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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Nathaniel Basola Sobayo, et al.,

NO. C 09-00615 JW

Plaintiffs,

v.

Chase Home Finance, LLC, et al.,

Defendants.

**ORDER GRANTING DEFENDANT
CHASE HOME FINANCE, LLC'S
MOTION TO DISMISS WITH LEAVE TO
AMEND; DENYING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Presently before the Court are Defendant Chase Home Finance, LLC's ("Chase") Motion to Dismiss and Plaintiffs' Motion for Summary Judgment against Defendant Countrywide Home Loans, Inc. ("Countrywide").¹ Plaintiffs, proceeding *pro se*, bring this action alleging, *inter alia*, that Defendants Chase and Countrywide, (collectively, "Defendants") violated their constitutional rights, breached oral and written contracts and engaged in fraud.

The Court found it appropriate to take this matter under submission without oral argument. See Civ. L.R. 7-3(b). Based on the papers submitted to date, the Court GRANTS Defendant Chase's Motion to Dismiss with leave to amend, and DENIES Plaintiffs' Motion for Summary Judgment.

¹ (Chase Home Finance, LLC's Memorandum of Points and Authorities in Support of Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, hereafter, "Chase Motion," Docket Item No. 8; Motion for Summary Judgment Against Defendant Countrywide for Refusal to Answer Complaint and Summons, hereafter, "Plaintiffs' Motion," Docket Item No. 16.) Defendant Countrywide joins in Chase's Motion to Dismiss. (Countrywide Home Loans, Inc.'s Joinder in Motion to Dismiss, Docket Item No. 15.) Plaintiffs filed a timely Opposition. (Opposition to Notice of Motion and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted, hereafter, "Opposition," Docket Item No. 12.)

1 **A. Background**

2 On December 5, 2008, Plaintiffs filed this action in the Superior Court of California for the
3 County of Santa Clara. (Notice of Removal, Ex. A, hereafter, “Complaint,” Docket Item No. 1.) In
4 their Complaint, Plaintiffs allege three causes of action. With respect to their First Cause of Action,
5 Plaintiffs identify their claim as one for

6 REAL ESTATE FRAUD, FOR SABOTAGE OF PURCHASE AND SHORT SALE
7 AGREEMENT AND OR CONTRACT WITH [PLAINTIFFS], FOR SPECIFIC
8 PERFORMANCE, AND INJUNCTION TO PREVENT THE SALE AND LOSS OF
9 PROPERTY, UNTIL ALL CONFLICTS AND ISSUES ARE RESOLVED, FOR
10 BREACH OF ORAL AND WRITTEN CONTRACT AND AGREEMENT, FOR
11 BREACH OF FIDUCIARY RESPONSIBILITIES AND LAWS, FOR NON-
12 DISCLOSURES OF INTENTS, DAMAGES FOR BREACH OF SELLER-BUYER
13 CONTRACTS, CANCELLATION OF INSTRUMENTS, SLANDER OF TITLE,
14 AND DAMAGES FOR HARRASSMENTS [sic], SUPPRESSIONS,
15 OPPRESSIONS, PREJUDICES, AND DISCRIMINATIONS AGAINST
16 PLAINTIFFS, AND VIOLATIONS OF SERIES [sic] OF CIVIL RIGHTS AND
17 FEDERAL AND CALIFORNIA STATE CONSTITUTIONAL RIGHTS.

18 (Complaint at 2 (emphasis in original).) Plaintiffs further allege that

19 [P]laintiffs and [Defendants] entered into various oral agreements and written
20 agreements whereby [P]laintiffs and [Defendants] agreed to resolve a real estate
21 property issues and disputes [sic], involving a FORECLOSURE SALE DATE OF
22 DECEMBER 09, 2008, AND OR AN ON GOING SHORT-SALE TRANSACTION,
23 RELATED TO A PROPERTY IDENTIFIED AS 6144 W. AVENUE, J-10,
24 LANCASTER, CALIFORNIA 93536-0000.

25 (Id. ¶ 5 (emphasis in original).) With respect to Plaintiffs’ Second Cause of Action, Plaintiffs bring
26 a claim for money had and received, alleging that “[o]n or about November 1, 2008, [D]efendants
27 have been apparently determined to destroy the lives of Plaintiffs, as will be proven to the Court
28” (Id. ¶ 11.) Finally, with respect to Plaintiffs’ Third Cause of Action, Plaintiffs bring a claim
for fraud, alleging as follows:

29 Throughout this year 2008, [D]efendants and each of them represented to [P]laintiffs,
30 that they would use their best efforts to bring about a successful SHORT-SALE
31 TRANSACTION OF THE SUBJECT PROPERTY TO PLAINTIFFS AS
32 MUTUALLY STIPULATED, AND AS COMMON SENSES DICTATE, AS
33 HUMAN TRADITIONS DICTATE, AS THE LAWS OF THE LAND DICTATE, IN
34 ALL HUMAN RATIONAL, ETHICAL, MORAL, AND COMPASSIONS
35 DICTATE; AND IN THE ALTERNATIVE WORKOUT A REASONABLE AND
36 AFFORDABLE LOAN MODIFICATIONS [sic], IN PRINCIPAL AMOUNTS
37 REDUCTIONS, INTEREST RATE REDUCTIONS, AND AFFORDABLE
38 MONTHLY PAYMENTS, MORE ESPECIALLY IN LIGHT OF THE CURRENT
STATE OF THE ECONOMY OF THE USA, AND OF THE WORLD AT LARGE.

1 allegations, vaguely asserting that the parties entered into “various oral and written contracts” that
2 were breached when Defendants withdrew the property from the real estate market and planned to
3 proceed with a foreclosure sale. (See Complaint ¶¶ 5, 7, 14.) Plaintiffs further provide a litany of
4 claims that consist entirely of labels, including “real estate fraud,” “breach of fiduciary [sic]
5 responsibilities,” and “violations of . . . civil rights,” for which there are no corresponding factual
6 allegations. (*Id.* at 2.)

7 Under *Twombly*, “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does
8 not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of entitlement to
9 relief requires more than labels and conclusions, and a formulaic recitation of the elements of a
10 cause of action will not do.” 550 U.S. at 555 (internal quotation marks and citations omitted).
11 Further, “[f]actual allegations must be enough to raise a right to relief above the speculative level
12” *Twombly*, 550 U.S. at 556 (citations omitted).

13 In reviewing the above allegations and the totality of Plaintiffs’ Complaint, the Court finds
14 that Plaintiffs have failed to adequately state a claim for relief. Accordingly, the Court GRANTS
15 Defendant Chase’s Motion to Dismiss.²

16 **C. Plaintiffs’ Motion for Summary Judgment**

17 Plaintiffs move for summary judgment against Defendant Countrywide on the ground that
18 Countrywide has failed to respond to the Complaint.³ (Plaintiffs’ Motion at 1.) Since summary
19 judgment under Fed. R. Civ. P. 56 would be inappropriate at this stage of the case, the Court treats
20 Plaintiffs’ Motion as a request for the entry of default as to Defendant Countrywide.

22 ² Plaintiffs request that the Court delay disposition on Chase’s Motion until Plaintiffs have
23 an opportunity to obtain counsel. (Opposition at 2.) However, Plaintiffs represented on March 18,
24 2009 that they were seeking counsel. (*Id.*) Since Plaintiffs have had over two months to obtain
25 counsel and, as discussed below, Plaintiffs will be granted leave to amend their Complaint, the Court
finds that delaying the disposition of Chase’s Motion is unwarranted.

26 ³ The substance of Plaintiffs’ Motion for Summary Judgment is virtually identical to their
27 Opposition to Defendant Chase’s Motion to Dismiss. The caption of Plaintiffs’ Motion, however,
indicates that summary judgment is sought only as to Countrywide on the ground that Countrywide
has failed to answer the Complaint.

1 Under Rule 12(a)(4) of the Federal Rules of Civil Procedure, a motion to dismiss pursuant to
2 Fed. R. Civ. P. 12(b)(6) alters the time for filing a responsive pleading. A party has 10 days
3 following the denial or postponement of such a motion to file a responsive pleading. Fed. R. Civ. P.
4 12(a)(4)(A).

5 Here, Defendant Chase filed its Motion to Dismiss pursuant to Rule 12(b)(6) before a
6 responsive pleading was due. (See Docket Item No. 7.) Defendant Countrywide joined in Chase’s
7 Motion. (See Docket Item No. 15.) Thus, Defendant Countrywide has not failed to timely file a
8 responsive pleading. Accordingly, the Court DENIES Plaintiffs’ Motion for Summary Judgment.

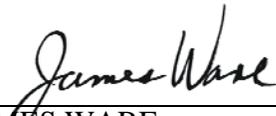
9 **D. Leave to Amend**

10 Leave to amend should be granted with “extreme liberality.” Eminence Capital, LLC v.
11 Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). In this case, it appears that Plaintiffs may be
12 able to clarify their allegations and state a claim for relief. Plaintiffs also represent that they are
13 seeking counsel to assist them in prosecuting this action. (Opposition at 2.) Accordingly, the Court
14 GRANTS Plaintiffs leave to file an amended complaint.

15 **E. Conclusion**

16 The GRANTS Defendant Chase’s Motion to Dismiss with leave to amend. The Court
17 DENIES Plaintiffs’ Motion for Summary Judgment. On or before **May 29, 2009**, Plaintiffs shall file
18 an Amended Complaint consistent with this Order, should they wish to do so.

19
20 Dated: May 13, 2009



JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Jason M. Julian jmj@severson.com
3 Regina Jill McClendon rjm@severson.com
4 Ronald M. Arlas ron.arlas@greenpoint.com

5 Nathaniel Basola Sobayo and
6 Emmanuel & Alice Osindele
7 Kingsway Technologies LLC @iTech Centers
8 The Technologies Services Center
9 211 University Avenue, Suite #C
10 East Palo Alto, CA 94303

11 **Dated: May 13, 2009**

Richard W. Wieking, Clerk

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By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy