

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELDORA MOORE,

Plaintiff,

Case No.: 07-CV-14498

DISTRICT JUDGE ANNA DIGGS TAYLOR
MAGISTRATE JUDGE STEVEN D. PEPE

vs.

AMERIQUEST MORTGAGE CO., AND
ACC CAPITAL HOLDINGS CORP.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION TO AMEND COMPLAINT (DKT. #16)**

In this action, Plaintiff asserts a claim under the Truth in Lending Act, 15 U.S.C. §§1601 *et seq.* ("TILA"), to enforce her right to rescind a consumer credit transaction and to recover damages, costs and fees. Plaintiff also asserts state statutory and common law claims. On October 23, 2008, Plaintiff filed her motion for leave to file first amended complaint in which she sought to add three new Defendants (1) Washington Mutual, Inc., (2) Washington Mutual Bank, and (3) JPMorgan Chase & Co. (Dkt. #16). On November 25, 2008, the parties filed their statement of resolved and unresolved issues in which they indicate they conferred and reached agreement that Washington Mutual Inc. and Washington Mutual Bank will not be added as parties at this time (Dkt. #20). Defendants' counsel states that Defendants do not object to the addition of JPMorgan Chase & Co. as a defendant, but does not have authority to stipulate to this result. For the reasons indicated below, Plaintiff's motion is **GRANTED IN PART** and **DENIED IN**

PART.

The parties have engaged in limited formal and informal discovery. Through informal discovery, Plaintiff has learned that Defendants are no longer holders or investors of the mortgage that is the subject of this action (“mortgage”). According to Defendants, the mortgage was assigned to Washington Mutual. On September 25, 2008, the Office of Thrift Supervision closed Washington Mutual. The Federal Deposit Insurance Corporation (“FDIC”) was named receiver and facilitated the acquisition of certain of Washington Mutual’s banking operations by JPMorgan Chase & Co. To date, according to Defendants, the identity of the current investor or assignee of this mortgage is uncertain, pending determination by the FDIC.

Rule 15(a) mandates that leave to amend a pleading be freely given when justice so requires. *Foman v. Davis*, 371 U.S. 178 (1962). Here, Defendants have stipulated to the granting of a motion for leave to amend by Plaintiff to add the assignee of the mortgage. Plaintiff seeks in good faith to amend her pleading to assert a claim against the subsequent holders or assignees of the mortgage. Until the identities of such assignees are clarified, Plaintiff is attempting to protect her interests by naming all potential defendants to the litigation. No new claim is asserted against either of the current Defendants. The amendments also do not appear to be offered for the purposes of delay, and will not unduly prejudice the current Defendants, because they involve facts that are already within the current Defendants’ knowledge.

Accordingly, Plaintiff may file her first amended complaint. As stipulated by the current parties, however, Plaintiff may only add JPMorgan Chase & Co. as defendant. Washington Mutual Inc. and Washington Mutual Bank will not be added as parties at this time.

The parties to this action may object to and seek review of this Order, but are required to

file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

SO ORDERED.

s/Steven D. Pepe
United States Magistrate Judge

Dated: December 3, 2008

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on December 3, 2008.

s/V. Sims
Case Manager