

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NOS. 17-11009-RWZ, 17-11129-RWZ, 16-10844-RWZ

DUSAN PITTNER

v.

CASTLE PEAK 2012-1 LOAN TRUST and SELENE FINANCE LP

MEMORANDUM OF DECISION

May 29, 2018

ZOBEL, S.D.J.

Pursuant to a plan entered in a Chapter 11 bankruptcy on July 17, 2013, plaintiff made regular payments to mortgagee defendants. Plaintiff co-signed the mortgage with his ex-wife, but she alone signed the note. Accordingly, defendants have taken the position that the ex-wife is the sole borrower, and plaintiff is not entitled to information about the loan. He thus did not receive defendants' notices of default concerning escrow amounts for taxes and insurance beyond the principal amounts plaintiff was paying, and filed a three-count complaint essentially seeking to compel defendants to accept his payments and communicate with him about the loan.

Defendants move to dismiss plaintiff's complaint, arguing that he lacks standing to enforce rights regarding a loan for which he was never a borrower and for which his personal liability was discharged in bankruptcy. They further contend that no contract exists because the bankruptcy court never confirmed the Chapter 11 plan. Although confirmation was not initially entered properly, the court confirmed the plan on August 1,

2016, retroactive to July 17, 2013. Case No.12-bk-12438, Docket # 191. Defendants point to the terms of a plan, Docket # 9-8, superseded by the modified plan which the bankruptcy court confirmed. Case No.12-bk-12438, Docket # 184. That modified plan contains the following language:

Pittner will pay Selene, as servicer, its successors or assigns, \$2,012.12 per month for 23 years. Hereafter, Mr. Pittner will be solely responsible for paying taxes and insurance on the property unless otherwise agreed. The original proposed fixed interest rate was 4%, but Selene requested an increase to 4.25%, to which Pittner agreed. On that basis, Selene assented to confirmation.

Id. at 7.

Plaintiff has sufficiently alleged defendants' violation of the plan and has standing thereunder to bring his claims. Defendants' motion is therefore denied, and a scheduling conference is set for June 19, 2018, at 2:00 pm.

May 29, 2018
DATE

/s/Rya W. Zobel
RYA W. ZOBEL
SENIOR UNITED STATES DISTRICT JUDGE