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## SunTrust Hit With Action Over Loan Fees, Foreclosures

By Lisa Uhlman

Law360, New York (August 31, 2011) -- SunTrust Mortgage Inc. and its parent were hit Wednesday with a putative class action in Illinois federal court alleging the lender improperly assessed late fees and foreclosed on homes even though the plaintiffs say they complied with their contracts.

Purported lead plaintiff Sigrid Garavito filed the suit against SunTrust and SunTrust Banks Inc. targeting the lender's loan modification practices developed in response to the economic crisis, practices that she says punish mortgage holders when they follow rules specifying that they can make reduced payments following a loan modification.

"When SunTrust mortgagees enter into the 'trial period' portion of the loan modification process, they are directed by SunTrust to make payments for a designated period of consecutive months at a reduced (modified) rate, ostensibly to qualify for permanent modification," the suit said.

"After consumers follow those directions during the trial period, however, SunTrust imposes substantial (but baseless) penalty fees and late fees and then commences foreclosure proceedings against consumers," it said.

Garavito emphasizes that she is seeking damages not for SunTrust's failure to grant loan modifications pursuant to its contracts, but rather for its practice of charging fees and starting foreclosure proceedings precisely because customers comply with the terms of those contracts.

The issues of the suit arose from practices SunTrust originated as part of the Troubled Asset Relief Program-created Home Affordable Modification Program, which laid the groundwork for mortgage companies to change loans for homeowners in financial need.

Under HAMP, eligible borrowers are allowed to make modified mortgage payments during a three-month trial period, at the end of which the lender must decide whether to grant a permanent loan modification.

In addition, servicers are required to hold off on all foreclosure proceedings during HAMP evaluations and trial modification periods, the suit notes.

"Plaintiff and members of the proposed classes entered into trial modification periods with SunTrust only to find that SunTrust refused to make a timely decision on the modifications, instead stringing borrowers along for many additional months without a decision — all the while imposing hefty penalty fees and, in many cases, ultimately commencing foreclosure proceedings," the suit said.

Garavito says that although SunTrust instructs mortgagees entering the trial period to make reduced payments for a designated period in order to qualify for permanent modification, when they do so the lender imposes substantial penalty and late fees before finally foreclosing.

"SunTrust's goal appears to be to keep loans in default and arrears for as long as possible before ultimately foreclosing or selling the servicing rights to another mortgage servicer," the suit said.

It says that is exactly what the lender has in mind when it invites borrowers to participate in HAMP and encourages them to make temporary, reduced payments with no intention of complying with the program's requirements or offering permanent loan modifications.

"Meanwhile, SunTrust profits from initiating and actively pursuing foreclosure while simultaneously collecting payments from mortgagors pursuant to illusory promises of forbearance, permanent modifications or 'workout' solutions," Garavito alleged.

The suit, which alleges breach of contract, intentional misrepresentation, negligent misrepresentation, unjust enrichment and violation of the Illinois Consumer Fraud Act, seeks class certification, restitution and disgorgement, an injunction, damages, and attorneys' fees and costs.

Counsel for Garavito did not immediately respond to a request for comment Wednesday evening.

Garavito is represented by Joseph J. Siprut of Siprut PC.

Counsel for the defendants was not immediately identifiable.

The case is Garavito v. SunTrust Mortgage Inc. et al., case number 1:11-cv-06056, in the U.S. District Court for the Northern District of Illinois.

--Editing by John Quinn.

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