

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

GENERAL JURISDICTION DIVISION

10 16810

Palm Aire Gardens Condominium Association, Inc., a Florida Non Profit Corporation,

Plaintiff,

CASE NO.

v.
Wells Fargo Bank, N.A., and any unknown heirs, devisees, grantees, creditors, and other unknown persons or unknown spouses claiming by, through and under Wells Fargo Bank, N.A.,

COMPLAINT TO QUIET TITLE

Defendant(s).

Florida Bar No. 62015

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CLERK OF CIRCUIT COURT
BROWARD COUNTY, FLORIDA

COMES NOW, the Plaintiff, Palm Aire Gardens Condominium Association, Inc. (hereinafter referred to as "Association"), and brings this action to quiet title to real property against the Defendant(s), Wells Fargo Bank, N.A., (hereinafter referred to as "Wells Fargo"), and any unknown heirs, devisees, grantees, creditors and other unknown persons or unknown spouses claiming by, through and under Wells Fargo and in support of its claims for affirmative relief, alleges the following:

JURISDICTION OF THE COURT

1. This is an action to quiet title to property located and situated in Broward County, Florida pursuant Florida Statute §65.021.

THE PARTIES

2. The Plaintiff is a Florida Non Profit corporation organized and existing as a condominium association pursuant to Florida Statute §718, et. seq., to administer, manage and operate Palm Aire Gardens Condominium Association located in Broward County, Florida.

3. The Defendant, Wells Fargo, is a National Bank doing business under the laws of the United States.

4. On January 24, 2006, Mireya Acevedo acquired fee simple title to the following real property (hereinafter referred to as the "Property") situated in Broward County, Florida, and described as:

Unit No. 25, Building 4281, of PALM AIRE GARDENS CONDOMINIUM, according to the Declaration of Condominium thereof, recorded in Official Records Book 40119, Page 1225 of the Public Records of Broward County, Florida.

5. On or about January 25, 2006, in connection with the purchase of the Property, Mireya Acevedo executed and delivered a promissory note in favor of Wells Fargo. Upon information and belief, the original principal amount of the Promissory Note was \$184,410.00. To secure the payment of said note, Mireya Acevedo, then being the owner of record, executed and delivered a first mortgage which is attached as Exhibit "A", (hereinafter referred to as the "Mortgage"). Said Mortgage was recorded in Official Records Book 41485 at Page 359 of the Public Records of Broward County, Florida and encumbers the Property which is the subject matter of this litigation.

VALIDITY OF PLAINTIFF'S TITLE

6. Mireya Acevedo defaulted and failed to pay her share of condominium common expenses to the Association.

7. The Association filed a Claim of Lien against the Property on January 16, 2009, which was then owned by Mireya Acevedo and recorded same in Official Records Book 45925, at Page 345 of the Public Records of Broward County, Florida.

8. On April 21, 2009, the Association filed suit against Mireya Acevedo to foreclose its claim of lien in Broward County Circuit Case Number CACE09022884 (21). On September 22, 2009, the Court entered Summary Final Judgment in favor of the Association and against

Mireya Acevedo, foreclosing the Association's statutory Claim of Lien on the Property.

9. At the Foreclosure Sale of the Property, the bid placed by the Association in the amount of \$100.00 was the highest and only bid on the Property and the Association acquired the Property as the highest and best bidder.

10. The Clerk of Court issued a Certificate of Title for the Property to the Association on January 5, 2010, and recorded same in Official Records Book 46794 at Page 705 of the Public Records of Broward County. A true copy thereof is attached hereto as Exhibit "B".

11. The Association now holds title and possession to the Property.

**ABANDONMENT OF WELLS FARGO'S CLAIM TO ANY TITLE, RIGHT, OR
INTEREST**

12. Upon information and belief, it appears that the borrower is in egregious default of the Mortgage by presumably failing to make any mortgage payments for an extended period of time and allowing him/herself to be stripped of title to the subject Property. On October 7, 2008, Wells Fargo filed suit against Mireya Acevedo and the Association in Broward County Circuit Court Case Number CACE08048159 (09) to foreclose the Mortgage against the Property. Based upon the pleadings filed by Wells Fargo in the aforementioned case, Wells Fargo is due the sum of \$184,410.00 in principal under the Note and Mortgage, plus interest from January 20, 2008.

13. On February 23, 2009, Wells Fargo voluntarily dismissed its foreclosure action against the Property and released its Lis Pendens filed on the Property. Wells Fargo deliberately abandoned its interest in the Property and never paid any property taxes on the Property and never paid any monies to the Association for the condominium common expenses attributable to the Property. Wells Fargo's egregious failure to act has obligated the condominium association and its members to continue to bear the burden for the preservation of the condominium property.

14. Wells Fargo voluntarily dismissed its foreclosure action against the Property thus providing constructive notice that it has waived any right, interest, or title to said Property.

