

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMES ZWERICAN, et al,

Plaintiff,

Case No. 16-cv-13195

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

PENNYMAC LOAN SERVICES, LLC, et al,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING MOTION TO
DISMISS, AND DISMISSING PLAINTIFFS' COMPLAINT**

On September 6, 2016, Defendants removed this case from Tuscola County Circuit Court. ECF No. 1. In the underlying Complaint, Plaintiffs allege that their property was wrongfully and negligently foreclosed on by Defendants. The case was referred to Magistrate Judge Patricia T. Morris. ECF No. 2. The next day, Defendants filed a motion to dismiss. ECF No. 3. On February 9, 2017, Judge Morris issued a report recommending that the motion to dismiss be granted and the complaint dismissed. ECF No. 9. Judge Morris found that Plaintiffs had not alleged "any fraud or irregularity in the foreclosure process whatsoever." *Id.* at 9. She further found that, even if there was fraud or irregularity in the process, Plaintiffs have not sufficiently alleged that they were prejudiced by it. Judge Morris also concluded that Plaintiffs had not alleged a claim for negligence because they had not alleged that Defendants owed a duty towards Plaintiffs other than the mortgage agreement. Because Michigan law bars purported tort claims that rely solely on a contract between the parties to create a duty, Judge Morris recommended that Plaintiffs' negligence claim be dismissed as well.

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. 9, is **ADOPTED**.

It is further **ORDERED** that Defendants' motion to dismiss, ECF No. 3, is **GRANTED**.

It is further **ORDERED** that Plaintiffs' Complaint, ECF No. 1, is **DISMISSED with prejudice**.

Dated: February 28, 2017

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 February 28, 2017.

s/Michael A. Sian
MICHAEL A. SIAN