

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EDDIE BINFORD, JR. and  
GERALDINE WILLIAMS,

Plaintiffs,

Civil Action No.  
10-cv-12390

vs.

JOHN ADAMS MORTGAGE, et. al.

HON. MARK A. GOLDSMITH  
M.J. R. STEVEN WHALEN

Defendants.

**OPINION AND ORDER ADOPTING THE REPORT AND RECOMMENDATION OF  
THE MAGISTRATE JUDGE (DKT. 30), DENYING PLAINTIFF'S MOTION TO  
VACATE AND RENEWED COMPLAINT (DKT. 23), GRANTING DEFENDANTS'  
MOTIONS TO DISMISS (DKTS. 25, 26), AND DISMISSING COMPLAINT**

In an Opinion and Order entered September 27, 2011, the Court dismissed all Plaintiffs' claims with prejudice, except (i) those claims pleaded in Count IV and any claim for fraud, conspiracy to defraud, wrongful foreclosure and violation of RICO, and (ii) the claim for violation of the MCPA as to MERS, which were dismissed without prejudice (Dkts 21, 22). The Court permitted Plaintiffs to file an amended complaint within 14 days. On October 11, 2011, Plaintiffs filed their "Motion to Vacate Order and Renewed Complaint of Fraud" (Dkt. 23), which the Court – following the construction of the Magistrate Judge – construes as an amended complaint. Now before the Court is Plaintiffs' "Motion to Vacate Order and Renewed Complaint of Fraud"; Defendant John Adams Mortgage Company's Response to Plaintiffs' motion, which also includes a motion to dismiss under FRCP 12(b)(6) and (c) (Dkt. 25); and Defendants Bank of America, N.A., Countrywide Home Loans, Inc., and Mortgage Electronic Registration Systems, Inc.'s "Motion to Strike Plaintiffs' Renewed Complaint of Fraud and in the Alternative Motion to Dismiss under Fed. R. Civ. P. 12(b)(6)" (Dkt. 26). Magistrate Judge R. Steven Whalen has entered a Report and Recommendation

(“R&R”) (Dkt. 30), and no objections have been filed by any party. Accordingly, the parties have waived any further right to appeal. Thomas v. Arn, 474 U.S. 140, 155 (1985).

As the Magistrate Judge has concluded, Plaintiffs’ amended complaint provides no additional clarification of the purported fraud or RICO claims. See R&R at 5-7. Furthermore, the Court agrees with the Magistrate Judge that Plaintiffs have not clarified allegations of MCPA violations as to Defendant MERS, and that Plaintiffs’ allegations of a lack of a “wet ink” copy of the mortgage and the lack of a sheriff’s involvement in the sale are without merit. See id. at 8-10. Finally, the Court agrees with the Magistrate Judge that Plaintiffs’ previously dismissed claims remain time barred. See id. at 7-8.

As the Magistrate Judge has concluded, because Plaintiffs have not shown a likelihood of success on the merits, their request for injunctive relief should be denied. See id. at 10. Furthermore, because Plaintiffs’ amended complaint is dismissable on the merits and Defendants’ motion to dismiss will be granted, Defendants’ request to strike Plaintiffs’ amended complaint can be dismissed as moot. See id. at 12.

Accordingly, it is ordered that the R&R (Dkt. 30) is accepted and adopted as the conclusions of this Court. Specifically, it is ordered as follows:

- Plaintiffs’ Motion to Vacate Order and Renewed Complaint of Fraud (Dkt. 23) is denied.
- Defendant John Adams Mortgage Company’s Motion to Dismiss Pursuant to FRCP 12(b)(6) and (c) (Dkt. 25) is granted, and all remaining claims against this Defendant are dismissed with prejudice.
- Defendants Bank of America, N.A., Countrywide Home Loans, Inc., and Mortgage Electronic Registration Systems, Inc.’s Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (Dkt. 26) is granted, and all remaining claims against these Defendants are dismissed with prejudice. Defendants’ request to strike Plaintiffs’ Renewed Complaint of Fraud is denied as moot.

SO ORDERED.

Dated: August 16, 2012  
Flint, Michigan

s/Mark A. Goldsmith  
MARK A. GOLDSMITH  
United States District Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 16, 2012.

s/Deborah J. Goltz \_\_\_\_\_  
DEBORAH J. GOLTZ  
Case Manager