

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BANKERS INSURANCE CO., et al.,

Plaintiffs,

vs.

Case No. 8:10-cv-419-T-27EAJ

DLJ MORTGAGE CAPITAL, et al.,

Defendants.

ORDER

BEFORE THE COURT is the Magistrate Judge's Report and Recommendation (Dkt. 28) on Defendants' Motion to Dismiss (Dkt. 16). The Magistrate recommends that Plaintiffs' claims against DLJ Mortgage Capital, Inc. ("DLJ"), Select Portfolio Servicing, Inc. ("SPS"), and The Bank of New York Mellon ("BNYM") be dismissed without prejudice. Plaintiffs filed an objection which, essentially, requests an extension of time to amend their claims against Defendants. Defendants responded in opposition (Dkt. 33).

Upon consideration, the Report and Recommendation (Dkt. 28) is adopted, confirmed, and approved in all respects and is made part of this order for all purposes, including appellate review.

- (1) Defendants' Motion to Dismiss (Dkt. 16) is GRANTED. Counts I through VIII of the second amended complaint are dismissed without prejudice.
- (2) Plaintiffs are granted leave to amend their claims against BNYM within 21 days.
- (3) Plaintiffs are granted leave to amend their claims against SPS and DLJ within 150 days.
- (4) Plaintiffs' request that they not be foreclosed from amending their pleadings to assert

individualized claims based on facts which have not yet been discovered is premature
and should be presented in the context of a Rule 15 motion.

DONE AND ORDERED this 22nd day of November, 2010.



JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record