

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID W. KELLY and JOAN L. KELLY,	:	CIVIL ACTION NO. 1:13-CV-2298
	:	
Plaintiffs	:	(Chief Judge Conner)
	:	
v.	:	
	:	
WELLS FARGO BANK, N.A.,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 25th day of March, 2015, upon consideration of the amended complaint (Doc. 27) of plaintiffs David W. Kelly and Joan L. Kelly (the “Kellys”) and the motion (Doc. 30) to dismiss same by defendant Wells Fargo Bank, N.A. (“Wells Fargo”), and further upon consideration of the report and recommendation (Doc. 40) of Magistrate Judge Susan E. Schwab, and the objection (Doc. 41) thereto filed by Wells Fargo, and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that:

1. The report (Doc. 40) of Magistrate Judge Susan E. Schwab is ADOPTED to the extent it recommends dismissal of the Kellys’ negligence claim, the breach of contract claim for lack of standing during the 2008 foreclosure proceedings, and the breach of contract claim for failure to provide an accounting. The court declines to adopt the remainder of the report.

2. Wells Fargo’s motion (Doc. 30) to dismiss is GRANTED to the following extent:

- a. The Kellys' negligence claim relating to Wells Fargo's July 2008 entry onto the subject property is DISMISSED as untimely.
 - b. The Kellys' breach of contract claims for lack of standing during the 2008 foreclosure proceedings and for failure to provide an accounting are DISMISSED for failure to state a claim for which relief may be granted.
 - c. The Kellys' breach of contract claims challenging the propriety of the 2008 and 2012 foreclosures, the escrow deficit, and the acceleration of payments in connection with those foreclosure proceedings are DISMISSED pursuant to the doctrine of collateral estoppel.
 - d. The motion is DENIED in all other respects.
3. This matter shall proceed solely with respect to the Kellys' breach of contract claim pertaining to Wells Fargo's July 2008 entry onto the subject property.
 4. The above-captioned matter is REMANDED to Magistrate Judge Schwab for further proceedings and pretrial management.

/S/ Christopher C. Conner
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania