



**AFTAB PUREVAL
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
November 11, 2020 01:32 PM**

**AFTAB PUREVAL
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 1005249**

FRANK T MORANO

A 2003954

vs.

FIFTH THIRD BANCORP

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH NO JURY
DEMAND**

PAGES FILED: 9

EFR200



VERIFY RECORD

W.B. Markovits (0018514)
Terence R. Coates (0085579)
Justin C. Walker (0080001)
Dylan J. Gould (0097954)
Matthew C. Metzger (0082235)

Counsel for Plaintiff

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

**FRANK T. MORANO,
486 Stanley Avenue
Cincinnati, Ohio 45226**

Plaintiff,

v.

**FIFTH THIRD BANCORP
38 Fountain Square Plaza
Cincinnati, OH 45202**

**SERVE AGENT:
Corporation Service Company
50 W. Broad Street, Ste. 1330
Columbus, OH 43215**

Defendant.

: **CASE NO.**

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

Judge

CLASS ACTION COMPLAINT

Plaintiff Frank T. Morano (“Plaintiff” and/or “Morano”) brings this action against Defendant Fifth Third Bancorp (“Defendant” and/or “Fifth Third”) on behalf of himself and all those similarly situated.

INTRODUCTION

1. Defendant Fifth Third is a national mortgage lending institution with substantial operations in Southwestern Ohio. In 2006, Fifth Third lent money collateralized by a mortgage on residential real property located at 5440 Childs Avenue., Cincinnati, OH 45248 (the “Property”).

2. When Plaintiff sold the Property on or about February 22, 2016, the mortgage was satisfied. Under Ohio Revised Code (“R.C.”) § 5301.36, including its subparts, Defendant was obligated to file an entry of satisfaction for the Property with the county recorder within 90 days of the mortgage being satisfied. Yet, Defendant failed to file the mortgage satisfaction with the county recorder within 90 days of the lien satisfaction.

3. Under R.C. § 5301.36(C), Plaintiff is entitled to recover damages of \$250.00 from Defendant for its failure to timely record the mortgage satisfaction. Plaintiff, on behalf of himself and all other Class Members, alleges the following complaint against Defendant for violating R.C. § 5301.36, and seeks more than \$25,000 exclusive of costs and interests from Defendant.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under R.C. § 2305.01, as the amount in controversy in this case exceeds \$15,000. The Court has personal jurisdiction over Fifth Third because it transacts substantial business within the State of Ohio and in Hamilton County. Furthermore, the Property is located in Hamilton County.

5. Venue is proper in this Court pursuant to Ohio Rule of Civil Procedure 3(C), as Fifth Third conducts business throughout Hamilton County and the Property is in Hamilton County. Fifth Third also regularly conducted activity giving rise to this complaint in Hamilton County.

6. Upon information and belief, the damages to which the Class are entitled is in the aggregate less than \$5 million exclusive of costs and interest.

PARTIES

7. Plaintiff Frank T. Morano is the former owner of the Property and was the mortgagor for the Fifth Third mortgage on the Property.

8. Defendant Fifth Third is a banking and lending institution with office locations throughout the Greater Cincinnati Area. It is headquartered in the State of Ohio and organized under the laws

FACTS

9. On or about October 17, 2006, Fifth Third entered into a promissory note with Plaintiff for a loan on the Property. The promissory note was secured by a mortgage on the property listing Fifth Third Bank as the mortgagor and Frank T. Morano as the mortgagor/borrower.

10. On or about February 22, 2016, Plaintiff sold the Property to Niko Ferrarelli.

11. The Property mortgage was therefore satisfied on or about February 22, 2016.

12. Under R.C. § 5301.36, Defendant was required to file a satisfaction of mortgage on the Property by on or about May 22, 2016.

13. However, Fifth Third never filed an entry of mortgage satisfaction with the Hamilton County Recorder's Office to reflect satisfaction of the balance of that mortgage until August 8, 2016.

