

**STATE OF VERMONT**

**SUPERIOR COURT  
Rutland Unit**

**CIVIL DIVISION  
Docket No. 307-5-11 Rdev**

**John Norton-Griffiths and  
Marilyn Norton-Griffiths  
Plaintiffs**

**v.**

**Wells Fargo & Company and  
Wells Fargo Bank N.A.  
Defendants**

**FILED**  
**DEC 04 2013**  
VERMONT SUPERIOR COURT  
RUTLAND

**DECISION**

**Plaintiffs' Motion for Partial Summary Judgment, filed October 26, 2012  
Defendants' Motion for Partial Summary Judgment, filed December 7, 2012  
Plaintiffs' Motion for Partial Summary Judgment, filed March 1, 2013**

This matter is before the Court on three motions for partial summary judgment, two filed by plaintiffs John and Marilyn Norton-Griffiths and one filed by defendants Wells Fargo & Company and Wells Fargo Bank N.A (collectively "Wells Fargo"). The Norton-Griffiths are homeowners whose home mortgage is held and serviced by Wells Fargo. They brought this suit against Wells Fargo, alleging violations of the federal Real Estate Settlement Procedures Act ("RESPA"), the federal Fair Credit Reporting Act, and the Vermont Consumer Fraud Act.

The Norton-Griffiths executed a note and mortgage to Norwest Mortgage, Inc. in 1998. They have continued to make payments on that note since that time and the mortgage has never entered foreclosure. Wells Fargo has been servicing this mortgage for over ten years and has been collecting the Norton-Griffiths' payments during that time.

*Plaintiffs' Motion for Partial Summary Judgment, filed October 26, 2012  
Defendants' Motion for Partial Summary Judgment, filed December 7, 2012*

The first two motions for partial summary judgment address the RESPA claims. RESPA is a federal statute that requires mortgage servicers to respond to qualified written requests from borrowers. See 12 U.S.C. § 2605(e). The failure to properly reply to qualified written requests renders the servicer liable to the borrowers for any actual damages caused by the failure to reply. See 12 U.S.C. § 2605(f)(1). The Norton-Griffiths claim that several written communications that they sent to Wells Fargo and its agents constitute qualified written requests under the RESPA and that Wells Fargo's failure to respond to them caused them damages.

As the RESPA claims are based on written correspondence sent by the Norton-Griffiths to Wells Fargo, the facts underlying the claims are not in dispute. Therefore, summary judgment

is appropriate if the facts show that a party is entitled to judgment as a matter of law. V.R.C.P. 56(a). The RESPA claims are based on a series of letters and notes submitted by the Norton-Griffiths to Wells Fargo or its agents between April 10, 2009 and May 2, 2011. The first of these letters requests a loan modification. The next eight correspondences, three of which constitute handwritten notes made on documents submitted with mortgage payments, all address the terms of the proposed loan modification. The final letter on which the Norton-Griffiths rely, which was submitted to Wells Fargo's counsel on May 2, 2011, requests a series of documents relating to Wells Fargo's ownership of the loan including deeds of assignment.

Wells Fargo raises multiple arguments in opposition to the Norton-Griffiths' claims. First, it argues that almost all of the written requests sent by the Norton-Griffiths sought a modification of the terms and conditions of their loan, a subject matter that removes them from the protections of RESPA. Second, it argues that the communications at issue do not satisfy the requirements of a "qualified written request" ("QWR") under RESPA. Finally, it argues that even if the Norton-Griffiths can show that the RESPA applies to their written communications they cannot show any actual damages stemming from Wells Fargo's failure to properly reply.

The parties agree that the communications at issue here are a series of letters and handwritten notes that the Norton-Griffiths submitted to Wells Fargo and its agents between April 2009 and May 2011. An examination of these documents reveals that none of them meet the requirements to qualify as a QWR under RESPA. Therefore, because Plaintiffs are unable to make out a case for damages under RESPA as a matter of law, summary judgment in favor of Wells Fargo is appropriate.

Under RESPA, a QWR is a "written request from the borrower (or an agent of the borrower) for information relating to the *servicing* of such loan." 12 U.S.C. § 2605(e)(1)(A) (emphasis added). The statute defines "servicing" as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan ... and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan." *Id.* § 2605(i)(3). RESPA further specifies the requirements of a QWR:

a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

12 U.S.C. §2605(e)(1)(B). The requirement that the QWR must relate to the "servicing" of a loan means that not all correspondence concerning a loan triggers a servicer's obligation to respond under RESPA. Courts have held that written requests for a loan modification or correspondence regarding the origination or ownership of loan do not qualify as QWRs under the statute. See, e.g., *In re Salvador*, 456 B.R. 610, 623 (Bankr. M.D. Ga. 2011) (concluding that a request for information relating to a potential loan modification was not a QWR); *In re Thorian*, 387 B.R. 50, 70 (Bankr. D. Idaho 2008) (concluding that a letter proposing a new payment schedule was

not a QWR); *MorEquity, Inc. v. Naeem*, 118 F. Supp. 2d 885, 901 (N.D. Ill. 2000) (holding that a request for information concerning the validity of loan documents was not a QWR).

