

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

FLAGSTAR BANK, FSB,

Plaintiff,

v

Case No. 14-142707-CK  
Hon. Wendy Potts

MONEY WISE INVESTMENTS, INC.,

Defendant.

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

At a session of Court  
Held in Pontiac, Michigan

On

JUN 11 2015

Plaintiff Flagstar Bank, FSB, and Defendant Money Wise Investments, Inc entered into a Correspondent Lending Mortgage Purchase Agreement whereby Money Wise would originate mortgage loans that it would sell to Flagstar. Money Wise agreed that it would indemnify Flagstar for any and all losses, costs, or damages it incurs from Flagstar's sale of loan to third-parties. Flagstar alleges Money Wise originated a December 2005 mortgage loan to Attef and Gisele Girgis in Adelanto, California. Money Wise sold that loan to Flagstar, who then sold it to Fannie Mae. In September 2013, Fannie Mae demanded that Flagstar reimburse it for a loss incurred on the Girgis loan because the borrower failed to reveal other mortgages on the property. Flagstar claims it reimbursed Fannie Mae \$130,868.04 for the Girgis loan, and demanded that Money Wise indemnify the loss, which it refused to do. Flagstar filed this action claiming a total loss of \$135,067.80, which includes its attorney fees and costs.

Flagstar now 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.

Money Wise first asserts that Flagstar lacks standing to pursue its indemnification claim because Fannie Mae succeeded to Flagstar's rights under the Agreement when it purchased the loan. The Agreement states that "in the event that Buyer [Flagstar] sells or assigns all or part of its interest in any mortgage loans that are subject to this Agreement to a third party, such third party shall succeed to all of the rights of Buyer hereunder with respect to such mortgage loans." This language contradicts Money Wise's argument because Fannie Mae succeeded only to Flagstar's rights with respect to the Girgis loan. The agreement does not state that Fannie Mae succeeded to Flagstar's right to indemnification. By selling the loan to Fannie Mae, Flagstar did not lose its right to seek indemnification from Money Wise.

Money Wise next claims Flagstar's claims are barred because it did not bring them within six years of Money Wise's alleged breaches of the warranties. However, this argument misconstrues the nature of Flagstar's claims, which allege that Money Wise breached its obligation to indemnify Flagstar. The indemnity provision of the Agreement imposes an obligation on Money Wise independent of any other contractual obligation. *Miller-Davis Co v Ahrens Construction, Inc*, 495 Mich 161, 173; 848 NW2d 95 (2014). An indemnification claim accrues when the indemnitee suffers a loss. *Miller-Davis, supra* at 180. Flagstar alleges that it suffered its loss in September 2013, when Fannie Mae demanded reimbursement. Because Flagstar's claim accrued less than six years before it filed this action, the claim is not barred.

In its final argument, Money Wise asserts that Flagstar is not entitled to indemnification because it cannot prove actual liability to Fannie Mae. Money Wise asserts that because the indemnification provision of the Agreement imposed both a duty to defend and indemnify, Flagstar had an obligation to tender its defense of Fannie Mae's claims to Money Wise before it settled with Fannie Mae. See *Grand Trunk Western RR, Inc v Auto Warehousing Co*, 262 Mich App 345, 354-55; 686 NW2d 756 (2004). However, the facts of *Grand Trunk* are distinguishable from this case because the indemnification provision in the *Grand Trunk* case required the indemnitee to tender its defense. Because Flagstar was not obligated to tender its defense to Money Wise, the analysis of *Grand Trunk* is not controlling.

Even if the Court agreed that Flagstar was obligated to prove its actual liability to Fannie Mae, the undisputed evidence demonstrates that Flagstar was liable to reimburse Fannie Mae. Flagstar presents Fannie Mae's September 4, 2013 demand letter in which it asserts that the borrower failed to reveal in their application four additional mortgages on the property, and that this misrepresentation was a breach of Flagstar's warranties to Fannie Mae. Because Money Wise presents no contrary evidence, there is no question of fact that Flagstar was liable to Fannie Mae. Instead, Money Wise asserts that Fannie Mae's request for reimbursement from Flagstar was untimely because it made the request more than seven years after Flagstar sold the loan to Fannie Mae. Although Money Wise correctly notes that a breach of contract claim is subject to a six-year limitation period, MCL 600.5807, it presumes that Fannie Mae's claim for reimbursement accrued when Flagstar sold it the loan. However, Fannie Mae's claim was based on Flagstar's warranty of the loan, which accrued when Fannie Mae discovered or should have discovered the breach. MCL 600.5833. Flagstar's evidence shows that Fannie Mae discovered the breach of warranty in 2013, and Money Wise presents no evidence from which the Court

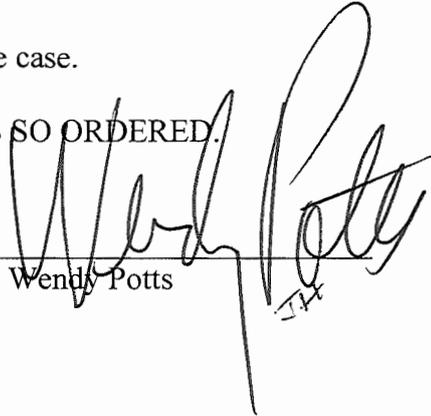
could conclude that Fannie Mae should have discovered it earlier. Thus, there is no question of fact that Flagstar was actually liable to reimburse Fannie Mae and that Fannie Mae timely demanded reimbursement from Flagstar.

For all of these reasons, Money Wise fails to demonstrate a question of fact that would preclude the Court from granting Flagstar summary disposition. The Court grants the motion and enters judgment in Flagstar's favor and against Money Wise in the amount of \$135,067.80 plus accrued interest and costs.

This resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Hon. Wendy Potts

A handwritten signature in black ink, appearing to read "Wendy Potts", is written over a horizontal line. The signature is stylized and cursive. Below the line, the name "Hon. Wendy Potts" is printed. There are some small, illegible marks or initials at the bottom right of the signature.

Dated: JUN 11 2015