

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

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|-------------------------|---|------------------|
| PATRICIA G. GUTHRIE, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | CIVIL ACTION NO. |
| | : | 1:13-CV-4226-RWS |
| WELLS FARGO HOME | : | |
| MORTGAGE NA and their | : | |
| attorney, <i>et al.</i> | : | |
| | : | |
| Defendants. | : | |

ORDER

This case is before the Court for consideration of the Report and Recommendation [66] of Magistrate Judge Linda T. Walker. After reviewing the Report and Recommendation and Plaintiff’s Objections [68] thereto, the Court enters the following Order.

In her Objections, Plaintiff identifies specific rulings in the Report and Recommendation to which she objects. After reviewing these Objections, the Court concludes that the analysis in the Report and Recommendation adequately addresses the issues raised by Plaintiff as to the following Motions: Motion for Reconsideration on Order to Deny Cause Hearing for Plaintiff’s

Motion for Injunction; Plaintiff's Motion for Summary Judgment; Motion for Permission for Electronic Case Filing; Motion to Consolidate Cases; Motion to Strike Declaration of Michael Dolan; and Motion to Strike Wells Fargo's Rule 12 Motion to Dismiss, or in the Alternative, for a More Definite Statement and Motion to Strike Any Alleged Added Motion for a More Definite Statement.

Additionally, Plaintiff objected to the denial of her Motion to Vacate the Judgment in the Dispossession Action based on Judge Walker's conclusion that the Motion to Vacate would be deemed moot because she was recommending dismissal of Plaintiff's Complaint. Plaintiff argues that, because she has the opportunity to file an amended complaint, her Motion should not be denied. The Court agrees with the conclusion reached by Judge Walker. However, in the event that Plaintiff files a complaint that survives dismissal, she may renew her motion.

Plaintiff objects to the Recommendation that her Motion to File an Amended Complaint be denied because she asserts that she is entitled to an opportunity to freely amend her *pro se* Complaint as justice requires. Judge Walker recommended denial of the Motion because Plaintiff neither attached a proposed amended complaint nor set forth the substance of the proposed

amendment within her Motions. However, as noted by Judge Walker, Plaintiff is being afforded an opportunity to file an amended complaint. Thus, Plaintiff is being afforded the relief she sought.


Plaintiff objects to the recommendation that her Motion for Sanctions be denied asserting that the facts support her contention that McCalla Raymer failed to timely mail their Motion to Dismiss to her. Judge Walker found that the facts did not establish a failure to mail on the part of McCalla Raymer. But in any event, Plaintiff suffered no prejudice because, as Judge Walker pointed out, Plaintiff's briefs in opposition to the Defendants' Motions to Dismiss were considered by the Court regardless of when they were filed. (R&R at 28). The Court agrees that sanctions are not appropriate under the present circumstances fo the case.

The Report and Recommendation [66] is received with approval and adopted as the Opinion and Order of this Court. Accordingly, Defendant McCalla Raymer, LLC's ("McCalla Raymer") Motion to Dismiss [5] is **GRANTED**; Wells Fargo Home Mortgage's ("Wells Fargo") Rule 12 Motion to Dismiss or in the Alternative for a More Definite Statement [7] is **GRANTED**; Plaintiff's Motion for Reconsideration of Removal From State Court and Standing Order 08-01 [10] is **DENIED**; Plaintiff's Motion for

Reconsideration on Order to Deny Cause Hearing for Plaintiff's Motion for Injunction [11] is **DENIED**; Plaintiff's Motion for Summary Judgment in Opposition to Defendant McCalla Raymer, LLC's Memorandum of Law in Support of its Motion to Dismiss [25] is **DENIED**; Plaintiff's Renewed Motion for Emergency Injunction [41] is **DENIED**; Plaintiff's Renewed Motion for Permission for Electronic Case Filing and Motion for Permission to File Supplemental Pleadings [41] is **DENIED**; Plaintiff's Notice of Motion and Motion to Vacate Judgment in Dispossessory Action and Deed Under Power of Sale[44] is **DENIED**; and Wells Fargo's Motion for Protective Order [54], in which McCalla Raymer joins, is **GRANTED**.

The case is hereby **REFERRED** to Magistrate Judge Linda T. Walker for consideration of the Amended Complaint [69] and Motion for Leave to File Affidavit [70] filed by Plaintiff.

SO ORDERED, this 28th day of July, 2014.


RICHARD W. STORY
UNITED STATES DISTRICT JUDGE