

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DANIEL TAYLOR, *et al.*,

Case No. 08-13258

Plaintiffs,

Stephen J. Murphy, III

v.

United States District Judge

COUNTRYWIDE HOME LOANS,  
*et al.*,

Michael Hluchaniuk

United States Magistrate Judge

Defendants.

\_\_\_\_\_ /

**REPORT AND RECOMMENDATION  
ON DEFENDANTS' MOTION TO DISMISS (Dkt. 5)**

Plaintiffs filed a complaint against defendants on July 29, 2008. (Dkt. 1). In lieu of a responsive pleading, defendants filed a motion to dismiss on August 18, 2008. (Dkt. 5). Plaintiffs then filed a motion for leave to file an amended complaint on August 21, 2008. (Dkt. 6). Defendants filed a response to plaintiffs' motion for leave to amend, pointing out, among other things, that plaintiffs failed to attach a new proposed amended complaint in accordance with Local Rule 15.1. (Dkt. 7). Plaintiffs filed a proposed amended complaint on September 15, 2008. (Dkt. 13). On September 22, 2008, defendants filed their opposition to plaintiffs' motion for leave to amend. (Dkt. 15). While defendants object to plaintiffs' proposed amended complaint on the grounds that it fails to state a claim and

permitting amendment would be futile, this Court concluded that plaintiffs may amend their complaint as of right and without leave of the Court at this stage of the proceedings pursuant to [Federal Rule of Civil Procedure 15\(a\)](#). (Dkt. 17).

Because the motion to dismiss relates to the original complaint, and plaintiffs have been granted leave to file their amended complaint, the undersigned suggests that defendants' motion to dismiss is moot. *See e.g., Williams v. Kelly, 2007 WL 2951303, \*1 (E.D. Mich. 2007)* (Defendants' motion to dismiss denied as moot where the complaint to which it was directed had been superseded by an amended complaint.).

Based on the foregoing, it is **RECOMMENDED** that defendants' motion to dismiss be **DENIED** as moot.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 10 days of service, as provided for in [28 U.S.C. § 636\(b\)\(1\)](#) and Local Rule 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn, 474 U.S. 140 (1985)*; *Howard v. Sec'y of Health and Human Servs., 932 F.2d 505 (6th Cir. 1981)*. Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs., 931*

F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829

F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Within 10 days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall not exceed 20 pages in length unless such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections by motion and order. If the Court determines any objections are without merit, it may rule without awaiting the response to the objections.

Date: September 30, 2008

s/Michael Hluchaniuk  
Michael Hluchaniuk  
United States Magistrate Judge

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Alicia B. Chandler and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Daniel Taylor, 35639 Rainbow Drive, Sterling Heights, MI 48312 and Diane Taylor, 35639 Rainbow Drive, Sterling Heights, MI 48312.

s/James P. Peltier \_\_\_\_\_  
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