

been filed the adverse party must identify evidence in the record which establishes the facts essential to his defense.

In reviewing the Defendant's Affidavit filed in response to Plaintiff's Motion for Summary Judgment, this Court notes that Defendant claims that the broker who arranged his mortgage convinced him that it would be beneficial for him because it would allow him to pay off other debt and only increase his monthly payment by about \$75.00. (Def. Aff. ¶ 2). The broker told him his payments would be about \$515.00 a month. (Def. Aff. ¶ 4). The Defendant avers that "he knew and trusted" the broker. (Def. Aff. ¶ 6). The actual loan payment amounted to \$170.00 more per month. (Def. Aff. ¶ 8).

As Defendant's averments relate to predatory conduct engaged in by the loan broker, and not the Plaintiff, this Court finds that Defendant has not identified facts of record which support his defense. The Plaintiff is not responsible for representations made by the original loan broker. WM Specialty Mortgage, LLC v. Shuttleworth, 82 Pa.D& C 4th 129 (Lawrence County 2007). In WM Specialty Mortgage, LLC, the plaintiff, WM Specialty Mortgage, LLC filed a mortgage foreclosure action against the defendant pursuant to the defendant's failure to honor its mortgage with Ameriquest Mortgage Company. WM Specialty Mortgage asserted its action as a result of the assignment of the mortgage by and between Ameriquest Mortgage Corporation and WM Specialty Mortgage. In response to plaintiff's complaint seeking an *in rem* judgment in plaintiff's favor for foreclosure, the defendants filed an answer, new matter and counterclaim. In defendant's counterclaim, the defendants alleged that the plaintiff had violated the Unfair Trade Practices and Consumer Protection Law "by engaging in

fraudulent and deceptive conduct, which created the likelihood of confusion or misunderstanding, by promising to reduce the Defendants' interest rate and monthly payments and then refusing to do so; in utilizing an appraisal process that improperly inflated the value of the property; and in using high-pressure sales techniques to course the Defendants into refinancing their property with Ameriquest." Id. at 130. In granting plaintiff's preliminary objections to defendants' counterclaim, the court held,

Plaintiff's cause of action arose from the failure of the Defendants to honor its mortgage transaction with Ameriquest Mortgage Company, which Plaintiff now asserts by virtue of the assignment of the mortgage by and between Ameriquest Mortgage Company and the Plaintiff, WM Specialty Mortgage, LLC. Defendants' Counterclaim alleged in the mortgage foreclosure action relates to allegations of deceptive conduct or fraudulent loan practices by Ameriquest Mortgage Company, the original lender. Ameriquest Mortgage Company is simply not the plaintiff in this mortgage foreclosure action; thus, Defendants' Counterclaim must be stricken. Id. at 132.

Since the Defendant's averments concerning wrongful, deceptive conduct or fraudulent loan practices are alleged to have been committed by the mortgage broker, I.K.*, and the original lender, Trilliant Mortgage, neither of whom are parties to this action, there is no defense to Plaintiff's cause of action.

Although the Defendant relies upon McGlawn v. Pa. Human Relations Commission, 891 A.2d 757 (Pa. Commw. 2006), for the proposition that the loan at issue was a "predatory loan," this Court finds McGlawn inapplicable to the present action. The issue in McGlawn centered on whether the Pennsylvania Human Relations Act prohibits reverse redlining, defined as "the practice of extending credit on unfair terms" to specific geographic areas "due to the income, race or ethnicity of its residents." McGlawn, supra, at 762, *citing* United Cos. Corp. v. Sergeant, 20 F.Supp.2d 192, 203, n.5 (D. Mass. 1998).

*Name redacted 10/20/2008 per Judge Gray's direction.

In McGlawn, the Commonwealth Court reviewed the Pennsylvania Human Relation Commission's decision which held that a state-licensed mortgage broker violated provisions of the Pennsylvania Human Relations Act by discriminating against complainants in mortgage loan transactions because of their race and the racial composition of their neighborhoods. Allegations of predatory or unfair lending practices was evaluated in light of alleged discrimination on the basis of race. The present action does not involve claims of discrimination, rather it involves whether the Defendant defaulted under the terms of his mortgage agreement. Moreover, the facts in McGlawn do not support Defendant's claim that the loan at issue was a predatory loan. In McGlawn, the complainants were charged "unreasonably high" interest rates for their loans, settlement sheets reflected charges for water bills and ambulance bills not owed, settlement charges amounted to 20% of the loan, and complainants testified that at closing they were informed they owed additional amounts "because of where they lived." After paying these fees in cash, no receipt was given, nor were such fees reflected on settlement sheets. None of these factors are present in the case at bar.¹

Defendants are not permitted to rely upon the averments of their Answers to raise issues of fact. Phaff v. Gerner, 303 A.2d 826 (Pa. 1973). When a defendant fails to deny allegations of default with any specificity, those allegations are deemed to be admitted. First Wisconsin Trust Company v. Strausser, 653 A.2d 688 (Pa.Super. 1995). Moreover, Defendant's response to Plaintiff's claim that Defendant's mortgage is in default is based solely upon claims relative to other parties, and as such, does not constitute a valid defense. Accordingly, no genuine issues of material fact are present.

¹ Notably, in the present action it appears that less than 10% of the loan was paid in fees to the bank, broker and others in obtaining the loan. (Def. Aff. ¶ 12).

ORDER

AND NOW, this 7th day of July, 2008, for the reasons stated above, Plaintiff's Motion for Summary Judgment is hereby GRANTED.

BY THE COURT,

Richard A. Gray, J.

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