

**Aurora Loan Servs. LLC v LaMattina &
Assoc., Inc.**

2009 NY Slip Op 31139(U)

May 13, 2009

Supreme Court, Richmond County

Docket Number: 103092/06

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

Index No.:103092/06
Motion No.:007 & 008

**AURORA LOAN SERVICES LLC,
a Delaware Limited Liability Company,**

Plaintiff

against

**LaMATTINA & ASSOCIATES, INC.,
JOSEPH LaMATTINA, ESQ.,
JOSEPH W. LaFORTE,
JAMES LaFORTE, JR.,
TINA LaFORTE,
JAMES LaFORTE,
TARA GIBSON,
JAMIE LYNN GULI,
FRANCIS ALFIERI,
MICHAEL O'LEARY,
UNION AMERICA MORTGAGE, INC.,
VINCENT J. ANCONA,
VINCENT J. ANCONA *d/b/a* UNION AMERICA
MORTGAGE KEY,
KEY LAND SERVICES, INC.,
WASHINGTON TITLE INSURANCE COMPANY,
HORTENSE MARKS, *and* ILENE MARKS,**

DECISION & ORDER

HON. JOSEPH J. MALTESE

Defendants

The following items were considered in the review of this motion to compel disclosure.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1, 4
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Attached to Papers

Defendants Vincent J. Ancona, Vincent J. Ancona *d/b/a* Union America Mortgage, and Union America Mortgage, Inc. (“Ancona”) move pursuant to *CPLR* Article 31 to direct the plaintiff to comply with Ancona’s Demand for Production of Documents or preclude the introduction of the same at trial. Ancona also moves pursuant to *CPLR* § 3215 for a default

judgment against co-defendant Key Land Services, Inc. (“Key Land”). Ancona’s first motion is granted in part and denied in part; Ancona’s second motion is granted in its entirety.

Facts

This litigation arises out of an alleged misappropriation of funds perpetrated by the defendants in this action. Specifically, the plaintiff Aurora Loan Services LLC (“Aurora”) alleges that LaMattina and Associates (“LaMattina”) stole funds that Aurora had wired to LaMattina for the refinance of a mortgage loan on the property of Hortense Marks and Ilene Marks. Aurora further alleges that Ancona selected LaMattina to act as the settlement agent and Key Land as the title agent on behalf of Aurora. The accusation against Ancona is that it referred this loan to LaMattina and Key Land when it knew or should have known that LaMattina and Key Land were participating in a fraudulent scheme.

Procedural History

Ancona served Aurora with a Demand for Production of Documents on November 17, 2006. Aurora responded to this demand on or about January 14, 2007. By correspondence dated February 20, 2007, Ancona’s counsel urged Aurora to provide the “Lender’s Guidelines” mentioned in the Broker’s Agreement. Through a letter dated August 28, 2008, Ancona again requested that Aurora provide the “Lenders Guidelines” as well as additional documents. On September 18, 2008, Ancona renewed its request for the outstanding discovery material. On October 2, 2008, Ancona served a motion to compel Aurora to provide the requested material, and to schedule an oral argument on this motion for November 14, 2008. On November 12, 2008, two days prior to the oral argument, Ancona received a letter from Aurora along with a CD-Rom containing about 1,550 documents. Given the timing of such correspondence, the court allowed Ancona additional time to review the material and set a date to serve a written response.

Discussion

I. Disclosure of Documents Sought by Defendant Ancona

CPLR § 3101(a) provides for “the full disclosure of all matter that is material and necessary to the prosecution or defense of an action.” The disclosure provisions of the *CPLR* are to be liberally construed with the test being one of usefulness and reason.¹ Demands for discovery must also be relevant, and may not impose an undue burden or represent a fishing expedition.² On a motion to compel, the party seeking discovery has the burden to demonstrate that the discovery it seeks is material and necessary to its case.

Ancona requests the following five set of documents from plaintiff Aurora: (1) a complete copy of the “Lender’s Guidelines” referenced in the Broker’s Agreement; (2) loan origination files for loans closed by LaMattina; (3) copy of all loan origination files in which Ancona participated; (4) communication and correspondence between employees of Aurora regarding the Marks loan and between Aurora and any party to this action regarding the same; and (5) Aurora’s policies or procedures on wiring funds to a closing agent. Aurora’s general response is that it has produced all documents in its possession that respond to Ancona’s requests, with the exception of documents related to other loans in which Ancona participated, those unrelated to the instant action, those that involve confidential business and personal information protected by contractual agreements, or those available from the District Attorney’s office and the New York State Department of Banking.

¹ *Wood v. NYCHA*, 228 AD2d 235 [2d Dept 1996].

² *Konrad v. 136 East 64th Street Corp.*, 209 AD2d 228 [1st Dept 1994].

A. The Lender's Guidelines

The movant asserts that it is entitled to receive the “Lender’s Guidelines” referenced in the Broker’s Agreement.³ Ancona maintains that failure to identify and provide the documents that constitute “The Lender’s Guidelines” would prevent Ancona from learning and understanding the nature of its obligations to Aurora and the alleged breach. In response, Aurora contends that there is not a document entitled “Lender’s Guidelines.” The Broker’s Agreement describes the “Lenders’ Guidelines” as an amorphous term, a compilation of various documents including instructions, communications, announcements or guidelines provided by the Lender to the Broker. The first paragraph of the Broker Agreement reads in part,

Broker agrees from time to time to submit and convey loan application packages to Lender, and provide certain additional services and facilities to Lender, subject to and upon the terms and conditions contained in this Agreement and in all other materials, including without limitation, interest rate shoots, product profiles, announcements or guidelines provided by Lender to Broker from time to time (“collectively, the “Lender’s Guidelines”).⁴

Because the “Lender’s Guidelines” cannot be identified in a single file, Aurora argues, it cannot provide any specific set of documents in response to this request. Aurora asserts to have already provided everything in response to Ancona’s demands.

B. Files for loans closed by LaMattina

Ancona requests the files for loans closed by LaMattina on behalf of Aurora in order to determine if these documents show any indication that LaMattina was acting fraudulently. Aurora, in response, maintains that this request is burdensome because it would be difficult to retrieve all files closed by LaMattina. The request is also irrelevant because the only transaction

³ Defendant Ancona’s exhibit S.

⁴ *Id.*

pertinent to this action, Aurora states, is the loan referred by Ancona to LaMattina and Key Land. Furthermore, Aurora asserts that since it was Ancona and LaMattina who engaged in this transaction, it would be Ancona who would have access to the original documents of their agreements. In its reply, Ancona points out that Aurora has failed to explain any efforts in trying to obtain these documents or to submit an affidavit confirming the same.

C. Copy of files in which Ancona participated

Because many of its files were seized by law enforcement agencies in relation to LaMattina's criminal investigation, Ancona says that it no longer has access to the files that concern the subject transaction. Ancona therefore requests these files because Aurora continues to possess them. Aurora claims that it would be difficult to ascertain the location of the loan origination files, since those files may be circulating among other servicers. In addition, Aurora states, these files contain confidential business and personal financial information protected by contracts. Lastly, Aurora urges Ancona to request copies of these files at the Attorney General's Office and the New York State Department of Banking.

D. Communications and correspondence between employees of Aurora and between Aurora and any party to this action related to the Marks loan

In an effort to acquire more documentation, Ancona believes that communications and correspondence between employees of Aurora and between Aurora and any party are essential to provide an adequate defense. The plaintiff contends to have produced copies of all internal communications to Ancona. It insists that since Ancona selected LaMattina and Key Land, it would be Ancona who would have access to documents regarding the Marks loan and the other parties. Hence, the plaintiff says that it cannot provide any or more information than what has already been submitted.

E. Policies or procedures on wiring funds to a closing agent.

Again, the plaintiff reiterates that it would be Ancona, the entity that selected LaMattina, who would have access to the information and procedures in which LaMattina came to act as Aurora's closing agent. Moreover, the plaintiff says to have agreed to produce any documents responsive to this request. Aurora points out that the plaintiff has yet to produce anything in relation to this request, as it had promised.

II. Motion for Default Judgment

Defendant Ancona also moves pursuant to *CPLR* § 3215(a) for a default judgment against Key Land entitling Ancona to contribution to the extent that any liability obligations are imposed against Ancona and/or Union in this action. Key Land has never answered or appeared in this action. There being no appearance, answer or opposition to the motion for a default judgment, it is granted.

Conclusion

Subject to *CPLR* § 3101(a), the parties are obliged to provide material that is necessary to the prosecution or defense of an action. The requesting party must ask for disclosure that is relevant and that may not impose an undue burden. This Court takes note of the plaintiff's contention that it submitted all the document that the defendant Ancona has requested. As such, Ancona would have to specify the types of documents it needs for litigation and Aurora would have to provide all documents in response to Ancona's demands to the extent not already provided.

Accordingly, it is hereby:

ORDERED, that the defendants Vincent J. Ancona, Vincent J. Ancona d/b/a Union

America Mortgage, and Union America Mortgage, Inc.'s motion directing the plaintiff to comply with their Demand for Production of Documents is granted in part and denied in part; it is further

ORDERED, that the plaintiff shall provide its response to the Demand for Production of Documents to the extent not already provided; it is further

ORDERED, that the Clerk shall enter a judgment as against Key Land Services Inc.; it is further

ORDERED, that an assessment of damages shall take place during the trial against the remaining defendants; and it is further

ORDERED, that all parties return to **DCM Part 3 on June 18, 2009 at 9:30 A.M.** for a Compliance Conference.

ENTER,

DATED: May 13, 2009

Joseph J. Maltese
Justice of the Supreme Court