of the impact of her signatures on the
20 rights of third parties such as the bank, other parties to the exchange, etc. she does not waive
21 nor intend to surrender any community interest that she has in any of the properties, proceeds
22 or other assets transferred by reason of these documents. .

23 18. Under exacerbated conditions of her duress Ms. Feeley returned on February 2, 2007, and
24 signed the deed of trust.

1 19. Because Ms. Feeley's signature was known to be under duress, her signature is
2 unenforceable and her community property interest in any investment made in the Milton
3 property has a superior position to that of Homestreet Bank. Any sale of the property would
4 be first and foremost to the benefit of Ms. Feeley to reimburse any and all value she has
5 invested in the property.

6 20. Ms. Feeley has invested substantial funds in both loan repayment and capital investment in
7 the Milton property and other Ratcliffe rental properties which includes, but is not limited to,
8 down payment monies and all monthly payment monies, repair costs, taxes, insurance
9 payments.

10
11 **C. The Relationships Between Principals In This Action Are Conflicted**

12 **Loan referrals and payments**

13 21. In 1997 Windermere Real Estate Services Company ("WSC") was a successful real estate
14 brokerage company. It wanted more. As a result of the high volume of real estate sales
15 being closed by its franchise holders, WSC generated a large volume of real estate loan
16 referrals, and it sought a means of profiting on that business stream.

17 22. WSC reached out to Homestreet Bank and proposed a joint venture company in which WSC
18 referrals could be managed through a jointly owned and governed mortgage brokerage. The
19 resulting company was Windermere Mortgage Services WRE, LLC. ("WMS").

20 23. WMS was intended to financially break even with generated surpluses being allocated to the
21 various referring WSC franchisees (collectively "WRE"). WMS generated from fees paid
22 by Homestreet to WMS for various services and referrals.

23 24. WMS was successful, generating loan volume for Homestreet, and various fees for WRE.
24
25

1 25. By 2005 WSC and Homestreet sought to change their relationship. There were legal risks to
2 the direct allocation of funds passing through WMS on their way to WRE. Not the least of
3 these concerns was the Real Estate Settlement Procedures Act (“RESPA”).

4 26. On May 5, 2005, Windermere Real Estate Services Company (“WSC”) and Homestreet
5 Bank engaged in another joint venture forming Windermere Mortgage Services Series,
6 LLC. (“WMSS”).

7 27. WMSS differed from WMS by its corporate licensure and structure. WMS was a
8 Washington licensed LLC, while WMSS was and is a Delaware licensed Series LLC. This
9 licensure is significant because of two influences: 1) RESPA provides an exception to its
10 prohibitions on kickbacks for business affiliates, and 2) Delaware law allows Series LLC
11 under its single licensure to designate discrete business units called “series” and for each
12 individual series to be treated for licensure and tax purposes as a unique business. These
13 two influences would allow WMSS to rely on the RESPA affiliated business exception
14 when allocating funds to discrete sets of WRE offices.

15 28. Homestreet Bank held 50% interest in the joint venture, with the remainder being divided
16 among various Windermere Real Estate franchises. Homestreet Bank executive Rich
17 Bennion sits on the Managing Board of WMSS.

18 29. Homestreet funds are transferred to each individual WMSS “series” for servicing the loans
19 it brokers and for originating those same loans; in turn the resulting profit on this local level
20 are transferred to the associated WRE. The individual WMSS also transfers per-loan
21 generated fees to WSC as a fee for the use of the WSC name. By this relationship the more
22 loans generated by each WRE office, the more fees the owners of that office are paid. In
23 addition the more loans generated by each WRE office the more is paid directly to WSC.

24 30. These financial relationships are of significant importance to WSC and each WRE office.
25 WMSS profits are reported on WRE quarterly financial summaries. WRE Board meeting

1 agendas include discussion of bonuses resulting from WMSS profit. WMS and WRE
2 engage in joint marketing efforts. WSC tracks loan and Title referrals by WRE office and
3 individual agent.

4 31. Total annual profits from all WMSS series is in the \$millions.

5 32. In 2011 WRE "South" office was compensated \$123,467 in from WMSS. In prior years
6 compensation exceeded \$400,000.

