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Wells Fargo Bank and
Wells Fargo Bank, N.A.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHURCH TOWERS URBAN RENEWAL
CORPORATION, a New Jersey Non-
Profit Corporation,

Plaintiff,

v.

HOLCO CAPITAL CORP., et al.,

Defendants.

Civil Action No. 2:10-CV-00638-PGS-ES

Hon. Peter G. Sheridan, U.S.D.J.

**DEFENDANT WELLS FARGO BANK'S
ANSWER TO AMENDED COMPLAINT
AND AFFIRMATIVE DEFENSES**

Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), which is also listed in the caption of the Amended Complaint under the name "Wells Fargo Bank," states its Answer to Plaintiff's Amended Complaint as follows:

PARTIES

1. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 1.
2. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 2.

3. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 3.

4. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 4.

5. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 5.

6. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 6.

7. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 7.

8. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 8.

9. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 9.

10. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 10.

11. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 11.

12. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 12.

13. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 13.

14. Wells Fargo admits that it is a national banking association chartered in South Dakota, which maintains its principal place of business in California.

15. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 15.

16. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 16.

17. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 17.

18. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 18.

19. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 19.

JURISDICTION OF THE COURT

20. Wells Fargo admits that it is a national banking association chartered in South Dakota. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations stated in Paragraph 20.

21. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 21.

VENUE

22. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 22.

23. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 23.

RELEVANT FACTS

24. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 24.

25. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 25.

26. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 26.

27. Wells Fargo admits that on January 14, 1966, Church Towers Urban Renewal Corporation entered into a Mortgage in the amount of \$6,220,400.00 with The County Trust Company, and that a copy of that Mortgage is attached to the Amended Complaint as **Exhibit A**.

Wells Fargo further admits that the Mortgage states in part:

Interest payable monthly on the first day of February, 1966, and on the first day of each month thereafter as hereinabove set forth. Commencing on the first day of October, 1968, installments of interest and principal shall be paid in the sum of Twenty-Two Thousand, Two Hundred Sixty-eight and 06/100 Dollars (\$22,268.06) each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal, if any, remaining unpaid, plus accrued interest, shall be due and payable on August 1, 2008. The installments of interest and principal shall be applied first to interest at the rate of three per centum (3%) per annum upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.

To the extent the allegations stated in Paragraph 27 are not expressly admitted, they are denied.

28. Wells Fargo admits that on January 14, 1966, Church Towers Urban Renewal Corporation entered into a Regulatory Agreement, and that a copy of that Agreement is attached to the Amended Complaint as **Exhibit B**. To the extent the allegations stated in Paragraph 28 are not expressly admitted, they are denied.

29. Wells Fargo admits that the Regulatory Agreement states, in part, “so long as the contract of mortgage insurance continues in effect, and during such further time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage or obligated to reinsure the mortgage.” To the extent the allegations stated in Paragraph 29 are not expressly admitted, they are denied.

30. Wells Fargo admits that Paragraph 30 accurately quotes portions of Paragraph 2 of the Regulatory Agreement. To the extent the allegations stated in Paragraph 30 are not expressly admitted, they are denied.

31. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 31.

32. Wells Fargo admits that Paragraph 32 accurately quotes a portion of Amendment No. 2, the document attached as **Exhibit C** to the Amended Complaint. To the extent the allegations stated in Paragraph 32 are not expressly admitted, they are denied.

33. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 33.

34. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 34.

35. Wells Fargo admits that on June 20, 2005, JP Morgan Trust Company, N.A. executed an Assignment of Mortgage to Wells Fargo Bank, N.A. as “Trustee, for the Benefit of the Holco Capital Group, Inc.” Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations stated in Paragraph 20.

36. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 36.

37. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 37.

38. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 38.

39. Wells Fargo denies that Defendants HC Mortgage Company or Holco Capital Group acted as agents of Wells Fargo. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations stated in Paragraph 39 and its subparts.

40. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 40.

41. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 41.

42. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 42.

WRONGFUL ACTIONS BY DEFENDANTS

43. Wells Fargo denies the allegations stated in Paragraph 43 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 43.

44. Wells Fargo denies that Defendants HC Mortgage Company or Holco Capital Group acted as agents of Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 44.

45. Wells Fargo denies the allegations stated in Paragraph 45 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 45.

46. Wells Fargo denies the allegations stated in Paragraph 46 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 46.

47. Wells Fargo denies the allegations stated in Paragraph 47 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 47.

48. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 48.

49. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 49.

50. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 50.

51. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 51.

52. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 52.

53. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 53.

54. Wells Fargo admits the allegations stated in Paragraph 54.

55. Wells Fargo admits that during his September 22, 2009 deposition, Kevin Horton testified that he repaid a \$1,450,000 loan from Libertyville Bank in January 2008, a \$2,000,000 line of credit to Wells Fargo in February 2008, and a \$1,100,000 operating line of credit to HSL Financial. To the extent the allegations stated in Paragraph 55 are not expressly admitted, they are denied.

