

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CHANCERY**

CMG MORTGAGE INC.,

Plaintiff/Counter Defendant

v.

MICHAEL STOLLER,
CHRISTOPHER STOLLER ET AL
Defendants/Counter Plaintiff.

Jury Demand

Judge Cury Room
Gen. No. 2019CH03920
Calendar No 57

MICHAEL STOLLER,
CHRISTOPHER STOLLER, assignee, ET AL
Defendants/Counter Plaintiff

v

Plaintiff CMG MORTGAGE INC., a dba of
CMG Financial a California Corporation,
CMG Financial, CHRISTOPHER M. GEORGE,
PRESIDENT AND CHIEF EXECUTIVE
OFFICER,
KIMBERLY CALLAS, EXECUTIVE
VICE PRESIDENT, PETER GILBERT,
CHIEF CREDIT AND OPERATION OFFICER,
CHARLIE ROGERS, SENIOR VICE
PRESIDENT, RETAIL
LENDING SARA REED,
VICE PRESIDENT OPERATIONS.
ATTORNEYS, AGENTS, ASSIGNEES
JOHN DOES 1 THRU 10

NOTICE OF FILING ANSWER AND COUNTER CLAIM

TO: Veronika Jones
Heaver Beyes
P.O. Box 740
Decatur Illinois 62525
Cookpleadings@hsbattys.com

PLEASE TAKE NOTICE that on the 14th day of **January 2020**, there was filed with the Clerk of the Cook County, the attached Answer to Complaint and Counter claim.

/s/ Philip M. Kiss 54709
Attorney for Defendant Michael Stoller
5250 Grand Ave #14-408
Gurnee, Illinois 60031
philip_kiss@comcast.net

Certificate of Service

I caused the foregoing to be served by first class mail and or via electronically on the January 14th **2020**, to the parties listed, with the U.S. Postal Service with proper postage prepaid in Chicago, Illinois.

/s/ L Stoller

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ANSWER TO COMPLAINT AND COUNTER CLAIM

NOW COMES defendants Michael Stoller, Christopher Stoller, assignee¹ in answer to complaint states as follows:.

Defendants has insufficient information with which to admit or deny the allegations found in paragraphs and sub paragraphs 1 thru 7 of the complaint see attached **Exhibit 1** a copy of Plaintiff's Complaint, and therefore denies them. Demands strict proof therein. Defendant deny each and every allegation not specifically admitted herein..

WHEREFORE, Defendant Michael Stoller respectfully requests that this Court dismiss this action with prejudice with Plaintiff to bear costs of all parties, and any other just and equitable relief this Court deems appropriate.

AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

AFFIRMATIVE DEFENSES

For their affirmative defenses, Defendant assert the following:

- A. Failure to state a claim;
- B. Plaintiff has no standing to bring an action
- C.. Plaintiff has breached the covenant of good faith and fair dealing;
- D. Plaintiff's claim is barred by the unenforceability of the underlying obligation;
- E. Waiver and estoppel;
- F Unclean hands
- G Fraud
- H Accord and Satisfaction
- I, Duress
- J. Frustration of Purpose
- K. Unjust Enrichment
- L. Violation of the Real Estate Settlement Procedure Act (RESPA)
- M. Breach of Illinois Consumer Fraud Act through Unfairness

Defendants may have other affirmative defenses that are presently available but unknown to them. In order to preserve all affirmative defenses, Defendants allege all matters constituting an affirmative defense as set forth herein.

Additional Defenses Reserved

Defendant hereby gives notice that he may rely on other defenses if and when such defenses become known during the course of litigation, and hereby reserves the right to amend his answer to assert any other defenses as become known or available.

¹ Defendant Lenny Lutz gave Christopher Stoller and assignment of claims and cause of action see Exhibit 1, permitting Christopher Stoller to no walk in the shoes of Lenny Lutz

WHEREFORE, Defendants pray that the Complaint be dismissed with prejudice, that Plaintiff take nothing and Defendants be awarded their reasonable attorneys' fees and costs incurred in the defense of this action, and for such other and further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED on this 14 th day of January, 2020.

COUNTERCLAIMS

NOW COMES Defendants/Counter Plaintiffs , Michael Stoller and Christopher Stoller, by and through his attorney Philip Kiss, to state the following claims against Plaintiff CMG MORTGAGE INC., a dba of CMG Financial a California Corporation, CMG Financial, CHRISTOPHER M. GEORGE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, KIMBERLY CALLAS, EXECUTIVE VICE PRESIDENT, PETER GILBERT, CHIEF CREDIT AND OPERATION OFFICER, CHARLIE ROGERS, SENIOR VICE PRESIDENT, RETAIL LENDING SARA REED, VICE PRESIDENT OPERATIONS. Mortgage Electronic Registrations Systems, Inc., ("MERS") (Counter Defendants) (herein after known as "CMG") knew or should have known that CMG Mortgage Inc., did not own the Mortgage on the date that it filed the foreclosure lawsuit and conspired together to defraud the Defendants /Counter Plaintiffs' out of their property.

Defendants/Counter defendants states as follows:

Nature of Counter Plaintiff Action

Unlawful Fraudulent foreclosure action

Defendant assert that the Plaintiff CMG MORTGAGE INC., ("CMG") an unregistered, unlicensed company does not have any standing to maintain a civil proceeding within the State of Illinois.

CMG have brought a fraudulent forclosure lawsuit against the Defendants. The CMG has no standing to foreclose against the defendants' The validity of CMG foreclosure action against Defendants' rests on one issue: whether CMG had standing—that is, whether it owned the mortgage—on the date that it filed the foreclosure action. CMG MORTGAGE INC., did not own the mortgage on the date that it filed the foreclosure action.

The foreclosure complaint is defective. Because it has to list the correct Mortgage, MERS improperly names the Mortgagee "MERS" Mortgage Electronic Registration Systems, Inc, as the nominee for CMG Mortgage, Inc., dba CMO Financial. At paragraph 2(D) of the complaint.

MERS is not the nominee as MERS made an improper, invalid assignment of the Mortgage to “CMG Mortgage Inc., by instrument dated February 21, 2019 and recorded on February 22, 2019” the invalid assignment Document No., 1905349332 in the records of the Recorder’s Office of Cook County, Illinois. At paragraph (T)4.

CMG MORTGAGE INC DBA CMG FINANCIAL IS NOT A REGISTERED WITH THE ILLINOIS SECRETARY OF STATE NOR WITH THE ILLINOIS DEPARTMENT OF REGISTRATION AND IS UNAUTHORIZED TO MAINTAIN A CIVIL LAW SUIT IN ILLINOIS.

CMG MORTGAGRE INC., IS NOT A REGISTERED DBA WITHIN THE STATE OF ILLINOIS.

The Corporate Resolution of CMG Mortgage Inc., in the first paragraph that **“CMG Mortgage Inc., dba CMG Financial, a California Corporation (“the Company”²)** and further certifies that the following are true copies of resolutions duly adopted by the governing body of the company effective as of the Effective Dated of Resolution set forth below , that remain in full force and effect and do not conflict with the governing documents of Company.”

CMG MORTGAGE INC³., DID NOT OWN THE MORTGAGE ON THE DATE THAT IT FILED THE FORECLOSURE ACTION⁴.

² Corporations that decide to use a DBA for business are required to register the DBA in every city or county where the business is located. Failure to properly register a corporation's business name in every city or county where the company operates will result in fines and penalties. The DBA used by a corporation may not contain a corporate identifier in the business name such as "incorporated," "corporation," "limited," or "company."

Furthermore, a corporate identifier may not be used as an abbreviation in the corporation's DBA. <https://bizfluent.com/info-7742243-can-corporation-dba.html>

³ The plaintiff to allege the “[c]apacity in which [the] plaintiff brings this foreclosure,” *e.g.*, as “the legal holder of the indebtedness, a pledgee, an agent, the trustee under a trust deed or otherwise.” 735 ILCS 5/15-1504(a)(3)(N) (West 2008).

⁴ The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit.” *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004). A party’s standing to sue must be determined as of the time the suit is filed. *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786 (1988). “[A] party either has standing at the time the suit is brought or it does not.” *Id.* An action to foreclose upon a mortgage may be filed by a mortgagee, *i.e.*, the holder of an indebtedness secured by a mortgage, or by an agent or successor of a mortgagee. See *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 7 (2010); see also 735 ILCS 5/15-1208, 15-1504(a)(3)(N) (West 2008).

COUNT I

CMG MORTGAGE INC is not the mortgage holder on the day it filed the Mortgage foreclosure lawsuit and has no authority to bring a foreclosure lawsuit in this case. and has no authority to bring a foreclosure lawsuit in this case.

WHEREFORE Counter defendants pray that the court dismiss this case with prejudice and grant the defendants their fees and costs.

/s/ Philip M. Kiss 54709
Attorney for Defendant Michael Stoller
5250 Grand Ave #14-408
Gurnee, Illinois 60031
philip_kiss@comcast.net