

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

AMANDA R. WENSEL, Individually and
as the Representative of a Class of Similarly
Situated Persons,

Case No. 15-_____

Document No. 1

Representative Plaintiff,

v.

THE BANK OF NEW YORK, as Trustee
of CWABS Asset-Backed Certificates
Trust 2007-BC3,

Defendant.

CLASS ACTION COMPLAINT – JURY TRIAL DEMANDED

Plaintiff Sergeant Amanda R. Wensel, through her counsel, brings this action on behalf of herself and all other persons similarly situated against the Defendant, The Bank of New York, in its capacity as the trustee of the CWABS Asset-Backed Certificates Trust 2007-BC3, for violations of the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (the "SCRA"), and in support thereof, alleges as follows:

INTRODUCTION

1. While Sergeant Wensel was on active duty in the armed services of the United States, the Defendant, as the Trustee of the CWABS Asset-Backed Certificates Trust 2007-BC3, improperly sold, foreclosed upon or seized her home. Sergeant Wensel's story is all too familiar: Sergeant Wensel was called up to support Operation Enduring Freedom, and when she returned "home" after serving in an area of Afghanistan that her orders describe as an "imminent danger pay area," Sergeant Wensel found that she had no home to return to because while she was in

that "imminent danger pay area," the Defendant, in a clear violation of the SCRA, caused her home to be sold at a foreclosure sale.

2. Congress enacted the SCRA "to provide for, strengthen, and expedite the national defense through [the] protection . . . of servicemembers . . . [so as] to enable such persons to devote their entire energy to the defense needs of the Nation. . . ." 50 U.S.C. App. § 502(1). The SCRA accomplishes this goal by providing for "the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their military service." *Id.* at § 502(2).

3. The protections of the SCRA extend to, *inter alia*, members of the Army, Navy, Air Force, Marine Corps and Coast Guard while on active duty. The SCRA also protects members of the military reserves who are called to active service authorized by the President or the Secretary of Defense for more than 30 consecutive days for purposes of responding to a national emergency. *Id.* at § 511.

4. Among the protections afforded active duty servicemembers, the SCRA limits a lender's ability to foreclose on an active duty servicemember's property. For instance, "[a] sale, foreclosure, or seizure of property for a breach of an obligation" secured by a mortgage, deed of trust or other security in the nature of a mortgage "shall not be valid if made during, or within one year after, the period of the servicemember's military service except "upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court." *Id.* at § 533(c). In short, when it comes to active-duty military personnel, judges must be part of the foreclosure process.

5. Moreover, an active duty servicemember is not required to notify his or her mortgage lender that the member is on active duty. Rather, the party seeking to foreclose on the

property in which it claims an interest is charged with determining whether the defendant in its action is protected by the SCRA. *Id.* at § 521(b).

6. The SCRA also provides that "any person" aggrieved by a violation of the SCRA may recover in a civil action "appropriate equitable or declaratory relief," "all other appropriate relief, including monetary damages," and the "costs of the action, including a reasonable attorney fee." *Id.* at § 597(a).

PARTIES, JURISDICTION AND VENUE

7. Representative Plaintiff Amanda R. Wensel is an E-5/Sergeant in the United States Army Reserves and a citizen and resident of the Commonwealth of Pennsylvania. During the foreclosure proceedings at issue in this complaint, Sergeant Wensel was engaged in a period of military service in the United States Army Reserves and is entitled to the protections of the SCRA.

8. Defendant The Bank of New York is corporation organized under the laws of the State of New York and is headquartered in New York, New York.

9. The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the claims arise under the SCRA. The court also has subject matter jurisdiction under 28 U.S.C. § 1332(a) and under the Class Action Fairness Act of 2005, codified in pertinent part at 28 U.S.C. § 1332(d)(2).

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Sergeant Wensel resides in this district and because many of the acts and transactions forming the basis of the claims in this action occurred in this district.

FACTUAL ALLEGATIONS

A. The CWABS Asset-Backed Certificates Trust 2007-BC3 And The Defendant As Trustee.

11. At the time it collapsed, Countrywide Home Loans, Inc. ("Countrywide") was the nation's largest residential mortgage lender. In 2005 and 2006 alone, Countrywide originated in excess of \$850 billion in home loans throughout the United States.

12. Countrywide pooled many of the residential mortgage loans that it either originated or purchased and deposited them into wholly-owned special-purpose entities (each, an "SPE"). An SPE -- Countrywide called each a "trust" -- then securitized the mortgages that Countrywide had transferred to it into mortgage-backed securities and sold them to investors in the form of certificates. From 2004 until 2007, Countrywide registered with the Securities and Exchange Commission (the "SEC") no fewer than 484 SPEs with a total offering value approaching \$400 billion.

