

John v Whiteacre Funding, LLC
2016 NY Slip Op 31234(U)
June 17, 2016
Supreme Court, Kings County
Docket Number: 500978/15
Judge: Bernard J. Graham
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Part 36

DESMOND JOHN,

Plaintiff(s),

-against-

WHITEACRE FUNDING, LLC, WOODBRIDGE MORTGAGE INVESTMENT FUND 1, LLC, ATLANTIC HOME CAPITAL CORP., UNIVERSAL DEBT SERVICES, INC., VANESSA THATCHER, JEFFREY H. LEAVITT, ESQ., DAVID E. GOLDEN ESQ., GUNIT S. SABHARWAL, ESQ., FRANCOIS OLOA, QUONTIC BANK, et al.,

Defendant(s).

Index No.: 500978/15
Motion Calendar No.
Motion Sequence No.

DECISION / ORDER

Present:

Hon. Judge Bernard J. Graham
Supreme Court Justice

Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion for: summary judgment and to dismiss the complaint

Table with 2 columns: Papers, Numbered. Rows include Notice of Motion and Affidavits Annexed, Order to Show cause and Affidavits Annexed, Answering Affidavits, Replying Affidavits, Exhibits, and Other.

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Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Defendants, Woodbridge Mortgage Investment Fund 1, LLC ("Woodbridge"), David E. Golden, Esq. ("Golden"), Oliver Entine, The Russell A. Racette Jr. Living Trust, Henri Jeanrenaud, Barbara Jeanrenaud, 8 Figures LLC, Brad Johnson, and Shawn Sparks (collectively referred to as the "Woodbridge defendants") and Whiteacre Funding LLC ("Whiteacre") have

moved, pursuant to CPLR § 3211, to dismiss the action as against each of these defendants upon multiple grounds. Defendant, Quontic Bank (“Quontic”), has moved, pursuant to CPLR § 3212, for an Order awarding summary judgment in favor of said defendant and a dismissal of plaintiff’s complaint (in which there are six causes of action) on the grounds that the complaint is devoid of any facts which would support the claim that Quontic violated any statute or committed an act of fraud. Defendant Jeffrey H. Leavitt, Esq. (“Leavitt”) has moved, pursuant to CPLR § 3126, to dismiss any and all claims asserted by the plaintiff as well as any and all cross-claims asserted against said attorney by reason of the failure of the plaintiff to fully respond to Mr. Leavitt’s discovery requests. Plaintiff opposes the relief sought in the motions to the extent that he maintains that summary judgment is a drastic remedy and that a dismissal of this matter would be unwarranted. As to defendant Leavitt, plaintiff maintains that he has complied with the discovery requests to the extent that he is required to do so.

Background:

The plaintiff, Mr. John, maintains that he owns the subject property known as 461 New Lots Avenue, Brooklyn, New York, as his primary residence. There is a dispute as to whether the property was used as his primary residence, which premises has four residential apartments and two retail stores. Plaintiff was the mortgagor on a mortgage with Greenpoint Mortgage Funding, LLC and upon merger of two banking institutions, this mortgage was transferred to GreenPoint’s successor, Capital One Bank. The mortgage was later assigned by Capital One Bank to Waterfall Victoria Master Fund Ltd. When plaintiff defaulted under the terms of the mortgage, Waterfall commenced a foreclosure proceeding.¹ In response to the foreclosure proceeding, plaintiff obtained a loan from Atlantic Home Capital Corp. (“Atlantic Capital”), with the assistance of Vanessa Thatcher, Atlantic Capital’s loan officer. Plaintiff alleges that he was tricked by Ms. Thatcher into transferring the premises into an LLC (461 New Lots Avenue LLC)² and obtaining a

¹ This Court in an Decision/Order dated June 4, 2013, issued summary judgment to Waterfall and an Order of Reference as and against Desmond John, as temporary administrator of the Estate of Shirley John (Index # 2637/10)

² Mr. John had a 75% interest in the LLC and Ariel Nicole Mark a 25% interest.

new one year commercial loan from Woodbridge Mortgage Investment Fund 1, LLC. Plaintiff alleged that Atlantic Capital and Ms. Thatcher had assured him that at the end of this one year commercial loan that the property would be refinanced by Universal Debt Services, Inc.³ Plaintiff further alleged that he was charged a fee of \$2,750.00 for a property appraisal with the promise that Quontic would assist him in refinancing the Woodbridge loan.

On or about January 28, 2015, the plaintiff filed a summons and verified complaint against the defendants named herein.

The action against Atlantic Capital also names the lender/broker and the loan officer, Vanessa Thatcher, as defendants. These defendants are alleged to have assisted in forming the LLC on behalf of the plaintiff, to which Mr. John had transferred ownership of the building after a short term mortgage loan was secured from Woodbridge. Atlantic Capital and Ms. Thatcher are alleged to have promised to procure refinancing from Universal Debt Services, Inc., when the financing from Woodbridge had terminated.

The cause of action against Universal Debt Services, Inc., and its president Francois Oloa is based upon an alleged failed promise to refinance the Woodbridge loan upon its expiration with Quontic.

The action against the Woodbridge defendants, includes some of the assignees of the loan from Woodbridge. They include Oliver Entine, The Russell A. Racette Jr. Living Trust, Henri Jeanrenaud, Barbara Jeanrenaud, and 8 Figures LLC. The action against the Woodbridge defendants alleges violations of lending statutes as well as common law fraud arising from the loan that was secured to avoid a pending foreclosure.

The action against David E. Golden, Esq., alleges that as the vice-president of Woodbridge, Woodbridge committed wrongful acts through Mr. Golden.

The action against attorneys Jeffrey Leavitt and Gunit S. Sabharwal were based upon claims of a breach of a fiduciary duty and legal malpractice in that it is alleged that Mr. Leavitt did not review any of the transfer documents or explain the consequences of transferring the property

³ The interest rate on the commercial loan was twelve percent (12%), with an initial payment of \$4,359.33 and then consecutive monthly payments were \$5,030.00. The remaining balance of the loan (\$503,000.00) was to be paid within one year after the inception of the debt.

to an LLC. The cause of action against Mr. Leavitt also includes claims of fraud and violations of several federal and state statutes which arose from Mr. Leavitt's representation of the plaintiff. The Plaintiff alleges in the complaint that he had retained Mr. Leavitt following the commencement of foreclosure proceedings against 461 New Lots Avenue, Brooklyn, New York. It was asserted that Mr. Leavitt was to form 461 New Lots Avenue LLC ("461 New Lots LLC") and it was alleged that Mr. Leavitt did not review the transfer documents nor did he explain to the plaintiff the consequences of transferring his property to this entity. Following the transfer of the property to New Lots Avenue LLC, that entity allegedly retained Gabor R. Sabharwal, Esq. to help procure a commercial loan. Plaintiff alleged that 461 New Lots Avenue LLC defaulted on a commercial loan due to the unfavorable terms of the mortgage.

On or about April 10, 2015, Mr. Leavitt served and filed a verified answer along with a demand for interrogatories. To date, Mr. Leavitt asserts that the responses offered by the plaintiff have been inadequate and have negatively impacted his ability to defend this action.

Defendant (Quontic's) contention:

In moving for summary judgment and a dismissal of the action, Quontic maintains that the complaint is devoid of any facts which supports plaintiff's claim that Quontic violated a statute or committed an act of fraud. The plaintiff applied for a commercial loan through an LLC from Quontic and paid a fee in the sum of \$2,750 to cover the costs of the appraisal, the credit report and a review of the documents. Quontic acknowledges that they processed the mortgage application for 461 New Lots LLC submitted by the plaintiff, obtained an appraisal of the premises and later denied the loan application based upon the plaintiff having insufficient financial support. Quontic maintains that they owed no duty to the plaintiff to make the loan and they did not violate any laws when they accepted and processed a loan application and chose not to write the loan.

Quontic asserts that the plaintiff has failed to state how any act of Quontic (fifth cause of action) violated RESPA nor has the plaintiff properly alleged or provided evidence showing that Quontic illegally shared fees with a third party. There is no provision within the RESPA statute that prohibits the payment for goods or facilities actually furnished or services actually performed.

Quontic contends that the sixth cause of action which alleges that Quontic violated NY General Business Law (GBL)§ 349 has no applicability to them. Since Quontic never entered into a mortgage with the plaintiff they could not have misled the plaintiff into entering into a mortgage “with grossly unfavorable terms”. In order to assert a prima facie case under GBL § 349, a plaintiff must demonstrate that (1) the defendant’s deceptive acts were directed at consumers; (2) the acts were misleading in a material way; (3) the plaintiff was injured as a result. Quontic contends that the plaintiff will be unable to meet the burden of establishing what deceptive acts Quontic had done, how the plaintiff was misled, and how he was injured in any way as a result thereof.

As to the seventh and eighth cause of actions which allege violations of New York Banking Laws §§ 6-1 and 6-m, Quontic maintains that these are consumer protection statutes that deal with sub-prime and high cost home loans and claims under these statutes are limited to debts incurred by borrowers primarily for personal, family or household purposes. Here, the application by plaintiff was for a commercial loan, and thus, Quontic contends that the plaintiff cannot maintain an action under either of these state statutes. Quontic further contends that there is no violation of either the NY Banking Law or RESPA for accepting payment which is reasonably related to the value of services that were actually performed.

In addressing the cause of action for fraud (ninth cause of action) in which the plaintiff alleged that Quontic deceptively solicited him into paying an appraisal fee with the promise that they would refinance his home and instead did nothing, defendant maintains that such allegations are false as Quontic maintains that they did process the loan, reviewed the financials and ordered an appraisal. Plaintiff cannot establish any of the elements necessary to establish a cause of action for common law fraud which includes (a) a false representation of material fact; (b) with intent to defraud; (c) reasonable reliance on the misrepresentation and causation of damages. Additionally, a cause of action for common law fraud must be pled with particularity which the plaintiff did not set forth herein.

Quontic further asserts that the fact that their supporting proof was submitted to the Court with an attorney’s affirmation rather than an affidavit of fact based on personal knowledge should not in and of itself be a reason to deny the motion (see Olan v. Farrell Lines Inc., 64 NY2d 1092,

489 NYS2d 884 [1985]).

Defendant (Leavitt's) contentions:

Defendant, Mr. Leavitt, in moving to dismiss, both the actions and cross-claims that were instituted against him, seeks relief pursuant to CPLR § 3126, due to the failure of the plaintiff to fully respond to its discovery requests (interrogatories). Mr. Leavitt maintains that the discovery requests are relevant and crucial to his defense of this action and he would be prejudiced if not provided with the information that has been sought. Defendant asserts that since plaintiff's claim of legal malpractice and negligent supervision includes his alleged failure to review documents for the plaintiff and permit the transfer of the property to an LLC, that the production of documents that were executed or information related to his involvement in creating a limited liability company must be provided. Mr. Leavitt further seeks documentation that has connected him to the alleged wrongdoing of defendants Vanessa Thatcher and Atlantic Home Capital Corp., as well as the production of documents related to the mortgage payments made by the plaintiff in the related foreclosure proceeding.

Defendants' (Woodbridge & Whiteacre's) contentions:

The defendants, in moving to dismiss, have asserted defenses based upon documentary evidence, lack of personal jurisdiction, statute of limitations, lack of capacity to sue, failure to state a cause of action, failure to name a necessary party, and failure to plead performance of a condition precedent.

Defendants maintain that there is no basis for plaintiff's claims and he has solely relied upon the fact that he is an 80 year old African American male as a defense to avoid repaying the loan and to stop the foreclosure proceeding. Defendants assert that the plaintiff provided false information to the defendants when he swore that the loan he sought was for commercial purposes and that neither he nor any member of his family would occupy the subject premises.

Defendants maintain that the loan was arranged not by their entity, but by defendant, Atlantic Capital, with the involvement of the Universal Debt defendants.

