



3. The NHA was passed by Congress to promote the availability of low and moderate-income housing. *Capitol Mortg. Bankers, Inc. v. Cuomo*, 222 F.3d 151, 152 (4th Cir. 2000).

4. Under its mortgage insurance program, the FHA agrees to protect mortgage lenders against the risk of loss caused by borrowers' non-payment, thereby making those loans more widely available to a greater portion of the population

5. Loans insured by the FHA are subject to HUD regulations. Furthermore, where HUD rules or regulations are incorporated into an insured mortgage, they are binding upon both the mortgagor and mortgagee. *In re Ruiz*, 501 B.R. 76, 79 (E.D. Penn Nov. 8, 2013).

6. Most pertinent here is HUD regulation 24 C.F.R. § 203.377, which provides:

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, **and efforts to reach the mortgagor by telephone within that period have been unsuccessful**, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant.... (emphasis added).

7. This section has been interpreted to mean that once a property has been found to be occupied, no further inspections are required by HUD or authorized for reimbursement. *See*, Mortgagee Letter 81-26 (HUDML), 1981 WL 389744 at \*1 (June 16, 1981); *see also*, *In re Ruiz*, 501 B.R. at 81. In other words, once a property subject to an FHA loan in default is found to be occupied, charges for inspection fees are not allowed.

8. The Antonicics, on behalf of themselves and all others similarly situated, bring this case as a class action asserting claims against HSBC for breach of contract, unjust

enrichment, and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”). 815 ILCS 505/2, *et seq.*

9. The Antonicics are informed and believe, and upon such information and belief aver, that this action is based upon a common nucleus of operative facts because HSBC violated the regulations of HUD and the FHA mortgages it services in the same or similar manner. This action is based on the same legal theory, namely liability for HSBC’s failure to comply with HUD regulations and the FHA mortgages it services by conducting and assessing fees for unauthorized and unnecessary property inspections of homes which, although in default, are owner-occupied.

10. This action seeks relief expressly authorized by Illinois law: (a) injunctive relief enjoining HSBC from assessing and collecting fees for unauthorized inspections of owner-occupied properties with FHA insured mortgages in default; (b) an award of the aggregate actual damages suffered through the assessment, payment, or judgment awards of the illegally assessed inspection fees; and (c) an award of penalties and punitive damages.

### **JURISDICTION AND VENUE**

11. The Antonicics bring this action pursuant to 735 ILCS 5/2-801 *et seq.*

12. This Court has jurisdiction pursuant to 735 ILCS 5/2-209 in that HSBC transacted business and committed acts in DuPage County, Illinois that directly relate to matters raised in this action and HSBC has done so continuously throughout the Class Period in a manner sufficient to support personal jurisdiction.

13. Venue is proper in DuPage County, Illinois because the Antonicics reside in DuPage County, the property is located in DuPage County, the allegations in the complaint arise

from conduct undertaken and having effect in DuPage County, and HSBC is doing business in DuPage County.

### **PARTIES**

14. Antonics are residents of Illinois over the age of eighteen (18) and presently reside at 7673 Sprucewood Avenue, Woodridge, Illinois 60517 (the "Property").

15. On information and belief, HSBC, is a national bank and mortgage company headquartered in New York and doing business in DuPage County, Illinois.

### **FACTS**

16. 16. On September 5, 2008, the Antonics entered into an FHA insured mortgage with HSBC (the "Mortgage"). A true and correct copy of the Mortgage is attached as

#### **Exhibit A.**

17. On June 26, 2017, HSBC filed its Complaint for Mortgage Foreclosure and Reformation.

18. The Antonics were served with the Complaint at the Property on June 29, 2017.

19. The Antonics have resided at the Property since September 5, 2008. At all times since the Mortgage was executed, the Property was, and remains, the Antonics' primary and only residence and was occupied by the Antonics as such at all relevant times.

20. In its Complaint, HSBC alleged that the Antonics defaulted on the Mortgage by failing to make payments due under the Note as of January 1, 2017 and continuing thereafter.

21. On or about June 21, 2018, HSBC filed a Motion for Entry of Default and for Judgment of Foreclosure and Judicial Sale. In connection with this motion, HSBC submitted to the Court an Affidavit of Amounts Due and Owning by Dennis Herman, Assistant Vice

President of PHH Mortgage Corporation. (“Herman Affidavit”). A true and correct copy of the Herman Affidavit is attached as **Exhibit B**.