7 33. Washington State does not recognize the licensure or the associated legal rights of a
8 Delaware Series LLC. The acts of any particular WMSS "series" entity is an act for which
9 WMSS itself retains full responsibility and liability.

10 34. The loan underwritten by WMSS and Funded by Homestreet Bank to Mr. Ratcliffe for the
11 Milton property led to specific and discrete reimbursement to WSC and WRE South.

12 35. Ms. Ratcliffe has experienced a pattern of such activity in other loans with these parties.

13
14 **Corporate Counsel Represents WSC, WRE, and WMSS**

15 36. The general counsel for WSC is Demco Law Firm ("Demco").

16 37. Demco also represents some the individual WRE franchises including WRE South.

17 38. Demco represents individual owners of WRE franchises including Defendant Michael
18 Ratcliffe.

19 39. Demco represents WMSS.

20 40. Demco drafted many of the organizational documents for WSC, WRE, and WMSS.

21 41. Demco is compensated from a fund shared among all of the WRE offices called the WMIA
22 fund.

23 42. The WMIA fund is the primary source of funding legal representation for WSC and WRE.

24 43. The source of funds for WMIA is per-month and per-transaction fees paid by WRE agents.

- 1 44. The WMIA fund runs a substantial surplus each year in excess of \$500,000 that is
2 distributed to the WRE office owners.
- 3 45. It is believed that WRE agents are generally ignorant that their "legal fund" is a profit center
4 for the WRE office in which they work.
- 5 46. Demco represented Michael Ratcliffe regarding deficiencies in the purchase-sale of the real
6 property located at 805 25th Avenue Court, Milton (hereinafter "Milton property").
- 7 47. Claims existed against the Title Company, Escrow Company, Lender, Seller, Listing Agent,
8 Selling Agent, Selling Agency, Closing Agent and WSC itself.
- 9 48. Demco filed claims only against the Title Company, Seller, and Listing Agent. The claims
10 against the Seller and the Listing Agent were past the 3-year statute of limitations and were
11 dismissed.
- 12 49. According to the WMSS Operating Agreement any liability resulting from mortgage
13 brokerage activity will be charged to the individual series that managed the loan; in the case
14 of the present action that would be WMSS South.
- 15 50. WMSS South is the single greatest contributor of surplus funds and loan origination fees to
16 WSC of all WMSS series.
- 17 51. Michael Ratcliffe requested Demco to file a claim against the escrow company.
- 18 52. It was likely any suit against the Escrow Company would result in a counterclaim against
19 WMSS South and WRE South.
- 20 53. Demco did not pursue any claim against the Escrow Company.
- 21 54. Demco was compensated 33% of the recovery plus costs regardless that significant claims
22 were left unfiled harming its client's interests.
- 23 55. To date no entity other than the Title Company, Michael Ratcliffe, and Joyce Feeley have
24 directly contributed financially to rectify the damages caused by all of the entities for which
25 valid claims existed.

1 56. As a result of the conflict of interest and resulting ineffective counsel experienced by
2 Defendants Ratcliffe and Feeley, Defendant Feeley has been financially harmed contributing
3 to the financial hardship that resulted in this action.

4
5 **Governing Authority of WSC over WRE Franchises**

6 57. John Jacobi, majority owner of WSC is also 70% owner of voting shares of stock in WRE
7 South.

8
9 **D. Despite Pervasive Negligence Homestreet Bank Participated in and Consented to the**
10 **Decision to Fund the Milton Loan**

11 58. The Purchase and Sale agreement for the Milton property failed to include a legal
12 description of the property or a Tax Parcel Number. The document did not refer to any
13 other document that included a legal description.

14 59. The Buyer, Michael Ratcliffe, was never provided a Seller's Disclosure Statement.

15 60. WMSS South ordered and obtained the required appraisal for the Milton property. The
16 appraisal identified that the Milton property was accessible exclusively by a private road.

17 61. Proper underwriting in the condition of access by a private road is to ensure that a joint use
18 and maintenance agreement is in place. By this action the lender verifies legal access exists
19 to the property. WMSS South did not inquire to or further act to ensure a joint use and
20 maintenance agreement was in place.