Defendants assert that plaintiff has made only conclusory allegations of violations of

federal and state consumer lending statutes against the Woodbridge defendants and the only acts of Woodbridge was the extension of the loan and its assignment to Whiteacre thirteen months later. There are no allegations of any fraud or misrepresentations by the Woodbridge defendants nor was there an allegation of reliance by the plaintiff on any misrepresentation.

Defendants maintain that this Court does not have jurisdiction over defendant Golden or any of the Woodbridge defendants except Oliver Entine, as they are all non-domiciliaries. The plaintiff has failed to meet the requirements of CPLR § 302(a). There are no allegations that either Golden or any of the Woodbridge defendants, all of whom reside outside of New York, transacted business in New York or contracts anywhere to supply goods or services in New York. Defendants further assert that there are no factual allegations showing that either the Woodbridge defendants committed a tortious act outside New York that would confer jurisdiction under CPLR § 302(a)(3), and they neither solicit or conduct business in New York; expected or should have expected his act to have consequences in New York and derives substantial revenue from interstate or international commerce.

Defendants further assert that the plaintiff does not have standing in this matter as he was not the borrower of the subject loan.

Defendants addressed each of the plaintiff's causes of action which they argue are baseless. As to plaintiff's first cause of action against Woodbridge and Whiteacre, which defendants' contend fails to state a cause of action, and that violations of the Federal Equal Credit Opportunity Act (ECOA) have no application to the plaintiff. The party that sought and obtained the loan was 461 New Lots LLC, and as an LLC it does not fit within the scope of the statutory definition of a "person" that is protected under this statute. In addition, the plaintiff has failed to properly make an allegation of discrimination of income that is derived from a public assistance program as required by 15 USC § 1691(a)(2) or there was a failure to allege any facts showing that Woodbridge or Whiteacre committed a discriminatory act or was motivated by discriminatory intent and that John was targeted to deprive him of his home pursuant to 15 USC § 1691(a)(1). In addition, the fact that a loan was actually extended to the plaintiff would negate the plaintiff making out a claim of an ECOA violation. In fact, it is contended that Mr. John has failed to meet the requirement that he ever applied for a Woodbridge loan, much less that he qualified for one.

In order to make out a prima facie claim which is based on reverse redlining, the defendants assert that the plaintiff must show that defendants lending practices and loan terms were unfair and predatory and that plaintiffs were either intentionally targeted on the basis of race or there was a disparate impact on the basis of race which the defendants strongly assert has not been done.

As to plaintiff's second cause of action, defendants maintain that violations of the Federal Fair Housing Act has no application to the plaintiff. Here, the loan was not issued for "purchasing, constructing, improving, repairing or maintaining a dwelling" since the Woodbridge loan was intended and used to pay off a prior loan. The reverse redlining requirements under this Act are similar to those under ECOA, and plaintiff, under either statute, has failed to make out a prima facie case.

As to plaintiff's third cause of action, defendants contend that plaintiff cannot assert a claim for violation of Federal Civil Rights 42 USC § 1981 and that conclusory and nonfactual allegations do not make out a civil rights claim. The loan transaction was consummated with 461 New Lots LLC and not Mr. John, and thus, the latter cannot make a claim under this section. Defendants assert that plaintiff cannot identify any contract with either Woodbridge or Whiteacre that was improperly denied to him. Injuries flowing under this section must be from a racially motivated breach of their own contractual relationship and not from someone else's (see Domino's Pizza Inc., v. McDonald, 546 US 470, 126 S.Ct. 1246 [2006]).

As to the plaintiff's fourth cause of action, defendants assert that the claim of a violation of the Federal Truth-in-Lending Act (TILA) is time barred. All such claims are governed by a one year limitations period. In addition, it is alleged that plaintiff has no standing nor can the plaintiff state a claim under TILA. Defendants assert that since the transaction was commercial in nature and did not involve plaintiff's principal dwelling, the transaction was exempt from coverage under this statute. The loan was written for business and commercial purposes. In Patriot National Bank v. Amadeus B. LLC, 2009 Slip Op. 601931 at 5-6 (Sup. Ct. NY Co., 2010), the Court in dismissing the borrower's claims which alleged violations of TILA and RESPA, noted that the loan is a commercial transaction and the proceeds from the loan shall not be used for personal, family or household purposes.

