

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIKA HAMILTON,
Plaintiff,
v.
WELLS FARGO BANK, N.A.,
Defendant.

No. 09-04152 CW
ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS
AND DENYING
DEFENDANT'S
MOTION TO STRIKE

_____/

Marika Hamilton brings this class action against Wells Fargo Bank alleging violations of the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601, et seq., violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. and breach of contract. Plaintiff alleges that Defendant illegally suspended and reduced credit limits on her home equity line of credit (HELOC) as well as those of other borrowers across the country. Defendant moves to dismiss all of Plaintiff's claims except for her breach of contract claim. Defendant also moves to strike various portions of Plaintiff's complaint. Plaintiff opposes the motion. Having read all of the papers submitted by the parties, the Court grants Defendant's motion to dismiss and denies its motion to strike.

1 BACKGROUND

2 Plaintiff, a resident of Fort Wayne, Indiana, obtained a HELOC
3 for \$103,600 from Defendant in August, 2008. The HELOC was secured
4 by her house. In February, 2009, Defendant suspended her account
5 because of her "derogatory credit." Compl. ¶ 20; Id., Exh. A.
6 Surprised by this notice, Plaintiff checked her credit report and
7 noticed only one blemish, a \$25 late charge, which she then
8 disputed. After she resolved the late charge issue, she requested
9 reinstatement of her HELOC account but Defendant refused to do so.
10 Defendant told Plaintiff that "the harder she pressed for
11 reinstatement, the more difficult and painful Wells Fargo would
12 make the reinstatement process, including a thorough examination of
13 all of Plaintiff's accounts, including her business accounts."
14 Compl. ¶ 24. Plaintiff alleges that the suspension of her HELOC
15 account "negatively impacted the amount of credit she had available
16 to pay for basic expenses" and it "damaged her credit rating and
17 increased the cost of credit to her." Id. at ¶ 26.¹

18 LEGAL STANDARD

19 A complaint must contain a "short and plain statement of the
20 claim showing that the pleader is entitled to relief." Fed. R.
21 Civ. P. 8(a). Dismissal under Rule 12(b)(6) for failure to state a
22 claim is appropriate only when the complaint does not give the
23 defendant fair notice of a legally cognizable claim and the grounds

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25 ¹The Court takes judicial notice of the existence of the Wells
26 Fargo websites mentioned in Plaintiff's opposition but not for the
27 truth of the matters asserted therein. The Court denies
28 Plaintiff's request to take judicial notice of various district
court opinions on related subject matter. Judicial notice is not
required to alert the Court to relevant case authority.

1 on which it rests. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
2 (2007). In considering whether the complaint is sufficient to
3 state a claim, the court will take all material allegations as true
4 and construe them in the light most favorable to the plaintiff. NL
5 Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).
6 However, this principle is inapplicable to legal conclusions;
7 "threadbare recitals of the elements of a cause of action,
8 supported by mere conclusory statements," are not taken as true.
9 Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949-50 (2009)
10 (citing Twombly, 550 U.S. at 555).

11 DISCUSSION

12 I. Plaintiff's TILA Claims

13 The first and second counts of Plaintiff's complaint allege a
14 violation of 15 U.S.C. § 1647 and its implementing regulation, 12
15 C.F.R. § 226.5b. TILA applies to consumer transactions where "the
16 party to whom credit is offered or extended is a natural person,
17 and the money, property, or services which are the subject of the
18 transaction are primarily for personal, family, or household
19 purposes. 15 U.S.C. § 1602(h). TILA specifically exempts from its
20 scope extension of credit for business or commercial purposes. 15
21 U.S.C.A. § 1603(1); 12 C.F.R. § 226.3(a). Defendant argues that
22 these claims should be dismissed because Plaintiff has not alleged
23 that her HELOC was primarily for personal, family, or household
24 purposes.

25 "In evaluating whether a certain loan was made for commercial
26 purposes, the emphasis should be on the purpose of the transaction
27 and not on the categorization of the properties used to secure the
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1 loan." Galindo v. Financo Fin., Inc., 2008 WL 4452344, at *4 (N.D.
2 Cal.). Plaintiff merely alleges that the HELOC was for "basic
3 expenses." Compl. ¶ 26. This allegation does not support the
4 claim that her HELOC was for "personal, family, or household"
5 purposes. Therefore, the Court concludes that Plaintiff has failed
6 to state cognizable TILA claims. The Court will grant Plaintiff
7 leave to amend her TILA claims if she can truthfully allege in a
8 non-conclusory fashion that the purposes for which she uses her
9 HELOC accord with 15 U.S.C. § 1602(h).