22. PHH Mortgage Corporation (“PHH”) was contracted by HSBC to perform mortgage related services for the Property. Most pertinent here, the Herman Affidavit indicates that the Antonicics were assessed fees in the amount of \$434.25 for property inspections. *See **Exh. B***.

23. HSBC has continued to charge for property inspections since the filing of the Foreclosure complaint on June 26, 2017. These inspections are identified as “Auto PPTY Inspection Assessed.” Attached as **Exhibit C** are true and correct copies of the Antonicics’ monthly mortgage statements reflecting property inspection fees, with loan number redacted.

24. The attached mortgage statements identify only some of the charges for property inspections in the amount of \$11.00 for inspections dated 3/7/2018, 4/10/2018, 5/7/2018, and 6/6/2018. *See **Exh. C***.

25. Although conducting its first inspection of the Property, HSBC, knew, or should have known, that the Antonicics occupied the Property.

26. Even though HSBC knew, or should have known, that the Antonicics occupied the Property, especially since HSBC served them with the foreclosure complaint on June 29, 2017, HSBC continued charging their account for inspection fees.

27. Paragraph 8 of the Mortgage describes when and under what circumstances fees may be charged and collected. This paragraph states:

**8. Fees.** Lender may collect fees and charges authorized by the Secretary [HUD]. *See **Exh. A**, ¶8.*

28. Although the Antonicics have continually occupied the Property throughout the foreclosure process, HSBC never attempted to contact them regarding the inspections of the Property it conducted and charged to their account.

29. To date, the Antonicics have been charged at least \$434.25 for inspections of the Property by HSBC even though the Antonicics have continually and conspicuously occupied and maintained it. *See* **Exh. B.**

30. On September 14, 2018 the Antonicics attempted to raise these claims in the HSBC foreclosure action. The court severed these claims and ordered the Antonicics to bring the claims as an original action in Law Division. A true and correct copy of the order dated December 6, 2018 is attached hereto as **Exhibit D.**

### **CLASS ACTION ALLEGATIONS**

31. Pursuant to 735 ILCS 5/2-801, the Antonicics bring this class action on behalf of the following National Classes and Illinois Subclass:

**A. National Class for Count I (Breach of Contract):**

All persons who (1) within ten years prior to the filing of HSBC's foreclosure action, (2) had an FHA insured loan serviced by HSBC, (3) occupied the subject property, and (4) were charged inspection fees by HSBC while still occupying the property.

**B. National Class for Count II (Unjust Enrichment):**

All persons who (1) within five years prior to the filing of HSBC's foreclosure action, (2) had an FHA insured loan serviced by HSBC, (3) occupied the subject property, and (4) were charged inspection fees by HSBC while still occupying the property.

**C. Illinois Subclass for Count III (Violation of Illinois Consumer Fraud Act):**

All persons in Illinois who (1) within three years prior to the filing of HSBC's foreclosure action, (2) had an FHA insured loan serviced by

HSBC, (3) occupied the subject property, and (4) were charged inspection fees by HSBC while still occupying the property.

Excluded from the Class and Subclass (collectively “the Class”) is HSBC and its employees and agents and members of the Judiciary. Antonicics reserves the right to amend the Class definition upon completion of class discovery when the contours and the parameters of the class become apparent.

A class action is proper in that:

- (a) On information and belief, the Class consists of more than forty (40) and likely thousands of persons who are identifiable through HSBC’s records and is so numerous that joinder of all members is impracticable.
- (b) There are questions of fact or law common to the class predominating over all questions affecting only individual Class Members including:
  - (i) Whether HSBC’s conduct in charging inspection fees constitutes breach of contract;
  - (ii) Whether HSBC knew or should have known that Antonicics and the other members of the class were occupying the mortgaged properties;
  - (iii) Whether HSBC was unjustly enriched by charging the inspection fees;
  - (iv) Whether the charging of inspection fees of owner-occupied property is an unfair, illegal, and deceptive practice which violates the Illinois Consumer Fraud and Deceptive Business Practices Act;
  - (v) Whether HSBC should be enjoined from charging inspection fees when the property is occupied; and

(vi) Whether the Class is entitled to actual damages, restitution for disgorgement of inspection fees wrongfully obtained, and/or punitive damages.

32. The Antonicics will fairly and adequately protect the interests of the other Class Members. The Antonicics have retained counsel who are experienced in handling class actions and claims involving unlawful business practices. Neither the Antonicics nor their counsel have any interests adverse or in conflict with the Class.

33. A class action is an appropriate method for adjudicating this controversy fairly and efficiently. The interest of the individual Class Members in individually controlling the prosecution of separate claims is small and individual actions are not economically feasible.

34. The Antonicics claims are typical of the claims of other Class Members in that each seek relief for incurred charges that should not have been charged and which increased their debt, increased the judgment awards against them, or resulted in the payment of fees that HSBC was not entitled to collect.

**COUNT I**  
**BREACH OF CONTRACT**

35. The Antonicics incorporate paragraphs 1 through 26, 27(A), 28-30 as if fully stated herein.

36. The respective FHA mortgages of the Antonicics and the Class Members are valid contracts.

37. The FHA mortgages limit the types of fees and charges and the circumstances under which HSBC may collect fees and charges authorized by the Secretary of HUD.

38. Most pertinent here, HUD does not authorize charges for inspections when a property subject to an FHA mortgage in default is found to be occupied. 24 C.F.R. § 203.377;



Mortgagee Letter 81-26 (HUDML), 1981 WL 389744 at \*1 (June 16, 1981); *see also, In re Ruiz*, 501 B.R. at 81.

39. Notwithstanding this limitation, HSBC charged the Antonicics, and the Class, for numerous inspection fees throughout default and the foreclosure process.

40. The Antonicics occupied the Property at all times during this process.

41. HSBC never sent notice to the Antonicics regarding the inspections nor attempted to contact them by telephone to determine whether the Property was occupied.

42. In addition, HSBC continued to charge the Antonicics for inspections after discovering that she occupied the Property.

43. HSBC materially breached the terms of the respective FHA mortgages with the Antonicics and the Class by charging fees for inspections that were not authorized by the Secretary of HUD.

44. As a result of HSBC's breach, the Antonicics and the Class Members have suffered damages in the form of being charged, assessed, having paid unauthorized inspection fees, or having judgment increase with the inclusion of the unauthorized inspection fees in foreclosure proceedings.

45. The Antonicics and the Class Members have also been damaged by having to defend a foreclosure litigation, through which HSBC is attempting to recoup the unauthorized inspection fees, having additional interest compounded, which increases the debt owed by each Class Member, and having the equity that the Antonicics and each Class Member have in their respective properties decrease by the addition of the unauthorized fees.

46. The Antonics, on behalf of themselves and the Class, seek actual and compensatory damages for HSBC's breaches of contract, restitution for disgorgement of monies wrongfully received, plus prejudgment interest, and costs.

**COUNT II**  
**UNJUST ENRICHMENT (IN THE ALTERNATIVE)**

47. The Antonics incorporate paragraphs 1 through 27(B), 28-30 as if fully stated herein.

48. Should this Court find that no contract provision expressly governs the claims arising from the allegations of this claim, the Antonics assert that HSBC knowingly received and retained benefits from the Antonics and the Class under circumstances that render HSBC's retention of such benefits unjust.

49. HSBC knowingly received and benefitted from financial gain achieved by charging for unauthorized inspection fees, which increases HSBC's leverage against the Antonics and Class Members in related foreclosure litigations or other attempts to rehabilitate their mortgages.

50. The Antonics and the Class incurred liabilities for the payment and assessment of the unauthorized inspection fees and have conferred a benefit on HSBC.

51. HSBC's assertion of the right to be paid such fees through this judicial foreclosure process and its retention of such fee payments is unjust, deceptive, unlawful, and against public policy and HUD regulations.

52. As an actual and proximate result of its actions, HSBC received and retained benefits at the expense of and detriment to the Antonics and the Class in the form of charges,

assessments, increased foreclosure judgments, increase in bargaining position during the foreclosure litigation, and payments of unauthorized inspection fees.

53. The Antonics seek removal of all charges and disgorgement and restitution of all revenue and profits gained through HSBC's unjust enrichment at the expense of the Antonics and the Class, plus prejudgment interest, and costs.

**COUNT III**  
**VIOLATION OF ILLINOIS CONSUMER FRAUD ACT – 815 ILCS 505/2**

54. The Antonics incorporate paragraphs 1 through 26, 27(C), 28-30 as if fully stated herein

55. The Illinois Consumer Fraud Act prohibits unfair or deceptive acts or practices, including the “misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact.” 815 ILCS 505/2. The Illinois Consumer Fraud Act further states that such acts or practices are unlawful “whether any person has in fact been misled, deceived or damaged thereby.” *Id.*

56. Here, HSBC charged the Antonics and the Class unauthorized inspection fees. These fees, in turn, were deceptively included in the monthly mortgage statements which incorrectly indicated that the inspection fees were due and owing. *See Exh. C.*

57. In placing the inspection fees on the statements, HSBC misrepresented to the Antonics and the Class that these fees were authorized under the FHA mortgages and HUD regulations, when HSBC knew, or should have known, that the fees were not authorized.

58. HSBC's inclusion of the inspection fees on the statements was misleading and intended to induce the Antonics and the Class to pay such unauthorized fees or, in a more

Machiavellian fashion, have this Court abstract the unauthorized fees from the Antonics through this mortgage foreclosure action.

59. HSBC's actions constitute a fraud on this Court and every court where HSBC claimed that it was entitled to charge for inspections of owner-occupied properties.

60. HSBC availed itself of the judicial mortgage foreclosure process to abstract payment for unauthorized inspection fees from the Class in a substantially similar manner to its attempt with the Antonics's mortgage foreclosure action.

61. As a result of HSBC's deceptive conduct in assessing and attempting to legitimize the unauthorized inspection fees, the Antonics and the Class were damaged by either paying the fees directly or having them deducted during the mortgage foreclosure process.

62. HSBC's conduct in attempting to charge these fees in violation of the Mortgage and HUD regulations was offensive to public policy, oppressive, and caused substantial injury to the Antonics and Class Members. Not only did HSBC's conduct increase the debt of the Antonics' and Class Members and decrease the equity they held in their homes, this conduct occurred when the Antonics and Class Members were at their most vulnerable – *i.e.* when they were in the process of losing their homes.

63. HSBC's deceptive attempt to assess and legitimize the unauthorized inspection fees was the direct and proximate cause of damages incurred by the Antonics and the Class and was done with the intent of causing the Antonics and the Class to pay illegal and unauthorized fees and to have courts award such fees through the foreclosure process.

64. Accordingly, the Antonics, on behalf of themselves and the Class, seek actual and compensatory damages, restitution for disgorgement of monies wrongfully received,

attorney's fees, prejudgment interest and costs as provided by 818 ILCS § 505/10(a) and, because of willful violations, punitive damages. *Id.*

65. The Antonicics also seeks an order requiring HSBC to remove all wrongfully imposed inspection fees from the accounts of the Antonicics and the Class and enjoining HSBC from further violating the Illinois Consumer Fraud Act.

**WHEREFORE**, Plaintiffs, Christopher J. Antonicic and Anastasia Antonicic, individually and on behalf of all others similarly situated, demand judgment in their favor and against Defendant, HSBC Mortgage Servicing Corporation, as follows:

- A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint the Antonicics as the representative of the Class, and appoint the the Antonicics' counsel as counsel for the Class;
- B. That the Court award the aggregate actual damages of the Class Members who have been assessed, paid, or awarded the unauthorized inspection fees;
- C. That the Court order restitution for disgorgement of monies wrongfully received;
- D. That the Court require HSBC to remove outstanding charges for unauthorized inspection fees from the accounts of Class Members;
- E. That the Court enjoin HSBC from engaging in the conduct complained of herein;
- F. That the Court award prejudgment interest and punitive damages;
- G. That the Court award reasonable attorney's fees and costs; and
- H. That the Court grant such further relief as it deems just.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues.

**NOTICE TO THE ILLINOIS ATTORNEY GENERAL**

Plaintiffs will mail a copy of this Complaint to the Illinois Attorney General.

Respectfully Submitted,

Christopher J. Antonicic and Anastasia Antonicic,  
individually and as the representative for a class of  
similarly-situated persons

By: /s/ Arthur C. Czaja  
Arthur C. Czaja  
One of their attorneys

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