

**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.,

Case No. CACE-24-015112

Plaintiff,

v.

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

Defendant(s).

ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Mortgage Electronic Registration Systems, Inc. (**MERS**), as Mortgagee, as Nominee for Countrywide Mortgage Ventures, LLC DBA LendingLink, its successors and assigns, by and through undersigned counsel, hereby answers the Complaint and asserts the following affirmative defenses.

INTRODUCTION

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

2. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS states that it does not know whether the document attached as Exhibit A is a true and correct copy of the Declaration. MERS 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. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 3 are true, therefore denied.

4. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 4 are true, therefore denied.

5. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 5 are true, therefore denied.

6. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. MERS further states that the allegations in paragraph 6 appear to call for a legal conclusion to which no response is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 6 are true, therefore denied.

THE PARTIES AND JOINING OWNERS

7. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS states that it does not know whether the document attached as Exhibit B is a true and correct copy of the Receivership Order. MERS 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. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS states that it does not know whether the document attached as Exhibit B is a true and correct copy of the Receivership Order therefore denied. MERS 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 8 contradict the actual Receivership Order, the language of the Receivership Order controls.

9. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 9 are true, therefore denied.

10. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 10 are true, therefore denied.

11. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 11 are true, therefore denied.

12. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 12 are true, therefore denied.

13. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 13 are true, therefore denied.

14. MERS states that this paragraph contains no allegations directed at MERS and

therefore no response this paragraph is required. To the extent a response is required, MERS 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 therefore denied. MERS further states that if Exhibit C is a true and correct copy of the Written Consents of the Joining Owners and the Joining Owners consent is valid, the document speaks for itself and to the extent the allegations in paragraph 14 contradict the actual Written Consents of the Joining Owners, the Written Consents of the Joining Owners controls to the extent the joining owners actually consented and such consent was valid.

15. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS states that it does not know whether the document attached as Exhibit D is a true and correct copy of all Heron Pond Unit Owners, therefore denied.

16. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. MERS further states that the allegations in paragraph 16 appear to call for a legal conclusion to which no response is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 16 are true, therefore denied.

17. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. MERS further states that the allegations in paragraph 17 appear to call for a legal conclusion to which no response is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 17 are true, therefore denied.

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

19. MERS admits that it has an interest in the litigation and the property whose address is 164 SW 83rd Way (Building 3, Unit 201), Pembroke Pines, Florida 33025, by virtue of its first position lien recorded in the Official Records of Broward County at Book 42765, Page 255. MERS is without knowledge of the remaining allegations in paragraph 19 therefore denied.

20. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. MERS further states that the allegations in paragraph 20 appear to call for a legal conclusion to which no response is required. To the extent a response is required, MERS does not know whether the allegations in paragraph 20 are true, therefore denied.

21. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS incorporates its response regarding Exhibit C above. MERS further states that it does know whether the remaining allegations in paragraph 21 are true, therefore denied.

JURISDICTION AND VENUE

22. Admitted for jurisdictional purposes only.

23. Admitted.

24. MERS denies the allegations in paragraph 24. Specifically, Plaintiff failed to comply with Section XXV Rights Reserved Unto Institutional First Mortgagees which requires the Association to give written notice of, among other issues, any damage or condemnation to condominium property and any items requiring mortgagee consent. Plaintiff further failed to comply with the Termination requirements set forth in Section X.

25. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS states

it has no knowledge of the allegations in paragraph 25, therefore denied.

26. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required. To the extent a response is required, MERS states it has no knowledge of the allegations in paragraph 25, therefore denied.

TERMINATION

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

28. The allegations in paragraph 28 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 28 contradict Section XI, the Declaration controls.

29. The allegations in paragraph 29 of the Complaint refer to the Florida Statutes which speak for themselves. To the extent the allegations in paragraph 29 contradict the Florida Statutes, the Florida Statutes control.

30. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, MERS denies the allegations in paragraph 30.

31. MERS lacks sufficient knowledge or information as to the allegations in paragraph 31 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 31.

