

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

FRED C. PROCTOR, JR.,

Plaintiff,

vs.

CASE NO. 3:10cv149/RS-MD

COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation; COUNTRYWIDE HOME LOANS, INC., a New York corporation; BAC HOME LOANS SERVICING, LP, a Texas Limited Partnership; LARRY WRIGHT, Individually; WRIGHT & ASSOCIATES OF NORTHWEST FLORIDA, INC., a Florida corporation; CHRISTOPHER LEE PEAVY, Individually; JAMES A. PEAVY, JR., Individually; ANDREW PICKEL, Individually; and PEAVY AND ASSOCIATES, INC., a Florida corporation,

Defendants.

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COUNTRYWIDE HOME LOANS, INC., a New York corporation,

Counter-Plaintiff,

vs.

FRED C. PROCTOR, JR.,

Counter-Defendant.

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**ORDER**

Before me is the Plaintiff's Motion To Remand For Lack Of Subject Matter Jurisdiction (Doc. 84). Defendants' Response (Doc. 91) contends that remand is improper because the allegations of Paragraph 64 of the Complaint (Doc. 1-3) (Count

II) “implicate violations of the federal Fair Credit Reporting Act (FCRA)”.

The three counts remaining against the present Defendants allege claims arising under Florida law. Count I is entitled “DECEPTIVE AND UNFAIR TRADE PRACTICES, CHAPTER 501, Part II Florida Statutes.” Count II is entitled “FRAUD”. Count III is entitled “CIVIL CONSPIRACY TO DEFRAUD”. Paragraph 64, on which Defendants rely, is one of the allegations in Count II for common law fraud:

“64. Plaintiff has sustained substantial damages, including impairment of his credit, purported income based on forgiveness of debt, loss of ability to refinance his home mortgages at reduced rates, as a consequence of the false statements, material misrepresentations and fraud perpetrated by Defendants Wright, Countrywide, Pickel, and Peavy.”

However, the very next numbered paragraph removes any doubt that Count II of Plaintiffs’ Complaint does not allege violations of the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq*;

“65. Pursuant to Section 627.792, Florida Statutes and Florida law, Defendants Wright, Countrywide, Pickel, and Peavy are liable for the fraud, defalcation, and misappropriation by Defendants Wright, Countrywide, Pickel, and Peavy.”

If that were not enough, Count V entitled “VIOLATIONS OF THE FAIR CREDIT REPORTING ACT, 15 U.S.C. §1681, ET SEQ”, asserted claims against only the now-dismissed Defendants, Countrywide Financial Corporation, Countrywide Home Loans, Inc., and BAC Home Loan Servicing, LP. The present Defendants are not named in Count V. Defendants’ argument that “Plaintiffs’ allegations implicate violations of the federal Fair Credit Reporting Act (FCRA)” attempts to be too clever by far. It is very clear that the remaining Counts, I, II, and III, allege only state law claims. Remand is required.

**IT IS ORDERED:**

1. This case is remanded to the Circuit Court of the First Judicial Circuit for Walton County, Florida.
2. The clerk is directed to close the file.

**ORDERED** on June 13, 2011.

/S/ Richard Smoak

**RICHARD SMOAK**

**UNITED STATES DISTRICT JUDGE**