As to Whiteacre, they were an assignee of the loan only, and thus was not a creditor required to make any loan related disclosures mandated under the statute and not subject to liability under 15 USC § 1640(a).

Defendants contend that plaintiff's claim for rescission, pursuant to 15 USC § 1638, fails to allege that the plaintiff is prepared to repay the loan principal. In order to state a cause of action as to a violation of TILA, a mortgagor must assert that the mortgagee violated TILA and that they can tender the principal of the loan to the mortgagee (see JP Morgan Chase Bank, N.A. v. Leto, 46 Misc3d 122(A), 2015 Slip Op. 5034(U) [Sup Ct. Queens Co. 2015] citing Berkeley Fed. Bank & Trust v. Siegel, 247 AD2d 498 [2nd Dept. 1998]).

As to the plaintiff's fifth cause of action, defendants contend that violations of Federal Real Estate Settlement Procedures Act (RESPA) are time barred and there had been a failure to state a claim. An allegation that there had been a kickback claim accrues at the time of occurrence and would be time barred under the one year statute of limitations. Occurrence has been found to take place for such claims at the time of closing (see Grimes v. Fremont General Corp, 785 F Supp.2d 269, 295 [E.D.N.Y. 2011]) which would result in this action being time barred.

Defendants assert that plaintiff's claims under 15 U.S.C. § 2605(b)(1) which are based on nondisclosure of the assignment of the loan from Woodbridge to Whiteacre, are unsupported by this statute. The statute required that the borrower be given notice of an assignment, sale or transfer of the servicing of the loan to another person, but not notice of assignment of the loan itself.

As to the plaintiff's sixth cause of action (violation of New York Deceptive Practices Act [GBL §349]), defendants assert that the commercial transaction that took place here was not a consumer oriented service within the scope of GBL § 349, and plaintiff also failed to allege any deceptive practices on the part of the Woodbridge defendants.

As to the seventh and eighth cause of action, defendants contend that the claim of a violation of New York Banking Law § 6-m is not applicable to this loan as this loan was not used for personal, family or household purposes, but rather for commercial purposes and New Lots Avenue LLC, is not a natural person. As to Banking Law § 6-I, defendants allege that plaintiff cannot state a claim because the complaint failed to allege facts as to how this alleged home loan

exceeded the conforming loan limit for a comparable dwelling as established by Fannie Mae.

As to the ninth cause of action, defendants maintain that there was no proof of fraud on their part nor reasonable reliance upon them. To plead fraud, a party must allege the material misrepresentation of an existing fact; made with knowledge of its falsity; intent to induce reliance thereon; justifiable reliance upon the representation and damages. Defendants maintain that the plaintiff has failed to allege any misrepresentation on the part of the Woodbridge defendants. There was no allegation on the part of the plaintiff as to communications between Whiteacre, Woodbridge or Mr. Golden at any time. Defendants contend that the only contact with Woodbridge was at the closing. As to reliance, plaintiff alleges reliance only on the statements of Atlantic Capital and Universal Debt. There is no claim that Woodbridge did or said anything upon which the plaintiff relied. There are no facts that would support the claim that Woodbridge had any intent to deceive the plaintiff. Mr. John did not allege that he did not understand the terms of the loan and that the loan was being taken by the LLC and not by Mr. John, individually. Mr. John attested to the fact that the reasons for transferring the building to New Lots was a business decision and unrelated to the loan.

As to the tenth cause of action, plaintiff asserts that defendants conspired to commit fraud. In response, defendants assert that the allegations are merely conclusory and that there was a failure to allege facts to show that the defendants agreed to join with others to commit a tortious act.

In New York, to plead a cause of action for conspiracy, the plaintiff must allege the primary tort and four additional elements. These include a corrupt agreement between two or more persons; an overt act in furtherance of the agreement; the parties intentional participation in the furtherance of a plan or purpose and resulting damage or injury. Defendant asserts that the plaintiff failed to assert factual allegations for any of these elements.

Defendant (Golden's) contention:

David E. Golden affirms that he is a member of the Bar of the State of Connecticut and has never been admitted to the New York State Bar. In maintaining that the Court does not have jurisdiction as to a claim against him, he asserts that since January 1, 2013, he has not transacted

business in New York nor committed any tortious act outside New York which caused injury to 461 New Lots LLC or to Mr. John. Mr. Golden maintains that he has not directly or through an agent transacted business or communicated with New Lots or Mr. John. He claims his only involvement with the loan from Woodbridge to New Lots was in his capacity as vice-president of Woodbridge and having thanked the transactional attorney for providing wiring instructions for the loan. There is no allegation that Mr. Golden made or purchased the loan or provided financial assistance which are the threshold conditions for making a claim under 42 USC § 3065(b).

Defendant (Barbara Jeanrenaud's) contention:

Ms. Jeanrenaud contends that this Court does not have personal jurisdiction over her as she has resided in Santa Cruz, California since January 1, 2013. Since that date, she maintains that she has not transacted business in New York nor committed any tortious act outside New York which caused injury to 461 New Lots LLC or to Mr. John. She further asserts that she has not directly or through an agent transacted business or communicated with New Lots Avenue LLC or Mr. John.

Defendant (Henri Jeanrenaud's) contention:

Mr. Jeanrenaud contends that this Court does not have personal jurisdiction over him as he has resided in Santa Cruz, California since January 1, 2013. Since that date, he contends that he has not transacted business in New York nor committed any tortious act outside New York which caused injury to 461 New Lots LLC or to Mr. John. He further maintains that he has not directly or through an agent transacted business or communicated with New Lots Avenue LLC or Mr. John.

Defendant (Brad Johnson's) contention:

Mr. Johnson asserts that he is one of two members of defendant 8 Figures LLC which was created pursuant to the laws of the State of Kansas, which is where he maintains his principal residence. Mr. Johnson asserts that this Court does not have personal jurisdiction over him as he alleges that since January 1, 2013, he has not transacted business in New York nor committed any

tortious act outside New York which caused injury to 461 New Lots LLC or to Mr. John. He further states that he has not directly or through an agent transacted business or communicated with 461 New Lots LLC or Mr. John.

Defendant (Russell A. Racette Jr's) contention:

Mr. Racette states that he is a trustee for the Russell A. Racette Jr. Living Trust. The trust was formed in 2002 under the laws of the state of Rhode Island. Mr. Racette asserts that this Court does not have personal jurisdiction over him as since January 1, 2013, he alleges that he has not transacted business in New York nor committed any tortious act outside New York which caused injury to 461 New Lots LLC or to Mr. John. He further states that he has not directly or through an agent transacted business or communicated with 461 New Lots LLC or Mr. John.

Defendant (Shawn Sparks) contention:

Mr. Sparks contends that this Court does not have personal jurisdiction over him as he has resided in Lawrence, Kansas since January 1, 2013. Since that date, he contends that he has not transacted business in New York nor committed any tortious act outside New York which caused injury to 461 New Lots LLC or to Mr. John. He further maintains that he has not directly or through an agent transacted business or communicated with 461 New Lots LLC or Mr. John.

Defendants' (Universal Debt Services & Oloa's) contention:

Defendants have moved to dismiss the plaintiff's cause of action as to these defendants due to failure to state a cause of action and more specifically a cause of action based upon fraud. Here, the plaintiff has failed to state the circumstances constituting the wrong in detail with specificity and particularity (see Pludeman v. Northern Leasing Systems, Inc., 10 NY3d 486 [2008]).

Defendants contend that the plaintiff in opposition to the motion has raised allegations for the first time that were not included within the complaint. These allegations pertain to concealing the balance of the document that the plaintiff executed.

Plaintiff (John's) contention:

Plaintiff opposes the relief sought by defendant Mr. Leavitt which seeks an Order of this Court to dismiss plaintiff's complaint or preclude the plaintiff from offering any evidence pertaining to the claims in the third party complaint.