32. The allegations in paragraph 32 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 32 contradict the referenced Receiver Motion filed in the Receivership Case, the Receiver Motion controls, subject to a finding that the allegations within are supported by competent, substantial evidence. To the extent a further response is required, MERS denies the allegations in paragraph 32 because it does not know if

they are true.

33. MERS lacks sufficient knowledge or information as to the allegations in paragraph 33 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 33.

34. MERS lacks sufficient knowledge or information as to the allegations in paragraph 34 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 34.

35. MERS lacks sufficient knowledge or information as to the allegations in paragraph 35 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 35.

36. MERS states that it does not know whether the documents attached as Exhibit F is a true and correct copy of the City's Unsafe Structure Notices, therefore denied. MERS further states that if Exhibit F is a true and correct copy of the City's Unsafe Structure Notices, the document speaks for itself and to the extent the allegations in paragraph 36 contradict the City's Unsafe Structure Notices, the City's Unsafe Structure Notices control.

37. MERS states that it does not know whether the documents attached as Exhibit G is a true and correct copy of the ACG Engineering Report, therefore denied. MERS further states that if Exhibit G is a true and correct copy of the ACG Engineering Report, the document speaks for itself and to the extent the allegations in paragraph 37 contradict the ACG Engineering Report, the ACG Engineering Report controls. MERS denies the remaining allegations in paragraph 37 because it does not know if they are true.

38. The allegations in paragraph 38 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 38 contradict the ACG

Engineering Report, the ACG Engineering Report controls.

39. The allegations in paragraph 39 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 39 contradict the ACG Engineering Report, the ACG Engineering Report controls.

40. The allegations in paragraph 40 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 40 contradict the City's Unsafe Structure Notices, the City's Unsafe Structure Notices control.

41. MERS lacks sufficient knowledge or information as to the allegations in paragraph 41 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 41.

42. MERS lacks sufficient knowledge or information as to the allegations in paragraph 42 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 42.

43. MERS lacks sufficient knowledge or information as to the allegations in paragraph 43 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 43.

44. MERS lacks sufficient knowledge or information as to the allegations in paragraph 44 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 44.

45. MERS lacks sufficient knowledge or information as to the allegations in paragraph 45 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 45.

46. MERS lacks sufficient knowledge or information as to the allegations in paragraph

46 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 46.

47. The allegations in paragraph 47 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 47 contradict the 25-year inspection letters, the 25-year inspection letters control.

48. MERS lacks sufficient knowledge or information as to the allegations in paragraph 48 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 48.

49. MERS lacks sufficient knowledge or information as to the allegations in paragraph 49 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 49.

50. MERS lacks sufficient knowledge or information as to the allegations in paragraph 50 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 50.

51. The allegations in paragraph 51 of the Complaint refer to the Florida Statutes which speak for themselves. To the extent the allegations in paragraph 51 contradict the Florida Statutes, the Florida Statutes control.

52. MERS lacks sufficient knowledge or information as to the allegations in paragraph 52 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 52.

53. MERS lacks sufficient knowledge or information as to the allegations in paragraph 53 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 53.

54. MERS lacks sufficient knowledge or information as to the allegations in paragraph 54 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 54.

55. MERS lacks sufficient knowledge or information as to the allegations in paragraph 55 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 55.

56. MERS lacks sufficient knowledge or information as to the allegations in paragraph 56 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 56.

57. MERS lacks sufficient knowledge or information as to the allegations in paragraph 57 of the Complaint. To the extent a response is required, MERS denies the allegations in paragraph 57.

58. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, MERS denies the allegations in paragraph 58.

59. MERS states that this paragraph contains no allegations directed at MERS and therefore no response this paragraph is required.

60. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, MERS denies the allegations in paragraph 60.

61. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, MERS denies the allegations in paragraph 61.

62. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, MERS denies the allegations in paragraph 62.