13. The certificates issued by each SPE entitled investors to receive monthly distributions of principal and interest from the cash flow generated from the mortgages held by the issuing SPE. As the SPEs collected payments each month from mortgagors, the holders of certificates received from the SPEs pre-determined payments of principal and interest as fixed by the certificates. As borrowers defaulted on their mortgage loans, those losses likewise flowed to the certificate holders.

14. The Trust for which the Defendant acted as trustee at the times relevant to this action, the CWABS Asset-Backed Certificates Trust 2007-BC3, is one of those 484 securitizations that Countrywide registered with the SEC between 2004 and 2007. This particular securitization was backed by adjustable-rate and fixed-rate first lien subprime

residential mortgages valued at \$551,418,100 which Countrywide acquired from, among others, The CIT Group/Consumer Finance, Inc. ("CIT").

B. The Defendant's Illegal Foreclosure Of Sergeant Wensel's Mortgage.

15. Since 2003, Sergeant Wensel has been employed full-time by Westinghouse Air Brake Technologies as a multi-service operator. Sergeant Wensel first served in the Army Reserves from 1995 until 2003, when she was honorably discharged with the rank of Private First Class. In August 2009, she re-enlisted in the Army Reserves, and her current enlistment expires in 2015.

16. On April 13, 2007, Sergeant Wensel borrowed \$64,500 from CIT so that she could purchase a home located at 15306 Route 286 Highway, Clarksburg, Pennsylvania 15725. To evidence that loan, Sergeant Wensel executed and delivered to CIT a note in the principal amount of \$64,500 (the "Note").

17. To secure her obligations under the Note, Sergeant Wensel executed and delivered to CIT a Real Property Mortgage dated the same date as the Note (the "Mortgage," and with the Note and the other documents executed in connection therewith, the "Loan Documents") under which she granted to CIT a first priority lien on her home. CIT properly recorded the Mortgage with the Recorder of Deeds of Indiana County, Pennsylvania (the "Recorder").

18. CIT subsequently assigned the Loan Documents to an SPE controlled by Countrywide -- the CWABS Asset-Backed Certificates Trust 2007-BC3 -- for which the Defendant serves as trustee. An assignment of the Mortgage identifying the Defendant as Trustee was subsequently recorded.

19. According to the Defendant, Sergeant Wensel defaulted on her obligations arising under the Loan Documents, and as a result of that alleged default, the Defendant on October 8,

2008, commenced a mortgage foreclosure action against Sergeant Wensel and Moyer in the Court of Common Pleas of Indiana County, Pennsylvania (the "Common Pleas Court") at No. 12101 CD 2008.

20. In 2007, The Bank of New York merged with Mellon Financial Corporation to form "The Bank of New York/Mellon Corporation." Because it was "The Bank of New York" (as opposed to the successor entity) that commenced the foreclosure action against Sergeant Wensel in October 2008, it appears that the successor entity continues to do business as "The Bank of New York." Accordingly, Sergeant Wensel has named "The Bank of New York" as the defendant here.

21. On October 21, 2008, Moyer, who Sergeant Wensel was no longer dating, was personally served with the foreclosure complaint in Trafford, Pennsylvania where he then lived.

22. Because it was unable to effect personal service on Sergeant Wensel, the Defendant on December 4, 2009, obtained an Order from the Common Pleas Court authorizing service on Sergeant Wensel by posting the complaint at her home and by mailing it to Sergeant Wensel at the property address. According to the docket in the foreclosure action, the Defendant complied with the service requirements of that Order.

23. In a notice dated February 17, 2010, and mailed to Sergeant Wensel at the property address, the Defendant stated that it intended to enter a default judgment against her unless Sergeant Wensel pleaded to the foreclosure complaint within ten (10) days of the date of that notice.

24. On March 3, 2010, the Defendant requested that a default judgment (the "Judgment") be entered against Sergeant Wensel in the amount of \$84,273.07, comprising \$74,652.12 in principal and \$9,620.95 in accrued but unpaid interest from July 3, 2008 through

March 1, 2010. (As an aside, it is unclear to Sergeant Wensel how the principal amount claimed by the Defendant in the judgment exceeded the amount that she originally borrowed.)

25. In connection with obtaining its default judgment against Sergeant Wensel, the Defendant, through its counsel, filed an "Affidavit of Non-Military Service," dated March 1, 2010, in which the Defendant's counsel stated under oath that Sergeant Wensel was "not in the Military or Naval Service of the United States or its Allies, or otherwise within the provisions of the Soldiers' and Sailors' Civil Relief Act of Congress of 1940 as amended."

26. In fact, that affidavit was false because at that time Sergeant Wensel was, and still is, in the military service of the United States.

27. On March 4, 2010, the Prothonotary of the Common Pleas Court mailed a notice to Sergeant Wensel at her home address informing her that the default judgment had been entered against her in the foreclosure action.

28. On April 15, 2010, the Defendant caused a writ of execution to be issued against Sergeant Wensel's home. Pursuant to that writ, Sergeant Wensel's property was scheduled to be sold at a sheriff's sale scheduled for June 25, 2010.

29. At the Defendant's request, that sheriff sale was adjourned multiple times from the original June 25, 2010 sale date. But the reasons for those adjournments wasn't always clear. For instance, when it sought to delay the sale from November 19, 2010 until January 28, 2011, the Defendant told the Common Pleas Court in its motion seeking that adjournment that "[t]his request is made consistent with the Bank of America's [sic] extended review of foreclosure documentation. Bank of America's [sic] initial assessment findings show the basis for its foreclosure decisions is accurate. Under the circumstances, we respectfully request that the Court postpone the sale until or after December 1, 2010 to enable Bank of America [sic] to

complete its review and facilitate the process." Whatever the reasons for the delays, the Defendant did not cause Sergeant Wensel's property to be sold until January 27, 2012, at which time the Defendant credit bid the value of its lien and took title to Sergeant Wensel's property.

30. More than four (4) months prior to the date on which the Defendant caused Sergeant Wensel's property to be sold, the Department of the Army, by orders dated September 13, 2011, ordered Sergeant Wensel to active duty in support of Operation Enduring Freedom with a duty station in Kunduz, Afghanistan. Sergeant Wensel received her deployment orders by mail no later than September 20, 2011, and deployed as required by her orders.

31. Sergeant Wensel's active duty ended in early February 2013, and she returned to the United States. Shortly thereafter, Sergeant Wensel learned for the first time that the Defendant had bought her home at the foreclosure sale.

32. The Defendant subsequently sold Sergeant Wensel's home to a third party. Sergeant Wensel received no money from that sale. As for the personal property that Sergeant Wensel had at the property at that time she deployed, she had no chance to claim it before the Defendant caused it to be hauled from the property.

CLASS ACTION ALLEGATIONS

33. In accordance with Fed. R. Civ. P. 23, Sergeant Wensel brings this action pursuant to the SCRA on behalf of the following class (the "Class"):

Any servicemember residing in any State or Territory of the United States who was obligated on a debt instrument that was secured by a mortgage, deed of trust or other security in the nature of a mortgage that originated prior to the period of the servicemember's military service and who, within the statute of limitations as extended or tolled by any period of military service:

(i) was on "active duty," as defined in 50 U.S.C. App. § 511(2), or had the protections of the SCRA by virtue of § 516 or was within the grace period provided under § 533; and

(ii) whose property was foreclosed, sold or seized by, or on behalf of, the Defendant in its capacity as Trustee of the CWAB Asset-Backed Certificates Trust 2007-BC3, without the prior court order required by 50 U.S.C. App. § 533(c); and

(iii) who had not executed a written waiver of the rights and protections afforded by the SCRA.

34. This class action satisfies the requirements of Fed. R. Civ. P. 23, including, but not limited to, numerosity, commonality, typicality, adequacy and predominance.

35. The proposed class is so numerous that joinder of all members is impracticable. During the relevant time period, there were thousands of active duty servicemembers in the United States. Further, upon information and belief, the Defendant, as Trustee for the CWAB Asset-Backed Certificates Trust 2007-BC3, services a portfolio of thousands of residential mortgage loans which are secured by real property located throughout the United States. Because the mortgage obligations in Trust 2007-BC3 were subprime and thus had a higher likelihood of going into default, the Defendant during the time periods relevant to this action undoubtedly initiated thousands of foreclosure actions in its role as the Trustee of the CWAB Asset-Backed Certificates Trust 2007-BC3. Thus, the number of class members is likely to be in the hundreds. Moreover, given the geographic dispersion of the class members, joinder of all of the class members would be impossible.

36. Common questions of law and fact exist as to all of the members of the Class and predominate over any questions affecting only individual class members. Such questions include whether the Defendant in its role as Trustee of the Trust, did, and continues to, (a) foreclose on,

sell or seize the real property, (b) of active duty servicemembers, including those foreclosed upon following their completion of active duty, (c) without the prior court order required under 50 U.S.C. App. § 533.

37. Sergeant Wensel's claims are typical of the claims of all class members. Sergeant Wensel is making the same claims and seeking the same relief for herself and for all class members based upon the same federal statute. The Defendant has acted in the same or in a similar manner with respect to Sergeant Wensel and all of the class members.

38. Sergeant Wensel will fairly and adequately represent the interests of the Class. Sergeant Wensel has no adverse or conflicting interest to the proposed class members. She has retained counsel competent and experienced in complex civil litigation who possess all of the necessary resources to adequately and vigorously litigate this class action.

39. Class certification is appropriate because the prosecution of individual actions by class members would: (a) create the risk of inconsistent adjudications that could establish incompatible standards of conduct for the Defendant, and (b) as a practical matter, adjudication of Sergeant Wensel's claims will be dispositive of the interests of the class members who are not parties.

40. Class certification is also appropriate here because the Defendant has acted, or has refused to act, in the same or similar manner with respect to all class members, thereby making injunctive or declaratory relief appropriate. Sergeant Wensel demands such relief as authorized by the SCRA.

41. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impractical. Prosecution of separate claims by individuals runs the inherent risk of varying and inconsistent adjudications

which could lead to the establishment of conflicting standards of conduct for the Defendant and, for that matter, all mortgage lenders. A class action is also superior because it will lead to the orderly and expeditious administration of claims, and it will foster economies of time, effort and expense. Here, the expense, the magnitude of the claims and the burden of individual litigation make it impractical for members of the class to individually redress the wrongs they have suffered. This is particularly apparent in the instant matter because the class members are servicemembers, many of whom may still be on active duty in foreign lands. Sergeant Wensel knows of no difficulty that would make a class action in this case unmanageable.

COUNT I: VIOLATION OF 50 U.S.C. APP. § 533(C)

42. Sergeant Wensel realleges each and every allegation contained in paragraphs 1 through 41 above as though set out fully here.

43. 50 U.S.C. App. § 533(c) provides:

A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within one year after, the period of the servicemember's military service except --

- (1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or
- (2) if made pursuant to [a written waiver of the rights and protections provided by the SCRA].

44. Sergeant Wensel was on active duty with the United States Army starting no later than September 20, 2011 until February 6, 2013. During that period, the Defendant caused Sergeant Wensel's property to be sold, foreclosed upon or seized based on an alleged breach by

Sergeant Wensel of the Loan Documents even though no order of court or written waiver signed by Sergeant Wensel authorized the Defendant to take the action that it did.

45. The Defendant's actions violated 50 U.S.C. App. § 533(c) and were thus invalid, thereby entitling Sergeant Wensel and the Class members, pursuant to 50 U.S.C. App. § 597(a), to appropriate declaratory and/or injunctive relief and to recover monetary damages, punitive damages, other appropriate relief, costs of the action and attorney's fees.

46. As a result of the Defendant's illegal and improper conduct, Sergeant Wensel and members of the Class have lost their real property, along with any equity they had in it and have incurred additional and unnecessary expenses as a result of the Defendant's actions, suffered unwarranted damage to their credit ratings and otherwise suffered economic hardship.

DEMAND FOR JURY TRIAL

Sergeant Wensel and the members of the Class demand a Jury Trial on all issues triable of right by a jury.

RELIEF SOUGHT

WHEREFORE, Sergeant Wensel, on behalf of herself and all others similarly situated, requests the court grant the following relief:

- (i) That it certify this case a class action on behalf of the proposed Class;
- (ii) That it appoint Sergeant Wensel as the representative of the Class;
- (iii) That it appoint the undersigned counsel as counsel for the Class;
- (iv) That it grant judgment on Count I in favor of Sergeant Wensel and members of the Class declaring the Defendant's foreclosure policies and practices to be in violation of the SCRA and awarding Sergeant Wensel and the Class compensatory damages suffered as a result thereof;

- (v) That it award Sergeant Wensel and the Class punitive damages;
- (vi) That it award the Class prejudgment interest at the applicable rate;
- (vii) That it award the Class all direct and consequential damages allowed by law;
- (viii) That it award the Class all appropriate equitable and injunctive relief;
- (ix) That it award the Class its reasonable costs and attorney's fees; and
- (x) That it grant such other relief as the court deems proper under the circumstances.

Dated: January 15, 2015

Respectfully submitted,

/s/ Aurelius P. Robleto

Aurelius P. Robleto
PA I.D. No. 94633
ROBLETO LAW, PLLC
Three Gateway Center, Suite 1306
401 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 925-8194

*Counsel for Amanda R. Wensel and
the Proposed Class*