

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

DANIEL J. STERMER AS RECEIVER OF
THE HERON POND CONDOMINIUM
ASSOCIATION, INC.,
PLAINTIFF,

Case No. CACE-24-015112

V.

HERON POND CONDOMINIUM
ASSOCIATION, INC., AND ALL UNIT
OWNERS LISTED ON EXHIBIT "C" AND
OTHER INTEREST PARTIES LISTED ON
EXHIBIT "D" TO THE COMPLAINT,
DEFENDANTS.

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**DEFENDANT, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE
CMLTI ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2007-AMC3
WITH LITTON LOAN SERVICING LP AS SERVICER'S
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CMLTI ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2007-AMC3 WITH LITTON LOAN SERVICING LP AS SERVICER ("U.S. BANK"), by and through undersigned counsel, submits the following Answer and Affirmative Defenses ("Answer") to the Complaint for Judicial Termination of Condominium ("Complaint") filed by Plaintiff, Daniel J. Stermer, not individually, but solely as Receiver of the Heron Pond Condominium Association, Inc. ("Stermer" or "Petitioner").

INTRODUCTION

1. Admitted this is an action to terminate the condominium. US BANK denies Plaintiff is entitled to any relief against US BANK and demands strict proof thereof.
2. US BANK states that this paragraph contains no allegations directed at US BANK and therefore no response to this Paragraph is required. To the extent a response is required, US

BANK states that it does not know whether the document attached as Exhibit A is a true and correct copy of the Declaration. US BANK further states that if Exhibit A is a true and correct copy of the Declaration that it speaks for itself and to the extent the allegations in Paragraph 2 contradict the actual Declaration, the language of the Declaration controls.

3. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 3 of the Complaint and as such they are denied.

4. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 4 of the Complaint and as such they are denied.

5. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 5 of the Complaint and as such they are denied.

6. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. US BANK further states that the allegations in Paragraph 6 call for a legal conclusion to which no response is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 6 of the Complaint and as such they are denied.

THE PARTIES AND JOINING OWNERS

7. US BANK states that this paragraph contains no allegations directed at US BANK and therefore no response to this Paragraph is required. To the extent a response is required, US BANK states that it does not know whether the document attached as Exhibit B is a true and correct copy of the Receivership Order. US BANK further states that if Exhibit B is a true and correct copy of the Receivership Order, that it speaks for itself and to the extent the allegations in Paragraph 7 contradict the actual Receivership Order, the language of the Receivership Order controls.

8. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 8 of the Complaint and as such they are denied.

9. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 9 of the Complaint and as such they are denied.

10. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 10 of the Complaint and as such they are denied.

11. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US

BANK lacks sufficient knowledge or information as to the allegations in Paragraph 11 of the Complaint and as such they are denied.

12. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 12 of the Complaint and as such they are denied.

13. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 13 of the Complaint and as such they are denied.

14. US BANK states that this paragraph contains no allegations directed at US BANK and therefore no response to this Paragraph is required. To the extent a response is required, US BANK states that it does not know whether the document attached as Exhibit C is a true and correct copy of the Written Consents of the Joining Owners and therefore denied. US BANK further states that if Exhibit C is a true and correct copy of the Written Consents of the Joining Owners, that it speaks for itself and to the extent the allegations in Paragraph 14 contradict the actual Written Consents of the Joining Owners, the language of the Written Consents of the Joining Owners controls.

15. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 15 of the Complaint and as such they are denied.

16. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 16 of the Complaint and as such they are denied.

17. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 17 of the Complaint and as such they are denied.

18. Admitted this is an action to terminate the condominium. US BANK denies Plaintiff is entitled to any relief against US BANK and demands strict proof thereof.

19. US BANK admits that it has an interest in the litigation and the property whose address is 8439 SW 5th Street, Unit 203, Pembroke Pines, Florida 33025, by virtue of its mortgage in first lien position. US BANK lacks sufficient knowledge or information as to the remaining allegations in Paragraph 19 of the Complaint and as such they are denied.

20. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 20 of the Complaint and as such they are denied.

21. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 21 of the Complaint and as such they are denied.

JURISDICTION AND VENUE

22. Admitted for jurisdictional purposes only.

23. Admitted.

24. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 24 of the Complaint and as such they are denied.

25. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 25 of the Complaint and as such they are denied.

26. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 26 of the Complaint and as such they are denied.

TERMINATION

27. Admitted this is an action to terminate the condominium. US BANK denies Plaintiff is entitled to any relief against US BANK and demands strict proof thereof.

28. The allegations in Paragraph 28 of the Complaint refer to documents or records which speak for themselves, to which no response is required. To the extent the allegations are contrary to the documents or records, they are denied.

29. The allegations in Paragraph 29 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

30. This paragraph calls for a legal conclusion, to which no response is required.

31. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 31 of the Complaint and as such they are denied.

32. The allegations in Paragraph 32 of the Complaint refer to documents or records which speak for themselves, to which no response is required. To the extent the allegations are contrary to the documents or records, they are denied. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 32 of the Complaint and as such they are denied.

33. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 33 of the Complaint and as such they are denied.

34. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 34 of the Complaint and as such they are denied.

35. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 35 of the Complaint and as such they are denied.

36. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 36 of the Complaint and as such they are denied.

37. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 37 of the Complaint and as such they are denied.

38. The allegations in Paragraph 38 of the Complaint refer to documents or records which speak for themselves, to which no response is required. To the extent the allegations are contrary to the documents or records, they are denied. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 38 of the Complaint and as such they are denied.

39. The allegations in Paragraph 39 of the Complaint refer to documents or records which speak for themselves, to which no response is required. To the extent the allegations are contrary to the documents or records, they are denied. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 39 of the Complaint and as such they are denied.

40. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 40 of the Complaint and as such they are denied.

41. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 41 of the Complaint and as such they are denied.

42. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 42 of the Complaint and as such they are denied.

43. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 43 of the Complaint and as such they are denied.

44. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 44 of the Complaint and as such they are denied.

45. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 45 of the Complaint and as such they are denied.

46. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 46 of the Complaint and as such they are denied.

47. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 47 of the Complaint and as such they are denied.

48. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 48 of the Complaint and as such they are denied.

49. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 49 of the Complaint and as such they are denied.

50. US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 50 of the Complaint and as such they are denied.

51. The allegations in Paragraph 51 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

52. The allegations in Paragraph 52 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

53. The allegations in Paragraph 53 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

54. The allegations in Paragraph 54 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

55. The allegations in Paragraph 55 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

56. The allegations in Paragraph 56 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

57. The allegations in Paragraph 57 of the Complaint refer to Florida Statutes which speak for themselves, to which no response is required. To the extent the allegations are contrary to the Florida Statutes, they are denied.

58. This paragraph calls for a legal conclusion, to which no response is required.

59. US BANK states that this Paragraph contains no allegations directed at Defendant and therefore no response to this Paragraph is required. To the extent a response is required, US BANK lacks sufficient knowledge or information as to the allegations in Paragraph 59 of the Complaint and as such they are denied.

60. This paragraph calls for a legal conclusion, to which no response is required.

61. This paragraph calls for a legal conclusion, to which no response is required.

62. This paragraph calls for a legal conclusion, to which no response is required.

In response to the Prayer of the Complaint, US BANK denies that it is liable to Plaintiff in any manner whatsoever under any theory whatsoever. US BANK further denies that Plaintiff is entitled to any relief sought in the Prayer of the Complaint.

AFFIRMATIVE DEFENSES

US BANK hereby sets forth the following affirmative and other defenses to the Complaint. By asserting the defenses set forth below, US BANK does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these defenses. Nor does US BANK admit that Plaintiff is relieved of his burden to prove each and every element of his claims and the damages, if any, to which he is entitled. US BANK reserves the right to amend its Affirmative and Other Defenses to the Complaint to conform to the evidence as determined in discovery or at trial.

FIRST AFFIRMATIVE DEFENSE
(Mortgage to be Satisfied First)

US BANK's mortgage lien is superior in right, title and dignity to the entitlement of Plaintiff or its co-defendants to any funds realized from the partition action pertaining to the unit securing US BANK's lien. Any such funds realized or generated from the partition of the property herein must first be paid to US BANK, until such time as US BANK has been paid in full all sums due under the note secured by US BANK's mortgage as to the subject unit.

SECOND AFFIRMATIVE DEFENSE
(F.S. §§ 64.071 and 64.081)

Pursuant to the referenced statutes, any sale ordered by the Court, either public or private, shall be subject to the condition that the proceeds be sufficient to satisfy the balance of US BANK's mortgage, including attorney fees and costs, which are due to US BANK under the terms of its mortgage. Any partition sale proceeds paid to Plaintiff or any co-defendants should be done with any surplus after US BANK is paid in full to satisfy its lien position. Further, US BANK should not be bound to pay a share of the costs of attorney fees or costs of Plaintiff or any other defendants. Any fees or costs paid to Plaintiff or any co-defendants should be done with any surplus after US BANK is paid in full to satisfy its mortgage lien.

THIRD AFFIRMATIVE DEFENSE
(Mortgage Rights Unaffected by Sale)

Any purchaser of the real property securing US BANK's lien subject to this action that purchases and obtains title to the real property shall purchase the property subject to an inferior to US BANK's mortgage lien. Any such partition sale shall not extinguish US BANK's mortgage lien or US BANK's entitlement to pursue all rights arising from its mortgage, including the right to foreclose the same prior to or subsequent to a partition sale and/or the issuance of a Certificate of Title arising therefrom.

FOURTH AFFIRMATIVE DEFENSE
(Mortgage Lien Survives Sale)

US BANK's mortgage lien shall survive and be superior in right, title, dignity to any attempt by Plaintiff to sell, partition or dispose of the real property subject to this action.

FIFTH AFFIRMATIVE DEFENSE
(Acceleration Upon Sale)

The sale, conveyance, or other transfer of interest in and to the real property as a result of this action may result in an acceleration of the balance due and owing US BANK under its note and mortgage.

SIXTH AFFIRMATIVE DEFENSE
(Request for Equitable Adjustments)

To the extent that Unit 203 has been improved in good faith, without intention to gain advantage and not for purposes of hindering the partition, but for the enhanced value of the property as a result of the improvements, US BANK requests the court to make equitable adjustments, accordingly. See *Biondo v. Powers*, 743 So. 2d 161 (Fla 4th DCA 1999) and *Shroeder v. Lawhon*, 922 So. 2d 285 (Fla 2nd DCA 2016) holding that an unequal division of real property can be justified when one co-tenant improved the real property without contribution from the other co-tenant.

SEVENTH AFFIRMATIVE DEFENSE
(Request for Consideration of Contributions)

To the extent that Unit 203 has paid the association dues and special assessments, as well as taxes and insurance, and to the extent that (1) other units may not have paid and/or (2) benefit therefrom was not realized, US BANK requests the court to make equitable adjustments, accordingly. See *Biondro, supra*.

Respectfully submitted,

/s/ Rosannie T. Morgan, Esq.

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Co-counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 17, 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida E-Portal, which will send an electronic service copy to:

Brian G Rich, Esq.

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