

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**WELLS FARGO BANK,)
NATIONAL ASSOCIATION,)
successor by merger to)
Wachovia Bank National)
Association,)**

PLAINTIFF,)

VS.)

2:10-cv-2380-JHH

**MARTINEZ, INC.;)
MARTINEZ REALTY, INC.; and)
GREGORY L. MARTINEZ,)**

DEFENDANTS.)

MEMORANDUM OPINION

The court has before it the Motion (Doc. #21) for Summary Judgment of Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, National Association (“Wells Fargo”) filed on March 26, 2012.

Plaintiff Wells Fargo commenced this action by filing a complaint in this court on August 31, 2010 alleging: (1) breach of contract against Martinez Realty, Inc. under Note 1 (Count I); (2) breach of contract against Martinez, Inc. under Note 2 (Count II); (3) breach of contract against Martinez, Inc. under Note 3 (Count III); (4)

breach of contract against Martinez, Inc. under Note 4 (Count IV); and (5) breach of contract against G. Martinez under guarantees (Count V). On March 26, 2012, Plaintiff Wells Fargo filed a brief and evidence¹ in support of its motion for summary judgment. (*See* Docs. #21, 22, 23). Defendants failed to file any brief or evidence in opposition to Plaintiff's Motion (Doc. #21) for Summary Judgment.² In accordance with the court's March 27, 2012 order (Doc. #24) the Motion (Doc. #21) for Summary Judgment came under submission on April 24, 2012.

The court has reviewed the Motion for Summary Judgment (Doc. #21), the brief in support of the Motion for Summary Judgment (Doc. #22), and the referenced portions of the evidentiary material filed in support of the Motion for Summary Judgment (Doc. #23). The court finds that the statement of facts as set forth on pages 3 through 15 of the brief (Doc. #22) is amply supported by the record evidence. Therefore, Plaintiff Wells Fargo has carried its burden of demonstrating the absence

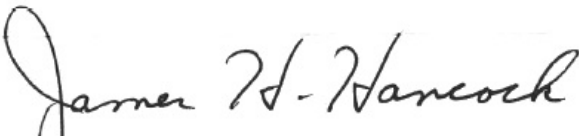
¹ Plaintiff Wells Fargo submitted: the affidavit of Jill Stewart of Wells Fargo with exhibits (Exhibit A) and the affidavit of Jennifer Harris Henderson of Bradley Arant Boult Cummings LLP (Exhibit B).

²At the request of the parties (*see* Doc. #14), this case was stayed by the court until February 28, 2012. (Doc. #15). That Order directed the parties to notify the court if Defendants defaulted under the Loan Modification Agreement. On January 23, 2012 Plaintiff notified the court that Defendants were in default of their obligations under the Loan Modification Agreement. (*See* Doc. #16). On the same day that the court lifted the stay, defense attorneys with the law firm of Spain & Gillion, LLC filed a Motion to Withdraw. (*See* Docs. #17, 18). On January 31, 2012, Garrick L. Stotser and Richard A. Bearden of the law firm of Massey, Stotser & Nichols, PC entered their appearance as counsel of record for Defendants. (*See* Doc. #19).

of any material factual dispute and that it is entitled to judgment as a matter of law as to all claims asserted in the complaint.

A separate order will be entered.

DONE and **ORDERED** this 4th day of May, 2012.



SENIOR UNITED STATES DISTRICT JUDGE