

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA.

CASE NO. 2009-008669-CA-20

WELLS FARGO BANK, N.A. AS SUCCESSOR BY  
MERGER TO WACHOVIA BANK, NATIONAL  
ASSOCIATION,

Plaintiff,

vs.

THE ORIGINAL  
FILED ON:

JUN 3 0 2010

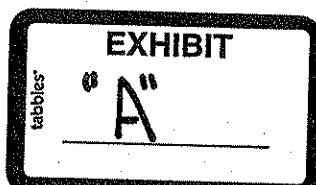
IN THE OFFICE OF  
CIRCUIT COURT DADE CO., FL

ROILANS AUTO SERVICE NO. 2, INC.; MARIO  
DOMINGUEZ A/K/A MARIO A. DOMINGUEZ;  
MARIA P. DOMINGUEZ; TAYLOR, BEAN &  
WHITAKER MORTGAGE CORP.; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS, INC.  
All Unknown Parties Claiming By, Through, Under  
Or Against The Named Defendants, Whether Living  
Or Not, And Whether Said Unknown Parties Claims  
As Heirs, Devisees, Grantees, Assignees, Lienors,  
Creditors, Trustees, Or In Any Other Capacity,  
Claiming By, Through Under Or Against The  
Named Defendants,

Defendants.

AMENDED COMPLAINT

Plaintiff, WELLS FARGO BANK, N.A. AS SUCCESSOR BY MERGER TO WACHOVIA  
BANK, NATIONAL ASSOCIATION, by and through its undersigned counsel, hereby sues the  
Defendant(s), ROILANS AUTO SERVICE NO. 2, INC.; MARIO DOMINGUEZ A/K/A MARIO A.  
DOMINGUEZ; MARIA P. DOMINGUEZ; TAYLOR, BEAN & WHITAKER MORTGAGE CORP.;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC All Unknown Parties Claiming  
By, Through, Under Or Against The Named Defendants, Whether Living Or Not, And Whether  
Said Unknown Parties Claims As Heirs, Devisees, Grantees, Assignees, Lienors, Creditors,  
Trustees, Or In Any Other Capacity, Claiming By, Through Under Or Against The Named  
Defendants, and alleges:



1. Plaintiff is a national banking association engaging in business in Miami-Dade County, Florida and is the owner and holder of the Note and Mortgage being foreclosed hereunder.

2. Jurisdiction and venue is proper in this Court in that the real property made the subject of this action is located in Miami-Dade County, Florida.

3. All conditions precedent to Plaintiff's maintenance of this action have occurred, or their performance have been excused or waived by the Defendant(s).

4. The Plaintiff has retained the law firm of Moskowitz, Mandell, Salim & Simowitz, P.A. to represent it in this cause and has agreed to and is obligated to pay it a reasonable fee for its services.

#### FIRST CAUSE OF ACTION

5. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 4 above, inclusive, with the same force and effect as if more fully set forth herein.

6. This is an action to foreclose a mortgage on real property located in Miami-Dade County, Florida (hereinafter referred to as the "land"), which land is more particularly described as:

**LOT 10, BLOCK 4, VEDADO, ACCORDING TO THE PLAT THEREOF,  
AS RECORDED IN PLAT BOOK 10, PAGE 19, OF THE PUBLIC  
RECORDS OF MIAMI-DADE COUNTY, FLORIDA.**

Street Address: 2268 SOUTHWEST 16 TERRACE, MIAMI, FLORIDA 33145

7. On or about December 10, 2007, ROILANS AUTO SERVICE NO. 2, INC. executed and delivered that certain Negotiable Promissory Note (hereinafter referred to as the "Note") to Plaintiff in Miami-Dade County, Florida. A true and correct copy of the Note is attached hereto and incorporated herein by reference and marked as Exhibit "A".

8. The Note was secured by a Mortgage dated December 10, 2007, which was executed by the MARIO DOMINGUEZ A/K/A MARIO A. DOMINGUEZ AND MARIA P. DOMINGUEZ. The Mortgage was recorded on January 4, 2008 Official Records Book 26145, Page 1073, of the Public Records of Miami-Dade County, Florida, and mortgaged the land, which land was then owned by and in the possession of MARIO DOMINGUEZ A/K/A MARIO A. DOMINGUEZ AND

MARIA P. DOMINGUEZ. A true and correct copy of the Mortgage is attached hereto and incorporated by reference and marked as Exhibit "B".

9. Plaintiff is the owner and holder of the Note and Mortgage.

10. The Note and Mortgage are in default due to the failure to pay the installment due on July 28, 2008 or any payments thereafter and for failure to pay 2007, 2008 and 2009 real estate taxes. As such, Plaintiff has elected to accelerate the payment of the balance.

11. Plaintiff has declared the full amount due and payable under the Note and Mortgage to be due and payable in full.

12. The Plaintiff is owed the principal sum of \$355,789.53 that is due with interest and late fees on the Note and Mortgage, as well as costs and expenses of ascertaining the necessary parties to this action, and reasonable attorney's fees.

