

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X:

In re : Chapter 11

:

DITECH HOLDING CORPORATION, et al., Case No. 19-10412 (JLG)

:

Wind Down Estates1 : (Jointly Administered)

:

----- X

OBJECTION TO CLAIMS TRUSTEE'S FORTY-THIRD
OMNIBUS OBJECTION TO PROOFS OF CLAIM
(INSUFFICIENT LEGAL BASIS UNSECURED CONSUMER CREDITOR CLAIMS)

COMES NOW, the Consumer Creditor, CHERANE PEFLEY, and files this her Objection in response to the Claims Trustee's Forty- Third Omnibus Objection to Proof of Claim and as grounds does state:

1. That the Creditor, CHERANE PEFLEY, filed a Proof of Claim, Number 22049 in the sum of ninety million dollars (\$90,000,000.00)
2. That on April 16, 2021, the Claims Trustee filed an Objection to the Proof of Claim stating that there was insufficient legal basis for the claim.
3. That Creditor objects that there was an insufficient legal basis for her claim. That Creditor presents sufficient facts which, if taken as true, will indicate that a violation of law occurred and that the Creditor is entitled to a legal remedy.
4. Creditor asserted claims for fraud, malicious prosecution and wrongful publication of foreclosure and herein presents all facts necessary to uphold such claims.
5. A misrepresentation is an untrue or misleading statement of fact made during negotiations by one party to another, the statement then inducing that other party to enter into a contract. Creditor/PEFLEY asserts that Ditech knowingly filed false reports and statements that served to trick or deceive Creditor into signing a contract for a

modification that it knew was not going to be honored in 'good faith. Ditech, knowing it was going to foreclose on Creditor, misrepresented its' intentions when it agreed that Creditor make three payments on the trial period plan (TPP) and only reported one payment to Fannie Mae. As the third automatic payment was being taken from Creditor's bank account, Fannie Mae, unaware of the second and third automatic payments and believing that Creditor did not keep her promise to pay, assigned Creditor's Mortgage and Promissory Note to Ditech so Ditech could foreclose against the Creditor. As a direct consequence of Ditech's deliberate and unlawful conduct, PEFLEY'S business no longer produced the revenue to cover her real estate expenses and she lost the real property.

6. When Ditech became holder of the Note and Mortgage, it became a party to the contract with Creditor/PEFLEY. See *Amjad Munim, M.D., P.A. v. Azar*, 648 So. 2d 145 (4th DCA 1994, Rehearing and Rehearing En Banc Denied Feb. 2, 1995) (holding under traditional corporate law rule, liability of predecessor corporation is not automatically imposed upon successor corporation unless successor expressly or impliedly assumes obligations of predecessor, transaction is de facto merger, successor is mere continuation of predecessor, or transaction is a fraudulent effort to avoid liabilities of predecessor.)

Creditor asserts that as a real party in interest, Ditech was a "mere continuation of predecessor" PNC. Therein, Ditech was responsible for complying with all provisions of the contract (which did **not** include foreclosure). Failure to comply with any of the contract's provisions would be a breach.

Ditech and Creditor/PEFLEY had a binding agreement that was to be

honored by each party. Ditech breached the agreement when it foreclosed on Creditor even though the record showed and the Court ruled that Creditor/PEFLEY had made all three payments punctually and in full. As a result of Ditech's breach, Creditor was delivered into poverty.

7. Although Ditech had no legal reason or judicial permission to foreclose on Creditor's/PEFLEY's property. Ditech attempted to foreclose. Ditech's publication **EXHIBIT F** of the foreclosure was wrongful. There should never have been a foreclosure, nor a publication of it. The Court agreed and on December 14, 2010, the Court vacated its decision for foreclosure and sale of Creditor's property. A non-jury trial was held on March 27, 2010 and the resulting decision was against Ditech and in favor of Creditor/PEFLEY. Ditech offered Creditor loss mitigation while still scheming behind the scenes to foreclose. **See Trial transcript expert testified ONE PAYMENT THE TPP**

8. Ditech attempted foreclosure two more times and failed as these attempts were fraudulent. The foreclosure attempts by Ditech were wrongful because Ditech was involved in unethical activity- that being, the failure to admit to and concealed from Fannie Mae that the Creditor had made three payments for the TPP and the failure to take the place of its predecessor in contract. **EXHIBIT C**

Contemporaneously with the second foreclosure, Ditech Improperly treated the loan payments during the transfer period. According to Title 12, 2006 Edition Supplement 5, Chapter 27, RESPA, § 2605(2)(d) entitled "Treatment of loan payments during transfer period": "During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no

such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment”

The initial and continuing attempts by Ditech to foreclosure should never have taken place as Creditor had made all payments due. The initiation of a foreclosure against Creditor/PEFLEY was without probable cause and thereby malicious in nature, causing Creditor to make her claim of Malicious Prosecution to the Trustee against Ditech. **EXHIBIT A**

9. Under Bankruptcy 101 (5) Creditor/ PEFLEY has a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. PEFLEY alleges that Ditech breached its agreement with her, fraudulently and maliciously brought forth foreclosure proceedings. As a result of Ditech’s actions, Creditor suffered damages and has a right to collect payment from Ditech as restitution for those damages.

WHEREFORE, Creditor/PEFLEY requests that this Court dismiss its’ objection to her proof of claim.

Cherane Pefley, Pro Se

CHERANE PEFLEY

May 10, 2021

EXHIBIT B

AMENDED FINAL JUGEMENT

Plaintiff comes to court with unclean hands"

"prevented defendant from complying with the terms of the loan"

"unconscionable to rule in favor of the plaintiff"

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION A/W
CASE NO. 502010CA012592XXXXMB

GREEN TREE SERVICING LLC,
Plaintiff(s)

v.
CHERANE PEFLEY,
Defendant(s).

AMENDED FINAL JUDGMENT

THIS CAUSE came on for Non-Jury Trial on March 27, 2014, and, the Court having taken testimony of witnesses and heard argument of counsel for both the Plaintiff and the Defendant, and being otherwise fully apprised in the premises, makes the following findings of fact and law;

1. In accordance with the Sixth Affirmative Defense filed by the Defendant, the Plaintiff's predecessor in interest agreed to a monthly mortgage payment of \$ 2,506.07 in October 2008, then refused to accept the Defendant's payments.
2. The Plaintiff's predecessor prevented the Defendant from complying with the terms of the loan. Plaintiff's predecessor comes to Court with unclean hands and it would be unconscionable to render a verdict in favor of the Plaintiff.


IT IS, THEREFORE,

ORDERED AND ADJUDGED as follows:

That the Court enters a Judgment in favor of Defendant CHERANE PEFLEY and reserves jurisdiction to award attorney's fees to Defendant upon proper proof and an evidentiary hearing, if necessary.

The original promissory note and mortgage shall be returned to Plaintiff's attorney uncanceled.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida, this 22nd day of May, 2014, nunc pro tunc 8th day of April, 2014.


Circuit Judge Susan R. Lubitz

Copies Furnished to:

Law Offices Of Philippe Symonovicz, 1995 East Oakland Park Boulevard - Suite 210 Fort Lauderdale,
FL 33306
SHD Legal Group, P.A P.O. Box 11438 Fort Lauderdale, Florida 33339-1438

CFN 20140194941, OR BK 26816 PG 92, RECORDED 05/28/2014 09:23:05
Sharon R. Bock, CLERK & COMPTROLLER, Palm Beach County, NUM OF PAGES 1

EXHIBIT A
ORDER BY THE COURT
COUNTERCLAIM COUNTS 1 AND TWO
APPROVED FOR BREACH OF
CONTRACT AND MALICIOUS
PROSECUTION
COUNT THREE FRAUD THIRTY DAYS
TO AMEND THIRD COUNT ON FRAUD
FEBUARY 8, 2019
DITECH FILED BANDKRUPTCY TWO
DAYS LATter that put a stay on my sex year
old counterclaim with finally this
court order for me to dismiss with
ruling my case as person of
interest to be in consumer
recovery for damages

Filing # 84609737 E-Filed 02/08/2019 04:20:21 PM

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 19-0310-CA-012592XXXXMB (AF)

GREEN TREE SERVICING, LLC,

Plaintiff/Counter-Defendant,

vs.

CHERANE PEFFLEY, et al.,

Defendants/Counter-Plaintiffs.

ORDER ON COUNTER-DEFENDANT DITECH FINANCIAL LLC'S
MOTION TO DISMISS COUNT III OF COUNTER-PLAINTIFF'S
FOURTH AMENDED COUNTERCLAIM

Motion For Relief/Supplemental Motion to Restyle Case
THIS CAUSE came before the Court on the 8th day of February, 2019, upon Counter-

Defendant, DITECH FINANCIAL LLC (aka Green Tree Servicing, LLC) Motion to Dismiss
Count III of Counter-Plaintiff's Fourth Amended Counterclaim (the "Motion"). The Court,
having reviewed the Court's file, heard argument of counsel and being otherwise fully advised in
the premises, it is

ORDERED AND ADJUDGED as follows:

1. Counter-Defendant's Motion is hereby *granted, without prejudice.*
2. *Counter-Plaintiff's Count III for*

fraud is not pleaded with the
necessary particularity.
It is denied, at Counter-Plaintiff's option. The parties are free to
DONE AND ORDERED at West Palm Beach, Palm Beach County, Fla. *6* day of *Feb*
February, 2019. *Attest for Judge to*
Re-style their filings to
avoid confusion as to who
the remaining Plaintiff is in
this case, however, the Clerk shall not make any changes to
the original style in the Court file, and this order will
not affect same. *CEP*

FILED PALM BEACH COUNTY, FL, SHARON R. BOOK, CLERK, 02/08/2019 04:20:21 PM

EXHIBIT C

**ON PBC DOCKET TO ANSWER
BY DITECH ATTORNEY**

modify the terms of the loan would be in writing and the Plaintiff states that this party has made reasonable inquiry and without waiving said objection the information known or readily available by the Plaintiff is insufficient to enable the Plaintiff to admit or deny anything beyond the fact that Plaintiff admits that the Defendant made periodic payments for \$1,099.44 for the months of January through March of 2010.

14. As to Request Number 14, Admitted that \$1099.44 was paid and received monthly in January through March, 2010.
15. As to Request Number 15, Admitted that \$3,912.65 was due and owing from the Defendant as an escrow payment in June of 2008.
16. As to Request Number 16, Admitted.
17. As to Request Number 17, the Plaintiff states that this party has made reasonable inquiry and the information regarding information on Form 1098 known or

ONLY ISSUE ARE

DEFENDANTS COUNTER

CLAIM AND MONEY

DAMAGES AND DEMAND

FOR JURY TRIAL "

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION A/W
CASE NO. 502010CA012592XXXXMB

GREEN TREE SERVICING LLC,
Plaintiff(s)

v.
UNKNOWN TENANT NO 1,
UNKNOWN TENANT NO 2,
CHERANE PEELEY,
Defendant(s).

COPY

ORDER DIRECTING CLERK TO REASSIGN CASE

THIS CAUSE came before the Court upon information that the foreclosure case has been resolved and that there remains only Defendant's counter-claim for money damages and demand for jury trial. Accordingly, the case should be reassigned in accordance with Administrative Order 3.302-6/13. It is therefore, ORDERED AND ADJUDGED:

The clerk shall randomly reassign this case to a general civil division.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, on this
15th day of August, 2014.


RICHARD L. OFTEDAL RICHARD L. OFTEDAL
Circuit Judge Circuit Judge

EXHBIT E

**DITECH JANUARY 2010
INVOICE WITH MY
OVERAGE OF ESCOW**

**CORPOATION ADVANCE
AND ESCROW**

19-10411 Jlg Doc 3416 Filed 05/12/21 Entered 05/30/21 13:22:34 Main Document Pg 14 of 18

Current Payment:
Past Due Payment:
Escrow Due:
Insurance Due:
Additional Charges:
Billed Late Charges:
Total Amount Due:

1-22-2010

Talhad

170-4804



and held by servicer for the future payment of taxes and insurance.
onies advanced by servicer to pay taxes, insurance, and any other
art of an escrow account.
o pay your loan in full.

TO STOP IN
DECEMBER 14 2010

ANOTHER ORDER
ONE YEAR LATER
BEFORE THEY
STOPPED
ADVERTISING

/ 1



66.7%



2011 APR - / AM 8:23

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 1

PALM BEACH DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
West Palm Beach, Palm Beach County, Florida

STATE OF FLORIDA
COUNTY OF PALM BEACH:

Before the undersigned authority personally appeared
N. LYONS, who on oath says that he or she is the
LEGAL CLERK, Legal Notices of the Palm Beach Daily
Business Review t/k/a Palm Beach Review, a newspaper
published at West Palm Beach in Palm Beach
County, Florida; that the attached copy of advertisement,
being a Legal Advertisement of Notice in the matter of

