

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DURHAM COMMERCIAL CAPITAL
CORP.,

Plaintiff,

vs.

Case No. 3:14-cv-877-J-34PDB

SELECT PORTFOLIO SERVICING, INC.,

Defendant.

_____ /

ORDER

THIS CAUSE is before the Court on Plaintiff, Durham Commercial Capital Corp.'s Motion for Final Summary Judgment Against Defendant, Select Portfolio Servicing, Inc. and Incorporated Memorandum of Law (Doc. 25; Motion), filed on March 23, 2015. In the Motion, Plaintiff moves for the entry of summary judgment against Defendant on Count II of the Complaint (Doc. 1). See Motion at 1. On April 17, 2015, Defendant filed a response in opposition to the Motion. See Defendant Select Portfolio Servicing, Inc.'s Response to Plaintiff's Motion for Final Summary Judgment (Doc. 30; Response). Defendant argues, inter alia, that the Motion should be denied as premature because Defendant has not yet had an adequate opportunity for discovery. See Response at 1, 5-7. With leave of Court, see Order (Doc. 35), Plaintiff filed a reply in support of its Motion on May 22, 2015. See Durham Commercial Capital Corp.'s Reply to Defendant Select Portfolio Servicing, Inc.'s Response to Motion for Final Summary Judgment and Incorporated Memorandum of Law (Doc. 43; Reply). Upon review, the Court determines that the Motion is due to be denied without prejudice pursuant to Rule 56(d), Federal Rules of Civil Procedure (Rule(s)).

Rule 56(d) provides that:

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may


- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or take discovery; or
- (3) issue any other appropriate order.

Defendant attaches to its Response the Affidavit of Justin Crowley on Behalf of Defendant, Select Portfolio Servicing, Inc., in Opposition to Plaintiff's Motion for Final Summary Judgment (Doc. 30-1; Crowley Affidavit). In the Crowley Affidavit, Justin Crowley, Defendant's Chief Financial Officer, asserts that Defendant still needs to conduct the depositions of several individuals in order to support its defenses. See Crowley Aff. ¶¶ 5-14. Indeed, the Court notes that Plaintiff filed its Motion over six months prior to the discovery deadline set forth in the Case Management and Scheduling Order (Doc. 18). Upon due consideration, the Court finds that Defendant has sufficiently established that it should be given an opportunity to complete discovery prior to any ruling on summary judgment. Accordingly, the Court will deny the Motion without prejudice to renewal upon completion of discovery. In light of the foregoing, it is

ORDERED:

Plaintiff, Durham Commercial Capital Corp.'s Motion for Final Summary Judgment Against Defendant, Select Portfolio Servicing, Inc. and Incorporated Memorandum of Law (Doc. 25) is **DENIED** without prejudice to renewal upon the completion of discovery.

DONE AND ORDERED at Jacksonville, Florida on June 12, 2015.


MARCIA MORALES HOWARD
United States District Judge

lc11

Copies to:

Counsel of Record
Pro Se Parties