

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

**FLAGSTAR BANK, FSB,
Plaintiff,**

v.

**Case No. 15-147027-CK
Hon. James M. Alexander**

**MORTGAGE CREDIT OF AMERICA, INC,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiff's motion for summary disposition. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

Defendant is a mortgage broker that presented twenty to thirty mortgage loans to Plaintiff for funding. In May 2004, the parties executed a "Wholesale Lending Broker Agreement" that required Defendant, in relevant part, to reimburse Plaintiff for losses on loans it funded when there was a defect in the loan's origination (regardless of cause).

Additionally, if Plaintiff sold the loan to a secondary market investor (such as Freddie Mac) then Defendant was required to reimburse if Plaintiff was required to repurchase the loan from Freddie Mac due to any defect. Defendant also warranted that all of the information submitted as part of the loan origination package was true and accurate and met Freddie Mac's requirements and specifications.

As it pertains to the current dispute, Defendant submitted a loan package to Plaintiff for funding. This loan, the Meneses Loan, closed on July 24, 2007. After the closing, Plaintiff sold and

assigned the loan to Freddie Mac. Thereafter, the borrower defaulted by failing to meet repayment obligations. Freddie Mac then conducted a review, which revealed that the loan failed to meet its guidelines. Specifically, Plaintiff claims that the loan package misrepresented the borrower's income and debt-to-income ratio. This was the basis for Freddie Mac's demand.

Freddie Mac then required that Plaintiff reimburse its losses on the loans. Plaintiff then demanded that Defendant, in turn, reimburse it as agreed, which led to the current lawsuit. Plaintiff seeks \$83,072.80 (representing \$82,856.80 for the repurchase and \$216 in broker fees) on the loan. In total, Plaintiff seeks a judgment for this amount, plus attorney fees and costs (which Plaintiff does not detail).

To that end, Plaintiff 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, 120; 597 NW2d 817 (1999). Under (C)(10), "the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

Under section 3.1(a) of said Agreement, Defendant warranted that:

all Mortgage Loan Documents submitted by [Defendant] for each Mortgage Loan are in every respect valid and genuine, being what they support (sic) to be and all information submitted in each Mortgage Loan Document is true and accurate.

Further, under section 3.1(k), Defendant warranted that:

[It] understands Flagstar intends to sell the Mortgage Loans to investors in the secondary market. [Defendant] represents, covenants, and warrants that in submitting Mortgage Loans to Flagstar that it is in full compliance with all pertinent requirements of . . . Freddie Mac

Finally, under section 3.1(m), Defendant warranted that:

All Mortgage Loan Documents . . . are genuine, accurate, and complete and meet the requirements and specifications established by Fannie Mae/Freddie Mac and product descriptions and underwriting guidelines listed in the Guide.

If Defendant breached any of the above provisions, then under section 4.1(a), it agreed to:

indemnify and hold harmless Flagstar . . . from any and all losses, liabilities, claims, damages, or costs of any nature, including without limitation attorneys' fees and costs, and actions suffered or incurred by Flagstar which arise out of, result from, or relate to . . . [t]he breach by [Defendant] of any covenant, condition, term, obligation, representation or warranty contained in this Agreement, the Guide, or in any written statement, certificate, or Mortgage Loan Document furnished by [Defendant] pursuant to this Agreement

In response to Plaintiff's motion, Defendant generally argues: (1) Plaintiff is the party that made the decision to fund the loan, not Defendant; (2) Plaintiff relied on unverified borrower income information to its own detriment; (3) Plaintiff could not have reasonably relied on the information that Defendant provided, and (4) Plaintiff did not provide Defendant any opportunity to defend its position when Freddie Mac first contacted Plaintiff.

Each of these arguments misunderstands the nature of the parties' agreement. Defendant warranted that the loan package was true and accurate. This, as it turned out, was not the case. As a result, Defendant breached the parties' Agreement. Defendant cannot shift the blame to Plaintiff based on an alleged failure to catch the misrepresentations or verify the information. The parties contracted for Plaintiff to guaranty the accuracy of the information.

As this Court previously stated:

The parties entered into contracts. As a part of each contract, Defendant not only warranted that the loan documents would be "in every respect valid and genuine," it also warranted that the loan documents would meet Fannie Mae's or Freddie Mac's guidelines. For the above reasons, Fannie Mae and Freddie Mac determined that each loan did not. This wasn't even Plaintiff's decision to make. Defendant

contracted to assume this risk in such an event, and now it wants to avoid that responsibility. The Court will not so allow.

Flagstar Bank, FSB v K&B Equity Group, Inc, Opinion and Order re: Summary Disposition, issued February 12, 2014 (Oakland County Circuit Court, Case No. 2013-134793-CK)

Finally, Defendant argues that Plaintiff wrongfully denied Defendant an opportunity to defend its position when Freddie Mac first notified Plaintiff of the loan defects, and somehow, this absolves Defendant of any liability for its wrongdoing.

But this argument ignores section 4.1(b) of the Agreement, which provides that when Freddie Mac required Plaintiff to repurchase, the parties agreed that: “[Plaintiff] shall have the complete and exclusive right to determine the conduct and defense of such legal proceeding or investigation with such third party including, without limitation, the right to compromise, settle, defend, or continue any such action.”

In other words, Defendant already agreed that it would not necessarily be notified when a secondary market investor claimed non-compliance of a loan package. And Defendant cannot now argue that Plaintiff somehow erred by not notifying Defendant when Defendant expressly agreed otherwise.

For all of the above reasons and viewing all evidence in the light most favorable to Defendant, the Court concludes that there are no material facts in dispute and Plaintiff is entitled to judgment as a matter of law. Defendant breached the parties’ agreement when it submitted a loan package that did not meet Freddie Mac’s guidelines. Because Plaintiff was required to make Freddie Mac whole, it suffered damages. Under the parties’ agreements, Defendant is required to reimburse Plaintiff for its damages.

As a result, the Court GRANTS Plaintiff’s motion for summary disposition and enters

judgment against Defendant in the amount of \$83,072.80.¹

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED

January 8, 2016 _____
Date

_____/s/ James M. Alexander_____
Hon. James M. Alexander, Circuit Court Judge

¹ In its Response, Defendant does not dispute Plaintiff's claimed damages – only its liability thereon.