

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RODNEY TRUDELL,

Plaintiff,

Case No. 16-cv-10441

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

CARRINGTON MORTGAGE SERVICES, LLC,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PLAINTIFF'S COMPLAINT**

On December 3, 2015, Plaintiff Rodney Trudell filed suit in the Circuit Court for the County of Midland. ECF No. 1. On February 8, 2016, Defendant Carrington Mortgage Services, LLC, removed this case to federal court, relying on federal question jurisdiction pursuant to 28 U.S.C. § 1331 and diversity jurisdiction pursuant to 28 U.S.C. § 1332. *Id.* at 2. In his state court complaint, Plaintiff alleged that Defendants had wrongfully foreclosed on his home. Compl., ECF No. 1, Ex. A at 19. Pretrial matters in this case were referred to Magistrate Judge Patricia T. Morris on February 22, 2016. ECF No. 5. On May 27, 2016, Defendant filed a motion for judgment on the pleadings. ECF No. 14. Defendant argued that Plaintiff's claims failed as a matter of law because, among other arguments, Defendant complied with all relevant state and federal laws and regulations, Plaintiff did not allege any substantial errors or irregularities in the sheriff's sale, and Plaintiff did not otherwise adequately plead facts sufficient to state a claim.

On September 27, 2016, Judge Morris issued a report recommending that Defendant's motion for judgment on the pleadings be granted and that Plaintiff's complaint be dismissed. ECF No. 22. Judge Morris noted that Plaintiff had not indicated the existence of any fraud or

irregularity during the foreclosure process. Judge Morris further found that Plaintiff had not alleged facts which would give rise to a claim for relief under the Real Estate Settlement Procedures Act, 12 U.S.C. 2605. The Magistrate Judge rejected Plaintiff's claim under the Federal Truth in Lending Act, 15 U.S.C. 1601, as time-barred. The report also recommended rejection of Plaintiff's claims of fraudulent misrepresentation and slander of title for failure to state a claim upon which relief could be based. Finally, Judge Morris rejected Plaintiff's argument that the doctrine of unclean hands justified equitable relief on his behalf, reasoning that the unclean hands doctrine can be raised only as a defense and not as an affirmative claim. Because Plaintiff had not raised any viable claims, Judge Morris likewise rejected Plaintiff's other requests for equitable remedies.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 22, is **ADOPTED**.

It is further **ORDERED** that Plaintiff Rodney Trudell's Complaint, ECF No. 1, is **DISMISSED with prejudice**.

Dated: October 17, 2016

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 17, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager