

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

WILLIAM STUART STAPP and ELIZABETH STAPP

Plaintiffs,

Case No. 4:11CV203

VS.

**BANK OF AMERICA, N.A.,
BAC HOME LOANS SERVICING, L.P.,
FEDERAL NATIONAL MORTGAGE
ASSOCIATION, and BARRETT DAFFIN
FRAPPIER TURNER & ENGEL, L.L.P.**

Defendants.

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On September 5, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss (Dkt. 26) be GRANTED as to Plaintiffs' claim of breach of contract based on breach of oral loan modification, waiver, anticipatory breach, breach of duty of good faith and fair dealing, and any breach of contract claim against Fannie Mae, Plaintiffs' claim of breach of common law tort of unreasonable collection efforts; Plaintiffs' negligent misrepresentation claim against Fannie Mae and BAC, Plaintiffs' TDCA

claim under Sections 392.301(a)(8), 392.302(4) and 392.303(a)(2), and Plaintiffs' claim of tortious interference with a contract, DENIED as to Plaintiffs' breach of contract claim based on a breach of the mortgage documents that they were not given adequate notice and an opportunity to cure, Plaintiffs' negligent misrepresentation claim against Bank of America, Plaintiffs' TDCA claims under Sections 392.304(a)(8) and (a)(19), Plaintiffs' suit to quiet title and trespass to try title, and Plaintiffs' request for declaratory judgment and accounting and DENIED as MOOT as to Plaintiffs' allegations of malice.

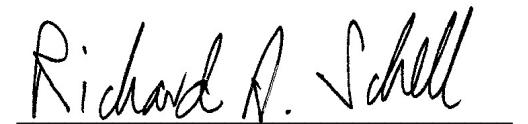
The court has made a *de novo* review of the objections raised by Plaintiffs and is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendants' Motion to Dismiss (Dkt. 26) is GRANTED as to Plaintiffs' claim of breach of contract based on breach of oral loan modification, waiver, anticipatory breach, breach of duty of good faith and fair dealing, and any breach of contract claim against Fannie Mae, Plaintiffs' claim of breach of common law tort of unreasonable collection efforts; Plaintiffs' negligent misrepresentation claim against Fannie Mae and BAC, Plaintiffs' TDCA claim under Sections 392.301(a)(8), 392.302(4) and 392.303(a)(2), and Plaintiffs' claim of tortious interference with a contract, DENIED as to Plaintiffs' breach of contract claim based on a breach of the mortgage documents that they were not given adequate notice and an opportunity to cure, Plaintiffs' negligent misrepresentation claim against Bank of America, Plaintiffs' TDCA claims under Sections

392.304(a)(8) and (a)(19), Plaintiffs' suit to quiet title and trespass to try title, and Plaintiffs' request for declaratory judgment and accounting and DENIED as MOOT as to Plaintiffs' allegations of malice.

IT IS SO ORDERED.

SIGNED this the 27th day of September, 2012.



RICHARD A. SCELL
UNITED STATES DISTRICT JUDGE