14. By failing to timely release the mortgage on the Property, Defendant caused injury to Plaintiff, by *inter alia.*, causing a cloud to be on the title to the Property, and by inaccurately letting a mortgage remain on the Property in Plaintiff's name even though he had previously satisfied the lien in full.

**Ohio Revised Code §§ 5301.34 and 5301.36:
Release of Mortgage and Entry of Satisfaction**

15. Ohio law provides a very specific pathway to releasing mortgages: "A mortgage shall be discharged upon the record of the mortgage by the county recorder when there is presented

to the county recorder a certificate executed by the mortgagee...certifying that the mortgage has been fully paid and satisfied.” R.C. § 5301.34.

16. In parallel, R.C. § 5301.36(B) requires a mortgagee to file an entry of mortgage satisfaction with the local county recorder within 90 days of satisfaction of the mortgage: “Within ninety days from the date of the satisfaction of a mortgage, the mortgagee shall record a release of the mortgage evidencing the fact of its satisfaction in the appropriate county recorder’s office and pay any fees required for the recording.”

17. The Ohio legislature wanted to ensure that mortgagees would fulfill this statutory duty, and so in the event a mortgagee fails to file the entry of mortgage satisfaction within 90 days of the mortgage being satisfied, the mortgagee is liable in a civil action for damages of \$250.00: “If the mortgagee fails to comply with division (B) of this section, the mortgagor of the unrecorded satisfaction and the current owner of the real property to which the mortgage pertains may recover, in a civil action, damages of two hundred fifty dollars.” R.C. § 5301.36(C). The Ohio Supreme Court has determined that these damages constitute remedial damages.

18. The Ohio legislature decided that the mortgagee is liable in a civil action for damages of \$250 to both the mortgagor whose mortgage had been satisfied and to the subsequent/current owners of the property to which the mortgage was attached. “Current owner” includes an owner who has satisfied a mortgage and retains ownership of a property, an owner who is the subsequent purchaser of a property where a satisfied mortgage remains unsatisfied, and a subsequent owner of a property where the satisfied mortgage was recorded more than 90 days after satisfaction and while that subsequent owner was the lawful owner of the property.

CLASS ALLEGATIONS

19. Under Rule of Civil Procedure 23(A), (B)(2), (B)(1)(A), and/or (B)(3), Plaintiff brings this action on behalf of himself and the Class, initially defined as follows:

All persons or entities who were the mortgagor to a mortgage or current owner of the real property to which the mortgage pertains where Fifth Third (or any predecessor or other entity acquired or merged with – or otherwise now part of Fifth Third – including any affiliates, subsidiaries, and/or related lending institutions) was listed as the mortgagee, where the mortgage was satisfied in full, and the mortgagee did not record an entry of mortgage satisfaction with the applicable county recorder’s office within 90 days of the date of mortgage satisfaction, within the Relevant Time Period.

20. The “Relevant Time Period” is the largest period allowed by law.

21. Excluded from the Class are Defendant, its employees, officers, directors, legal representatives, heirs, successors, and wholly or partially owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

22. The definition of the Class is unambiguous, and Plaintiff is a member of the Class he seeks to represent.

23. The Class is so numerous that joinder of all members is impracticable. Due to the nature of trade and commerce involved, the members of the Class are geographically dispersed throughout the State of Ohio. While the exact number of Class Members is unknown to Plaintiff at this time, on information and belief, Fifth Third has acted as mortgagee for thousands of mortgages in the State of Ohio for which Fifth Third failed to file an entry of satisfaction of mortgage with the appropriate county recorder’s office within 90 days of the date of the mortgage satisfaction. Accordingly, the Class size is considered to be over one thousand Class Members and will be identified with more specificity through discovery.

24. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other Class Members satisfied the amounts owed on their mortgages/promissory notes with Defendant or are the current owners of the real property for which the mortgage was untimely released and Fifth Third failed to file the mortgage satisfaction with the applicable county recorder's office within 90 days of the date of satisfaction as required under R.C. § 5301.36 *et seq.*

25. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action litigation.