10 Defendant also argues that Plaintiff's first cause of action
11 should be dismissed because she seeks a remedy unavailable under
12 TILA, declaratory relief. Defendant cites law from the Eleventh
13 Circuit which notes that TILA does not "confer upon private
14 litigants an implied right to an injunction or other equitable
15 relief such as restitution or disgorgement." Christ v.
16 Beneficial Corp., 547 F.3d 1292, 1297-98 (11th Cir. 2008). Christ
17 does not preclude relief under the Declaratory Judge Act, although
18 the Act gives the Court discretion as to whether to allow it. 28
19 U.S.C. § 2201 ("any court of the United States, upon the filing of
20 an appropriate pleading, may declare the rights and other legal
21 relations of any interested party seeking such declaration.").
22 Here, the relief sought under the Declaratory Judgment Act is
23 essentially a declaration of liability under TILA. Plaintiff may
24 seek the remedy of declaratory relief if she can truthfully allege
25 her TILA claims.

26 II. Implied Covenant of Good Faith and Fair Dealing

27 Plaintiff's fourth cause of action is for a breach of the
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1 implied covenant of good faith and fair dealing. Defendant argues
2 that the Court should analyze this cause of action under Indiana
3 law because of the choice of law provision in the HELOC contract.
4 That provision states, "[T]his agreement and all related documents,
5 as well as the rights, remedies, and duties of the Bank and the
6 Borrower(s), shall be governed and interpreted by federal law with
7 respect to national banks and, to the extent not preempted by
8 federal law, the laws of the state in which the Property is
9 located." Compl., Exh. B. Section two of the HELOC agreement
10 defines "Property" as the property in which the borrower has given
11 Wells Fargo a security interest. Id. ("The Security Instrument
12 gives you a security interest in the property located at the
13 address shown above (the 'Property')."). Plaintiff does not
14 dispute that her property is located in Fort Wayne, Indiana.
15 Rather, she argues that the Court should invalidate the choice of
16 law provision of the HELOC agreement because "substantial injustice
17 would result from its enforcement." Washington Mutual Bank v.
18 Superior Court, 24 Cal. 4th 906, 918 (2001). Plaintiff claims
19 that, because the HELOC agreement was an adhesion contract, and
20 because Indiana law lacks the same consumer protections as
21 California, application of Indiana law would be substantially
22 unjust. Although the adhesive nature of a contract is a relevant
23 factor when determining whether a choice of law clause is valid,
24 courts also assess whether the provision "was included in the
25 contract 'by improper means, such as by misrepresentation, duress,
26 or undue influence, or by mistake.'" Discovery Bank v. Superior
27 Court, 134 Cal. App. 4th 886, 896 (2005) (quoting Restatement

1 (Second) Conflicts of Law § 187 cmt. b). Here, Plaintiff does not
2 argue that the choice of law clause is avoidable for fraud, mistake
3 or any similar ground. Therefore, the Court applies Indiana law to
4 Plaintiff's state law claims.

5 "Indiana law does not impose a generalized duty of good faith
6 and fair dealing in every contract." Hispanic College Fund, Inc.
7 v. National Collegiate Athletic Ass'n, 826 N.E.2d 652, 658 (Ind.
8 Ct. App. 2005) See Bob Nicholson Appliance, Inc. v. Maytag Co., 883
9 F. Supp. 321, 327 (S.D. Ind. 1994); Hamlin v. Steward, 622 N.E.2d
10 535, 540 (Ind. Ct. App. 1993). Indiana courts will impose such a
11 duty only if the contract (1) contains ambiguities, (2) expressly
12 imposes the duty on the parties or (3) pertains to an employment or
13 insurance matter. Allison v. Union Hosp., Inc., 883 N.E.2d 113,
14 123 (Ind. Ct. App. 2008). The Indiana Supreme Court explained its
15 reluctance to extend this duty:

16 It is not the province of courts to require a party acting
17 pursuant to such a[n unambiguous] contract to be
18 "reasonable," "fair," or show "good faith" cooperation.
19 Such an assessment would go beyond the bounds of judicial
20 duty and responsibility. It would be impossible for parties
21 to rely on the written expressions of their duties and
22 responsibilities. Further, it would place the court at the
23 negotiation table with the parties.

24 First Fed. Sav. Bank of Ind. v. Key Markets, Inc., 559 N.E.2d 600,
25 604 (Ind. 1990). Because Plaintiff has not shown that the HELOC
26 contract is ambiguous or pertains to an employment or insurance
27 matter, the Court concludes that she may not bring her claim for
28 breach of the covenant of good faith and fair dealing.

III. UCL

Because Indiana, not California, law applies to Plaintiff's

1 state law claims, the Court dismisses her fifth cause of action for
2 violation of California's UCL. Having signed a contract in which
3 Plaintiff agreed to litigate her claims under Indiana law, she
4 cannot seek protection under California statutes.

5 IV. Fraud

6 Under Indiana law, the elements of fraud are: "(1) a material
7 representation of a past or existing fact by the party to be
8 charged that; (2) was false; (3) was made with knowledge or
9 reckless ignorance of its falsity; (4) was relied upon by the
10 complaining party; and (5) proximately caused the complaining
11 party's injury." Ruse v. Bleeke, 914 N.E.2d 1, 10 (Ind. Ct. App.
12 2009). Defendant argues that Plaintiff's fraud claim fails because
13 she did not rely on any action of Defendant to her detriment.
14 Plaintiff cannot sustain a claim for fraud if her complaint alleges
15 facts "incapable of showing detrimental reliance." McCalment v.
16 Eli Lilly & Co., 860 N.E.2d 884, 896 (Ind. Ct. App. 2007).

17 Defendant argues that Plaintiff has not alleged that she
18 actually relied on any statements made by Defendant. Plaintiff
19 counters that the "Court should consider a good faith extension of
20 existing law." She argues that she not be required to demonstrate
21 reliance because reliance is merely a proxy for causation and here
22 Defendant's conduct clearly caused her an injury. Opposition 17.
23 The Court will not consider such an extension. Indiana law
24 requires Plaintiff to allege reliance and Plaintiff has not done
25 so. Accordingly, the Court dismisses Plaintiff's sixth cause of
26 action for fraud. Plaintiff may amend this claim if she can
27 truthfully allege reliance.

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1 V. Motion to Strike

2 Defendant also moves to strike from Plaintiff's complaint her
3 request for statutory damages as a remedy for the alleged TILA
4 violation. Defendant argues that Plaintiff cannot receive
5 statutory damages under the relevant statute of TILA, 15 U.S.C.
6 § 1640, because the statute that she claims Defendant violated,
7 § 1647(c), is not among those enumerated in § 1640(a) for which
8 damages are available. However, § 1640(a) does not provide an
9 exhaustive list of TILA violations for which statutory damages are
10 available. Section 1640(a) specifically discusses the TILA
11 "disclosure" requirement violations that can provide as the basis
12 for statutory damages. Plaintiff's allegations against Defendant
13 do not concern disclosure requirements. Rather, she alleges that
14 Defendant failed to have a reasonable belief and factual basis for
15 suspending her HELOC account, as required under § 1647(c). Nothing
16 in § 1640(a) precludes a statutory damages remedy for this type of
17 TILA violation. Therefore, the Court denies Defendant's motion to
18 strike Plaintiff's request for statutory damages.

19 Defendant also seeks to strike paragraph ten and the first
20 sentence of paragraph twelve of the complaint. These allegations
21 state that Defendant's actions were unconscionable in light of the
22 fact that Defendant obtained \$25 billion from the federal
23 government under the Emergency Economic Stabilization Act of 2008.
24 These allegations have no bearing on the question of whether
25 Defendant violated TILA. Accordingly, the Court grants Defendant's
26 motion to strike these allegations.

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CONCLUSION

For the foregoing reasons, the Court grants Defendant's motion to dismiss and grants in part Defendant's motion to strike. Docket No. 23. Plaintiff is given leave to amend her TILA and fraud claims. However, her claims against Defendant for breaching the implied covenant of good faith and fair dealing and for violating the UCL are dismissed with prejudice because amendment would be futile. Any second amended complaint must be filed within two weeks from the date of this order. If no second amended complaint is filed, Defendant must file an answer to the remaining claims within four weeks from the date of this order.

IT IS SO ORDERED.

Dated: 4/12/10



CLAUDIA WILKEN
United States District Judge