

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:14-cv-322-MR-DSC**

TD BANK, N.A.,

Plaintiff,

vs.

**CHARLES WATKINS AUTOMOBILES,
INC., CHARLES T. WATKINS, and
JACKIE R. WATKINS,**

Defendants.

ORDER

THIS MATTER is before the Court on the Defendants’ Motion to Dismiss or in the Alternative to Stay [Doc. 10], the Magistrate Judge’s Memorandum and Recommendation (“M&R”) suggesting that the Court stay this case [Doc. 16], and the Plaintiff’s Objections to the Magistrate Judge’s M&R. [Doc. 17].

Pursuant to 28 U.S.C. § 636(b) and a specific Order of referral of the District Court, the Honorable David S. Cayer, United States Magistrate Judge, was designated to conduct pretrial proceedings in the above-captioned matter and to submit to this Court recommendations regarding any dispositive action to be taken.

This matter is a debt collection action brought by Plaintiff to recover money it claims it is owed by the Defendants following their alleged default on two promissory notes and corresponding modification, forbearance, extension, and guaranty agreements. [Doc. 1 at 12-13]. Prior to filing this action, Plaintiff initiated three non-judicial foreclosure proceedings before the Rutherford County, North Carolina, Clerk of Superior Court, to sell collateral used to secure Defendants' debts owed to Plaintiff. [Doc. 14-1 at 1]. Defendants herein, together with non-party Church Street Station, LLC, thereafter filed a complaint and motion for preliminary injunction in the Rutherford County, North Carolina, Superior Court. [Id.]. The Defendants' complaint alleges state law claims and equitable defenses to foreclosure against TD Bank and two of its representatives for breach of duty of good faith and fair dealing, fraud, negligent misrepresentation, breach of contract, breach of duty of confidentiality, unfair and deceptive acts and practices, and prima facie tort arising from acts and misrepresentations in connection with the Defendants' loans and all other written agreements with TD Bank entered into after July of 2007. [Id. at 2]. The Defendants' motion for preliminary injunction seeks to enjoin the sale of the collateral at issue in the three foreclosure proceedings. [Id. at 3-5].

As the basis for their state court complaint and injunction, Defendants allege that TD Bank entered into the loans, deeds of trust and other written agreements with Mr. Watkins during a time in which he lacked the necessary mental capacity required to enter into enforceable contracts or agreements. [Doc. 22 at 6-7]. The state court has entered a preliminary injunction enjoining the respective trustees from proceeding further with the three foreclosure actions. [Id.].

On June 22, 2015, the Magistrate Judge filed his M&R in this case analyzing whether the Court should proceed to entertain this matter or abstain and allow the state court action to continue uninterrupted. [Doc. 16]. The Magistrate Judge recommended that the Court abstain from hearing this case and stay the same pending the resolution of the parallel state action. [Id. at 6-7]. The parties were advised by the Magistrate Judge that any objections to his M&R were to be filed in writing within fourteen days of service. [Id. at 7]. The Plaintiff timely filed its Objections on July 6, 2015. [Doc. 17].

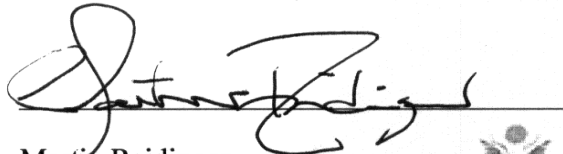
After careful, *de novo* review and thorough consideration of the Magistrate Judge's M&R [Doc. 16] and the Plaintiff's Objections thereto [Doc. 17], the Court concludes that the Magistrate Judge's legal analysis is consistent with applicable case law. Accordingly, the Court hereby overrules

the Plaintiff's Objections and accepts the Magistrate Judge's recommendation.

IT IS, THEREFORE, ORDERED that: the Magistrate Judge's Memorandum and Recommendation [Doc. 16] is **ACCEPTED**; the Plaintiff's Objections thereto [Doc. 17] are **REJECTED**; the Defendants' Motion to Dismiss or in the Alternative to Stay [Doc. 10] is **GRANTED in part and DENIED in part**; the Court **ABSTAINS** from proceeding in this matter; and, this case is hereby **STAYED** pending further order of the Court.

IT IS SO ORDERED.

Signed: February 1, 2016


Martin Reidinger
United States District Judge

