

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FLAGSTAR BANK, FSB,

Plaintiff,

v

SOUTHWEST EQUITY CORP D/B/A
SOUTHWEST EQUITY MORTGAGE,

Defendant.

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Case No. ~~XX~~137590-CK

Hon. Wendy Potts

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan

On

~~SEP 04 2014~~

This case is before the Court on Plaintiff Flagstar Bank's motion for summary disposition of its claim that Defendant Southwest Equity Corp breached a mortgage loan broker agreement. Flagstar moves for summary disposition under MCR 2.116(C)(10), which tests the factual support for the claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). The parties waived oral argument on the motion and the Court is exercising its discretion to decide the matter without a hearing. MCR 2.119(E)(3).

Flagstar and Southwest Equity entered into an agreement whereby Southwest Equity would originate mortgage loans that would be sold to Flagstar. Southwest Equity 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 Freddie Mac and Fannie Mae. Southwest Equity further agreed to indemnify Flagstar for any and all losses, liabilities, or damages that arise out of, result

from, or relate to Southwest Equity's breach of any covenant, condition, term, obligation, representation or warranty in the agreement.

Flagstar alleges that Southwest Equity breached its warranties for a 2007 mortgage loan to Edward Cox and Claudia Perez-Cox in Yuma, Arizona. Flagstar claims that Mr. Cox is the owner and President of Southwest Equity, and Ms. Perez-Cox is his wife and the office manager. Flagstar funded the \$196,000 loan, and then sold it to Fannie Mae. After Mr. Cox and Ms. Perez-Cox defaulted on the loan, Fannie Mae demanded that Flagstar reimburse it for its loss on the loan. Flagstar investigated the loan and claims it discovered that Mr. Cox and Ms. Perez-Cox committed fraud by failing to disclose a \$25,000 loan and mortgage on the house that was granted in November 2006 but not recorded until after the closing on Flagstar's loan. According to Flagstar, if it had known about the \$25,000 loan and mortgage, it would not have funded the loan. Flagstar further claims that as a result of reimbursing Fannie Mae it suffered \$184,826.68 in losses and is entitled to indemnification from Southwest Equity for those losses. Flagstar also notes that the broker agreement allows it to collect its attorney fees and legal costs incurred in prosecuting this action, which it claims total \$6,362.50 and \$194.40, respectively.

Flagstar argues that there is no question of fact that Southwest Equity breached its warranties under the broker agreement and is obligated to indemnify Flagstar. Because Southwest Equity did not respond to the motion in writing or otherwise present evidence demonstrating a factual dispute for trial, Flagstar is entitled to summary disposition. The Court grants the motion and enters judgment for Flagstar and against Southwest Equity in the amount of \$191,383.58 plus statutory interest.

This order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Dated:

SEP 04 2014

Hon. Wendy Potts