

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FLAGSTAR BANK, FSB,

Plaintiff,

v

Case No. 14-140051-CK  
Hon. Wendy Potts

INTEGRA LENDING GROUP, LLC,

Defendant.

---

OPINION AND ORDER RE:  
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION OR DISMISSAL  
AND  
PLAINTIFF'S AMENDED MOTION FOR SUMMARY DISPOSITION

At a session of Court  
Held in Pontiac, Michigan

**NOV 21 2014**

---

This case is before the Court on the parties' cross-motions for summary disposition of Plaintiff Flagstar Bank's claim that Defendant Integra Lending Group, LLC breached a mortgage loan broker agreement. Integra moves for summary disposition under MCR 2.116(C)(7), which determines whether a claim is barred as a matter of law. A motion under (C)(7) is decided on the pleadings, unless the parties submit admissible evidence contradicting the allegations in the pleadings. *Turner v Mercy Hosp & Health Services*, 210 Mich App 345, 349 (1995). Flagstar moves for summary disposition under MCR 2.116(C)(10), which tests the factual support for its claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). When deciding a (C)(10) motion, the Court considers admissible evidence submitted by the parties in the light most favorable to the nonmoving party to determine if there is a genuine issue of material fact

for trial. *Id* at 120. The parties waived oral argument, and the Court is deciding the matter without a hearing. MCR 2.119(E)(3).

Flagstar and Integra entered into an agreement whereby Integra would originate mortgage loans that would be sold to Flagstar. Integra agreed to several broad warranties in that agreement, including that the loan documents and the information in them is genuine, true, accurate, and complete, and the loan documents meet the requirements and specifications of Fannie Mae. Integra further agreed to indemnify Flagstar for any and all losses, liabilities, or damages that arise out of, result from, or relate to Integra's breach of any covenant, condition, term, obligation, representation, or warranty in the agreement.

Flagstar alleges that Integra breached its warranties for two loans: a September 2006 loan to Lorinda Walker and a November 2007 loan to Suzannah Killian. Integra transferred the notes and mortgages for these loans to Flagstar, who then sold them to Fannie Mae. In December 2012, Fannie Mae demanded that Flagstar reimburse it for a loss incurred on the Walker loan because the mortgage insurer rescinded the insurance based on several misrepresentations. In April 2013, Fannie Mae demanded Flagstar reimburse the Killian loan because the borrower misrepresented her income. Flagstar reimbursed Fannie Mae \$133,506.12 for the Walker loan and \$108,715.59 for the Killian loan. Flagstar claims that its total loss is \$248,236.99 plus attorney fees and costs.

Integra first asserts that Flagstar's claims are barred because it did not bring them within six years of its alleged breaches of the warranties. Integra claims that the breaches alleged by Flagstar occurred when Integra transferred the loans to Flagstar, which was more than six years before Flagstar filed this action. However, this argument misconstrues the nature of Flagstar's claims, which allege that Integra breached its obligation to indemnify Flagstar. The indemnity

provision in Integra's agreement creates an obligation to Flagstar independent of any other obligation. *Miller-Davis Co v Ahrens Construction, Inc*, 495 Mich 161, 173; 848 NW2d 95 (2014). Flagstar alleges that Integra breached this duty to indemnify when Flagstar demanded indemnification and Integra failed or refused to do so. Because those alleged breaches occurred in 2012 and 2013, Flagstar filed its claims well within the six-year limitation period.

Integra also asserts that Flagstar did not suffer a loss triggering its indemnification duty because Flagstar was not obligated to reimburse Fannie Mae. This argument is premised on a similar statute of limitation theory that Fannie Mae's right to demand reimbursement from Flagstar accrued when the loans closed. However, Flagstar presents evidence that Fannie Mae made its demands for reimbursement on both loans within six years of the loans closing. Because Integra presents no evidence to the contrary, Fannie Mae's demands were timely and Flagstar was obligated to reimburse it.

Regarding Flagstar's motion, Flagstar claims that there is no question of fact that Integra breached its warranties under the broker agreement and is obligated to indemnify Flagstar. Integra contends that this motion is premature because discovery is ongoing regarding Integra's affirmative defenses. Summary disposition is generally premature when discovery on disputed issues is ongoing. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). However, Integra has the burden of explaining how further discovery will yield support for its position. *Dimondale, supra*. Because Integra has not identified any discovery that is likely to support its defenses, it cannot avoid summary disposition on this ground.

For all of these reasons, Integra fails to demonstrate a question of fact that would preclude the Court from granting Flagstar summary disposition. Thus, the Court grants the

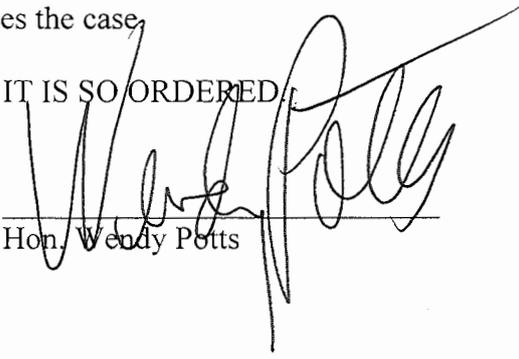
motion and enters judgment in Flagstar's favor and against Integra in the amount of \$248,236.99 plus accrued interest and costs.

This resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Dated:

NOV 21 2014

  
\_\_\_\_\_  
Hon. Wendy Potts