COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPT
CIVIL NO. _____

BRENDAN BURKE

Plaintiff,

v.

THOMAS J. DOHERTY, ROBERT A. COSTANTINO, and TAYLOR, BEAN & WHITAKER MORTGAGE CORP.

Defendants.

COMPLAINT

1. Brandon Burke ("Burke") the Plaintiff in the above-captioned Action, believes himself to be the owner of property located at 161 Summer Street, Scituate, Plymouth County, Massachusetts (the "Property").

2. Thomas J. Doherty ("Doherty"), a Defendant in the above-captioned Action, is an individual residing at 11 Briar Meadow Circle, Scituate, MA.

3. Robert A. Costantino ("Costantino"), a Defendant in the above-captioned Action, is an individual residing at 200 Orchard Lane, Abington, MA.

4. Taylor, Bean & Whitaker Mortgage Corp. ("TBW"), a Defendant in the above-captioned Action, is a corporation with a usual place of business located at 1417 North Magnolia Ave, Ocala, FL.

5. On or about November 18, 2005, Doherty purchased the Property.

EXHIBIT
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6. On or about April 14, 2006, Doherty granted a mortgage on the Property to MERS as nominee for TBW, which is recorded in the Plymouth County Registry of Deeds at Book 32515, Page 51 (the "Mortgage").

7. On or about May 16, 2006, Doherty granted a second mortgage on the Property to Costantino, which is recorded in the Plymouth County Registry of Deeds at Book 32689, Page 133.

8. On or about September 11, 2008, TBW commenced foreclosure proceedings in connection with the Mortgage by publishing a legal notice of its intent to conduct a sale by public auction.

9. A foreclosure auction was held on October 16, 2008, and entry was made by TWB on that date.

10. On or about November 3, 2008, the Assignment of Mortgage from MERS to TBW was executed.

11. The assignment states that it was effective as of April 17, 2008.

12. On or about November 10, 2008, TBW conveyed the Property to US Bank as Trustee for TBW 2006-3 ("US Bank") pursuant to the terms of a deed recorded in the Plymouth County Registry of Deeds at Book 36520, Page 160.

13. On or about January 25, 2010, US Bank conveyed the Property to Burke pursuant to the terms of a deed recorded in the Plymouth County Registry of Deeds at Book 38158, Page 204.

COUNT I

14. The Plaintiff realleges the allegations set forth in Paragraphs 1 through 13, inclusive, as if fully set forth herein.

15. Throughout the foreclosure process, TBW represented that it was the holder of the Mortgage.

16. The transfer of the Mortgage to TBW took place prior to the commencement of foreclosure proceedings by TBW.

17. TBW was the holder of the Mortgage no later than the commencement of the foreclosure proceedings.

WHEREFORE, the Plaintiff in the above-captioned Action respectfully requests that this Court issue an Order determining and declaring that the foreclosure conducted by TBW was proper and title to the Property passed to Burke free and clear of the mortgage held by Constantino pursuant to the terms of the quitclaim deed recorded in the Plymouth County Registry of Deeds at Book 38168, Page 204, and award such other and further relief as the Court deems just and appropriate.

COUNT II

18. The Plaintiff realleges the allegations set forth in Paragraphs 1 through 13, inclusive, as if fully set forth herein.

19. If the foreclosure was not effective then US Bank became the holder of the Mortgage following the foreclosure.

20. The quitclaim deed from US Bank to the Plaintiff constituted an assignment of the Mortgage.

21. Doherty has breached the covenants of the Mortgage, including by non-payment thereof.

WHEREFORE, the Plaintiff in the above-captioned Action respectfully requests that this Court issue:

A) A declaration that the Plaintiff is the holder of the Mortgage, that Doherty has defaulted under the Mortgage and that the Plaintiff has the present right to exercise all rights and remedies in the Mortgage arising after default, including without limitation foreclosure by entry or by sale;

B) A final injunction ordering that TBW, and its agents and attorneys, turn over to the Plaintiff the original promissory note and loan records evidencing, at a minimum, payments made on the loan secured by the Mortgage, loan balances, information on how said balances were calculated, notices of default and of acceleration of the Mortgage and/or the loan secured thereby; and

C) Such other and further relief as this Court deems just and appropriate.