13. The Defendant, TAYLOR, BEAN & WHITAKER MORTGAGE CORP., may have or may appear to have some right, title, interest or claim in and to the mortgaged property by virtue of that certain Mortgage, recorded in Official Records Book 20482, at Page 4852 and re-recorded in Official Records Book 20552, at Page 2517 of the Public Records of Miami-Dade County, Florida. Said interest, if any, is subject and inferior to the lien of Plaintiff's mortgage.

14. The Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., may have or may appear to have some right, title, interest or claim in and to the mortgaged property by virtue of that certain Mortgage, recorded in Official Records Book 20482, at Page 4852 and re-recorded in Official Records Book 20552, at Page 2517 of the Public Records of Miami-Dade County, Florida. Said interest, if any, is subject and inferior to the lien of Plaintiff's mortgage.

15. Pursuant to the terms and conditions of the Note and Mortgage, Defendant(s) agreed that he shall be liable for and responsible to the Plaintiff for any and all attorney's fees and costs incurred by the Plaintiff in the bringing of any action to collect any of the monies due and owing the Plaintiff herein or to foreclose the action.

WHEREFORE, Plaintiff requests that:

(1) The Court will assume jurisdiction of the subject matter of this action and of the named parties.

(2) The Court will ascertain the amount of the money due Plaintiff for principal and interest on the mortgage, note and for late charges, abstracting, taxes, expenses, and all expenses of foreclosure including attorney's fees, that Plaintiff is entitled to recover in this action plus interest thereon.

(3) The Court decree that Plaintiff has a lien on the property described in the mortgage for the sum of money found to be due Plaintiff.

(4) If the sums due Plaintiff under the Note and Mortgage are not paid immediately, the Court shall foreclose the Mortgage in accordance with the rules and established practice of the Court, and the Clerk of the Court shall sell all of the above mentioned property securing the indebtedness to satisfy the mortgage lien of Plaintiff in accordance with the provisions of Florida Statutes, Section 45.031.

(5) The Court decree that the mortgage lien interests of the Plaintiff are superior and paramount to all liens, rights, title and interests of any Defendant, or any party claiming by, through, under or against any Defendant, and that such liens, rights, title or interest of any Defendant named herein or after made a Defendant, or any party claiming by, through, under or against any Defendant be forever barred and foreclosed.

(6) The Court retain jurisdiction of this action in order to make any and all further orders and judgments as may be necessary and proper including the issuance of a writ of possession and/or a deficiency judgment.

(7) The Court grant such other and further relief as Plaintiff may be entitled to receive.

### **SECOND CAUSE OF ACTION**

16. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 4 above, inclusive, with the same force and effect as if more fully set forth herein.

17. This is an action for damages in excess of \$15,000.00.

18. On or about December 10, 2007, ROILANS AUTO SERVICE NO. 2, INC. executed and delivered to Plaintiff a Negotiable Promissory Note (hereinafter referred to as "Note") in the principal amount of \$350,000.00. A true and correct copy of the Note is attached hereto and incorporated by reference and marked as Exhibit "A".

19. Plaintiff now owns and holds the Note and Mortgage.

20. Defendants have defaulted under the Note and Mortgage by failing to pay the installment due on July 28, 2008, or any payments thereafter and for failure to pay the 2007, 2008 and 2009 real estate taxes. As such, Plaintiff has elected to accelerate the payment of the balance.

21. Plaintiff has declared the full amount due and payable under the Note to be due and payable in full.

22. Defendant(s), ROILANS AUTO SERVICE NO. 2, INC. owe Plaintiff the sum of \$355,789.53 in principal that is due with interest from June 28, 2008, on the Note.

23. Pursuant to the terms and conditions of the Note, Defendants, ROILANS AUTO SERVICE NO. 2, INC., agreed that they shall be liable for and responsible unto the Plaintiff for any and all attorney's fees and costs incurred by the Plaintiff in the bringing of any action to collect any of the monies due and owing by Defendant(s) herein.

WHEREFORE, Plaintiff demands judgment against the Defendant(s), ROILANS AUTO SERVICE NO. 2, INC., for damages in the amount of \$355,789.53 in principal, interest, late fees, costs and disbursements, reasonable attorney's fees and such further relief as this Court may deem just, equitable and proper.

### THIRD CAUSE OF ACTION

24. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 4 above, inclusive, with the same force and effect as if more fully set forth herein.

25. This is an action for damages in excess of \$15,000.00.

26. On or about December 10, 2007, Defendant, ROILANS AUTO SERVICE NO. 2, INC., executed and delivered to Plaintiff the Promissory Note, Exhibit "A" attached hereto.

27. On or about December 10, 2007, Defendants MARIO DOMINGUEZ A/K/A MARIO A. DOMINGUEZ AND MARIA P. DOMINGUEZ, executed and delivered their Unconditional Personal Guarantee unto the Plaintiff in which they unconditionally guaranteed payment in full of all monies due and owing Plaintiff by ROILANS AUTO SERVICE NO. 2, INC. under the Promissory Note, Exhibit "A". A true and correct copy of the Unconditional Guarantee is attached hereto and incorporated herein by reference and marked as Exhibit "C".

