

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Chief Judge Wiley Y. Daniel**

Civil Action No. 08-cv-00955-WYD-CBS

SECURITY SERVICE FEDERAL CREDIT UNION,

Plaintiff,

v.

FIRST AMERICAN MORTGAGE FUNDING, LLC, et al.,

Defendants.

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FIRST AMERICAN MORTGAGE FUNDING, LLC,

Third-Party Plaintiff,

vs.

STEWART TITLE OF CALIFORNIA, INC.; ORANGE COAST TITLE INSURANCE;  
LAWYERS TITLE COMPANY; BRIAN L. BARKER; SHARLENE P. BENTLEY; ROBIN  
AND MARGARET FREESTONE; DONALD AND SHARON GRUBB; TERENCE AND  
DONNA HAFER; CHARLES AND BARBARA HESS; KENNETH INGRAM; SIMON  
AND JOANNA KROON; TRACY LARSON; THOMAS AND LOUISE MITCHELL; PETER  
AND JULIE PASO; JAMES AND JOANN PHILLIPS; DOUG RANGLACK; LOUIS AND  
DEBORAH SASSALI; SHELIAH A. WILLIAMS, SHARON CARLEO AND GERALD  
CARLEO et al.,

Third-Party Defendants.

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FIRST AMERICAN MORTGAGE FUNDING, LLC, FIRST AMERICAN MORTGAGE,  
INC., CONSTRUCTION DISBURSEMENT SERVICES, INC., WILLIAM DEPUY,  
JEFFREY JORDAN, SHAUN JORDAN, MARK CAMPBELL and KEVIN B. JORDAN,

Cross-Claim Plaintiffs,

v.

KENNETH E. NORTH, PARADISE RANCH VIEW MIRAGE, LLC, GILGER HOMES,  
LLC, KIRK GILGER, NEW CENTURY BUILDERS, INC., SUNDANCE MORTGAGE,  
LLC, THE ARTISAN GROUP, LLC, DBA ARTISAN DEVELOPMENT GROUP, AND/OR  
EHLIN CO.

Cross-Claim Defendants.

FIRST AMERICAN MORTGAGE FUNDING, LLC,  
CONSTRUCTION DISBURSEMENT SERVICES, INC., and  
KEVIN B. JORDAN,

Counterclaim Plaintiffs,

v.

SECURITY SERVICE FEDERAL CREDIT UNION,

Counterclaim Defendant.

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**ORDER**

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THIS MATTER comes before me on the “Petition and Request to Third-Party Plaintiff’s Allegations,” [ECF No. 352], filed as a Motion to Dismiss, on April 28, 2010 by Gerald Carleo and Sharon Carleo. I have also considered Third-Party Plaintiff First American Mortgage Funding, LLC’s Response [ECF No. 364], as well as the document filed as a Reply by Gerald Carleo and Sharon Carleo [ECF No. 367].

Defendants Gerald and Sharon Carleo initially state they are “making a special appearance before this court under the supplemental rules of Admiralty, Rule 8(E).” (Def.s’ Mot. 1). I concur with First American Mortgage Funding LLC (hereinafter “FAM Funding”) that admiralty law is not applicable to this motion.

When deciding a motion to dismiss pursuant to Rule 12(b)(6), this Court is required to “accept all the well-pleaded allegations of the complaint as true and view them in the light most favorable to the plaintiff.” *Alvarado v. KOB-TV, LLC*, 493 F.3d 1210, 1215 (10th Cir. 2007) (quoting *David v. City & County of Denver*, 101 F.3d 1344, 1352 (10th Cir. 1996)) (internal quotations omitted). A court must determine if the plaintiff’s complaint contains “enough facts to state a claim to relief that is plausible on

its face.” *Ridge at Red Hawk, LLC v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In fact, “facial plausibility requires sufficient factual content (as opposed to legal conclusions) suggesting that the defendant is liable for the misconduct alleged.” *Weise v. Casper*, 593 F.3d 1163, 1166 (10th Cir. 2010) (quoting *Aschroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)).

After reviewing FAM Funding’s Third-Party Complaint as a whole, accepting the well-pleaded allegations of the complaint as true, and viewing the allegations in the light most favorable to the plaintiff, I find that the complaint should not be dismissed. I further find that FAM Funding’s third-party claim for fraudulent misrepresentation is pled with sufficient particularity and should not be dismissed under Fed. R. Civ. P. 9(b).

Accordingly, it is

ORDERED that Defendants Gerald and Sharon Carleo ‘s motion to dismiss is **DENIED.**

Dated: February 17, 2011

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Chief United States District Judge