## \*\*NOT FOR PRINTED PUBLICATION\*\*

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

MARK L. MADENWALD and	§	
ALMEDA F. MADENWALD	§	
	§	
Plaintiffs,	§	
	§	
V.	§	Case No. 4:13cv136
	§	(Judge Clark/Judge Mazzant)
JPMORGAN CHASE BANK, N.A. and	§	
U.S. BANK, NATIONAL	§	
ASSOCIATION, AS TRUSTEE FOR	§	
WAMU MORTGAGE PASS THROUGH	§	
CERTIFICATE FOR WMALT SERIES	§	
2007-OA3 TRUST	§	
	§	
Defendants.	§	

## 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 July 24, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss First Amended Complaint [Doc. #13] be denied [Doc. #23]. Defendants filed objections on August 2, 2013 [Doc. #25]. On August 8, 2013, plaintiffs filed a response [Doc. #27].

The court, having made a *de novo* review of the objections raised by defendants [Doc. #25], is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit as to the denial of the Rule 12(b)(6) motion. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this

court as to the denial of the Rule 12(b)(6) motion. A motion under Rule 12(b)(6) tests the formal

sufficiency of the plaintiffs' statement of their claim for relief, and cannot be used to resolve factual

issues or the merits of the case. Dismissal under Rule 12(b)(6) is appropriate only if plaintiffs have

not provided fair notice of their claims. See Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009).

Generally, motions to dismiss for failure to state a claim are viewed with disfavor. Collins v.

Morgan Stanley Dean Witter, 224 F.3d 496, 498 (5th Cir. 2000). It is within the power of a court

to require a party to produce evidence rather than lengthy, convoluted, and sometimes misleading

arguments, before deciding that judgment should be granted. And, in this case, if the facts are as

clear as defendants claim, a motion for summary judgment should accomplish the "just, speedy, and

inexpensive determination" of this action. See Fed. R. Civ. P 1. However, the court does not agree

to the finding that discovery is necessary before proceeding to a motion for summary judgment.

That decision will depend on the facts presented and the issues raised in such a motion.

It is, therefore, **ORDERED** that Defendants' Motion to Dismiss First Amended Complaint

[Doc. #13] is **DENIED.** 

So ORDERED and SIGNED this 22 day of August, 2013.

Ron Clark, United States District Judge

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2