21 62. The Closing Instructions required a final inspection prior to closing that could have caught
22 the error of the lack of legal access or at least the lack of a joint use and maintenance
23 agreement. That inspection never occurred.

24 63. WMSS South knew the Milton property had not been issued a Certificate of Occupancy and
25 closed on the loan anyway.

- 1 64. WRE South real estate selling agent Danny Altizer prepared and faxed to the escrow agent
2 an addendum to the Purchase and Sale Agreement referencing a holdback and other items
3 apparently to address the final items required for a Certificate of Occupancy and allowing
4 for the loan to close without that Certificate.
- 5 65. Drafting this Addendum constituted an illegal practice of law.
- 6 66. Michael Ratcliffe was never advised to seek the advice of an attorney to understand the
7 significance of this Addendum.
- 8 67. The seller added language to this same Addendum after it was initialed by Michael
9 Ratcliffe. Michael Ratcliffe never saw this added language prior to the loan closing.
- 10 68. The Escrow Agent prepared an additional escrow instruction "holdback agreement" which
11 is the unauthorized practice of law, below the standard of care required for an Escrow
12 Agent. The Escrow Agent also failed to advise the parties to discuss the significance of this
13 addendum with an attorney.
- 14 69. The Purchase and Sale agreement required that the appraisal price for the Milton Property
15 exceed the sales price. In fact the appraisal value of \$420,000 was significantly less than the
16 sale price of \$438,000.
- 17 70. Richard Bennion, Executive Vice President of Homestreet Bank and Managing Board
18 Member of WMSS, was requested and gave his authorization to fund the Milton Loan
19 despite all of the negligence in its underwriting and processing.
- 20 71. Homestreet Bank funded the loan on the Milton property.
- 21 72. Homestreet Bank is a 50% owner in WMSS.
- 22 73. The loan closed without a marketable title.
- 23 74. Because of the negligent underwriting and processing of this loan Ms. Feeley has incurred
24 financial damage.
- 25

1 **IV.3 COUNTER CLAIMS AND CROSS CLAIMS**

- 2
- 3 1. **Violation of Fiduciary Duties.** Homestreet Bank violated its fiduciary duties when its
4 agent, Richard Bennion, overstepped his role as a managing board member and assumed the
5 role of the lender. Homestreet committed this violation when its agent, Richard Bennion,
6 assumed the responsibility of making the final decision to fund the Milton property loan
7 despite the numerous underwriting and processing shortcomings of that loan. As a result of
8 Homestreet's violation Ms. Feeley suffered financial damages and Homestreet Bank has
9 been unjustly enriched in amounts to be proven at trial.
- 10 2. **RESPA Violations.** Because WMSS and Homestreet Bank reimburse WSC and discrete
11 WRE offices in relation to the volume of loans they refer, those payments constitute an
12 improper kickback in violation of CFR 3500.14. Due to WMSS and Homestreet Bank
13 violation, Ms. Feeley suffered financial damage in an amount to be proven at trial.
- 14 3. **Conspiracy to Commit Bribery.** Because WMSS, Homestreet Bank, and the other cross-
15 claim defendants profited from unlawful bribery and the conspiracy to commit such acts,
16 they have acted in violation of 18 U.S.C. 1962 (a) and (c). Due to this violation Ms. Feeley
17 has suffered financial damage in an amount to be proven at trial.
- 18 4. **Negligent Inducement.** Homestreet Bank negligently induced payments and investments
19 causing misallocation of funds and unjust enrichment in amounts to be proven at trial.
- 20 5. **Homestreet improperly commences multiple actions against individual deeds of trust**
21 **in violation of RCW 61.24.030(4).**

22 WMSS incorporated into all loans involved in this action a cross-default provision. The
23 purpose of this provision is to provide WMSS added security should the borrower default on
24 any particular loan. See 1-4 Family Rider, section I, page 2, of each deed-of-trust:

1 I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any
2 note or agreement in which Lender has an interest shall be a breach under the
3 Security Instrument and Lender may invoke any of the remedies permitted by the
4 Security Instrument

5 The 1-4 Family Rider is an optional rider for the benefit of the lender and used at
6 the option of the lender as a means of increasing the security for each individual loan. By
7 adding cross-default provision in this rider to one loan a lender is able to increase the
8 security of that loan through the right to foreclose on any other loan held by that lender
9 for that borrower. By the same token should the same lender add this provision to a
10 second loan, that loan too would have additional security. Should the lender add this
11 provision to all loans to a single borrower, the lender benefits by having additional
12 security to the possible default of each individual loan.

