

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WHITNEY BANK,)
)
Plaintiff,)
)
v.) CASE NO. 2:14-CV-969-WKW
) [WO]
PAYNE LEE & ASSOCIATES)
ARCHITECTS, LLC, *et al.*,)
)
Defendants.)

ORDER

In accordance with this court's prior Order lifting the stay as to the non-debtor Defendant, Payne Lee & Associates Architects, LLC, and the counterclaim of debtor Defendant David H. Payne, Plaintiff's pending Motion for Adjudication on Magistrate Judge's Report and Recommendation as to Non-Bankrupt Defendant and Counterclaim (Doc. # 42) will now be addressed. On February 10, 2015, the Magistrate Judge filed a Recommendation in this case. (Doc. # 37.) On February 23, 2015, Defendants filed an Objection (Doc. # 38), in which they allege that the Magistrate Judge failed to consider the equitable arguments Defendants raised in their brief opposing Plaintiff Whitney Bank's motion for summary judgment. Upon an independent and *de novo* review of those portions of the Recommendation to which objection is made, *see* 28 U.S.C. § 636(b), Whitney

Bank's motion (Doc. # 42) is due to be granted, the Objection is due to be partially overruled, and the Recommendation is due to be partially adopted.

In their Objection to the Recommendation, Defendants argue that the Magistrate Judge failed "to consider the equitable arguments as cited in [their] brief." (Doc. # 38, at 1.) Defendants raised equitable arguments in their brief in opposition to Whitney Bank's motion for summary judgment and they further assert that equitable considerations mandate that Whitney Bank not be allowed to retain monies unjustly earned on a loan never drawn upon. These arguments, however, do not call into question the soundness of the Magistrate Judge's legal conclusions as they are based upon actions taken by Whitney Bank with regard to a promissory note that is not the subject of this action.

Accordingly, it is ORDERED as follows:

1. Plaintiff Whitney Bank's Motion for Adjudication on Magistrate Judge's Report and Recommendation as to Non-Bankrupt Defendant and Counterclaim (Doc. # 42) is GRANTED;
2. Defendant Payne Lee & Associates Architect, LLC's Objection (Doc. # 38) is OVERRULED;
3. the Recommendation (Doc. # 37) is partially ADOPTED;
4. Defendant David H. Payne's Counterclaim is DISMISSED with prejudice;

5. Plaintiff Whitney Bank's Motion for Summary Judgment is GRANTED as to Defendant Payne Lee & Associates;

6. the stay remains in full force and effect as to Plaintiff's claims against debtor-Defendants Mark E. Lee and David H. Payne; and

7. the Recommendation (Doc. # 37) and Objection (Doc. # 38) remain pending as to debtor-Defendants Mark E. Lee and David H. Payne.

DONE this 4th day of June, 2015.

/s/ W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE