

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH AND DENISE KIEFER,

Plaintiffs,

v.

Case No. 12-10051

Honorable Sean F. Cox

ABN AMRO MORTGAGE GROUP,
INC., *ET AL.*,

Defendants.

ORDER
ADOPTING REPORT AND RECOMMENDATION

Plaintiffs filed a one-count quiet title complaint in state court. Defendants removed the action to this Court based on diversity jurisdiction. Thereafter, Defendant CitiMortgage, Inc., individually and as successor by merger to ABN AMRO Mortgage Group, Inc. (“CMI”), and the Federal Home Loan Mortgage Corporation, named here as “Freddie Mac,” filed a Motion to Dismiss, asserting that: 1) Plaintiffs’ complaint fails to state a claim because it does not identify any reason that the mortgages to which Plaintiffs agreed are invalid; 2) Plaintiffs lack standing to assert claim based upon transactions to which they are not a party; and 3) CMI is the mortgagee of record for the mortgage. (Docket Entry No. 6). This Court referred Defendants’ Motion to Dismiss for hearing and determination by Magistrate Judge Michael Hluchaniuk.

On June 12, 2012, Magistrate Judge Hluchaniuk issued a Report and Recommendation (“R&R”), wherein he recommends that the Court grant Defendants’ motion and dismiss Plaintiffs’ Complaint with prejudice after concluding that Plaintiffs’ complaint does not state a plausible claim for relief to quiet title, given that Plaintiffs admit in their complaint and briefs

that they executed a mortgage and HELOC in the amounts of \$248,000 and \$94,000, respectively, and they do not allege that they have fully repaid or satisfied that indebtedness or that any of the lenders discharged the debt. (Docket Entry No. 15 at 6-7). Magistrate Judge Hluchaniuk concluded that alone was sufficient to justify dismissal of this case. (*Id.*) Nevertheless, he went on to address Defendants' additional arguments, finding them to have merit as well. (*Id.* at 7-11).

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. "The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made." *Id.*

Plaintiffs filed timely objections to the R&R (Docket Entry No. 16) and Defendants filed a response to those objections. (Docket Entry No. 17).

Plaintiffs' first objection is that Magistrate Judge Hluchaniuk "ignored" the pled elements of Plaintiffs' quiet title claim. The Court finds this objection without merit and agrees that Plaintiffs, like the plaintiffs in *Leone* and *Stafford*, fail to state a plausible claim for relief to quiet title. *Leone v. Citigroup, Inc.*, 2012 WL 1564698 (E.D. Mich. 2012); *Stafford v. Mortgage Elect. Reg. Sys., Inc.*, 2012 WL 1564701 (E.D. Mich. 2012).

Plaintiffs' second objection is that the Magistrate Judge ignored the applicable standard for motions brought under Fed. R. Civ. P. 12(b)(6). The Court finds this objection without merit. The Magistrate Judge set forth, and applied, the correct standard for evaluating a motion brought under Fed. R. Civ. P. 12(b)(6). In evaluating a 12(b)(6) motion, the Court is not bound to accept

as true a legal conclusion or a legal conclusion couched as a factual allegation. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiffs' remaining objections attack the Magistrate's additional rulings regarding standing and CMI's position as the mortgagee of record for the mortgage. Plaintiffs assert that the Magistrate Judge misapplied the facts and the law as to these issues. The Court disagrees and concurs with Magistrate Judge Hluchaniuk's additional rulings.

The Court hereby ADOPTS the June 12, 2012 R&R and ORDERS that this action is DISMISSED WITH PREJUDICE as to Defendants CitiMortgage, Inc., ABN AMRO Mortgage, Inc., and the Federal Home Loan Mortgage Corporation.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: August 21, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 21, 2012, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager