

mortgage. (Id. at ¶¶ 34, 36). He borrowed an additional \$58,000, at a fixed rate of 8.945% for fifteen years, with a balloon payment of \$46,108.69, at the end of the term, supported by a second lien mortgage. (Id. at ¶¶ 34, 36, 37).

On May 14, 2009, Plaintiff filed his Complaint [1-4] in the Superior Court of Forsyth County, Georgia, asserting claims against Pulte Mortgage, LLC, Countrywide Financial Corp., Bank of America, N.A., Mortgage Electronic Registration Systems, Inc., two other named Defendants and Unnamed Defendants Does 1 through 50 for fraud, conversion, quiet title, civil conspiracy, injunctive relief, violation of a settlement agreement, as well as violations of the Georgia Uniform Deceptive Trade Practices Act, Georgia Residential Mortgage Act, the Georgia Fair Business Practices Act, and Georgia RICO violations. This case was removed by Defendants on June 19, 2009 to this Court [1].

Plaintiff alleges that he “was induced by Defendants to obtain a loan” to purchase the Property and was “induced by same Defendants to obtain a second mortgage.” (Complaint at ¶¶ 34, 35). Plaintiff alleges that “Defendants disregarded and ignored Plaintiff’s actual ability to pay off the loans and steered Plaintiff to loans he could not afford to increase their own profit.” (Id. at 40).

Plaintiff alleges that Defendants induced him to accept Defendants' risky loan products through material omissions and misrepresentations. (Id. at 41).

On June 29, 2009, Defendants filed a Motion for a More Definite Statement and to Dismiss [3]. Primarily, Defendants contend that Plaintiff's Complaint is a shotgun pleading—that it “indiscriminately incorporates into each count all of the preceding counts and allegations, is replete with conclusory speculations of unspecified ‘illegal activity’ and ‘fraud,’ and fails to draw any distinctions between the alleged conduct between and among any of the Served Defendants or the unserved defendants.” (Dkt. No. [3-2] at 2). Defendants ask the Court to dismiss the counts that fail to state a claim upon which relief can be granted and direct the Plaintiff to replead, if possible, the remaining counts with specific facts. (Id.).

Discussion

The Eleventh Circuit has clearly established that shotgun pleadings are an unacceptable form of establishing a claim for relief. Strategic v. Income Fund v. Spear, Leeds & Kellogg, 305 F.3d 1293 (11th Cir. 2002). By definition, a shotgun pleading is one that “contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most

of the counts (i.e., all but the first) contain irrelevant factual allegations and legal conclusions.” Id. at 1295 n.9. As a result, it is oftentimes difficult to discern which allegations of fact correspond to which defendant or claim for relief. Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll., 77 F.3d 364, 366 (11th Cir. 1996); see also Beckwith v. Bellsouth Telecomm. Inc., 146 Fed. Appx. 368, 371 (11th Cir. 2005) (“The failure to identify claims with sufficient clarity to enable the defendant to frame a responsive pleading constitutes a ‘shotgun pleading.’ ”). The structure of the complaint is such that the defendant may find it impossible to frame a responsive pleading and provide appropriate defenses. Id.

Rather than attempt to sift through a myriad of various counts and allegations, the defendant is expected to move the court, pursuant to Rule 12(e), to require the plaintiff to file a more definite statement. The court may then require the plaintiff to amend the complaint to adequately comply with the rules of civil procedure. Dismissal of the complaint with prejudice is a drastic sanction and requires a showing that the plaintiff acted willfully or in bad faith, or that lesser sanctions will not suffice. Beckwith, 146 F. Appx. at 373.


Here, Plaintiff's Complaint amounts to a shotgun pleading. Plaintiff alleges eleven counts against seven named defendants and fifty unnamed defendants. The Complaint attempts to categorize all Defendants as a single actor, failing to differentiate which actions should be attributed to which Defendant. Plaintiff does not specify how each of the Defendants was specifically involved in the alleged misstatements and omissions that constitute her claim.

Absent a showing of willfulness, bad faith, or the insufficiency of lesser sanctions, a dismissal with prejudice is not warranted. While it is unlikely that Plaintiff will be able to state a claim as a matter of law as to each of the counts presently included in his Complaint, the Court finds that Plaintiff should be afforded an opportunity to amend his Complaint. Accordingly, Plaintiff is **DIRECTED** to replead his complaint, stating specifically which Defendants are responsible for each alleged act. Plaintiff must file the amended complaint within fourteen (14) days of this Order's issue date. Defendants' Motion for a More Definite Statement [3-1] is **GRANTED**, and Defendants' Motion to Dismiss [3-2] is **DENIED** at this time. Following Plaintiff's filing of amended complaint, Defendants may file a renewed Motion to Dismiss, if appropriate.

Conclusion

Based on the foregoing, Plaintiff is **DIRECTED** to replead his complaint within fourteen (14) days of this Order. Defendants' Motion for a More Definite Statement [3-1] is **GRANTED**, and Defendants' Motion to Dismiss [3-2] is **DENIED**.

SO ORDERED, this 16th day of March, 2010.



RICHARD W. STORY
United States District Judge