502010CA012592XXXXMB
NOTICE OF SALE PURSUANT TO CHAPTER 45
GREEN TREE SERVICING LLC VS CHERANE PEFLEY, ET AL

in the CIRCUIT Court,
was published in said newspaper in the issues of

03/30/2011 04/06/2011

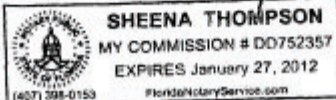
Affiant further says that the said Palm Beach Daily Business
Review is a newspaper published at Palm Beach, in said
Palm Beach County, Florida and that the said newspaper has
heretofore been continuously published in said Palm Beach
County, Florida, and has been entered as second class mail matter
at the post office in West Palm Beach in said Palm Beach County,
Florida, for a period of one year next preceding the first
publication of the attached copy of advertisement; and
affiant further says that he or she has neither paid nor promised
any person, firm or corporation any discount, rebate,
commission or refund for the purpose of securing this
advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

06 day of APRIL A.D. 2011

(SEAL)

N. LYONS personally known to me



NOTICE OF SALE
PURSUANT TO CHAPTER 45
IN THE CIRCUIT COURT FOR PALM
BEACH COUNTY, FLORIDA,
CIVIL DIVISION
CASE NO. 502010CA012592
XXXXMBAW
GREEN TREE SERVICING LLC,
Plaintiff,

vs.
CHERANE PEFLEY, et al.,
Defendants.

NOTICE IS HEREBY GIVEN pur-
suant to an Order or Summary Final
Judgment of foreclosure dated Aug
20, 2010, and entered in Case No.
502010CA012592XXXXMB, of the
Circuit Court in and for Palm Beach
County, Florida, wherein Green Tree
Servicing LLC is Plaintiff and CHER-
ANE PEFLEY, UNKNOWN TEN-
ANT NO. 1; UNKNOWN TENANT
NO. 2; and ALL UNKNOWN PAR-
TIES CLAIMING INTERESTS BY,
THROUGH, UNDER OR AGAINST
A NAMED DEFENDANT TO THIS
ACTION, OR HAVING OR CLAIM-
ING TO HAVE ANY RIGHT, TITLE
OR INTEREST IN THE PROPERTY
HEREIN DESCRIBED, are Defen-
dants, I will sell to the highest and
best bidder for cash at www.
mypalmbeachclerk.clerkauction.com
at Palm Beach County, Florida, at
10:00 a.m. on the 14 day of APRIL,
2011, the following described prop-
erty as set forth in said Order or Final
Judgment, to-wit:

THE WEST 258 FEET OF THE
EAST 774 FEET OF THE
NORTH 1/2 OF TRACT 9,
BLOCK C OF LOXAHATCHEE
GROVES, ACCORDING TO
THE PLAT THEREOF, RE-
CORDED IN PLAT BOOK 12,
PAGE 29, PUBLIC RECORDS
OF PALM BEACH COUNTY,
FLORIDA, TOGETHER WITH
AN EASEMENT FOR IN-
GRESS AND EGRESS OVER
THE SOUTH 30 FEET OF THE
NORTH 1/2 OF TRACT 9 AND
OVER THE NORTH 30 FEET
OF THE SOUTH 1/2 OF
TRACT 9, BLOCK C OF SAID
LOXAHATCHEE GROVES.
ANY PERSON CLAIMING AN
INTEREST IN THE SURPLUS
FROM THE SALE, IF ANY,
OTHER THAN THE PROP-
ERTY OWNER AS OF THE DATE
OF THE LIS PENDENS MUST
FILE A CLAIM WITHIN 60
DAYS AFTER THE SALE.

If you are a person with a disabili-
ty who needs any accommodation
in order to participate in this pro-
ceeding, you are entitled, at no cost
to you, to the provision of certain as-
sistance. Please contact Krista Gar-
ber, ADA Coordinator, in the Admin-
istrative Office of the Court, Palm
Beach County Courthouse, 205
North Dixie Highway, Room 5.2500,

DATED at West Palm Beach,
Florida, on SEPT 10, 2010.
SHARON R. BOCK
As Clerk, Circuit Court
(Circuit Court Seal)
By: EDWARD WILHELMS
As Deputy Clerk
SMITH, HIATT & DIAZ, P.A.
Attorneys for Plaintiff
PO BOX 11438
Fort Lauderdale, FL 33339-1438
Telephone: (954) 564-0071
Pursuant to Florida Statute
45.031(2), this notice shall be pub-

EXHIBIT G

My client who has bought
from me since january 2028
when my plea was this is near
end

5/12/2021

and correct

0
0

5,000