

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROBERT BITTINGER,

§

Plaintiffs,

§

v.

§

CIVIL ACTION NO. H-10-1745

§

WELLS FARGO BANK NA, *In Its
Name and as Trustee for the Certificate
Holders of Soundview Home Loan Trust
2007-OPTI, Asset-Backed Certificates
Series 2007-OPTI, et al.,*

§

§

§

§

§

§

Defendants.

§

§

ORDER

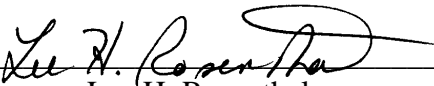
This court granted the defendants’ motion for summary judgment, denying the plaintiff’s motion to reinstate his fraud claim, and entered final judgment for the defendants. (Docket Entry No. 59). Bittinger’s motion to extend the time in which to file a motion for a new trial under Federal Rule of Civil Procedure 59(b) and motion to reconsider the denial of that motion were also denied. Bittinger has filed a notice of appeal, which the defendants argue is untimely, (Docket Entry No. 65), and now moves to appeal *in forma pauperis*. (Docket Entry No. 73).

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The inquiry “into the litigant’s good faith ‘is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous).’” *Weisner v. Bexar Cnty.*, 434 F. App’x 401, 402 (5th Cir. 2011) (quoting *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983)). “The existence of any nonfrivolous issue on appeal is sufficient to require” the district court to grant the motion to appeal *in forma pauperis*. *Howard*, 707 F.2d at 220. Additionally, a court should consider any pleadings and motions of a pro se litigant

under less stringent standards than those applicable to licensed attorneys. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). In this case, counsel represented Bittinger until the filing of this appeal. Even holding Bittinger's complaint and other filings to the more liberal standard for *pro se* filings, however, an appeal of this action would present no legal point of arguable merit and would be frivolous. This court finds that the motion to appeal *in forma pauperis* is not taken in good faith. Bittinger may challenge this finding by filing a timely motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, United States Court of Appeals for the Fifth Circuit.

The motion for leave to file an appeal *in forma pauperis* is denied.

SIGNED on February 6, 2012, at Houston, Texas.



Lee H. Rosenthal
United States District Judge