

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WALTER D. CAMPBELL and	:	
MARLENE A. CAMPBELL, h/w,	:	
	:	
Plaintiffs,	:	
v.	:	No. 05-CV-972
	:	
BANK OF AMERICA, N.A.,	:	
	:	
Defendant.	:	

Green, S.J.

December 20 , 2005

MEMORANDUM

Presently pending is Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and the responses thereto. For the reasons set forth below, Defendant's motion will be denied in its entirety.

I. FACTUAL AND PROCEDURAL BACKGROUND

Walter D. Campbell and Marlene A. Campbell, ("Plaintiffs" or "the Campbells"), are owners of property located in Langhorne, Pennsylvania ("the Property"). Plaintiffs seek to hold Bank of America¹ ("Defendant") liable for allegedly failing to record the satisfaction of the mortgage of the Property.

On November 3, 2000, the Campbells claim they obtained a mortgage from Summit Bank, Fleet Bank and Bank of America's predecessor-in-interest, for \$389,200 and secured this mortgage with the Property. Plaintiffs further assert they paid the full amount of the mortgage with interest and recording fees to Summit Bank on May 18, 2001. However, the Campbells allege that between May 18, 2001, and August 24, 2004, despite repeated requests from Plaintiffs to do so, Defendant failed to record the satisfaction of the mortgage. Plaintiffs

¹Plaintiffs originally filed their suit against Summit Bank. However, through a number of acquisitions, the interest formerly held by Summit Bank was passed to Fleet Bank and is now represented by Bank of America. Accordingly, the parties have substituted Bank of America as the party Defendant.

contend that Defendant's failure to record the satisfaction of the mortgage created a cloud upon the Property's title. On September 8, 2004, Plaintiffs allege the satisfaction of the mortgage was recorded when they filed the mortgage satisfaction document forwarded by Defendant with the Bucks County Recorder of Deeds.

On January 21, 2005, Plaintiffs filed their Complaint in Pennsylvania state court alleging that: (1) Defendant refused to record the satisfaction of the mortgage of the Property; (2) by not timely recording the satisfaction of the mortgage, Defendant violated its contractual and/or statutory responsibilities; (3) Defendant should have to pay penalties, including legal fees; and (4) Defendant engaged in fraudulent practices. These claims were made pursuant to 21 P.S. §§ 681 and 682, 21 P.S. § 721-6(d)(1), Pa. C.S.A. § 8104, and Pennsylvania consumer protection laws, including the Unfair Trade Practices and Consumer Protection Law.

Defendant subsequently removed the case to this Court based on diversity of citizenship. In its Motion to Dismiss, Defendant argues that the Campbells' claims should be dismissed because: (1) 21 P.S. §§ 681 and 682 are repealed statutes that have been replaced by the Mortgage Satisfaction Act, 21 P.S. § 721, et seq. ("new Act"); (2) Plaintiffs have failed to provide Defendant with the requisite notice required to bring a cause of action under the new Act; and (3) the new Act precludes all other causes of action regarding a mortgagee's failure to timely satisfy a mortgage.

II. MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

A. Legal Standard - Rule 12(b)(6)

A court may dismiss a complaint for failure to state a cause of action only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514, 122 S.Ct 992 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229 (1984)). The court "must take all

the well pleaded allegations as true and construe the complaint in the light most favorable to the plaintiff.” Colburn v. Upper Darby Twp., 838 F.2d 663, 665-66 (3d Cir. 1988). In Swierkiewicz, a unanimous United States Supreme Court addressed the liberal pleading standards set forth in Fed. R. Civ. P. 8(a)(2), noting that Fed. R. Civ. P. 8(a)(2) only requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Swierkiewicz, 122 S.Ct. at 998-99. The Supreme Court further noted that the statement of facts must simply “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Id. at 998 (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99 (1957)). Notice pleading is all that is required even when it may appear on the face of the pleadings that a recovery is very remote and unlikely. See Swierkiewicz, 122 S.Ct. at 997-98. “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” Id. at 997. The Supreme Court further expounded upon the simplified notice pleading standard stating that the standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. Id. at 998. The pleading standard is a liberal one and was adopted to focus litigation on the merits of a claim. Id. at 999. Therefore, Fed. R. Civ. P. 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits. Id. at 998-99.

B. Defendant’s motion to dismiss will be denied in its entirety.

In the present case, Defendant argues that this Court should dismiss the claims set forth in Plaintiffs’ Complaint because: (1) the Pennsylvania statutes, 21 P.S. §§ 681 and 682, on which Plaintiffs base their claims, have been repealed and replaced by the Mortgage Satisfaction Act, 21 P.S. § 721-1, et seq. (“the new Act”); (2) Plaintiffs failed to provide the required notice to Defendant under the new Act; and (3) all other causes of action are precluded because Plaintiffs’ only remedy is a suit under the new Act. In their “Memorandum in

Opposition to Motion to Dismiss,” Plaintiffs claim that they cannot be deprived of a cause of action under the repealed Pennsylvania mortgage statutes because the events giving rise to their claims arose before the effective date of the new Act.

1. The Mortgage Satisfaction Act does not apply.

The applicability provision of the new Act states that the “act shall apply to every mortgage on real property in this Commonwealth which has not been satisfied prior to the effective date of this act and regardless of whether such mortgage was executed before the effective date of this act.” 21 P.S. § 721-12. The Act was passed on December 9, 2002 and became effective on February 7, 2003. See Id. It repealed and replaced most of the previous Pennsylvania mortgage statutes including 21 P.S. §§ 681 and 682 as set forth in Plaintiff’s Complaint. See Windon Country Homes v. Hudson United Bank, 2004 U.S. Dist. LEXIS 10522, *4, 2004 WL 1240619 (E.D.Pa. 2004), Noel v. First Financial Bank, 855 A.2d 90 (Pa. Super. 2004).

In considering Defendant’s Motion to Dismiss, this Court must determine what “satisfied” means regarding the new Act’s applicability to the instant case. The Pennsylvania Supreme Court has not yet addressed the precise legal issue of what constitutes satisfaction of a mortgage under the new Act when the mortgagor has paid the full balance of the mortgage before the effective date of the new Act and the mortgagee entered satisfaction on the record after the effective date of the new Act. However, in the absence of a reported decision by the state’s highest court addressing the precise legal issue before it, a federal court sitting in diversity and applying state substantive law must predict how the state’s highest court would rule if presented with the case. Nationwide Mut. Ins. Co. v. Buffeta, 230 F.3d 634, 637 (3d Cir. 2000). The “federal court must consider relevant state precedents, analogous decisions, considered dicta, scholarly works, and any other reliable data tending convincingly to

demonstrate how the highest state court would decide the issue at hand.” Id. (quoting McKenna v. Ortho. Pharm. Corp., 622 F.2d 657, 663 (3d Cir. 1980)).

Viewing the evidence in the light most favorable to Plaintiffs, where the mortgagors actually paid off the full mortgage amount nearly two (2) years prior to the effective date of the new Act, repeatedly requested that the mortgagee enter a satisfaction piece and through no fault of the mortgagor, the mortgagee continued to delay entering satisfaction by means of a satisfaction piece, I predict that the Pennsylvania Supreme Court would permit the aggrieved party (mortgagor) to proceed under either the repealed provisions of the Pennsylvania mortgage statutes or the new Act. Here, Plaintiffs may proceed under the old Pennsylvania mortgage satisfaction statutes. In O’Donoghue v. Laurel Savings Assoc., 556 Pa. 349, 355, 728 A.2d 914 (Pa. 1999), the Supreme Court of Pennsylvania addressed what constitutes satisfaction under the repealed Pennsylvania mortgage statutes. The Supreme Court of Pennsylvania found that

[s]atisfaction of a mortgage and marking the mortgage satisfied are two separate and distinct actions. “Satisfaction of a mortgage” occurs when all sums due and owing are tendered to the mortgagee. “Marking a mortgage” satisfied takes place when the mortgagee physically notes in the margin of the official mortgage papers, or by a satisfaction piece, that the mortgage has been paid in full. Once the mortgage is marked satisfied, all interested parties are on notice that the obligation of the loan has been fulfilled.

