

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

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

CASE NO.: CACE-24-015112  
DIVISION: 12

Plaintiff,

v.

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

Defendants.

**ANSWER AND DEFENSE OF WILMINGTON TRUST, NA, SUCCESSOR TRUSTEE  
TO CITIBANK, N.A., AS TRUSTEE FOR THE BENEFIT OF REGISTERED HOLDERS  
OF STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2007-AR3,  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR3 TO COMPLAINT  
FOR JUDICIAL TERMINATION OF CONDOMINIUM**

Defendant Wilmington Trust, NA, successor trustee to Citibank, N.A., as Trustee for the benefit of registered holders of Structured Asset Mortgage Investments II Trust 2007-AR3, Mortgage Pass-Through Certificates, Series 2007-AR3 ("Defendant"), through undersigned counsel, hereby files this Answer and Affirmative Defenses, based on its mortgage lien on the property located at 100 SW 83<sup>rd</sup> Way, #204, Pembroke Pines, FL 33025, and states as follows:

**INTRODUCTION**

1. Defendant is without knowledge, therefore denied.
2. Defendant is without knowledge, therefore denied.
3. Defendant is without knowledge, therefore denied.
4. Defendant is without knowledge, therefore denied. Defendant demands strict proof thereof.

5. Defendant is without knowledge, therefore denied. Defendant demands strict proof thereof.
6. Defendant is without knowledge, therefore denied.

### **THE PARTIES AND JOINING OWNERS**

#### **PLAINTIFF**

7. Admitted that Exhibit B is attached to the Complaint. Except as expressly admitted, denied.
8. Admitted that Exhibit B speaks for itself. Except as expressly admitted, denied.

#### **JOINING OWNERS**

9. Defendant is without knowledge, therefore denied.
10. Defendant is without knowledge, therefore denied.
11. Defendant is without knowledge, therefore denied.
12. Defendant is without knowledge, therefore denied.
13. Defendant is without knowledge, therefore denied.
14. Admitted that Composite Exhibit C is attached to the Complaint. Except as expressly admitted, denied.

#### **DEFENDANTS**

15. Admitted that Exhibit D is attached to the Complaint. Except as expressly admitted, denied.
16. Admit.
17. Admit.
18. Admit.
19. Admitted that Exhibit E is attached to the Complaint. Admitted that Defendant has an interest in the Condo Property as the owner and holder of the Mortgage recorded on May 21, 2007, granted by Maria Ruiz, as to the property located at 100 SW 83<sup>rd</sup> Way, #204, Pembroke Pines, FL 33025. Except as expressly admitted, denied.
20. Admitted that Exhibit C is attached to the Complaint. Except as expressly admitted, denied.

21. Admitted that Exhibit C is attached to the Complaint. Except as expressly admitted, denied.

#### JURISDICTION AND VENUE

Admitted for jurisdictional purposes only.

22. Admitted for venue purposes only.

23. Defendant is without knowledge, therefore denied.

24. Defendant is without knowledge, therefore denied.

25. Defendant is without knowledge, therefore denied.

#### TERMINATION

26. Admit.

27. The Declaration speaks for itself.

28. Florida Statute §718.118 speaks for itself.

29. Denied.

30. Defendant is without knowledge, therefore denied.

31. Defendant is without knowledge, therefore denied.

32. The Receivership Order speaks for itself. As to all other allegations in paragraph 33, Defendant is without knowledge, therefore denied.

33. Admit that Receiver Reports are posted on the Receiver's website. As to all other allegations in paragraph 34, Defendant is without knowledge, therefore denied.

34. Defendant is without knowledge, therefore denied.

35. Admitted that Composite Exhibit F is attached to the Complaint. Except as expressly admitted, denied.

36. Admitted that Composite Exhibit G is attached to the Complaint. Except as expressly admitted, denied.

37. Defendant is without knowledge, therefore denied.

38. Defendant is without knowledge, therefore denied.

39. Defendant is without knowledge, therefore denied.
40. Defendant is without knowledge, therefore denied.
41. Defendant is without knowledge, therefore denied.
42. Defendant is without knowledge, therefore denied.
43. Defendant is without knowledge, therefore denied.
44. Defendant is without knowledge, therefore denied.
45. Defendant is without knowledge, therefore denied.
46. Defendant is without knowledge, therefore denied.
47. Defendant is without knowledge, therefore denied.
48. Admitted that Unit Owners with mortgages encumbering their Units must continue to pay their monthly mortgage obligations, including Defendant's borrower, Maria Ruiz. As to the remaining allegations in paragraph 49, Defendant is without knowledge, therefore denied.
49. Defendant is without knowledge, therefore denied.
50. Defendant is without knowledge, therefore denied.
51. Defendant is without knowledge, therefore denied.
52. Defendant is without knowledge, therefore denied.
53. Defendant is without knowledge, therefore denied.
54. Defendant is without knowledge, therefore denied.
55. Defendant is without knowledge, therefore denied.
56. Defendant is without knowledge, therefore denied.
57. Defendant is without knowledge, therefore denied.
58. Defendant is without knowledge, therefore denied.
59. Defendant is without knowledge, therefore denied.

60. Defendant is without knowledge, therefore denied.

61. Admit that Plaintiff proposes to bifurcate the proceedings.

### **AFFIRMATIVE DEFENSES**

1. Defendant is the owner and holder of that certain note and Mortgage granted by Maria Ruiz, dated March 21, 2007 and recorded on May 21, 2007, in Book 44067, Page 1911 of the Official Records of Broward County, Florida, (“**Mortgage**”). The Mortgage is a first priority lien encumbering the property located at 100 SW 83<sup>rd</sup> Way, #204, Pembroke Pines, FL which is located within the Condo Property and legally described as follows:

**CONDOMINIUM UNIT NO. 204, IN BUILDING NO. 2, OF HERON POND CONDOMINIUM, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 42216, page 910, of the Public Records of Broward County, Florida.**

(“**Property**”). Accordingly, Defendant, has an interest in the Property and the proceeds resulting from any sale or termination of the Property or Condo Property. As of January 21, 2025, the amounts owed under the loan include the unpaid principal balance of \$10,653.92, together with interest, advances, fees and costs, including ongoing and future advances and attorney’s fees.

2. Plaintiff fails to state a cause of action for equitable relief under Florida Statute §718.118, and failed to mitigate its damages, as the Property and the Condo Property as a whole have not suffered “substantial damage to or destruction of all or a substantial part of the condominium property ...” or “substantial damage to or destruction of all or a substantial part of the Condominium Property ...” under Section XI of the Declaration. Paragraphs 27 – 62 set forth allegations which describe a situation where the Condo Property and the Property were not properly maintained by the Heron Pond Condominium Association, Inc., resulting in the current deteriorated condition of the Condo Property and the Property, which circumstances are addressed

under Florida Statute §718.117(2), “Termination Because of Economic Waste or Impossibility,” and Plaintiff does not allege or sufficiently state a cause of action for condominium termination under Florida Statute §718.117, et. seq.

**RESERVATION OF RIGHT TO AMEND OR SUPPLEMENT  
AFFIRMATIVE DEFENSES**

Defendant reserves the right to amend or supplement these affirmative defenses, including raising additional affirmative defenses.

**PRAYER FOR ATTORNEYS’ FEES AND COSTS**

Defendant retained the undersigned counsel to represent it in this matter. Under Florida law and the subject loan documents, including Paragraph 9 of the Mortgage, Defendant is entitled to attorneys’ fees and costs to defend its interest in these proceedings.

WHEREFORE, Defendant respectfully requests this Court to order that all amounts owed to the Defendant under the Mortgage be paid from the proceeds from the termination or sale of the subject property, to protect Defendant’s interests in the property, including the first priority lien of the Mortgage, to award Defendant’s attorneys’ fees and costs and for such other and further relief as the Court deems just and reasonable.

QUARLES & BRADY LLP

By: /s/ Joseph T. Kohn

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*Counsel for Defendant,  
FirstKey Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was filed on January 27, 2025, using the Court's Florida E-filing Portal which will electronically serve a copy of the foregoing to all registered parties.

/s/ Joseph T. Kohn

Joseph T. Kohn