56. Wells Fargo denies the allegations stated in Paragraph 56 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 56.

COUNT I (RETURN OF STOLEN FUNDS)

57. Wells Fargo restates its answer to Paragraphs 1-56.

58. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 58.

59. Wells Fargo denies the allegations stated in Paragraph 59.

60. Wells Fargo admits that Paragraph 60 accurately quotes portions of N.J.S.A. 3B:14-56.

61. Wells Fargo denies the allegations stated in Paragraph 61 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 61.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count I of the Amended Complaint, and for all other appropriate relief.

COUNT II (ACCOUNTING)

62. Wells Fargo restates its answer to Paragraphs 1-61.

63. Wells Fargo denies the allegations stated in Paragraph 63 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 63.

64. Wells Fargo denies the allegations stated in Paragraph 64 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 64.

65. Wells Fargo denies the allegations stated in Paragraph 65 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 65.

66. Wells Fargo denies the allegations stated in Paragraph 66 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 66.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count II of the Amended Complaint, and for all other appropriate relief.

COUNT III (NEGLIGENCE)

67. Wells Fargo restates its answer to Paragraphs 1-66.

68. Wells Fargo denies the allegations stated in Paragraph 68 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 68.

69. Wells Fargo denies the allegations stated in Paragraph 69 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 69.

70. Wells Fargo denies the allegations stated in Paragraph 70 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 70.

71. Wells Fargo denies the allegations stated in Paragraph 71 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 71.

72. Wells Fargo denies the allegations stated in Paragraph 72 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 72.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count III of the Amended Complaint, and for all other appropriate relief.

COUNT IV (CONVERSION)

73. Wells Fargo restates its answer to Paragraphs 1-72.

74. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 74.

75. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 75.

76. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 76.

77. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 77.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count IV of the Amended Complaint, and for all other appropriate relief.

COUNT V (FRAUD)

78. Wells Fargo restates its answer to Paragraphs 1-77.

79. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 79.

80. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 80.

81. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 81.

82. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 82.

83. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 83.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count V of the Amended Complaint, and for all other appropriate relief.

COUNT VI (BREACH OF FIDUCIARY DUTY)

84. Wells Fargo restates its answer to Paragraphs 1-83.

85. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 85.

86. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 86.

87. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 87.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count VI of the Amended Complaint, and for all other appropriate relief.

COUNT VII (FEDERAL R.I.C.O. VIOLATIONS)

88. Wells Fargo restates its answer to Paragraphs 1-87.

89. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 89.

90. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 90.

91. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 91.

92. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 92.

93. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 93.

94. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 94.

95. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 95.

96. Wells Fargo denies the allegations stated in Paragraph 96 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 96.

97. Wells Fargo denies the allegations stated in Paragraph 97 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 97.

98. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 98.

99. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 99.

100. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 100.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count VII of the Amended Complaint, and for all other appropriate relief.

COUNT VIII (NEW JERSEY R.I.C.O. VIOLATIONS)

101. Wells Fargo restates its answer to Paragraphs 1-100.

102. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 102.

103. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 103.

104. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 104.

105. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 105.

106. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 106.

107. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 107.

108. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 108.

109. Wells Fargo denies the allegations stated in Paragraph 109 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 109.

110. Wells Fargo denies the allegations stated in Paragraph 110 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 110.

111. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 111.

112. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 112.

113. Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 113.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count VIII of the Amended Complaint, and for all other appropriate relief.

COUNT IX (MALICIOUS, WANTON AND INTENTIONAL ACTIONS)

114. Wells Fargo restates its answer to Paragraphs 1-113.

115. Wells Fargo denies the allegations stated in Paragraph 115 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 115.

116. Wells Fargo denies the allegations stated in Paragraph 116 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 116.

117. Wells Fargo denies the allegations stated in Paragraph 117 as they relate to Wells Fargo. To the extent the allegations relate to other defendants, Wells Fargo lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in Paragraph 117.

WHEREFORE, Wells Fargo asks that Plaintiff take nothing against Wells Fargo on Count IX of the Amended Complaint, and for all other appropriate relief.

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state claims against Wells Fargo upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims against Wells Fargo are barred by the doctrines of laches, waiver, and estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims against Wells Fargo are barred, in whole or part, by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Any loss incurred by the Plaintiff was not proximately caused by Wells Fargo's conduct.

FIFTH AFFIRMATIVE DEFENSE

The damages claimed by the Plaintiff were not reasonably foreseeable at the time of contracting with Wells Fargo.

SIXTH AFFIRMATIVE DEFENSE

Any loss incurred by the Plaintiff was caused by the acts or omissions of a third party, including Kevin Horton.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff failed to mitigate its claimed damages.

EIGHTH AFFIRMATIVE DEFENSE

Kevin Horton, Holco Capital Group, Inc., and HC Mortgage Company, Inc. were not agents of Wells Fargo.

NINTH AFFIRMATIVE DEFENSE

Wells Fargo reserves the right to assert any additional affirmative defenses that may become known through discovery.

BRESSLER, AMERY & ROSS, P.C.

By: /s/ Mark M. Tallmadge
Mark M. Tallmadge

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