Plaintiff contends that they have complied with Mr. Leavitt's discovery demands. A response to Mr. Leavitt's first set of interrogatories dated April 10, 2015, was made on July 2, 2015. Upon being advised by Mr. Leavitt that the responses were inadequate, plaintiff provided a supplemental response on or about August 17, 2015. Plaintiff maintains that pursuant to CPLR § 3126, the Court will not invoke the drastic remedy of striking a pleading or issuing a preclusion order unless there has been a clear showing that the failure to comply with court ordered discovery was willful or contumacious. Plaintiff maintains that there has not been court ordered discovery between these two parties nor has a preliminary conference been conducted. Moreover, plaintiff contends that his actions were neither willful nor contumacious as they provided responses to the initial demand for interrogatories as well as the supplemental or amended demand.

Plaintiff opposes the relief sought by defendant Quontic in its motion for summary judgment. Plaintiff maintains that this motion must be denied due to the failure of Quontic to submit an affidavit from an individual with personal knowledge of the facts. Here, Quontic has submitted only an affirmation from counsel in support of the relief requested. As to the substantive issues pertaining to Quontic, plaintiff maintains that Quontic participated in and conspired with co-defendants, Francois Oloa and Universal Debt Services, in a fraudulent scheme to deprive the plaintiff of his primary residence. It was Mr. Oloa, the president of Universal Debt Services who allegedly solicited the plaintiff in July 2014. Plaintiff alleges that Quontic had promised to assist the plaintiff in refinancing the loan in order to pay off the \$503,000 remaining balance on the mortgage which was due on or about August 31, 2014. Plaintiff maintains that based upon these alleged representations made by Quontic that he had agreed to meet with Mr. Oloa in mid-August of 2014. It was during that meeting that Mr. Oloa asked the plaintiff to sign the documents, but had covered up the other writings on the page that was executed, and thus, did not provide the plaintiff with the opportunity to review the contents of the document. Plaintiff also objects to a document being offered that contained the signature of Desmond John Jr.

Plaintiff maintains that Desmond John Jr. had no involvement with this property, had no knowledge that this limited liability company had been created or that a foreclosure action had been commenced against the property, and thus, it is unlikely that he would have executed any documents pertaining to this property.

Discussion:

This Court has reviewed the submissions of counsel for the respective parties, the responses thereto, and considered the arguments presented herein, as well as the applicable law in making this determination with respect to the motions to dismiss.

This Court in considering the actions against the various defendants notes that the plaintiff has not submitted any opposition to the motion of the Woodbridge defendants which include Woodbridge, David Golden, Oliver Entine, The Russell A. Racette Jr. Living Trust, Henri Jeanrenaud, Barbara Jeanrenaud, 8 Figures LLC, Brad Johnson and Shawn Sparks and Whiteacre Funding. David Golden was the vice-president of Woodbridge. Oliver Entine, The Russell A. Racette Jr. Living Trust, Henri Jeanrenaud, Barbara Jeanrenaud, 8 Figures LLC were assignors of the mortgage from Woodbridge and Brad Johnson and Shawn Sparks appear to have been members of 8 Figures LLC. Woodbridge has addressed the merits of each of the causes of action that were set forth against these parties and the plaintiff has not refuted these arguments in its submissions. The Court finds that the arguments raised by the Woodbridge defendants require dismissal of plaintiff's claims and the Court will dismiss the causes of action as against these parties without rehashing each of the arguments previously discussed.

As to defendant Quontic, this Court has considered the causes of action which were instituted against defendant Quontic and whether Quontic has violated any statute or committed an act of fraud. Here, Quontic was paid a fee of \$2,750 by the plaintiff to cover the costs of a credit report, an appraisal and to review the mortgage application. After consideration, Quontic made the determination to reject the loan application based upon the plaintiff having insufficient financial support. The Court finds that the plaintiff has failed to raise a valid argument that Quontic had a duty to issue a loan to an entity which was found not to be financially stable.

In addressing the fifth cause of action that Quontic violated RESPA or illegally shared fees

with a third party, this Court has not been presented with a valid argument by the plaintiff that Quontic violated RESPA or illegally shared fees with a third party. Here, the plaintiff sought a loan while he was defending a foreclosure proceeding and was admittedly having financial difficulties and the failure to secure a loan from an entity such as Quontic may simply have been the result of plaintiff's lack of finances rather than there having been a violation of a statute. The claim of Quontic of having wrongfully shared fees with another party is not supported by any proof and has been simply presented as an allegation or as conjecture.

In addressing the sixth cause of action, the alleged violation of the General Business Law § 349, the plaintiff has not offered any specific details as to whether this statute has been violated. Whether a representation or omission is a deceptive act or practice depends upon the likelihood that it will mislead a reasonable consumer acting reasonable under the circumstances (see Gomez v. New York Law School, 103 AD3d 13, 956 NYS2d 54 [1st Dept. 2012]). Here, Quontic did not approve the plaintiff for a loan and did not enter into a loan agreement with the plaintiff and its determination to not approve a potential borrower, who admittedly had financial difficulties, does not appear to have been unreasonable and actionable.

In addressing the seventh and eighth causes of action, in which the plaintiff alleged violations of New York Banking Laws §§ 6-1 and 6-m, the Court finds that these Banking Laws are consumer protection statutes that deal with sub-prime and high cost home loans and claims under these statutes are limited to debts incurred by borrowers primarily for personal, family or household purposes. This statute has no applicability to an application for a commercial loan which the plaintiff had sought on behalf of 461 New Lots Avenue LLC.

In addressing the ninth cause of action for fraud, the plaintiff seeks damages based upon a claim of deceit in paying for an appraisal as well as an alleged promise and misrepresentation made by Quontic that they would assist in refinancing the subject property. The Court finds that the plaintiff failed to plead this cause of action with particularity. The complaint contained only conclusory allegations of fraud, without any facts to support a finding that any fraudulent act was committed (see Thaler & Gertler v. Weitzman, 282 AD2d 522, 722 NYS2d 891 [2nd Dept. 2001]).

This Court finds that there is no merit to the causes of action against Quontic and as a result the action against Quontic is dismissed.

This Court has considered the motion by Mr. Leavitt regarding plaintiff's alleged lack of compliance with defendant's discovery requests which include interrogatories and his request for dismissal or penalties pursuant to CPLR § 3126. Plaintiff maintains that he has complied with the requests and has not willfully failed to disclose any information. This Court will not address each of the responses to the interrogatories in which there is a dispute as to whether the responses are adequate, but rather will direct the plaintiff to more fully comply with these requests within sixty (60) days herein. Following that time period, Mr. Leavitt may renew his application if there is a good faith belief that there is still a lack of compliance on the part of the plaintiff. Mr. Leavitt will be afforded an additional forty-five days following compliance by the plaintiff with the interrogatory requests before depositions need to be conducted.

As to the action against defendants, Universal Debt Services and Francois Oloa, there was no formal motion to dismiss the action as against these parties, but rather a reply affirmation submitted by their counsel. As such, this Court cannot render a determination on the relief requested in the reply.

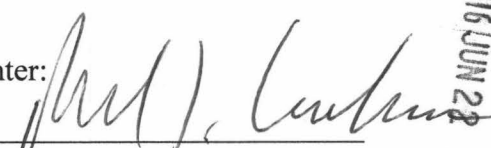
Conclusion:

The motions by the Woodbridge defendants (Woodbridge, David Golden, Oliver Entine, The Russell A. Racette Jr. Living Trust, Henri Jeanrenaud, Barbara Jeanrenaud, 8 Figures LLC, Brad Johnson and Shawn Sparks), Whiteacre Funding, LLC, as well as Quontic, to dismiss the action as against these defendants, is granted. The motion by defendant Jeffrey H. Leavitt is granted to the extent of directing the plaintiff to more fully comply with his Demand for Interrogatories within 60 days hereof.

This shall constitute the decision and order of this Court.

Dated: June 17, 2016
Brooklyn, New York

Enter:


Hon. Bernard J. Graham, Justice
Supreme Court Kings County

FILED
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