15. The Certificate of Title recorded by the Plaintiff in Official Records Book 46794, at Page 705 of the Public Records of Broward County, Florida creates a title that is superior in dignity to the right, title, claim of lien or interest of Wells Fargo or any entities or persons claiming by, through, under or against Wells Fargo to the extent provided by Florida Statutes.

**WELLS FARGO'S MORTGAGE REPRESENTS AN UNREASONABLE
RESTRAINT ON THE ALIENATION OF PROPERTY**

16. The Association continues to hold title to the Property, however, Wells Fargo's Mortgage acts as an absolute restriction on the sale of the Property. Under Florida law, "conditions that operate as restraints on alienation are held to be void against public policy." 22 Fla. Jur 2d Estates, Powers and Restraints § 70. Seagate Condominium Association, Inc. v. Duffy, 330 So.2d 484 (Fla. 4th DCA 1976); see also Metropolitan Dade County v. Sunlink Corporation, 642 So.2d 551 (Fla. 3rd DCA 1992). Given that Wells Fargo's encumbrance far exceeds the fair market value of the Property, there were no bidders when the Association foreclosed its lien. The Association received title to the Property after placing the minimum bid of \$100.00. Furthermore, no buyer will purchase the Property from the Association with an outstanding first mortgage held by Wells Fargo which greatly exceeds the value of the Property. Florida courts have consistently held that the rule disfavoring unreasonable restraints on alienation is based on the principle that the free alienability of property promotes economic and commercial development. Peavcy v. Reynolds, 946 So.2d 1125 (Fla. 5th DCA 2006).

17. At present the amount owed to Wells Fargo under the Mortgage grossly exceeds the value of the Property and said Mortgage prevents any sale. Nevertheless, Wells Fargo has failed to release its Mortgage.

18. The Mortgage of Wells Fargo limits the economic and commercial development of

the Property and therefore restricts the ability of the Association to sell said Property. At present the Property has a negative value and continues to represent an economic loss to the Association and all prospective buyers.

19. Two comparable units within the Palm Aire Condominium have recently sold for an average sales price of \$43,500.00 which is less than 1/4th of the amount of the Mortgage now encumbering the Property.

20. The Mortgage precludes any and all buyers who are not willing to pay far in excess of the Property's market value from purchasing said Property. The amount of Wells Fargo's Mortgage unreasonably restrains the alienability of the Property for an indefinite period of time since the value is based on a fluctuating Florida housing market.

21. In the event Wells Fargo desires title to be conveyed to Wells Fargo by a Certificate of Title, the Association waives any right of redemption it may have in the Property, waives its right to have the Property sold at foreclosure sale and consents to the issuance of a Certificate of Title to Wells Fargo forthwith without the need of a foreclosure sale.

22. In the alternative, the Association seeks a declaration that the title to the subject Property is vested in the Association alone and Wells Fargo be declared to have abandoned its interest in the Property, including but not limited to any claim under Exhibit "A" attached hereto. As a consequence thereof, Wells Fargo shall have no estate, right, title or mortgage lien interest in the Property and shall be forever enjoined from asserting any estate, right, title or interest in the subject Property adverse to the Association herein.

WHEREFORE, the Association moves this Honorable Court for any and all of the following relief:

a. That pursuant to Florida Evidence Code § 90.202 and § 90.203, the court take judicial notice of the pleadings and judgments entered in Broward County Circuit Cases numbered CACE09022884 CA (21) and CACE08048159 (09).

b. For a Judgment declaring Wells Fargo's Mortgage on subject Property creates an unreasonable restraint on alienation because the Mortgage is substantially more than the value of the Property;

c. For Judgment giving Wells Fargo, or any entities or persons claiming by, through and under Wells Fargo, the option to accept by a date certain legal and equitable title and possession of the subject Property from the Association forthwith, by a Certificate of Title to be issued by the Clerk of Court without foreclosure sale, or;

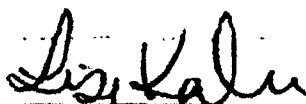
d. In the event Wells Fargo, or any entities or persons claiming by, through and under Wells Fargo, does not elect to take title to the Property upon entry of judgment herein, that the Court enter a declaration and determination that the Association is the rightful holder of the title to the Property and that Wells Fargo, by its actions, be declared to have abandoned its Mortgage on the Property and has no estate, right, title, or interest in the Property;

e. For a judgment forever enjoining Wells Fargo, or any entities or persons claiming by, through and under Wells Fargo, from claiming any estate, right, title, or interest in the Property in the event they fail or refuse to take title to the Property;

f. For costs of suit herein incurred;

g. For such other and further relief as the court may deem proper.

ASSOCIATION LAW GROUP, P.L.
Attorneys for the Plaintiff
P.O. Box 415848
Miami Beach, Florida 33141
Telephone: (305) 938-6922
Facsimile: (305) 938-6914



By: Lisa Kalman, Esq.
Fla. Bar No. 62015