26. Defendant has acted or refused to act on grounds generally applicable to the Class, making it appropriate for the Court to render final injunctive relief regarding the Class as a whole. Specifically, Defendant continued to refuse or failed to file mortgage satisfactions within the required 90-day window despite its knowledge of the requirements under R.C. § 5301.36 *et seq.*

27. Common questions of law and fact exist to all Class Members and predominate over any questions solely affecting individual members thereof. Among the common questions of law and fact are the following,

- a. Whether Fifth Third was a mortgagee, either originally or as a successor;
- b. Whether the mortgage was satisfied;
- c. Whether the mortgagee failed to timely record a release of the mortgage evidencing the fact of the mortgage's satisfaction with the applicable county recorder's office within 90 days of the date of the mortgage satisfaction as required under R.C. § 5301.36(B); and,
- d. Whether Fifth Third owes the Class Member \$250 because the Class Member was the mortgagor for the real property encumbered by the mortgage or was or is the current owner of the real property to which the note/mortgage pertains.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class Members is impracticable. The prosecution of separate actions by individual Class Members would impose heavy burdens upon courts, Class Members, and Defendant, and would create the risk of inconsistent adjudications of questions of law and fact common to the Class. The allegations contained herein show that common questions of law and fact predominate over any questions affecting individual Class Members and a class action is therefore superior to other available methods for fairly and efficiently adjudicating the controversy. A class action would achieve substantial economies of time, effort, and expense, and would assure uniformity as to persons similarly situated without sacrificing procedural fairness.

CAUSES OF ACTION

COUNT I – VIOLATION OF R.C. § 5301.36 *et seq.*

29. Plaintiff repeats and re-alleges all allegations in this Complaint as if fully restated herein.

30. Plaintiff and the Class Members were mortgagors or current owners of real property on which Fifth Third was the mortgagee, where the property was collateral for a note held by Fifth Third.

31. The amounts due under the applicable mortgages were satisfied.

32. The mortgagee failed to timely file the entry of mortgage satisfaction with the local county recorder's office within 90 days of the satisfaction of the balance of such mortgages.

33. Fifth Third is and was obligated to comply with R.C. § 5301.36 and owe a statutory duty to Plaintiff and Class Members to comply with R.C. § 5301.36.

34. Fifth Third failed to comply with its statutory duty under R.C. § 5301.36.

35. Plaintiff and the Class Members are entitled to collect \$250.00 in remedial damages from Fifth Third as a direct and proximate result of Defendant's failure to timely file the entry of mortgage satisfaction within 90 days of the mortgage satisfaction under R.C. § 5301.36.

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for the following judgment,

- (a) Certifying this case as a Class Action under Ohio Rule of Civil Procedure 23 and appointing Plaintiff as the class representative for the proposed Class and his counsel as Class Counsel;
- (b) Awarding Plaintiff and Class Members damages in an amount to be determined at trial, including, but not limited to, the amount of \$250.00 for each violation of R.C. § 5301.36 *et seq.*;
- (c) Requiring Defendant to comply with Ohio Revised Code § 5301.36 *et seq.*;
- (d) Ordering Defendant to pay the costs and expenses of this lawsuit and reasonable attorneys' fees;
- (e) Ordering Defendant to pay prejudgment interest; and,
- (f) Awarding any such other and further legal and equitable relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Terence R. Coates

W.B. Markovits (0018514)

Terence R. Coates (0085579)

Justin C. Walker (0080001)

Dylan J. Gould (0097954)

MARKOVITS, STOCK & DEMARCO, LLC

3825 Edwards Road, Suite 650

Cincinnati, OH 45209

Telephone: (513) 651-3700

Fax: (513) 665-0219
bmarkovits@msdlegal.com
tcoates@msdlegal.com
jwalker@msdlegal.com
dgould@msdlegal.com

Matthew C. Metzger (0082235)
WOLTERMAN LAW OFFICE, LPA
434 W. Loveland Ave.
Loveland, OH 45150
Telephone: (513) 488-1135
Fax: (513) 322-4557
matt@woltermanlaw.com

Counsel for Plaintiff and the Class