

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

Adedipe Ajibola Mack,

Plaintiff,

versus

Whitney Bank, et al.,

Defendants.

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ENTERED

December 21, 2017

David J. Bradley, Clerk

Civil Action H-17-2543

Opinion on Summary Judgment

I. *Background.*

In August of 2013, Adedipe Ajibola Mack purchased an annuity contract for \$15,000 from Western-Southern Life Assurance Company. The contract says that if more than ten percent of the value is withdrawn in a year for the first seven years, Western-Southern will charge a surrender fee.

In September of 2016, he applied for a \$12,000 secured loan from Whitney Bank. In October, the bank approved his application. He pledged the annuity from Western-Southern as security.

Adedipe missed the January and February loan payments, defaulting on the loan. The bank wrote to Western-Southern, requesting payment of the annuity to pay the loan. Western-Southern paid Whitney \$12,100.00, which accounted for the \$11,800.00 in principal owing, \$277.08 in unpaid, accrued interest, and \$22.92 in late fees. In March, the bank deposited the check from Western-Southern and closed the loan account.

Western-Southern deducted \$674.43 from the annuity as a surrender fee, as agreed. The annuity remains open. On the day of the withdrawal, its remaining value was \$2,564.98.

On March 29, 2017, Adedipe attempted to make his loan payments. He went to the bank and gave the teller a check for \$415.13. The following day, the bank issued a cashier's check to reimburse him.

Adedipe says that Whitney and Western-Southern breached their contracts with him and conspired against him. He says that he told the bank that he would be out of the country in January and February. He also says that his being abroad prevented him from paying his loan.

2. *Analysis.*

Western-Southern and Whitney did what they agreed to do in their contracts with Adedipe. Nothing suggests that they conspired to harm him.

Adedipe did not make two loan payments. That is a default. As agreed, the bank accelerated the loan and collected the balance from the annuity that secured the loan.

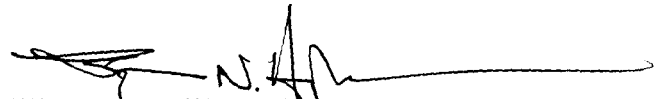
Western-Southern had agreed to Adedipe's annuity being pledged as security for the loan. On notice that he had defaulted, it paid the loan and deducted the agreed fee.

Being out of the country is no excuse for missing payments. Funds may be transferred electronically anywhere in the world. Checks can be sent internationally. Adedipe tried to cure his default by paying late. The bank was not obliged to accept late payment. Its rejection did not breach the contract.

3. *Conclusion.*

Western-Southern and the bank did exactly what they agreed to do. Adedipe Ajibola Mack will take nothing from Western-Southern Life Assurance Company and Whitney Bank.

Signed on December 21, 2017, at Houston, Texas.



Lynn N. Hughes
United States District Judge