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

THERESA MCMASTER	:	CIVIL ACTION
	:	
v.	:	
	:	
CIT GROUP/CONSUMER FINANCE, INC., et al	:	NO. 04-339

O'NEILL, J February 8, 2006

MEMORANDUM

Plaintiff Theresa McMaster asserts that defendants CIT Group, Fairbanks Capital Corp, Steven Rosen, Security Mortgage Brokers, and Kevin Murphy violated federal and state laws in connection with their actions relating to a mortgage on McMaster's residence. Before me now is McMaster's motion for summary judgment against all defendants and Murphy's response and cross-motion for summary judgment. This order addresses only McMaster's claims against Murphy.

FACTS

On December 27, 1998, Walter McMaster, plaintiff's husband, died. At the time he died, he owned a rowhouse located at 415 Snyder Avenue, Philadelphia, Pennsylvania. Following her husband's death, plaintiff moved into the Snyder Avenue home and took steps to become appointed the administrator of her husband's estate. At the time of Walter McMaster's death, plaintiff and her husband had been separated for ten years. However, plaintiff failed to take any action to transfer the deed for the property from Walter McMaster's name to her own.

In February 2001, McMaster's home incurred a severe water leak from a bathroom. At

that time, she applied through defendant Security for a loan in order to obtain financing for the repairs. Prior to this loan, Theresa McMaster had never purchased a home or entered into a loan transaction. The process of obtaining financing for McMaster became difficult due to the fact that she was not on the deed to the property, and Security ended up charging McMaster a higher loan procurement fee than originally agreed upon. Subsequent to approval, CIT was put on notice that the deed to the property was not in McMaster's name nor had any state inheritance tax return been filed as would be required to effect a transfer.

In April 2001, CIT preapproved McMaster for a $32,200 loan payable at a 14.7% rate of interest over thirty years. Although she originally desired only a home equity loan to pay for the repairs, she entered into a refinancing loan. The loan refinanced the $13,000 balance of the 6.3% original mortgage leaving a cash balance of $15,400.[1] Security required McMaster to endorse a check in that amount over to Ed Rosen, the contractor hired to perform the repairs. McMaster claims that the work done by Rosen was subpar and had a fair market value of only half the price paid.

The loan closed on April 23, 2001, at which time Kevin J. Murphy, Esq. conducted the closing. Prior to closing, Murphy prepared for McMaster, as administratix of her late husband's estate, a Pennsylvania inheritance tax return and documents necessary to transfer the deed to plaintiff's own name so as to enable her to give a mortgage on the subject property. At closing, plaintiff signed documents agreeing to pay Murphy, as a partner of the entity Baltz, Murphy and Mazullo, the sum of $1000. The fee was deducted from the loan proceeds. McMaster asserts that McMurphy never provided her with a copy of the fee agreement. She also asserts that

[1]The remaining portion of the loan covered various fees.

although she generally understood Murphy's role at closing to be making the transaction legal she had no specific understanding of him as her attorney or what specifically he would do in connection with the loan transaction.

Murphy also acted as the title agent and attorney for CIT for the loan transaction. Murphy's title agency, Pinnacle Abstract, LLP, was wholly owned by Murphy's law firm at the time. Pinnacle received 85% of the title premium charge as a commission. Murphy testified at deposition that the service of title examination was one of several services paid for by the title premium charge. Pinnacle charged McMaster a separate $91.00 title examination charge on the settlement statement. Murphy did not disclose that he also received a $275.00 payment for representing CIT.

At closing, McMaster was provided with a Federal Disclosure Statement providing the accurate annual percentage rate, finance charge, amount financed and payment information. She also received a Notice of Right to Cancel. McMaster acknowledged that she understood that by signing the Notice she had three days to cancel the loan. She also executed a HUD-1 Settlement statement. The $1000 legal fee payable to Baltz, Murphy & Mazullo is disclosed on page 3 of the Settlement statement. Plaintiff admits that she read the HUD-1 at closing.

A foreclosure action against McMaster was filed in March 2003 in the Philadelphia Court of Common Pleas. A default judgment was entered, after which McMaster instituted the present action. Foreclosure is stayed during the pendency of this action.