RESPONSE TO REQUEST FOR RELIEF CLAUSE

MERS denies Plaintiff is entitled to any relief against MERS in this action, denies Plaintiff is entitled to damages, costs, or attorney's fees from or against MERS, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

MERS, having answered the Complaint, now asserts the following Affirmative Defenses:

1. *Failure to State a Claim* – Plaintiff fails to state a claim against MERS upon which relief can be granted.
2. *MERS's First-Position Lien* – MERS holds first-priority as the mortgagee under the mortgage attached to the subject property located at 164 SW 83rd Way (Building 3, Unit 201), Pembroke Pines, Florida 33025. The mortgage was executed by borrower Marilyn Gallego on August 2, 2006, and was recorded in the Official Records of Broward County as Instrument No. 106428512. The total amount due to MERS under the mortgage will be provided under separate affidavit/notice of claim; however, the face value of the mortgage demonstrates an amount of \$141,120.00 lent to Ms. Gallego. To the extent the court orders the Heron Pond Condominium be terminated pursuant to Fla. Stat. § 718.118 and/or approves the sale of the Condominium or other activities that may generate proceeds or assets related to Unit 201, in whole or in part, MERS should be paid a proportionate share of the proceeds or assets based upon the value of Unit 201, as set forth in paragraph 11 of the mortgage, and any other applicable provisions thereof.
3. *Conditions Precedent* - Plaintiff failed to comply with conditions precedent to termination because it failed to comply with Section XXV Rights Reserved Unto Institutional First Mortgagees which requires the Association to give written notice of, among other issues,

any damage or condemnation to condominium property and any items requiring mortgagee consent. Plaintiff further failed to comply with the Termination requirements set forth in Section X.

4. *Right to Contest* – Should the court enter a termination plan, MERS reserves the right to contest pursuant to Fla. Stat. § 718.117(6).
5. *Full and Complete Payment* – Should the court enter a termination plan, MERS states that any termination plan sought must provide for the full and complete payment of MERS's mortgage to satisfy MERS's lien against Unit 201 from the proceeds resulting from the sale of Unit 201.
6. *Limitation on Court Action Under 12 U.S.C. §4617(f)* – Fannie Mae is the investor of the subject mortgage and is currently under the conservatorship of the Federal Housing Finance Agency. Under 12 U.S.C. §4617(f), no court may take any action to restrain or affect the exercise of the Conservator's powers including, but not limited to, the imposition of any injunctive relief, restraining or affecting the exercise of its powers or functions.
7. *MERS Lien is Protected Under 12 U.S.C. §4617(j)(3)* – Under 12 U.S.C. §4617(j)(3), Plaintiff is barred from recovering any non-monetary relief, including but limited to levies, attachments, garnishments, foreclosures or sales, of or against MERS's lien and interest in the subject property, unless the Conservator provides express written consent. Plaintiff is further barred from proceeding with any litigation that results in the extinguishing of MERS's mortgage or subordinating MERS's lien by foreclosure sale or otherwise without the prior express consent of the Conservator.
8. *Agency Preemption under 12 U.S.C. §4617(a)(7)* – The Plaintiff's requests for relief are barred, in whole or in part, by 12 U.S.C. §4617(a)(7), which limits external interference

with the Federal Housing Finance Agency's actions as conservator by providing that "when acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency," and preempts any state law to the contrary.

9. *Reservation of Rights* – MERS reserves its right to exercise any remedies it may have under the mortgage and subject note against Marilyn Gallego to the extent the amount received under the termination plan is not sufficient to satisfy Marilyn Gallego's obligations under the note and mortgage unless personal liability has been discharged.

MERS expressly reserves the right to amend, supplement, or otherwise add to these affirmative defenses as litigation progresses and additional information is discovered.

TROUTMAN PEPPER LOCKE

Dated: January 29, 2025

By: /s/ Anthony Calenzo, Esq.

Anthony Calenzo, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 29, 2025, a true and correct copy was served by E-service on: **Brian G. Rich, Esq.**, Berger Singerman LLP, 201 East Las Olas Blvd., Suite 1500, Fort Lauderdale, FL 33301, brich@bergersingerman.com; jwertman@bergersingerman.com;

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/s/ Anthony Calenzo, Esq.
Attorney