13 The effect of adding the cross-default provision to multiple loans also has a
14 downside. A pre-requisite to any trustee's sale is that the beneficiary of that trust deed
15 cannot have already commenced an action regarding any other obligation secured by that
16 deed of trust that is in default.

17 It shall be requisite to a trustee's sale:

18 That no action commenced by the beneficiary of the deed of trust is now
19 pending to seek satisfaction of *an obligation secured by the deed of trust* in any
20 court by reason of the grantor's default on the obligation secured

21 RCW 61.24.030(4)

22 Because the multiple cross-default provisions create a system of cross-secured
23 obligations, an action commenced against any individual property is an action against all
24 of the properties. Cross-default provisions applied generally create a conflict with RCW
25 61.24.030 when an action for default is taken on more than one property at a time. By
commencing action on all of these properties simultaneously, Homestreet violates RCW
61.24.030 exceeding its authority under the deeds of trust and damaging Ms. Feeley.

1
2 **V. CONCLUSION AND PRAYER FOR RELIEF**

3 Wherefore Defendant, Joyce Feeley, prays for relief as follows:

- 4 1. A Declaratory Judgment that Ms. Feeley's community interest in the Milton property is
5 superior to that of Windermere Mortgage Services Series, LLC., and Homestreet Bank.
6 2. A Declaratory Judgment that Homestreet Bank lacks the standing to foreclose on the Milton
7 property.
8 3. A Judgment against Homestreet Bank and cross-claim Defendants for negligence in the
9 underwriting and processing of the Milton property loan resulting in damage to Ms. Feeley.
10 4. A Judgment against Homestreet Bank and Windermere Mortgage Services Series, LLC., for
11 unjust enrichment.
12 5. A Judgment denying Homestreet Bank's petition for appointment of a receiver.
13 6. A Judgment against Homestreet Bank, WMSS, and WSC for violation of CFR 3500.14.
14 7. A Judgment against Homestreet Bank, WMSS, and WSC for violation of 18 U.S.C. 1962 (a)
15 and (c).

16 DATED this 29th day of January, 2012.

17
18 KRAM & WOOSTER, P.S.

19 

20
21

Patrick Hollister, WSBA # 41492
22 Attorneys for Defendant Joyce M. Feeley
23
24
25

CERTIFICATE OF SERVICE

I, Connie DeChaux, hereby certify that I am over the age of 18 years and not a party to the within action; my business address is and I am employed by Kram & Wooster, 1901 South I Street, Tacoma, Washington 98405. On January 29, 2013, a true and correct copy the following documents: (1) DEFENDANT JOYCE M. FEELEY'S ANSWER AND COUNTER-CLAIMS AND CROSS-CLAIMS were sent to:

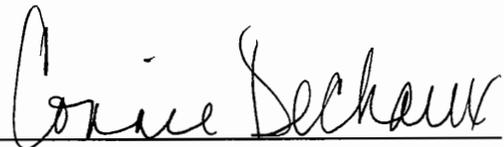
HomeStreet Bank, c/o Joseph A.G. Sakay, Hillis Clark Martin & Peterson P.S., 1221 Second Avenue, Suite 500, Seattle, Washington, 98101-2925.

by the following method:

- By depositing same postage pre-paid in the United States Mail addressed to the person(s) identified above.
- Delivering a copy to Legal Messenger Service, Inc., with appropriate instructions to deliver the same to the person(s) identified above.
- Delivering a copy through electronic mail
- Personally delivering copies to the person(s) identified above.

I hereby certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 29th day of August, 2012.



Connie DeChaux