

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

Civil Action No. 11-cv-03184-WYD-KLM

LINDA SUE FICK,

Plaintiff,

v.

US BANK NATIONAL ASSOC.;
CITIGROUP MORTGAGE LOAN TRUST;
WELLS FARGO;
NEW CENTURY MORTGAGE;
AMERICA'S SERVICING COMPANY;
CITIGROUP MORTGAGE LOAN TRUSTS; and
CASTLE STAWIARSKI,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court in connection with the Defendants Motion to Dismiss First Amended Complaint and Supporting Brief ("Motion to Dismiss") [ECF No. 36], filed March 16, 2012. Defendant's motion was referred to United States Magistrate Judge Kristin Mix for a recommendation by Memorandum dated March 16, 2012 [ECF No. 37], and by Order of Reference dated December 9, 2011 [ECF No. 7]. Magistrate Judge Mix issued a Recommendation on September 10, 2012, [ECF No. 52]. The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), D.C.COLO.LR. 72.1.

Magistrate Judge Mix recommends therein that the motion be granted in part and denied in part. She begins by explaining that she construes Plaintiff's *pro se* complaint

to allege the following: 1) a request for declaratory judgment against Defendant U.S. Bank; 2) violation of the Real Estate Settlement Procedures Act (“RESPA”) by Defendants America’s Servicing Company (ACS) and Wells Fargo; and 3) violation of the Fair Debt Collection Procedures Act (“FDCPA”). With respect to the claim for declaratory judgment, Magistrate Judge Mix finds that the Plaintiff has failed to state a claim for which relief can be granted because all of her arguments fail under Colorado law. Therefore, she recommends that the declaratory judgment request be dismissed.

With respect to the RESPA and FDCPA claims, Magistrate Judge Mix notes that due to the lack of clarity in the complaint, Defendants have not addressed these claims. Accordingly, she declines to address those claims, “[a]s the parties have not raised and argued the merits of the RESPA or FDCPA claims.” (Recommendation at 12). Instead she directs Defendants ACS and Wells Fargo to file an Answer or other response to Plaintiff’s RESPA and FDCPA claims within fourteen days of my final resolution of this Recommendation. *Id.*

Magistrate Judge Mix advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation at 13.) Despite this advisement, no objections were filed to the Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”). Nonetheless, though not required to do so, I review the

Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”¹ See FED. R. CIV. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Mix’s Recommendation is thorough, well-reasoned and sound. I agree with Magistrate Judge Mix that Defendant U.S. Bank should be dismissed from this matter for the reasons stated in both the Recommendation and this Order. I further agree that Defendants must answer or otherwise respond to Plaintiff’s RESPA and FDCPA claims before they are addressed by the Court. Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Mix [ECF No. 52], filed September 10, 2012 is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendants Motion to Dismiss First Amended Complaint and Supporting Brief [ECF No. 36], filed March 16, 2012, is **GRANTED IN PART and DENIED IN PART**. It is **DENIED** as to the RESPA claim against Defendants ACS and Wells Fargo and as to the FDCPA claim against Defendant Wells Fargo. It is **GRANTED** as to all other claims, including the request for declaratory judgment against U.S. Bank, and these claims are **DISMISSED WITHOUT PREJUDICE**. It is

FURTHER ORDERED that Defendant U.S. Bank be **DISMISSED WITHOUT PREJUDICE** as a party in this matter. It is

¹ Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, FED. R. CIV. P. 72(a), which in turn is less than a de novo review, FED. R. CIV. P. 72(b).

FURTHER ORDERED that consistent with Magistrate Judge Mix's recommendation, Defendants ACS and Wells Fargo must file an Answer or otherwise respond to Plaintiff's RESPA and FDCPA claims **on or before Friday, November 23, 2012.**

Dated: November 8, 2012

BY THE COURT:

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