

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DOUGLASS SHERMETA
and BETH SHERMETA,

Plaintiffs,

Case No. 17-10218
Hon. Matthew F. Leitman

v.

SELECT PORTFOLIO
SERVICING, INC., *et al.*,

Defendants.

ORDER ON DEFENDANTS' MOTION TO DISMISS (ECF #6)

In this action, Plaintiffs Douglass and Beth Shermeta assert claims based upon certain alleged acts and omissions by Defendants in connection with (1) a proposed short sale transaction and (2) a proposed deed in lieu of foreclosure transaction. With respect to the short sale transaction, Plaintiffs assert claims for tortious interference with contract and tortious interference with business expectancy. (*See* Compl. at Counts I and II, ECF #1-2 at Pg. ID 21-22, hereinafter the “Short Sale Claims.”). With respect to the deed in lieu of foreclosure transaction, Plaintiffs assert claims for fraudulent misrepresentation, breach of contract, and promissory estoppel. (*See id.* at Counts II, IV, and IV¹, Pg. ID 22-24, hereinafter the “Deed in Lieu Claims.”).

¹ The Complaint does not include a Count V.

Plaintiffs also assert a claim for breach of fiduciary duty. (*See id.* at Count VII, Pg. ID 24-25.)

On March 16, 2017, the Defendants filed a motion to dismiss all of the Plaintiffs' claims pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* ECF #6.) The Court held a hearing on Defendants' motion on August 16, 2017. For the reasons stated on the record at the hearing, the Court rules on the motion as follows:

- The Short Sale Claims (Counts I and II of the Complaint) are **DISMISSED**.
While the Plaintiffs may include different claims related to the short sale in an Amended Complaint (*i.e.*, *not* tortious interference claims), they are cautioned to carefully review those claims before filing them in order to determine whether there is a good faith argument that they are not barred by the applicable Statute of Frauds.
- Plaintiffs may **AMEND** the Deed in Lieu Claims (Counts III, IV, and VI of the Complaint) to add the additional factual allegations identified during the August 16, 2017, hearing. With those additional allegations, the Court concludes that the Deed in Lieu Claims are plausible.
- Plaintiffs' breach of fiduciary claim (Count VII of the Complaint) is **DISMISSED**.

Plaintiffs shall file their First Amended Complaint as set forth above within 21 days of this Order. Defendants shall file an answer or otherwise respond to the First Amended Complaint within 21 days of its filing.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: August 16, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 16, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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