All of the Norton-Griffiths' letters to Wells Fargo concern requests to modify the loan or requests for documents that support Wells Fargo's current ownership of the loan; therefore, these letters are not QWRs under the statute because they are not requests for information related to the servicing of the loan. The first nine letters at issue all relate to the potential modification of the loan and the terms of the loan as newly modified. Under RESPA, written requests concerning a loan modification are not related to the "servicing" of the loan; therefore, these requests are not QWRs. The final letter at issue relates to Wells Fargo's ownership of the loan and their ability to foreclose. Requests for information concerning these topics are also not related to the "servicing" of a loan.

In light of this conclusion, the court need not consider whether the Norton-Griffiths have sufficiently alleged damages under RESPA in order to survive a motion for summary judgment. Normally, a plaintiff claiming a RESPA violation must show actual damages. 12 U.S.C. § 2605(f)(1)(A). There is an exception, however, "in the case of a pattern or practice of noncompliance with the requirements of this section," where a court may authorize statutory damages in an amount up to \$2000. *Id.* § 2605(f)(1)(B). The Norton-Griffiths rely on this exception. It is, however, inapplicable here because none of the Norton-Griffiths' correspondence with Wells Fargo constitutes a QWR. Therefore, they cannot make a showing of a "pattern or practice of noncompliance." Summary judgment in favor of Wells Fargo is appropriate on the RESPA claims.

*Plaintiffs' Motion for Partial Summary Judgment, filed March 1, 2013*

The Norton-Griffiths have filed an additional motion for partial summary judgment. This motion states two bases for summary judgment: 1) that Wells Fargo is unable to produce an "ink-signed original mortgage and note" and 2) that Wells Fargo has slandered the Norton-Griffiths' title to their property. The Norton-Griffiths have not, however, connected these two purported bases for summary judgment to the two remaining counts in their complaint: violation of the Fair Credit Reporting Act and violation of the Vermont Consumer Fraud Act.

Turning to the issue of the purported lack of an "ink-signed original mortgage and note," the Norton-Griffiths have failed to show how this assertion, even if assumed to be true, entitles them to judgment as a matter of law on either of their remaining claims. It is possible that the Norton-Griffiths' assertion here could be a defense to some potential future foreclosure action brought by Wells Fargo, though there are ways to enforce a note other than possessing an "ink-signed original." See, e.g., 9A V.S.A. § 3-309 (setting forth the requirements to enforce a lost, destroyed, or stolen instrument). There is, however, no linkage between the lack of original documentation and the Norton-Griffiths' claims under the Fair Credit Reporting Act and the Vermont Consumer Fraud Act. Without such a connection or, indeed, any plausible explanation as to why the failure to produce an "ink-signed original mortgage and note" at this juncture entitles the Norton-Griffiths to judgment as a matter of law, summary judgment is denied on this point.

The Norton-Griffiths' second argument refers to a slander of title claim. Their complaint does not appear to contain a slander of title claim, but even assuming for argument's sake that the Norton-Griffiths are now attempting to pursue this cause of action, they have not established that they are entitled to judgment as a matter of law on this issue. To prove slander of title, a plaintiff must show 1) defendant published a false statement concerning plaintiff's title, 2) the statement caused special damages, and 3) defendant acted with malice. *Sullivan v. Stear*, 2011 VT 37, ¶ 8, 189 Vt. 442. As the Vermont Supreme Court has stated, "The essence of the tort is the publication of an assertion that is derogatory to the plaintiff's title to property in an effort to prevent others from dealing with the plaintiff." *Id.*

Though the Norton-Griffiths, if they choose to pursue a slander of title claim, may ultimately have difficulty proving the other two elements, the lack of special damages is sufficient to deny summary judgment at this stage. The Norton-Griffiths' slander of title allegation is based on Wells Fargo allegedly erroneously reporting to a credit reporting agency that this mortgage was in foreclosure when in fact it was not. The only form of special damages alleged here is the continued existence of the Wells Fargo mortgage.

The Norton-Griffiths' arguments as to why the continued existence of the mortgage constitutes special damages stemming from an allegedly false statement from Wells Fargo to a credit reporting agency are difficult to understand, but are presumably grounded in Wells Fargo's purported inability to actually foreclose upon this mortgage, perhaps because it does not possess an "ink-signed original mortgage and note." Whether or not Wells Fargo is in a position to foreclose is a question for another, hypothetical proceeding. The answer to this question will not be based on any statements made by Wells Fargo to credit reporting agencies; rather, it will be based on an interpretation of the provisions of Title 9A. Thus, the continuing existence of the mortgage, which is unrelated to any statements made to credit reporting agencies, cannot constitute special damages in a suit for slander of title. Without an adequate allegation of special damages, any slander of title claim here fails. The Norton-Griffiths are also not entitled to summary judgment on this issue.

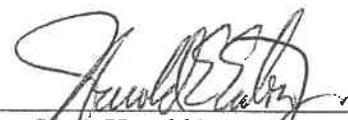
### ORDER

Plaintiffs' Motion for Partial Summary Judgment, filed October 26, 2012 is *denied*.

Defendants' Motion for Partial Summary Judgment, filed December 7, 2012 is *granted*.

Plaintiffs' Motion for Partial Summary Judgment, filed March 1, 2013 is *denied*.

Dated at Rutland, Vermont this 2 day of December, 2013.

  
Hon. Harold E. Eaton, Jr.  
Civil Division Judge