

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

FLAGSTAR BANK, FSB,

Plaintiff,

v

Case No. 14-142309-CK  
Hon. Wendy Potts

FDB MORTGAGE, INC,

Defendant.

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

At a session of Court  
Held in Pontiac, Michigan

On

~~DEC 03 2014~~

This case is before the Court on Defendant FDB Mortgage, Inc.'s motion for summary disposition of Plaintiff Flagstar Bank's claim that FDB breached a mortgage loan broker agreement. FDB 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; 533 NW2d 365 (1995). The parties waived oral argument, and the Court is deciding the matter without a hearing. MCR 2.119(E)(3).

FDB agreed to originate mortgage loans and sell them to Flagstar under a written agreement in which FDB extended several broad warranties to Flagstar, including that the loan documents are genuine, true, accurate, and complete and the documents meet the requirements

and specifications of Freddie Mac. FDB also agreed to indemnify Flagstar for any and all losses, liabilities, or damages that arise out of, result from, or relate to FDB's breach of any covenant, condition, term, obligation, representation, or warranty in the agreement.

In January 2008, FDB closed on a mortgage loan to Heather Kashenbach and transferred it to Flagstar, who then sold the loan to Freddie Mac. In August 2013, Freddie Mac demanded that Flagstar reimburse it for a loss incurred on the loan because Kashenbach made false statements in her loan documents. Flagstar reimbursed Freddie Mac and claims that its net loss after selling the home is \$60,523.74 plus attorney fees and costs.

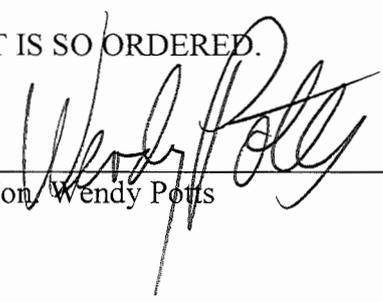
FDB asserts that Flagstar's claims are barred because it did not bring them within six years of its alleged breach of the warranties which FDB claims occurred when it transferred the loan to Flagstar in 2008, more than six years before Flagstar filed this action. However, this argument misconstrues the nature of Flagstar's claims, which allege that FDB breached its obligation to indemnify Flagstar. The indemnity provision in FDB'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). An indemnification claim accrues when the indemnitee sustains the loss. *Miller-Davis, supra* at 180. Thus, Flagstar alleges that FDB breached its duty to indemnify Flagstar, and this claim accrued when Flagstar sustained the loss, which occurred at the earliest when Freddie Mac demanded payment in August 2013. Because Flagstar's claim is premised on breach of an indemnification clause, and that claim did not accrue until 2013, Flagstar filed this action within the six-year limitation period for contract claims.

FDB also asserts that Flagstar did not suffer a loss triggering its indemnification duty because Flagstar was not obligated to reimburse Freddie Mac. This argument is premised on a

similar statute of limitation theory that Freddie Mac's right to demand reimbursement from Flagstar accrued when the loan closed. However, Freddie Mac's right to reimbursement under its agreement with Flagstar did not accrue until Freddie Mac suffered a loss based on the borrower made false statements. Flagstar presents evidence that Freddie Mac suffered its loss and made its demands for reimbursement well within limitation period on that claim. Because FDB presents no evidence to the contrary, it cannot avoid its obligation to Flagstar on the ground that Flagstar was not obligated to reimburse Freddie Mac.

For all of these reasons, FDB's motion is denied.

Dated: DEC 03 2014

IT IS SO ORDERED.  
  
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Hon. Wendy Potts