

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

_____	)	
In re:	)	
	)	
RICHARD P. LOTFY and SHARI D. LOTFY	)	Chapter 13
	)	Case No. 08-40106
_____	)	
	)	
RICHARD P. LOTFY and SHARI D. LOTFY	)	
Plaintiffs,	)	
vs.	)	
	)	
MORTGAGE ELECTRONIC REGISTRATION	)	Adv. Pro. No. 08-04071
SYSTEMS, INC.	)	
	)	
and	)	
	)	
INDYMAC BANK, F.S.B.	)	
Defendants.	)	
_____	)	

**CO-DEFENDANT, INDYMAC BANK, F.S.B.'S,  
ANSWER TO PLAINTIFFS' COMPLAINT  
AND COUNTERCLAIMS**

Co-Defendant, Indymac Bank, F.S.B. ("IMB"), hereby answers the complaint (the "Complaint") of Plaintiffs, Richard P. Lotfy and Shari D. Lotfy, as follows:

**Introduction.**

The Complaint begins with an introductory statement and allegations consisting of legal conclusion to which no response is required. Insofar as a response is required, IMB denies the allegations contained in the introduction.

1. On information and belief, IMB admits the allegations set forth in paragraph 1 of the Complaint.

2. The allegations set forth in paragraph 2 of the Complaint consist of legal conclusions to which no response is required.

**Parties.**

3. On information and belief, IMB admits that Richard and Shari Lotfy are natural persons. IMB is without sufficient knowledge or information to form a belief as to the remaining allegations set forth in paragraph 3 of the Complaint.

4. On information and belief, IMB admits that Mortgage Electronic Registration Systems, Inc. (“MERS”) is a Delaware corporation with a principal office located in Virginia. The remaining allegations set forth in paragraph 4 of the Complaint pertaining to whether MERS does business in the Commonwealth of Massachusetts are legal conclusions to which no response is required.

5. IMB admits that it is a federal savings bank with a corporate office located at 155 N. Lake Avenue, Pasadena, CA 91101. The remaining allegations set forth in paragraph 5 of the Complaint pertaining to whether IMB does business in the Commonwealth of Massachusetts are legal conclusions to which no response is required.

**Factual Allegations.**

6. On information and belief, IMB admits that the Debtors purchased the property located at 145 Hazel Street, Uxbridge, Worcester County, Massachusetts (the “Property”). IMB denies the remaining allegations set forth in paragraph 6 of the Complaint.

7. IMB denies the allegations set forth in paragraph 7 of the Complaint.

8. IMB admits that two mortgages encumbering the Property were granted by the Mr. and Ms. Lotfy to MERS, as nominee for IMB. IMB denies that the mortgages were granted at the

time referenced in paragraph 7 of the Complaint or that the Plaintiffs have accurately described the loan agreements.

9. IMB admits that a mortgage in the original principal amount of \$300,000.00 was recorded with the Worcester County (Worcester District) Registry of Deeds (the "Registry") at Book 38967, Page 279. IMB denies the remaining allegations set forth in paragraph 9 of the Complaint insofar as they purport to represent that the "\$300,000.00 loan" is as described in paragraph 7 of the Complaint.

10. IMB admits that a mortgage in the original principal amount of \$75,000.00 was recorded with the Registry at Book 38967, Page 303. IMB denies the remaining allegations set forth in paragraph 10 of the Complaint insofar as they purport to represent that the "\$75,000.00 loan" is as described in paragraph 7 of the Complaint.

11. IMB admits the allegations set forth in paragraph 11 of the Complaint.

12. IMB admits that a Complaint to Foreclose Mortgage was executed. IMB denies the remaining allegations set forth in paragraph 12 of the Complaint.

13. IMB denies the allegations set forth in paragraph 13 of the Complaint.

14. IMB admits the allegations set forth in paragraph 14 of the Complaint.

15. IMB admits that a foreclosure deed was executed on or about November 5, 2007 by Erica Johnson-Seck. IMB denies that the grantee and grantor names are as described by Plaintiffs in paragraph 15 of the Complaint.

16. IMB admits that on or about December, 10, 2007, a foreclosure deed was recorded with the Registry at Book 42172, Page 27. IMB denies that said foreclosure deed is exactly as described in paragraph 16 of the Complaint.

17. IMB admits that on or about July 20, 2007, an assignment of the mortgage recorded with the Registry at Book 38967, Page 279 and held of record by MERS, as nominee for IMB, was executed. IMB denies that the assignee's name is as described in paragraph 17 of the Complaint.

18. IMB admits that an assignment of the mortgage recorded with the Registry at Book 38967, Page 279 was recorded on or about December 10, 2007 at Book 42172, Page 22.

**Claims.**

**COUNT I  
(Violation of M.G.L. c. 244)**

19. IMB adopts and re-alleges all paragraphs above as if fully restated herein.

20. The allegations set forth in paragraph 20 of the Complaint consist of legal conclusions to which no response is required.

21. The allegations set forth in paragraph 21 of the Complaint consist of legal conclusions to which no response is required.

22. IMB is without sufficient knowledge or information to form a belief as to what the Debtors contend. IMB denies the remaining allegations set forth in paragraph 22 of the Complaint.

23. IMB is without sufficient knowledge or information to form a belief as to what whether or not the Debtors' contentions are reasonable. Insofar as the remaining allegations set forth in paragraph 23 of the Complaint consist of legal conclusions, no further response is required.

**COUNT II  
(Violation of §548 U.S.C. as Fraudulent Conveyance)**

24. IMB adopts and re-alleges all paragraphs above as if fully restated herein.

**Request For Relief.**

IMB denies that Plaintiffs are entitled to the relief they have demanded.

**DEFENSES**

**First Affirmative Defense**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted against IMB.

**Second Affirmative Defense**

Plaintiffs' claims are barred by the doctrines of release, waiver, estoppel, acquiescence, and ratification.

**Third Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of unclean hands and laches.

**Fourth Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of unclean hands and laches.

**Fifth Affirmative Defense**

IMB reserves the right and intends to rely upon any such other defenses which may not be now known but are discovered and made available during discovery in this case, and hereby reserves its right to amend its Answer and assert such defenses.

WHEREFORE, co-defendant, Indymac Bank, F.S.B., respectfully requests that the Court:

- i. Enter a judgment in its favor on all counts of the Complaint;
- ii. Dismiss the Complaint with prejudice;
- iii. Award IMB its costs and expenses, including attorneys' fees, incurred in this action; and
- iv. Grant such other relief as the Court deems as just and proper.

INDYMAC BANK, F.S.B.  
By its attorney,

ORLANS MORAN PLLC

/s/ Joseph P. Corrigan

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Joseph P. Corrigan  
BBO #656426  
45 School Street  
Boston, MA 02108  
(617) 502-4100  
(617) 502-4101 (fax)

Date: July 7, 2008

**CERTIFICATE OF SERVICE**

I, Joseph P. Corrigan, do hereby certify that on this 7<sup>th</sup> day of July, 2008, I served a true copy of the within document by sending it to the undersigned via first class mail, postage prepaid or other method specified.

Electronically

Rosaleen J. Clayton rondonlaw@aol.com

Via U.S. Mail

Richard P. Lotfy  
145 Hazel Street  
Uxbridge, MA 01569

Shari D. Lotfy  
145 Hazel Street  
Uxbridge, MA 01569

/s/ Joseph P. Corrigan

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Joseph P. Corrigan

Date: July 7, 2008