

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

THOMAS A. GNIPP,

Plaintiff,

v.

Case No: 2:15-cv-99-FtM-29CM

BANK OF AMERICA N.A.,

Defendant.

OPINION AND ORDER

This matter comes before the Court on Defendant's Motion to Dismiss (Doc. #19) filed on November 5, 2015. Plaintiff filed an Objection (Doc. #20) on November 19, 2015. Also before the Court is Plaintiff's Motion for Summary Judgment (Doc. #21) filed on November 19, 2015.

Plaintiff Thomas A. Gnipp (Gnipp), who is proceeding *pro se*, has filed a Complaint (Doc. #1) against Defendant Bank of America N.A. (Bank of America) alleging violations of the Real Estate Settlement Procedures Act (RESPA) and the Fair Debt Collection Practices Act (FDCPA). In its Motion to Dismiss, Bank of America argues that the Complaint must be dismissed because Gnipp has failed to adequately plead his RESPA and FDCPA causes of action. (Doc. #19.) Gnipp responds that the Motion to Dismiss must be denied because Bank of America defaulted by failing to file an answer to the Complaint within 21 days as required by Rule

12(a)(1)(A)(i) of the Federal Rules of Civil Procedure. (Doc. #20.) Gnipp's Motion for Summary Judgment is also premised on Bank of America's alleged default. (Doc. #21.)

"Generally, a party must serve an answer to a complaint within 21 days of being served with the summons and complaint." Dyer v. Wal-Mart Stores, Inc., 535 F. App'x 839, 843 (11th Cir. 2013). However, "[a]fter . . . a motion to dismiss for failure to state a claim is made, there is no reason to file any other pleadings until the motion is acted upon." Id. (quoting Lawhorn v. Atl. Ref. Co., 299 F.2d 353, 357 (5th Cir. 1962)). As a result, a defendant who files a motion to dismiss within 21 days of service need not file an answer until after a ruling on the motion. Id. Here, Bank of America timely filed its Motion to Dismiss, which remains pending. Therefore, Bank of America is not yet required to file and answer and, consequently, it is not in default. Accordingly, Gnipp's Motion for Summary Judgment is denied. Gnipp is granted an additional 21 days to file a substantive response to Bank of America's Motion to Dismiss. If no response is filed, the Court will rule on the motion without further notice and without the benefit of a response.


Accordingly, it is hereby

ORDERED:

1. Plaintiff's Motion for Summary Judgment (Doc. #21) is **DENIED.**

2. Plaintiff shall file a response to Defendant's Motion to Dismiss (Doc. #19) within **twenty-one (21) days** of this Opinion and Order. If no response is filed, the Court will rule on the motion without further notice and without the benefit of a response.

DONE and ORDERED at Fort Myers, Florida, this 3rd day of December, 2015.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record