

# **EXHIBIT A**

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

JAMES HARPER and  
TAMMY J. HARPER,

Plaintiffs,

CIVIL ACTION NO. 08-C-147

v.

CARTERET MORTGAGE CORPORATION,  
NATIONAL CITY MORTGAGE COMPANY  
d/b/a ACCUBANC MORTGAGE, FLAGSTAR  
BANK, LARRY WOOD, and CRAIG WILSON,

Defendants.

COMPLAINT  
INTRODUCTION

FILED  
PUTNAM CO. CIRCUIT COURT  
2008 MAY -5 PM 2:08

1. This case arises out of the practice known as predatory lending.<sup>1</sup> The defendants induced the Plaintiffs into an exploitive loan based on misrepresentations and an inflated appraisal. The Plaintiffs bring this action to save their home and for other appropriate relief.

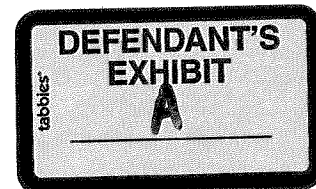
PARTIES

2. (a) James and Tammy Harper, a married couple, are natural persons residing in West Virginia.

(b) The Harpers are not sophisticated in financial matters.

3. Lender. The Defendant, National City Mortgage Company d/b/a Accubanc Mortgage is an Ohio banking corporation licensed to do business in West Virginia with a principal place of

<sup>1</sup> See HUD-Treasury National Predatory Lending Task Force, Joint Report: Curbing Predatory Home Mortgage Lending, (visited June 6, 2007) <<http://www.huduser.org/publications/hsgfin/curbing.html>>.



business of 3232 Newmark Drive, Miamisburg, Ohio, 45342. Said Defendant was the originating lender in the transaction.

4. (a) Broker. The Defendant broker, Carteret Mortgage Corporation ("Carteret"), is a Virginia corporation licensed as a broker and doing business in West Virginia. Its principal place of business is 6211 Centreville Road, Suite 800, Centreville, Virginia, 20121.

(b) Larry Wood was the broker in the transaction that is the subject matter of this action.

5. (a). Servicer. The Defendant, Flagstar Bank, F.S.B. ("Flagstar") is a federal savings bank with its principal place of business at 5151 Corporate Drive, Troy, Michigan, 48098 and the servicer of the loan.

(b) The Defendant Larry Wood is a broker residing in West Virginia.

6. Appraiser. The Defendant Craig Wilson is a resident of Elkins, Randolph County, West Virginia and a real estate appraiser.

#### STATEMENT OF FACTS

7. The Plaintiffs received a solicitation in the mail from Defendants Carteret and Wood to lower payments.

8. The Plaintiffs dealt with Larry Wood, who represented that he could obtain financing at a lower rate and payment.

9. (a) Carteret arranged for appraisal with Defendant Craig Wilson.

(b) Wilson appraised for \$170,000.00.

(c) This was false. The actual value was no more than \$99,600.00.

10. The Defendant's broker suggested that the Plaintiffs not make payments on the existing loan.

11. The closing did not occur until January 3, 2003.

12. The Defendant Flagstar has returned the Plaintiffs' payments on at least four occasions.

13. The Defendant is attempting to pursue foreclosure for those payments.

### COUNT I – BREACH OF FIDUCIARY DUTY

14. The Plaintiffs incorporate the preceding paragraphs by reference.

15. The Defendant broker, Carteret, owed a fiduciary duty to the Plaintiffs as a broker (a) to disclose the existence and terms of the broker relationship; (b) to act on their behalf and to obtain and pursue loans with the best available terms; (c) to provide them a written agreement disclosing the services to be performed and the total cost thereof; (d) to provide them notice and an opportunity to cancel the broker agreement; and (d) to disclose to them the range of options and risks associated with their loan.

16. The Defendant broker, Carteret, breached its fiduciary duty to the Plaintiff by engaging in the following activities (this list is not necessarily exhaustive):

- (a) failing to seek out and obtain credit for the Plaintiffs on the best terms available;
- (b) obtaining credit terms without regard for the Plaintiffs' ability to pay; and
- (c) misrepresenting and suppressing material facts to the Plaintiffs;
- (d) arranging for an inflated appraisal.

17. The Plaintiffs were injured by the Defendant broker's breach of its fiduciary duty when they were induced into a loan agreement not supported by the true value of their home on terms favorable to the brokers and lender without regard to terms more favorable to the Plaintiffs that may have been obtained from other lenders.

18. As a direct and proximate result of the Defendant broker's breach of its fiduciary duty, the Plaintiffs suffered substantial monetary losses and damages to their property, including potential loss of their home.

