

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WELLS FARGO FINANCIAL PENNSYLVANIA, INC.,	:	NO. 09 – 02,865
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ROBERT L. MENDLER, et al.,	:	
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the court are preliminary objections filed by Plaintiff on November 28, 2011, to Defendant’s New Matter and Counterclaim. Argument was heard January 9, 2012.

Plaintiff’s Complaint sets forth an action in mortgage foreclosure, contending that a mortgage and note executed by Defendants on October 25, 2005, are in default as payments due thereunder have not been made since October 29, 2008. In their Answer, Defendants generally deny the allegations of the Complaint, and in New Matter, they assert the claims are barred by “Plaintiff’s predatory lending tactics”, and in their Counterclaim, they allege they were “subjected to predatory lending techniques” as a result of which they have “incurred damages”. Plaintiff objects on three grounds: (1) that Defendants may not seek monetary damages in a foreclosure action, (2) that Defendants have failed to state a cause of action as there is no common law cause of action for “predatory lending”, and (3) that Defendants have failed to state their cause of action with sufficient specificity. These objections will be addressed seriatim.

With respect to the request for monetary damages, since Plaintiff’s claim in mortgage foreclosure is an *in rem* proceeding, the Court agrees with Plaintiff that Defendants are entitled to counterclaim for only recoupment, rather than monetary damages. See Green Tree Consumer Discount Co. v. Newton, 909 A.2d 811 (Pa. Super. 2006). Therefore, the counterclaim prayer for relief will be stricken, without prejudice to substitute a request for recoupment.

With respect to the common law cause of action for “predatory lending” which Defendants appear to have asserted in their New Matter and Counterclaim, the Court agrees

with Plaintiff that there is no such cause of action. See McConnell v. K-2 Mortgage, 390 B.R. 170 (W.D. Pa. 2008). Any claim for relief for predatory lending practices must be supported by some statutory basis. Id. Therefore, these claims will be stricken from the New Matter and Counterclaim, without prejudice to Defendants' right to plead a statutory cause of action.

Finally, with respect to the objection that Defendants have failed to state their claim with sufficient specificity, the Court again agrees. The New Matter and Counterclaim assertions that "Plaintiff's claims are barred in whole, or in part, by Plaintiff's predatory lending tactics" and "Defendants were subjected to predatory lending techniques by the Plaintiff" are bald assertions, completely unsupported by factual allegations. Even the included allegations that "[t]he Plaintiffs' (sic) individual responsible for the loan plead (sic) guilty to Federal charges for improper loan financing" and "Defendants' loan was one of the loans that the Plaintiffs' (sic) agent was criminally charged and plead (sic) guilty (sic)" are so vague that Plaintiff could not possibly be expected to respond to them. Therefore, Defendants will be required to re-plead their *statutory* cause of action with much more specificity.

ORDER

AND NOW, this 11th day of January 2012, for the foregoing reasons, Plaintiff's preliminary objections are hereby SUSTAINED. Paragraph 13 of Defendants' New Matter and Defendants' Counterclaim are hereby STRICKEN, without prejudice to their right to plead a statutory basis for relief and to seek recoupment. Any amended New Matter and Counterclaim shall be filed within twenty (20) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph Nguyen, Esq., Reed Smith LLP
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Hon. Dudley Anderson