

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 207-4-18 Wncv

WELLS FARGO BANK, NATIONAL
ASSOCIATION AS TRUSTEE FOR
SOUNDVIEW HOME LOAN TRUST 2007-
OPT1, ASSET-BACKED CERTIFICATES,
SERIES 2007-OPT1,
Plaintiff,

v.

FUAD NDIBALEMA et al.,
Defendants.

RULING ON MR. NDIBALEMA'S MOTION TO AMEND

The Vermont Supreme Court remanded this foreclosure case for a ruling on Mr. Ndibalema's motion to amend the answer to add two new counterclaims. Mr. Ndibalema asserted several counterclaims in his answer. He later (August 15, 2018) filed a motion to amend the answer to add more. The trial court dismissed the original counterclaims in a March 29, 2019 decision, explaining: "All of these counterclaims, regardless of the legal-sounding assertions in each, lack a basic set of factual allegations sufficient to make them understandable." The case proceeded to trial, where Mr. Ndibalema successfully defended against foreclosure when the court, for procedural reasons, barred Wells Fargo from establishing that the note had ever been negotiated to it.

Mr. Ndibalema appealed, arguing (among other things) that the trial court had never ruled on his motion to amend. The Court affirmed on all other grounds but agreed "that the matter must be remanded for the trial court to address defendant's August 2018 motion to amend in the first instance." *Wells Fargo Bank, N.A., Trustee v. Ndibalema*, No. 2020-153, 2021 WL 3020740 (Vt. July 16, 2021) (unpub.). The Court interpreted Mr. Ndibalema's 45-page motion to amend to seek to add as counterclaims violations of 8 V.S.A. § 2922 (prohibited acts by loan servicers) and the federal Racketeering Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968.

Mr. Ndibalema's motion to amend was fully briefed by the parties in 2018, and nothing that has transpired since suggests any need for more briefing. Accordingly, the court now rules on that motion.

The extraordinary length of Mr. Ndibalema's motion does little to aid clarity. He describes in broad and conclusory terms some lending industry concepts or bad or

fraudulent practices, including, among other things, “liar’s loans” and appraisal fraud, the latter apparently the basis for his counterclaims, and asserts violations of 8 V.S.A. § 2922 and RICO counterclaims. Presumably, in some manner, his home was appraised at an unrealistically high valuation to support a loan in an amount that the originating bank should not have approved. He claims that he never would have taken out the loan if he had known what his home was really worth.

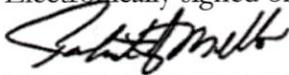
Surely, these claims sound in fraud, and thus are subject to the particularity requirement of Rule 9(b). See Civ. RICO Prac. Manual § 3.23 (particularity requirement applies to predicate offenses sounding in fraud). Yet, Mr. Ndibalema included virtually no factual allegations as to the origination of *his* loan and how the appraisal, if it was higher than fair market value at the time, was fraudulent in nature, who issued the appraisal, and what the originating bank’s relation to the appraiser may have been. It is also wholly unclear how this “fraud” might violate 8 V.S.A. § 2922, which applies to loan servicers, and be attributable to Wells Fargo, which did not originate the loan. Similarly, it is entirely unclear how the allegations could competently state a RICO violation insofar as there are nearly no specific allegations as to Mr. Ndibalema’s loan and Wells Fargo’s conduct in relation to it.

The court usually grants motions to amend liberally, but it is appropriate to deny amendment for futility. See *Perkins v. Windsor Hosp. Corp.*, 142 Vt. 305, 313 (1982). Mr. Ndibalema’s motion is futile. As Judge Teachout explained in dismissing his other counterclaims, the new counterclaims “lack a basic set of factual allegations sufficient to make them understandable” and give the court and Wells Fargo fair notice of their nature. Mr. Ndibalema’s exploration of perceived problems in the mortgage industry over the years is entirely conclusory and insufficient to cogently state a counterclaim against *this* plaintiff arising out of *his* loan.

Order

For the foregoing reasons, Mr. Ndibalema’s motion to amend is denied.

Electronically signed on 11/8/2021 11:25 AM, pursuant to V.R.E.F. 9(d)



Robert A. Mello
Superior Judge