

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

CASE NO.:

WALTER E. SAHM and
PATRICIA SAHM

Plaintiffs,

v.

BERNSTEIN FAMILY REALTY, LLC and
ALL UNKNOWN TENANTS.

Defendant

FIRST AMENDED COMPLAINT FOR FORECLOSURE

Plaintiffs, WALTER E. SAHM, an individual, and PATRICIA SAHM, an individual, by and through their undersigned counsel, hereby sue BERNSTEIN FAMILY REALTY, LLC, a Florida Limited Liability Company, and ALL UNKNOWN TENANTS, and allege:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this action because it is both an action in equity seeking to foreclose a mortgage on real property, and because it is an action seeking to enforce a promissory note for damages in excess of fifteen thousand dollars (\$15,000.00).

2. Venue is proper in Palm Beach County, pursuant to § 47.011, Florida Statutes, because Palm Beach County is the county in which the subject property is located.

3. All conditions precedent and necessary to bring this cause of action either have been performed, have occurred, have been waived, or otherwise excused.

PARTIES¹

4. Plaintiff, WALTER E. SAHM (“Mr. Sahn”), is an individual residing in Palm Beach County, Florida, and at all times material was *sui juris*.

5. Plaintiff, PATRICIA SAHM (“Mrs. Sahn”), is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

6. Defendant, BERNSTEIN FAMILY REALTY, LLC (“BFR”) is an administratively dissolved Florida Limited Liability, with its principal place of business in Boca Raton, Florida, and its registered agent, T&S Registered Agents, LLC, also located in Boca Raton, Florida.

7. All UNKNOWN TENANTS (“Tenants”) who are unidentified but are either residing on the subject property or may claim an interest in the subject property, as a spouse, heir, devisee, grantee, or other name, are joined as defendants, and whose interest is subordinate, junior, and inferior to Plaintiff’s interest.

COUNT I – FORECLOSURE OF MORTGAGE

8. This action seeks to foreclose a mortgage on real property which secures an outstanding debt owed under a promissory note between the parties.

9. On June 20, 2008, BFR entered into a Promissory Note (“Note”) with the Sahms, agreeing to pay the Sahms the sum of \$110,000.00 plus interest under terms set forth in the Note. **Exhibit “1”**.

10. On June 20, 2008, BFR executed a Mortgage on real property in favor of the Sahms as collateral to the debt owed under the Note. **Composite Exhibit “2”**.

¹ Mr. Sahn and Mrs. Sahn may collectively be referred to as the “Sahms”.

11. The Mortgage was recorded on June 26, 2008 in the Public Records of Palm Beach County, Florida: O.R. Book 22723, Page 0691.

12. On February 15, 2012, BFR and the Sahms executed an Amendment to Mortgage and Promissory Note (“Amendment” to the Note and Mortgage). **Composite Exhibit “3”**.

13. The Amendment was recorded on April 12, 2012 in the Public Records of Palm Beach County, Florida: O.R. Book 25132, Page 1051.

14. The Sahms both own and hold both the Note and Mortgage.

15. BFR owns the subject property and is in possession of it.

16. BFR defaulted under, and subsequently breached its obligations under both the Note and Mortgage by failing to make all necessary payments under the Note, Mortgage, and Amendment.

17. As of the date of the filing of this lawsuit, BFR owes the Sahms at least \$187,163.80, exclusive of both attorney’s fees and costs.

WHEREFORE, Plaintiffs, WALTER E. SAHM and PATRICIA SAHM, pray for a final judgment of foreclosure against Defendants, BERNSTEIN FAMILY REALTY, LLC and ALL UNKNOWN TENANTS:

a. concluding that Plaintiffs’ Mortgage is a valid Lien on the subject property and is superior to any lien of record;

b. foreclosing Plaintiffs’ Mortgage;

c. foreclosing of all Defendants named in this action;

d. delivering full possession of the subject property to Plaintiffs;

e. retaining jurisdiction for the Court to determine any deficiency to which

Plaintiffs may be entitled; and

- f. retaining jurisdiction to determine the reasonable amount of both attorney's fees and costs which Plaintiffs are entitled to recover against Defendant; and
- g. any other relief which the Court deems just and proper.

ATTORNEY FEE DEMAND

Plaintiffs, WALTER E. SAHM and PATRICIA SAHM, have retained the undersigned law firm to represent them in this action. The Note, which the Sahms are suing to enforce, contains an attorney's fees provision. Florida Statute §57.105(7) state that "if a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract." Thus, if the Sahms are the prevailing party in this action, then the Sahms are entitled to recover their attorney's fees and costs from Defendant, BERNSTEIN FAMILY REALTY, LLC. Plaintiffs hereby exercise that right.

Respectfully submitted,

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