

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EUGENE KLINE, et al.,	:	
Plaintiffs,		
v.	:	Case No. 3:08cv408
MORTGAGE ELECTRONIC SECURITY SYSTEMS, et al.,	:	JUDGE WALTER H. RICE
Defendants.	:	

ENTRY AND ORDER DISMISSING ANY REMAINING STATE LAW
CLAIMS OF PLAINTIFFS GEORGE ROSS AND CAROL ROSS AGAINST
DEFENDANTS MORTGAGE ELECTRONIC SECURITY SYSTEMS AND
LERNER, SAMPSON & ROTHFUSS, WITHOUT PREJUDICE TO
REFILING IN A STATE COURT OF COMPETENT JURISDICTION

In this putative class action, Plaintiffs George Ross and Carol Ross (the "Rosses") originally alleged claims against the following Defendants: Mortgage Electronic Security Systems ("MERS"), Flagstar Bank FSB ("Flagstar"), Chase Home Finance ("Chase"), and Lerner, Sampson & Rothfuss ("LS&R"), based on allegations that they were illegally charged late fees and attorneys' fees during a bankruptcy proceeding. Doc. #1, Complaint, at 22-23, 23-27. The Rosses brought federal claims under the Fair Debt Collection Practices Act ("FDCPA), 15 U.S.C. § 1692f(1), against LS&R and MERS. Invoking supplemental jurisdiction under 28 U.S.C. § 1367, the Rosses brought state law claims under the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01, and state common law

claims of unjust enrichment and breach of contract against MERS, Flagstar, Chase, and LS&R.

The Rosses have no remaining claims against Chase or Flagstar. The Rosses voluntarily dismissed, with prejudice, all of their claims against Chase on October 19, 2009. Doc. #121. Furthermore, the Court sustained Flagstar's Motion for Summary Judgment (Doc. #132), which it treated as a motion to dismiss filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on September 28, 2010. Doc. #215. In sustaining Flagstar's motion, all of the Rosses' claims against Flagstar were dismissed.

As explained below, the Rosses' federal claims against LS&R and MERS have been dismissed. Accordingly, any state law claims of the Rosses against LS&R and MERS that were not the subject of an explicit previous ruling by the Court are hereby DISMISSED, without prejudice to refiling in a state court of competent jurisdiction.

I. THE ROSSES' CLAIMS AGAINST LS&R

LS&R filed a Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing for dismissal of the claims that the Rosses had stated against it in the Plaintiffs' original complaint. Doc. #18. The Court overruled LS&R's motion to dismiss the Rosses' FDCPA claim (Doc. #116 at 16); overruled LS&R's motion to dismiss their OSCPA claim brought on behalf of themselves, but sustained its dismissal insofar as they attempted to plead a class action under that

statute (*Id.* at 18-19); dismissed the Rosses' claim of unjust enrichment (*Id.* at 17); and dismissed, with prejudice, the Rosses' breach of contract claim against LS&R, because they failed to defend that claim after LS&R challenged it on its motion to dismiss, and there were no facts alleging that the Rosses ever entered into a contract with LS&R (*Id.* at 7-8).

Plaintiffs filed an Amended Complaint on April 14, 2010 (Doc. #157). LS&R filed a Motion for Judgment on the Pleadings (Doc. #242), which the Court sustained in part and overruled in part in its Decision and Entry of November 3, 2011 (Doc. #263). Specifically, the Court dismissed, with prejudice, the Rosses' claim under the FDCPA against LS&R (Doc. #263 at 6) and dismissed, without prejudice, their claim under the OSCPA.¹ Although the Amended Complaint appeared to state a state law claim of unjust enrichment against LS&R, (*see* Doc. #157 at 28), LS&R did not formally move for its dismissal in its Motion for Judgment on the Pleadings. Section 1367(c)(3) of the supplemental jurisdiction statute allows the Court to “decline to exercise supplemental jurisdiction” over any state law claims after it “has dismissed all claims over which it has original

¹ The Court sustained a motion for reconsideration after dismissing the FDCPA claims of another Plaintiff, Eugene Kline, and reinstated Kline's FDCPA claim under 15 U.S.C. § 1692f(1). *See* Doc. #271 (reinstating claim); Doc. #294 (clarifying that reinstatement only applied to Kline's claim under 15 U.S.C. § 1692f(1)). The reinstatement did not apply to the FDCPA claim of the Rosses. Unlike Kline, the Rosses failed to allege a necessary element of the claim, namely, that LS&R had ever even collected the amounts in question. *See* Doc. #263 at 6 (stating that “[w]hat is missing from Plaintiffs Amended Complaint is an allegation that LS&R received some payment as a result” of their attempts to collect fees); *see also* Amended Complaint, Doc. #157 at ¶¶ 68-76 (stating Kline's allegations of fees collected by LS&R).

jurisdiction” in the action. 28 U.S.C. § 1367(c)(3). Furthermore, the state law claims of the Rosses do not present “situations in which the state claim is so closely tied to questions of federal policy that the argument for exercise of [supplemental] jurisdiction is particularly strong” after the dismissal of their federal claims. *United Mine Workers v. Gibbs*, 383 U.S. 715, 727 (1966). Thus, because the Court dismissed the Rosses’ only federal claim against LS&R, the Court declines to continue to exercise supplemental jurisdiction over any remaining state law claim of the Rosses against LS&R. Accordingly, any claim under Ohio law of the Rosses against LS&R is DISMISSED, without prejudice to refile in a state court of competent jurisdiction.

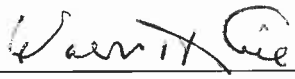
II. THE ROSSES’ CLAIMS AGAINST MERS

MERS filed a Motion to Dismiss, directed at the Rosses’ original claims against it. Doc. #31. In its Decision and Entry of March 29, 2010, the Court dismissed the Rosses’ claims under the FDCPA against MERS. Doc. #154 at 7. However, the Court gave the Rosses leave to file an Amended Complaint repleading their state law claims, because, on the date of that ruling, the Rosses’ FDCPA claim against LS&R was still viable, and said claim arose from the same nucleus of fact as their state law claims against MERS. *Id.* at 11-12. After Plaintiffs filed an Amended Complaint (Doc. #156), MERS once again filed a Motion to Dismiss (Doc. #174). In ruling on that motion, the Court dismissed, with prejudice, the Rosses’ replead unjust enrichment claim against MERS, but

allowed their breach of contract claim against MERS to go forward, while limiting its scope. Doc. #239 at 9.

However, as stated above, the Court subsequently dismissed, with prejudice, the Rosses' claim under the FDCPA against LS&R (Doc. #263 at 6). As with their state law claims against LS&R, the Rosses' state law claims against MERS do not present "situations in which the state claim is so closely tied to questions of federal policy that the argument for exercise of [supplemental] jurisdiction is particularly strong" after the dismissal of their federal claims. *Gibbs*, 383 U.S. at 727. The Court will, therefore, exercise its discretion under 28 U.S.C. § 1367(c)(3), and decline to exercise supplemental jurisdiction over the Rosses' state law claims against MERS: specifically, the OSCPA claim or their breach of contract claim. Accordingly, the Court DISMISSES any of the Rosses' remaining state law claims against MERS, without prejudice to refiling in a state court of competent jurisdiction.

Date: September 18, 2013



WALTER H. RICE
UNITED STATES DISTRICT JUDGE