

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ANAMARIA BECH, et al.

CIVIL ACTION

VERSUS

NO. 09-7667

WELLS FARGO BANK, N.A.,  
d/b/a AMERICA'S SERVICING COMPANY

SECTION "N" (3)

**ORDER AND REASONS**

Before the Court are the following two motions: (1) Defendant's Objection and Motion for Review of Magistrate Judge's Discovery Order to Allow Non-Resident Deposition in South Carolina (Rec. Doc. 61); and (2) Plaintiffs' Motion for Sanctions Pursuant to Rule 11(C)(2) (Rec. Doc. 64). Both motions are opposed. (See Rec. Docs. 68 and 67, respectively).

The undersigned recently continued this trial to Monday, February 14, 2011, and at the same time, allowed Plaintiff additional time to file an opposition to Defendant's pending Motions for Summary Judgment (Rec. Doc. 38 and 42) after conducting certain discovery recently allowed by the assigned Magistrate Judge. Defendant filed a Motion for Appeal of the Magistrate's decision, and noticed it for hearing on the next available hearing date, Wednesday, December 29, 2010, in accordance with the Local Rules of this Court. However, Wednesday, December 29, 2010 is also the court-ordered deadline for Plaintiff to file his oppositions to Defendant's pending motions for summary judgment. Plaintiff's counsel then filed a Motion for Sanctions under Rule 11, claiming that defense counsel acted with an improper purpose by noticing its Motion to Review the Magistrate's Decision on the same day as the deadline for his oppositions to the pending motions for summary judgment.

After considering the memoranda of the parties and the applicable law,

**IT IS ORDERED** that **Defendant's Objection and Motion for Review of Magistrate Judge's Discovery Order to Allow Non-Resident Deposition in South Carolina (Rec. Doc. 61)** is **DENIED**. Although the Court does not find this motion to be wholly without merit, it is largely because Defendant initially agreed to produce Ms. Brown for deposition<sup>1</sup> that this Court affirms the Magistrate Judge's decision in this regard.

**IT IS FURTHER ORDERED** that the **Plaintiffs' Motion for Sanctions Pursuant to Rule 11(C)(2) (Rec. Doc. 64)** is **DENIED**. Plaintiffs' counsel failed to comply with the safe harbor provision in Rule 11(c)(2) of the Federal Rules of Civil Procedure. Although the Court chooses to take no further action in this regard, the undersigned notes that this conduct is sanctionable in and of itself.

**IT IS FINALLY ORDERED** that Plaintiff is allowed until **Wednesday, January 5, 2010** to file oppositions to Defendant's pending motions at Rec. Docs. 38 and 42. Any replies thereto shall be filed on or before **Monday, January 10, 2011**, at which time the motions will be taken under advisement.

New Orleans, Louisiana, this 27th day of December 2010.



**KURT D. ENGELHARDT**  
United States District Judge