McMaster alleges that Murphy violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") by charging a "title examination charge," which she claims was a junk fee; deceived her as to his law firm's relationship with CIT, allowing Murphy

to overcharge; deceived her when he had her sign a retainer agreement without notice or explanation; and deceived her as to the disadvantages of entering into the loan. McMaster does not assert any federal law violations against Murphy. Murphy's motion for summary judgment contests McMaster's UTPCPL claims, arguing that McMaster failed to establish that the title examination fee was paid to Murphy or CIT and generally failed to set forth sufficient evidence to prove her UTPCPL claim. Murphy also contests McMaster's federal claims, but I will not address those arguments here because he has no federal claims pending against him.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides, in relevant part, that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c) (2005). Rule 56(e) provides that when a properly supported motion for summary judgment is made, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."

Summary judgment will be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The party moving for summary judgment has the burden of demonstrating that there are no genuine issues of material fact. Id. at 322-323. If the moving party sustains the burden, the nonmoving party must set forth facts demonstrating the existence of a genuine issue for trial. See

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). An issue of material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 255. In addition, the "existence of disputed issues of material fact should be ascertained by resolving 'all inferences, doubts and issues of credibility against'" the moving party. Ely v. Hall's Motor Transit Co., 590 F.2d 62, 66 (3d Cir. 1978) (quoting Smith v. Pittsburgh Gage & Supply Co., 464 F.2d 870, 878 (3d Cir. 1972)).

DISCUSSION

The Pennsylvania UTPCPL contains twenty specific forms of prohibited conduct and a catchall provision covering other forms of "fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. 73 Pa. Cons. Stat. § 201-2 (2005). The UTPCPL is to be liberally construed to effectuate the legislature's goal of consumer protection. Commonwealth v. Monumental Properties Inc., 460, 329 A.2d 812, 817 (Pa. 1974); Keller v. Volkswagen of America, Inc., 733 A.2d 642, 646 (Pa. Super. Ct. 1999). McMaster argues that Murphy specifically violated (1) 73 Pa. Cons. Stat. § 201-2(4)(iii) by "[c]ausing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another"; (2) § 201-2(4)(v) by "[r]epresenting that goods or services have . . . benefits . . . that they do not have"; and (3) the catchall provision, § 201-2(4)(xxi) by "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."

I do not agree with Murphy's assertion that there are no genuine issues of material fact in this case. First, he argues that plaintiff failed to establish that the $91.00 title examination fee was paid to Murphy or CIT. In McMaster's complaint, she notes that the amount was charged by Pinnacle Abstract, the title company. That company was owned by Murphy's law firm and

represented by Murphy at closing. (Murphy dep. at 16-17). Murphy was also representing CIT in the transaction. This existence of these relationships is enough evidence for a reasonable jury to infer that fees paid to Pinnacle were essentially going to Murphy and/or CIT. This is a genuine issue of material fact.

Second, Murphy avers that McMaster failed to demonstrate that the fee charged for title examination was unreasonable or not bona fide. McMaster claims that the title examination fee of $91.00 was unnecessary and unreasonable since she was already charged by Murphy for that service. McMaster notes that Murphy described the services charged under the $411.75 Pinnacle fee as "order the title, review it, *examine it*, clear it, then issue a final policy, of course take care of the liens at closing." (Murphy dep. at 49-50) (emphasis added). Murphy later described the basis for the $91.00 title examination fee as "For just what it says, to examine the title." (Murphy dep. at 51). Murphy claims that separating these fees is permissible under Pennsylvania state law, but has not cited specific statutes allowing his conduct. He has also not sufficiently explained why he needed to charge for examining title twice. Perhaps he misspoke during his deposition, and perhaps a jury will believe that the charges were for separate and distinct services. There remains a genuine issue of material fact as to whether the fees charged by Pinnacle and Murphy were unreasonable.

Murphy finally argues that McMaster generally failed to meet her evidentiary burden regarding her UTPCPL claim. As I discussed above, with the evidence offered so far, a reasonable jury could find that Murphy, Pinnacle, and CIT were acting in concert, confusing McMaster as to each of their roles in the loan process. McMaster has also offered enough evidence for a reasonable jury to find that the fees charged by Murphy and Pinnacle were

duplicative and/or unreasonable. Therefore, genuine issues of material fact exist which preclude me from granting summary judgment.

An appropriate order follows.

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

THERESA MCMASTER	:	CIVIL ACTION
	:	
v.	:	
	:	
CIT GROUP/CONSUMER FINANCE,	:	
INC., et al	:	NO. 04-339

ORDER

AND NOW, on this 8th day of February 2006, upon consideration of defendant Kevin Murphy's motion for summary judgment, it is ORDERED that said motion is DENIED.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.