

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Martin Crofton,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:08-CV-1296-JOF
Bank Of America, N.A. and	:	
Phil Harrison,	:	
	:	
Defendants.	:	

OPINION AND ORDER

This matter is before the court on the Report and Recommendation of Magistrate Judge Susan S. Cole [16]. Plaintiff, Martin Crofton, filed suit against Defendants, Phil Harrison and Bank of America, N.A., alleging breach of contract and fraud. On September 4, 2008, Defendant Bank of America, N.A. filed a Motion for Summary Judgment [11] on all of Plaintiff's claims. Magistrate Judge Susan S. Cole issued a Report and Recommendation in which she recommends that summary judgment be granted for Defendant on all of Plaintiff's claims. Plaintiff has filed no objections to the Report and Recommendation. Having been read and considered, the court hereby ADOPTS the Report and Recommendation as the order of the court on all of Plaintiff's claims AS MODIFIED below.

It appears that Plaintiff's breach of contract claim may have been alleged only against Defendant Harrison, who was never served. Even if Plaintiff did intend to bring a breach of contract claim against Defendant Bank of America, N.A., Plaintiff fails to allege the existence of any contract between Plaintiff and Bank of America. On this basis alone, the court GRANTS Defendant Bank of America's motion for summary judgment on Plaintiff's breach of contract claim. Plaintiff does not expressly allege that Defendant Bank of America, N.A. has violated the Truth in Lending Act. However, Plaintiff's complaint asserts that "[at] the time of closing, Plaintiff was provided with no settlement statement, truth-in lending disclosure or appraisal performed by the BANK, supporting the purchase of the property." (Complaint, Ex. 1-B to Notice of Removal, ¶ 6). Because this statement alone is not sufficient to raise a claim, the court GRANTS Defendant's motion for summary judgment as to any claim under the Truth in Lending Act.

The court ADOPTS AS MODIFIED the Report and Recommendation of the Magistrate Judge. The court GRANTS Defendant's motion for Summary Judgment [11]. The Clerk of the Court is DIRECTED to DISMISS WITHOUT PREJUDICE any claims against Defendant Harrison. The Clerk of Court is DIRECTED to DISMISS WITH PREJUDICE all claims against Defendant Bank of America, N.A.

IT IS SO ORDERED this 14th day of September 2009.

/s J. Owen Forrester

J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE