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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TOWN & COUNTRY BANK,)
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 Plaintiff,)
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 vs.)
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 BRIAN GODDARD and DANIEL K. LAK,)
)
 Defendants.)
)
 _____)
 BRIAN GODDARD,)
)
 Counterclaimant,)
)
 vs.)
)
 TOWN & COUNTRY BANK, DOE)
)
 INDIVIDUALS, I-X, inclusive, and ROE)
)
 COMPANIES, I-X, inclusive,)
)
 Counterdefendants.)
)
 _____)

Case No.: 2:09-cv-00686-RLH-LRL

ORDER

(Motion for Summary
Judgment-#88; Counter Motion
for Summary Judgment-#151/159;
Motion for Sanctions-#171)

Before the Court is Plaintiff/Counterdefendant Town & Country Bank’s (“Bank”) **Motion for Summary Judgment** (#88, filed Mar. 4, 2011) on Defendant/Counterclaimant Brian Goddard’s counterclaims. The Court has also considered Goddard’s Opposition (#94, filed Mar. 25, 2011),¹ and the Bank’s Reply (#160, filed Apr. 4, 2011).

¹ Goddard re-filed the same Opposition a second time as Dkt. #158.

1 477 U.S. 242, 248–49 (1986). Where reasonable minds could differ on the material facts at issue,
2 however, summary judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441
3 (9th Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996). “The amount of evidence necessary to raise a
4 genuine issue of material fact is enough ‘to require a jury or judge to resolve the parties’ differing
5 versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983)
6 (quoting *First Nat’l Bank v. Cities Service Co.*, 391 U.S. 253, 288–89 (1968)). In evaluating a
7 summary judgment motion, a court views all facts and draws all inferences in the light most
8 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d
9 1100, 1103 (9th Cir. 1986).

10 The moving party bears the burden of showing that there are no genuine issues of
11 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In order to carry
12 its burden of production, the moving party must either produce evidence negating an essential
13 element of the nonmoving party’s claim or defense or show that the nonmoving party does not
14 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.”
15 *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the
16 moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting the motion to
17 “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256.
18 The nonmoving party “may not rely on denials in the pleadings but must produce specific
19 evidence, through affidavits or admissible discovery material, to show that the dispute exists,”
20 *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply
21 show that there is some metaphysical doubt as to the material facts.” *Bank of America v. Orr*, 285
22 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). “The mere existence of a scintilla of
23 evidence in support of the plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252.

24 Where parties submit cross-motions for summary judgment, the court must consider each
25 party’s evidence, regardless under which motion the evidence is offered. *Fair Hous. Council v.*
26 *Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001); *see also* William W. Schwarzer, et al., *The*

1 *Analysis and Decision of Summary Judgment Motions*, 139 F.R.D. 441, 499 (Feb. 1992); 10A
2 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2720,
3 at 335-36 (3d ed.1998) (stating: “The court must rule on each party’s motion on an individual and
4 separate basis, determining, for each side, whether a judgment may be entered in accordance with
5 the Rule 56 standard.”).

6 **II. Analysis**

7 **A. Goddard’s Claims for Intentional Misrepresentation**

8 **1. Loan Modification Misrepresentation**

9 Goddard’s first intentional misrepresentation claim fails. To succeed on a claim for
10 fraudulent or intentional misrepresentation in Nevada, a plaintiff must show each of the following
11 elements: (1) the defendant made a false representation of fact; (2) the defendant knew or believed
12 the representation to be false; (3) the defendant intended to induce plaintiff to rely on the
13 misrepresentation; and (4) the plaintiff suffered damages as a result of his reasonable reliance.

14 *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386 (Nev. 1998); *Bulbman v. Nevada Bell*, 825 P.2d
15 588, 592. The Bank argues that summary judgment is appropriate on this claim because Goddard
16 has not presented any evidence of a false representation related to the loan modification. In his
17 response, Goddard does not dispute this argument with material facts or legal analysis, only
18 general assertions and ramblings.

19 Further, upon review of the evidence presented to the Court, the Court agrees with
20 the Bank. The evidence shows that, at most, the Bank informed Goddard that it was possible to
21 obtain a second loan modification (Dkt. #88, Mot. Ex. 11, Goddard’s Resp. to Interrogatory #11)
22 and that the Bank engaged in negotiations to modify the loan (*Id.*, Ex. 2, Burns Decl. ¶ 9). The
23 Bank owed no duty to modify the loan, but made an offer to modify the loan with certain
24 conditions. (*Id.*, Ex. 7, Sept. 16, 2008 Letter to Goddard.) The Court does not know whether
25 those conditions were reasonable, though they appear to have been. Regardless, the allegedly false
26 representation that a modification was possible or even likely was not a false representation of fact

1 but a statement of opinion as to future events. *Bulbman*, 825 P.2d at 592 (holding that estimates
2 and opinions are generally not actionable as fraud.) As such, Goddard cannot prove intentional
3 misrepresentation as he cannot show a false representation of fact. Accordingly, the Court grants
4 summary judgment on Goddard’s first counterclaim.

5 **2. Appraisal Misrepresentation**

6 Similarly, Goddard’s claim for intentional misrepresentation regarding the R. Scott
7 Dugan Appraisal fails. To prevail on his misrepresentation claim, Goddard would have to show
8 “justifiable reliance upon the misrepresentation” he claims exists in the Dugan Appraisal.
9 *Bulbman*, 825 P.2d at 592. This is regardless of whether he should even be able to bring a
10 misrepresentation claim against the Bank for a representation in the Dugan Appraisal. Goddard,
11 however, testified that he did not rely on the Dugan appraisal and did not even see the Dugan
12 appraisal until after the initiation of this litigation. (Dkt. #88, Ex. 3 Goddard Dep. 172:18–173:7.)
13 As Goddard testified that he did not rely on the alleged misrepresentation, he cannot show that he
14 reasonably relied on the misrepresentation. Accordingly, the Court grants summary judgment on
15 Goddard’s last remaining counterclaim.

16 Further, Goddard did not present any evidence demonstrating triable issues of
17 material fact in his response/counter motion or any evidence or reason requiring the Court to deny
18 summary judgment in favor of the Bank or grant summary judgment in Goddard’s favor. In fact,
19 as to certain issues, Goddard presents facts and law that undercut his own arguments and bolster
20 the reasons for granting summary judgment for the Bank. For these reasons, the Court grants the
21 Bank’s motion for summary judgment.

22 **B. Goddard’s Additional Claims**

23 In Goddard’s counter motion for summary judgment, he seems to assert new claims
24 for violation of the Racketeer Influenced and Corrupt Organization Act (“RICO”), 18 U.S.C. §§
25 1961, *et seq.*, and breach of the implied covenant of good faith and fair dealing. Apparently, he
26 seeks summary judgment on these newly alleged claims. However, the Court need not, indeed

1 cannot, consider such new claims as they were not alleged in Goddard's Answer/Complaint. *See,*
2 *e.g., Hawana v. City of New York*, 230 F. Supp. 2d 518, 534 (S.D.N.Y. 2002). If Goddard desired
3 to assert these claims, he should have sought leave to amend his complaint and add them, though
4 the Court believes it would not have granted leave to amend as these claims appear futile on their
5 face. Accordingly, the Court denies Goddard's motion.

6 **C. Motion for Sanctions**

7 Goddard seeks sanctions alleging various instances of perjury by the Bank's
8 counsel, the Bank's employees, and witnesses. His first allegation is that one of the Bank's
9 counsel incorrectly stated that the Law Firm of Holland & Hart had been the only firm to represent
10 the Bank (presumably just in this litigation). Goddard claims to have immediately corrected her by
11 pointing out that a separate firm represented the Bank early in these proceedings. Goddard's other
12 allegations are of similar quality and the Court need not restate each of them.

13 The Court denies this motion for two principal reasons. First, the so called
14 perjurious statements were not material issues but more likely simple oversights or slips not
15 amounting to perjury, misunderstandings (either by Goddard or the speaker), or arguments rather
16 than factual statements. Second, Goddard presents no evidence showing perjury but merely makes
17 claims and general references to documents. In sum, the Bank is correct: "These serious and
18 unsubstantiated allegations are nonsensical and do not warrant" the Court's serious consideration.
19 Accordingly, the Court denies the motion and warns Goddard not to bring similar allegations
20 without actual, substantive evidence of his charges.

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CONCLUSION

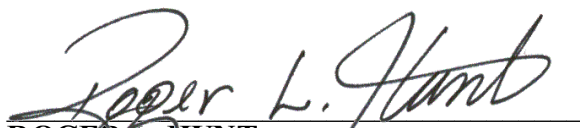
Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that the Bank’s Motion for Summary Judgment (#88) is GRANTED.

IT IS FURTHER ORDERED that Goddard’s Motion for Summary Judgment (#151/159) is DENIED.

IT IS FURTHER ORDERED that Goddard’s Motion for Sanctions (#171) is DENIED.

Dated: July 15, 2011.


ROGER L. HUNT
United States District Judge