

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

WELLS FARGO BANK, NA	:	NO. 07-02834
	:	
	:	
v.	:	
	:	CIVIL ACTION - LAW
	:	
CHARLES and LINDA YARISON	:	

**OPINION**

This Opinion comes as a result of Plaintiff’s Preliminary Objections to Defendant’s Counterclaims to the mortgage foreclosure action.

Plaintiff argues that Defendant’s Counterclaims fail to state a claim upon which relief can be granted. Specifically, Plaintiff argues that Defendant’s Counterclaims are outside of the permissible scope of Counterclaims allowed by the Court as they do not arise from the creation of the mortgage relationship between Plaintiff and Defendant. Plaintiff cites several sources in support of its proposition, including the case of Chrysler First Business Credit Corp. v. Gourniak, 601 A.2d 338 (Pa. Super.1991). In Chrysler, the Court affirms previous holdings that interpret Pa.R.Civ.P. 1148, governing counterclaims in foreclosure actions, as being interpreted narrowly and allowing only those counterclaims that are “part of or incident to the creation of the mortgage itself”. Id. at 341.

Defendant’s provided their own case law in support of their proposition that their counterclaim should be allowed to go forward. The case law provided by Defendant further underscores Plaintiff’s argument that Counterclaims in a foreclosure action, which are subject to

Pa.R.Civ.P. 1148, will only be allowed if they arise out of the creation of the mortgage relationship itself. Defendant argues that their Counterclaims of Breach of Contract and Unfair Trade Practices do arise out of the creation of the mortgage relationship.

The Court finds Defendant's argument to be unpersuasive. The actions which allegedly gave rise to Defendant's Counterclaims, would have occurred after the creation of the mortgage itself. The alleged actions took place years after the creation of the actual mortgage and were in regard to a renegotiation of the terms of the mortgage. The authority supplied by Defendant clearly holds that Counterclaims in a mortgage foreclosure action must be wrapped up in the creation of the mortgage itself in order to be allowed to go forward. Defendant does not allege that Plaintiff committed any breach or unfair trade practices with regard to the creation of the mortgage. Therefore, the Court finds that the alleged facts surrounding Defendant's Counterclaim were not part or incident to the creation of the mortgage itself.

**ORDER**

AND NOW, this \_\_\_\_ day of February, 2009, it is hereby ORDERED and DIRECTED that Plaintiff's Preliminary Objections are SUSTAINED and Defendant's Counterclaim is DISMISSED without prejudice.

BY THE COURT,

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Judge Richard A. Gray

cc: Jennifer Heverly, Esq  
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