

Complaint:

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

COUNTY OF _____

FILE NO. ____ --CVD-- ____

Plaintiffs

vs.

COMPLAINT TO RECOVER
CIVIL PENALTY PURSUANT
TO N.C.G.S SECTION 45-36.9

Defendant

1. Plaintiffs, _____ and _____ are citizens and residents of _____, and _____ and _____ are citizens and residents of _____.

2. Defendant, _____ is a _____ with an office and doing business in the State of _____ and is not suffering under any disability.

3. _____ and _____ executed a promissory note to _____, secured by a Deed of Trust, dated _____, and recorded on _____, in Book _____, at page _____ in the office of the _____ County, North Carolina, Register of Deeds.

4. Defendant is the beneficiary of said Deed of Trust or subsequently acquired or was assigned the aforesaid note and Deed of Trust

5. On or about _____ Plaintiffs _____ and _____ purchased the property described in the aforesaid Deed of Trust and at or before that time, full payment or performance was delivered to Defendant in full and final satisfaction of the indebtedness out of the proceeds of the sale.

6. More than 90 days has passed since Defendant received full satisfaction if the indebtedness secured by the aforesaid Deed of Trust and defendant has neglected and refused, after notice and demand, to comply with the provisions of N.C.G.S. Section 45-36.9(a), in that Defendant has not canceled the Deed of trust of record nor has forwarded the note and Deed of Trust with payment and satisfaction acknowledged in accordance with the provisions of N.C.G.S. Section 45-37, nor has Defendant satisfied said Deed of Trust of record by any of the methods provided in G.S. Section 45-37(a).

7. On _____, Plaintiffs' Attorney in compliance with the Requirements of N.C.G.S. Section 45-36.3(b), notified Defendant of the obligation to discharge and release the lien of the aforesaid Deed of Trust. More than thirty (30) days have elapsed since Defendants receipt of said notice.

8. Defendant's unwarranted refusal and neglect to discharge and cancel the lien of the Deed of Trust of record constitutes a cloud on Plaintiffs' title to the property and violates the provisions of N.C.G.S. Section 45-36.9(a).

9. (optional - if plaintiffs have special damages pursuant to N.C.G.S. Section 45-36.9(b) set forth the allegations here)

WHEREFORE, Plaintiffs pray judgment against Defendant as follows:

1. A penalty of \$ 1000.00 in favor of Plaintiffs _____ and _____, as prescribed by N.C.G.S. Section 45-36.9(c); and
2. (optional) - Damages in the sum of \$ _____ in favor of Plaintiffs _____ and _____. As prescribed by N.C.G.S. Section 45-36.9(b).
3. That the Trustee be directed and authorized by the Court to cancel the Deed of Trust, or, alternatively, that the Court enter a Judgment to be recorded in the Office of the Register of Deeds for ____ County, N.C. canceling the Deed of Trust of Public Record.
4. Recovery of the costs, including reasonable attorney's fees, required by plaintiffs to prosecute this action; and
5. Such other and further relief as the Court may deem just and proper.

This the _____ day of _____, _____.

_____ and _____ LLP

By: _____

Attorneys for Plaintiffs

Motion for default:

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ___--CVD--___

Plaintiffs

vs.

MOTION AND AFFIDAVIT
FOR ENTRY OF DEFAULT

Defendant

Plaintiffs, by counsel and pursuant to Rule 55(a) of the North Carolina Rules of Civil Procedure, move that default be entered in this action against Defendant _____, on plaintiffs' claim, and in support of this motion makes the following affidavit:

NORTH CAROLINA
_____ COUNTY

SS:

_____, being duly sworn, deposes and says that:

1. A complaint was filed in this action by Plaintiff seeking affirmative relief on _____;
2. A summons and a copy of the complaint were served upon Defendant by serving its registered (optional - authorized) agent via certified mail, return receipt requested, on _____;
3. Personal jurisdiction of the defendant was acquired by service of process in the manner described above; (optional - because Defendant is without a place of business or registered agent in the State of North Carolina, but subjected itself to the jurisdiction of the courts of North Carolina through the purchase or mortgage indebtedness secured by property located in _____ County, North Carolina;
4. No answer, other responsive pleading to the complaint, or extension of time to file an answer or any responsive pleading has been filed, requested by or granted to or by the Defendant;
5. The time within which an answer or other responsive pleading may be filed has expired.
6. Affiant has expended ___ hours in the prosecution of this action and customarily charges \$ ___ per hour for similar matters.

This the _____ day of _____, _____.

Judgment:

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF _____

DISTRICT COURT DIVISION

FILE NO. ____ --CVD-- ____

Plaintiffs

vs.

JUDGMENT

Defendant

THIS MATTER COMING on for Hearing before the undersigned Judge of the District Court of _____ County on Plaintiff's Motion for Hearing; and

It appears to the Court that default was previously entered in this matter on or about the ____ day of _____, ____ by the Clerk of Superior Court of _____ County, and that the matter is properly before the Court. Based thereon the Court makes the following Findings of Facts, enters its Conclusions of Law and its Judgment based thereon:

FINDINGS OF FACT:

1. This Court has personal and subject matter jurisdiction, the Defendant is not suffering under any disability and this matter is properly before the Court.

2. This is an action brought by Plaintiffs against Defendant to enforce the requirements of N.C.G.S. Section 45-36.9 which requires that the holder of an indebtedness secured by a Deed of Trust cancel or make provisions for cancellation of its Deed of Trust in a timely manner not more than 60 days after satisfaction plus 30 days after notice pursuant to the statute.

3. Plaintiffs satisfied the secured indebtedness and Defendant was notified of its obligation to cancel or provide for cancellation of the Deed of Trust.

4. Defendant failed to do so within 60 days as provided by Statute.

5. After 60 days had elapsed without Defendant complying with the Statute, Plaintiffs by and through their attorney provided Defendant the 30 day notice required by the Statute and Defendant failed and neglected to comply with the provisions of the Statute and more than 30 days has expired.

6. Plaintiffs filed a complaint against Defendant in this matter on the ____ day of _____, ____ and Defendant was properly served as required by law. Defendant failed to answer or respond and Default was entered by the Clerk of Superior Court of _____ County on or about the ____ day of _____, ____.

7. (optional - Plaintiffs were damaged in the sum of \$_____)
8. Plaintiffs are entitled to attorney's fees and \$ _____ is a reasonable amount.

BASED UPON THE FOREGOING FINDINGS OF FACT THE COURT
MAKES THE FOLLOWING CONCLUSIONS OF LAW:

CONCLUSIONS OF LAW:

1. Plaintiffs are entitled to recover of the Defendant for its failure to comply with the requirements of N.C.G.S. 45-36.9.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs _____ and _____ recover of the Defendant a civil penalty in the amount of \$ 1000.00.

2. (optional - Plaintiffs _____ and _____ recover of the Defendant damages in the amount of \$ _____.

3. Plaintiffs recover of the Defendant reasonable attorney's fees required to prosecute their claim in the amount of \$ _____.

4. That the Trustee is directed and authorized by the Court to cancel the Deed of Trust, or, alternatively, that a certified copy of this Judgment may be recorded in the Office of the Register of Deeds for ____ County, N.C. pursuant to N.C.G.S. Section 1-228 for the purpose of canceling the Deed of Trust of Public Record.

6. That the costs of this action be taxed against the Defendant.

This the ____ day of _____, ____.

Judge Presiding