**WHEREFORE**, the Plaintiff respectfully request the following relief:

- (a) A declaration that the Defendant broker, Carteret, had a fiduciary duty to the Plaintiffs;
- (b) A declaration that the Defendant broker, Carteret, breached its fiduciary duty to the Plaintiffs by, *inter alia*, (i) failing to disclose adequately, and consistent with West Virginia law, the nature and terms of the agreement between the Plaintiffs and the Defendant broker, Carteret; (ii) failing to seek out and obtain credit for the Plaintiffs on the best terms available; (iii) obtaining credit terms without regard for the Plaintiffs' ability to pay; and (iv) arranging for an inflated appraisal.
- (c) A declaration that by breaching their fiduciary duty to the Plaintiffs, the Defendant broker, Carteret, engaged in unconscionable conduct in the inducement of the loan agreement;
- (d) Actual and punitive damages;
- (e) Reasonable attorney fees and the costs of this litigation; and
- (f) Such other relief as this Court deems equitable and just.

**COUNT II - FRAUDULENT MISREPRESENTATION**

19. The Plaintiffs incorporate the preceding paragraphs by reference.
20. The Defendant broker misrepresented to the Plaintiffs that they could lower their payments.
21. The Plaintiffs reasonably relied on this representation in taking out the mortgage.
22. The Defendants' misrepresentations were material and intentional.
23. The Plaintiffs were injured as a proximate result of the Defendant's misrepresentation and suppression of material facts.

**WHEREFORE**, the Plaintiffs respectfully request the following relief:

- (a) A declaration that the Defendant broker engaged in unlawful conduct as alleged;
- (b) Actual and punitive damages; and
- (c) Such other fees and costs as may be deemed reasonable and just.

**COUNT III - UNCONSCIONABLE CONTRACT**

24. The Plaintiffs incorporate the preceding paragraphs by reference.
25. The Defendants are large national lenders that have engaged in a pattern of predatory lending practices to make unfair loans to borrowers originated by unscrupulous brokers and based on fraudulently inflated appraisals.
26. The Plaintiffs are not sophisticated consumers and did not understand the details of the transaction.
27. The loan issued by the Defendants put the Plaintiffs in jeopardy of losing their home.

28. (a) The circumstances of the loan created confusion, the documents and the loan closing were not in keeping with industry standards for proper lending practices;

(b) Certain terms of the loan were suppressed, and the Plaintiffs were not provided adequate explanation of the documents.

29. The loan agreement contained the following unfair terms, which constituted an unfair surprise to the Plaintiffs:

(a) Excessive fees;

(b) A loan based on a fraudulent appraisal, which exceeded the market value of the home;

30. The loan issued to the Plaintiffs was unconscionable, under all circumstances alleged, at the time it was made and/or was induced by unconscionable conduct, and therefore is unenforceable.

**WHEREFORE**, the Plaintiffs respectfully request the following relief:

- (a) A declaration that Plaintiffs' loan was induced by unconscionable conduct and/or contained unconscionable terms;
- (b) Actual damages equivalent to the amount paid plus amount claimed due under the loan;
- (c) Actual damages for incidental and consequential damages;
- (d) Appropriate civil penalties pursuant to *W. Va. Code* §46A-5-101(1) & 106;
- (e) Appropriate equitable relief;
- (f) Reasonable attorney fees and the cost of this litigation; and
- (g) Such other relief as the Court may deem equitable and just.

**COUNT IV - FRAUD AND CONSPIRACY**

31. The Plaintiffs incorporate the preceding paragraphs by reference.

32. The Defendants relied on an appraisal at or above \$170,000.

33. In fact, the market value was no more than \$99,600.00.

34. The Defendant broker, Carteret, intentionally employed the Defendant appraiser and relied on a bogus appraisal of the Plaintiffs' property for the purpose of inducing the Plaintiffs into the contract.

35. The Plaintiffs reasonably relied upon the loan being originated consistent with prudent lending standards when entering into the loan agreement.

36. The Defendants' reliance on a bogus appraisal of the market value of the property was intentional and material.

37. The Plaintiffs were damaged by the Defendants' fraudulent appraisal.

**WHEREFORE**, the Plaintiffs respectfully request the following relief:

- (a) Actual and punitive damages;
- (b) Set-off and other equitable relief;
- (c) Reasonable attorney's fees and the cost of this litigation; and
- (d) Such other relief as the Court deems equitable and just.

**COUNT V - DISHONESTY, MISREPRESENTATION,  
AND BREACH OF PROFESSIONAL STANDARDS**

38. The Plaintiffs incorporate the preceding paragraphs by reference.

39. The Defendant appraiser in making the false appraisal as hereinbefore alleged, engaged in dishonesty, fraud, and/or misrepresentation with the intent to substantially benefit herself



or another, and with the intent to substantially injure another in violation of the Real Estate Appraiser Licensing and Certification Act, *W. Va. Code* § 30-38-12(3).

40. The Defendant appraiser breached the standards for professional practice in violation of *W. Va. Code* § 30-38-17.

41. The Plaintiffs were injured as a proximate result of the Defendant's breach of standards.

**WHEREFORE**, the Plaintiffs respectfully request the following relief:

(a) A declaration that the Defendant appraiser engaged in unlawful conduct as alleged;

(b) Award the Plaintiffs a penalty pursuant to *W. Va. Code* § 30-38-15(c) in an amount determined by the Court for the unlawful conduct as alleged;

(c) Actual and punitive damages; and

(d) Such other fees and costs as may be deemed reasonable and just.

**COUNT VI - BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

42. The Plaintiffs incorporate the preceding paragraphs by reference.

43. The Defendants breached their duties of good faith and fair dealing implied in every contract that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the benefit of their contract.

44. The Defendants, as a matter of intentional and planned business practices, breached their duties by refusing to accept payments by the Plaintiffs in violation of *W. Va. Code* § 46A-2-115.

**WHEREFORE**, the Plaintiffs respectfully pray that the Court enter judgment in their favor and against the defendants as follows:

(a) The Court enter declaratory judgment that practices are illegal as alleged, and enjoin the Defendants from any further attempt to enforce all or part of the contracts or assert liability thereunder;

- (b) Enjoining the illegal practices as alleged;
- (c) Actual damages;
- (d) Reasonable attorneys fees and the cost of this litigation;
- (e) Such other relief as the Court may deem equitable and just.

#### **COUNT VII – JOINT VENTURE, CONSPIRACY, AND AGENCY**

45. The Plaintiffs incorporate the preceding paragraphs by reference.
46. Each Defendant had a pecuniary interest in the loan transaction with the Plaintiffs.
47. The Defendants combined their money, skill, and knowledge to carry out the enterprise, that is the loan to the Plaintiffs.
48. On information and belief, each Defendant had an agreement – written, oral, constructive, or otherwise – with one another to close the loan.
49. Each of the acts of the Defendants hereinbefore alleged, were done in furtherance of a joint venture in which each of the acts of each of the Defendants was pursued with a joint purpose.
50. The Defendants conspired to commit the unlawful acts, or lawful acts by unlawful means, hereinbefore alleged, and each is responsible for all acts alleged herein.
51. Each of the Defendants' acts were conducted as a part of the principal-agency relationship between the Defendants.

#### **COUNT VIII - ILLEGAL FAILURE TO CREDIT PAYMENTS**

52. The Plaintiffs incorporate the preceding paragraphs by reference.

53. The Defendant Flagstar returned the plaintiffs' payment on at least four occasions and failed to credit their payments to their account in violation of W. Va. Code §46A-2-115.

**WHEREFORE**, Plaintiffs respectfully pray for the following relief:

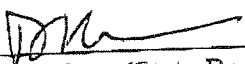
(a) The Court enter a declaratory judgment that Defendant is pursuing illegal practices.

(b) Civil penalties of \$4,000 for each violation pursuant to W. Va. Code §§ 46A-5-101(1) & 106.

(c) Attorney fees and such other relief as the Court may deem reasonable and just.

**THE PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE**

**JAMES HARPER and  
TAMMY J. HARPER,  
By Counsel**

  
Daniel F. Hedges (State Bar ID No. 1660)  
Bren J. Pomponio (State Bar ID No. 7774)  
Mountain State Justice, Inc.  
1031 Quarrier St., Ste. 200  
Charleston, WV 25301  
(304) 344-3144  
(304) 344-3145 (fax)  
**COUNSEL FOR PLAINTIFFS**

**MEMORANDUM TO CLERK  
FOR INSTITUTING CIVIL ACTION**

To the Clerk of the Circuit  
Court of Putnam County, West Virginia

**JAMES HARPER and  
TAMMY J. HARPER,**

Plaintiffs,

CIVIL ACTION NO. 08-C-147

v.

**CARTERET MORTGAGE CORPORATION,  
NATIONAL CITY MORTGAGE COMPANY  
d/b/a ACCUBANC MORTGAGE, FLAGSTAR  
BANK, LARRY WOOD, and CRAIG WILSON,**

Defendants.

	<u>Days to Answer</u>	<u>Type of Service</u>
Carteret Mortgage Corporation	<u>30</u>	Secretary of State
National City Mortgage Company d/b/a Accubanc Mortgage	<u>30</u>	Secretary of State
Flagstar Bank	<u>30</u>	Secretary of State
Larry Wood	<u>30</u>	Personal Service
Craig Wilson	<u>30</u>	Personal Service

2008 MAY -5 PM 2:08  
PUTNAM CO. CLERK OF COURT

Please issue summons in the above-styled action as indicated.

Original and 2 copies of Complaint furnished herewith.

*Daniel F. Hedges*  
Daniel F. Hedges (WV Bar ID No. 1660)  
Bren J. Pomponio (WV Bar ID No. 7774)  
Mountain State Justice, Inc.  
1031 Quarrier Street, Suite 200  
Charleston, WV 25301  
304/344-3144  
304/344-3145 (fax)  
**COUNSEL FOR PLAINTIFFS**

PLAINTIFF: James Harper and Tammy J. Harper	CASE NUMBER:
DEFENDANTS: Carteret Mortgage Corporation, et al.	

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND:  Yes  No

CASE WILL BE READY FOR TRIAL BY 4/2009

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?  YES  NO  
IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: \_\_\_\_\_

Attorney Name: Daniel F. Hedges      Representing:


Firm: Mountain State Justice, Inc.       Plaintiffs     Defendant

Address: Suite 200       Cross-Complainant     Cross-Defendant

          1031 Quarrier Street

          Charleston, WV 25301

Telephone: 304/344-3144      Dated: May 2, 2008

  
Signature

Pro Se