28. Defendant, ROILANS AUTO SERVICE NO. 2, INC. has defaulted under the terms and conditions of the Note, Exhibit "A", by failing to make the installment due on July 28, 2008 or any payments thereafter and for failure to pay the 2007, 2008 and 2009 real estate taxes. As such, Plaintiff has elected to accelerate payment of the balance.

29. Defendants, MARIO DOMINGUEZ A/K/A MARIO A. DOMINGUEZ AND MARIA P. DOMINGUEZ, jointly and severally, have defaulted under the terms and conditions of the Unconditional Guarantee, Exhibit "C", by failing to make payment in full to Plaintiff of all monies due and owing under the Note, Exhibit "A" and Unconditional Guarantee, Exhibit "C".

30. As such, Defendants, MARIO DOMINGUEZ A/K/A MARIO A. DOMINGUEZ AND MARIA P. DOMINGUEZ, are indebted to the Plaintiff in the sum of \$355,789.53 in principal that is due with interest from June 28, 2008 on the Unconditional Guarantee, Exhibit "C".

31. Pursuant to the terms and conditions of the Unconditional Guarantee, Defendants, MARIO DOMINGUEZ A/K/A MARIO A. DOMINGUEZ AND MARIA P. DOMINGUEZ, agreed that they shall be liable for and responsible unto the Plaintiff for any and all attorneys fees and costs incurred by the Plaintiff in the bringing of any action to collect any of the monies due and owing by the Plaintiff.

32. Plaintiff has retained the law firm of Moskowitz, Mandell, Salim & Simowitz, P.A. to represent it in this cause and has agreed and become obligated to pay it a reasonable fee for its services.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, MARIO DOMINGUEZ A/K/A MARIO A. DOMINGUEZ AND MARIA P. DOMINGUEZ, jointly and severally, for damages in the amount of \$355,789.53 in principal, interest, costs and disbursements, reasonable attorneys fees and such other and further relief as this Court may deem just, equitable and proper.

#### **FOURTH CAUSE OF ACTION**

33. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 4 above, inclusive, with the same force and effect as if fully set forth herein.

34. This is an action to quiet title to property located in Palm Beach County, Florida pursuant to the provisions of Chapter 65 of the Florida Statutes.

35. The title to the property legally described in Paragraph 6 above is in controversy.

36. Upon information and belief, a mortgage in favor of Defendants TAYLOR, BEAN & WHITAKER MORTGAGE CORP. recorded in Official Records Book 20482, at Page 4852 and re-recorded in Official Record Book 20552, at Page 2517 of the Public Records of Miami-Dade County, Florida and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. recorded in Official Records Book 20482, at Page 4852 and re-recorded in Official Record Book 20552, at Page 2517 of the Public Records of Miami-Dade County, Florida has been satisfied; however, no satisfaction of the said mortgage has ever been recorded in the public records.

37. Failure to record said satisfaction of mortgage by TAYLOR, BEAN & WHITAKER MORTGAGE CORP. and/or MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. casts a cloud on the title to the property.

**WHEREFORE**, Plaintiff prays this Court will enter a Judgment quieting title in favor of the Plaintiff and discharging, canceling, satisfying the mortgage in favor of TAYLOR, BEAN &

WHITAKER MORTGAGE CORP., and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and granting such other and further relief as the Court may deem just, equitable and proper.

MOSKOWITZ, MANDELL, SALIM  
& SIMOWITZ, P.A.  
Attorneys for Plaintiff  
800 Corporate Drive, Suite 500  
Fort Lauderdale, FLORIDA 33334  
(954) 491-2000  
954-491-2051 (TELEFAX)

By:  FOR

Scott E. Simowitz, Esq.  
FBN 306207

**PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, THIS OFFICE MAY BE A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT IN THIS CAUSE. THUS, ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**



NOTICE REQUIRED BY THE FAIR DEBT COLLECTION  
PRACTICES ACT. (the Act), 15 U.S.C. SECTION 1601  
AS AMENDED

1. The amount of the debt is stated in the Complaint.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt described in the Complaint and evidenced by a copy of the Mortgage and Note attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
4. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
5. If the creditor named as the Plaintiff in the Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by the creditor's law firm.
6. Written requests should be addressed to counsel for Plaintiff:  

Scott E. Simowitz, Esq.,  
Moskowitz, Mandell, Salim & Simowitz, P.A.  
800 Corporate Drive, Suite 500  
Ft. Lauderdale, FL 33334  
(954) 491-2000
7. The law does not require the debt collector to wait until the end of the thirty-day period to initiate this action to collect this debt. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period which begins with your receipt of this notification, the law requires the debt collector to suspend efforts (through litigation or otherwise) to collect the debt until the debt collector mails the requested information to you.