COUNT III

22. The Plaintiff realleges the allegations set forth in Paragraphs 1 through 13, inclusive, as if fully set forth herein.

23. The Plaintiff is the assignee and holder of the Mortgage as more particularly described in said mortgage.

24. Doherty is not in the military service within the meaning of the Servicemembers Civil Relief Act.

25. On information and belief, Doherty is the only person with an interest in the equity of redemption of the Property covered by the Mortgage so far as appears of record in the said Registry of Deeds or as known to the Plaintiff.

26. The Plaintiff seeks to foreclose the Mortgage to protect his interest as secured thereby for breach of the conditions thereof and desire to comply with the provisions of the Servicemembers Civil Relief Act.

27. A mortgagee's affidavit executed by the Plaintiff is filed herewith.

WHEREFORE, the Plaintiff in the above-captioned Action respectfully requests that this Court:

A) Issue an order of notice ordering the Defendant Doherty to appear and answer this Complaint;

B) Enter judgment declaring that the Plaintiff is the sole holder of the first mortgage on the land and buildings located at 161 Summer Street, Scituate, Massachusetts granted by Doherty and recorded in the Plymouth County Registry of Deeds at Book 32515, Page 51.

C) Enter a final injunction ordering that TBW, and its agents and attorneys, turn over to the Plaintiff the original promissory note and loan records evidencing, at a minimum, payments made on the loan secured by the Mortgage, loan balances, information on how said balances were calculated, notices of default and of acceleration of the Mortgage and/or the loan secured thereby;

D) Enter judgment declaring that Doherty has breached the covenants of said Mortgage and are in default thereunder;

E) Enter judgment declaring that as the holder of said Mortgage, the Plaintiff is entitled to exercise all rights and remedies in the Mortgage arising after default, including without limitation foreclosure by entry and/or by sale;

F) Enter judgment that the record owner is not entitled to the benefits of the Servicemembers Civil Relief Act;

G) Enter judgment authorizing the Plaintiff to make entry for the purpose of foreclosing and authorizing the Plaintiff to foreclose the Mortgage by sale under the power therein contained;

H) Award Plaintiff his costs, including reasonable attorneys' fees, and;

I) Grant Plaintiff such other relief as the Court deems just and equitable.

COUNT IV

28. The Plaintiff realleges the allegations set forth in paragraphs 1 through 13, inclusive, as if fully set forth herein.

29. The Plaintiff is the holder of the Mortgage.

30. Doherty is in default under their obligations under the Mortgage.

31. The Plaintiff is entitled to foreclose on the Mortgage.

32. TBW received $448,000 from the Plaintiff's predecessor in title in exchange for its rights in the Property.

33. Notwithstanding the fact that TBW received $448,000 for its rights in the Property it has failed to turn over to the Plaintiff the underlying promissory note.

34. Where TBW has transferred its rights in the Property it has no right to refuse to turn over the underlying promissory note.

WHEREFORE, the Plaintiff in the above captioned Action respectfully requests that this Court issue an Order determining and declaring as follows:

A) The Mortgage was not extinguished by the foreclosure auction and is still an encumbrance on the Property;

B) The deeds recorded at the Plymouth County Registry of Deeds at Book 26520, Page 160 and Book 38168, Page 204 operate as assignments of the mortgage recorded at the Plymouth County Registry of Deeds at Book 32515, Page 51, resulting in the Plaintiff holding a mortgage on any interest in the Property remaining in Doherty;

C) TBW is to turn over to the Plaintiff the original promissory note and loan records evidencing, at a minimum, payments made on the loan secured by the Mortgage, loan balances, information on how said balances were calculated, notices of default and of acceleration of the Mortgage and/or the loan secured thereby; and

D) Such other and further relief as this Court deems just and appropriate.

Respectfully submitted,
The Plaintiff,
By his attorneys,

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Dated: January 15, 2015

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