

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

ERIC KOWALSKI and
ANTOINETTE KOWALSKI,

Plaintiffs,

V.

WELLS FARGO BANK, N.A.,

Defendants.

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CASE NO. 4:12cv142
Judge Clark/Judge Mazzant

**ORDER 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 December 17, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that defendant’s Motion for Summary Judgment [Doc. #37] be granted. On December 31, 2012, plaintiffs filed objections [Doc. #51]. On January 14, 2013, defendant filed a response to plaintiffs’ objections [Doc. #52] .

Plaintiffs object to the United States Magistrate Judge’s report and recommendations, asserting that there is a genuine fact issue as to whether defendant accepted plaintiffs’ tax deferral. Plaintiffs’ objections merely reassert the same arguments made before the Magistrate Judge. The summary judgment evidence demonstrates that defendant acknowledged the tax exemption but rejected plaintiffs’ tax deferral because the deferral created a superior lien and jeopardized defendant’s interests in the property. The Magistrate Judge examined each document that plaintiffs assert creates a fact issue. The Magistrate Judge correctly considered and rejected each piece of

evidence. The documents offered by plaintiffs fail to create a fact issue. Thus, there is no basis for this objection.

Plaintiffs next object that there is a genuine fact issue as to whether defendant misapplied payments. This objection is based solely on whether there is a fact issue on the issue of deferred taxes. Because defendant did not accept plaintiffs' tax deferral, plaintiffs' contention that defendant misapplied plaintiffs' payments also fails. The Magistrate Judge correctly found that there was no evidence that any funds were misapplied by defendant.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by plaintiffs [Doc. #51], as well as defendant's response [Doc. #52], this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that defendant's Motion for Summary Judgment [Doc. #37] is **GRANTED**, and plaintiffs' case is **DISMISSED** with prejudice.

So **ORDERED** and **SIGNED** on January 30, 2013.



Ron Clark
United States District Judge