O’Donoghue, 556 Pa. at 355. Therefore, under the repealed Pennsylvania mortgage statutes, Plaintiffs may claim that their mortgage was satisfied when they allegedly paid the balance of the mortgage in full on May 18, 2001. The new Act only applies to mortgages that have not been satisfied prior to February 7, 2003. Therefore, the repealed Pennsylvania mortgage satisfaction statutes apply in the instant case. Viewing the evidence in the light most favorable to Plaintiffs, the allegations in the Campbells’ Complaint set forth claims under the repealed Pennsylvania mortgage statutes that are sufficient to survive Defendant’s Motion to Dismiss.

2. Plaintiff followed the proper notice requirements.

Additionally, Defendant's argument that Plaintiffs' claims under the repealed Pennsylvania mortgage statutes should be dismissed because the Campbells did not follow the proper notice requirements also fails. Although the new Act contains strict notice procedures, the old mortgage statutes are more lenient. See O'Donoghue, 556 Pa. at 357-58; Kornfeld v. Atlantic Financial, 856 A.2d 170 (Pa. Super. 2004); see also former 21 P.S. § 682 (repealed and replaced by 21 P.S. § 721-6 (2003)). In fact, under the repealed Pennsylvania mortgage satisfaction statutes, a verbal request is sufficient.² See O'Donoghue, 556 Pa. at 357-58. Here, the Campbells contend that they asked Defendant to satisfy the mortgage by telephone and in letters. See Pl.'s Compl. at ¶¶ 13-16. Viewing these facts in the light most favorable to the Campbells, under the former 21 P.S. § 682, Plaintiffs' assertions that they gave proper notice to Defendant are sufficient to survive Defendant's Motion to Dismiss.

3. Plaintiffs' remaining claims survive.

Defendant also argues that 21 P.S. § 721-6(d)(4) of the new Act precludes Plaintiffs' 42 Pa. C.S.A. § 8104 claims in Counts I and II of Plaintiffs' Complaint and Plaintiffs' claim for fraud and violation of Pennsylvania consumer protection law, including the Unfair Trade Practices and Consumer Protection Law, in Count IV of the Complaint. The new Act states "[a]n action under section 6 [of the Act] shall be the exclusive remedy for damages for failure of a mortgagee to issue and present for recording a satisfaction piece." 21 P.S. § 721-6(d)(4). However, for the reasons stated previously, 21 P.S. § 721-6(d)(4) is inapplicable because Plaintiffs have proceeded under the repealed Pennsylvania mortgage satisfaction

²The former Pennsylvania mortgage statute, 21 P.S. § 682, states "[a]nd if such mortgagee, by himself or his attorney, shall not, within forty-five days after request and tender made for his reasonable charges, return to said office, and there make such acknowledgment as aforesaid, he, she or they, neglecting to do so, shall for every such offence, forfeit and pay, unto to party or parties aggrieved, any sum not exceeding the mortgage-money, to be recovered in any Court of Record within this Commonwealth, by bill, complaint or information.

statutes. Accordingly, Plaintiffs' claims under 42 Pa. C.S.A. § 8104 and the Unfair Trade Practices and Consumer Protection Law survive Defendant's Motion to Dismiss.

Count I of Plaintiffs' Complaint sets forth a claim for relief under 21 P.S. § 721-6(d)(1) of the new Act. Plaintiffs have proceeded under the repealed Pennsylvania mortgage satisfaction statutes and therefore may not obtain relief under the new Act for the same underlying cause of action. However, in setting forth a claim for relief in a pleading, Fed. R. Civ. P. 8(a) states that "[r]elief in the alternative or of several different types may be demanded." Therefore, this Court considers Plaintiffs' claim under 21 P.S. § 721-6(d)(1) of the new Act as a claim pled in the alternative to Plaintiffs' claims under the repealed Pennsylvania mortgage satisfaction statutes in Count I. Accordingly, Plaintiffs' 21 P.S. § 721-6(d)(1) claim survives Defendant's Motion to Dismiss.

III. CONCLUSION

For the above-stated reasons, Defendant's Motion to Dismiss will be denied in its entirety.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WALTER D. CAMPBELL and	:	
MARLENE A. CAMPBELL, h/w,	:	
	:	
Plaintiffs,	:	
v.	:	No. 05-CV-972
	:	
BANK OF AMERICA, N.A.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this day of December 2005, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is **DENIED** in its entirety.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.