

United States District Court
Southern District of Texas

ENTERED

April 10, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JESSIE M. BUTLER,

Plaintiff,

VS.

CIT BANK, N.A., *et al*,

Defendants.

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CIVIL ACTION NO. 4:18-CV-268

MEMORANDUM AND ORDER

Before the Court is the defendant’s, CIT Bank, motion to dismiss the plaintiff’s, Jessie M. Butler, suit [DE#s 3, 8]. The Court has reviewed the defendant’s motion and related document(s) and, finding no response from the plaintiff, determines that the motion is meritorious and should be granted.

The plaintiff entered into a home equity loan with the defendant on November 17, 2003. Since that time, the plaintiff has failed to pay the Note according to its terms and the Note is in default. In an effort to avoid foreclosure proceeding, the plaintiff filed suit against the defendant asserting claims for deceptive trade practices, statutory fraud, common law fraud and breach of contract.

The Court is of the opinion that the plaintiff’s claims, and in particular, the facts asserted in his suit, fail to state a cognizable claim against the defendant beyond conclusory allegations. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996).

Federal Rule of Civil Procedure, 12 (b)(6) authorizes dismissal of a suit where a plaintiff fails to state a claim upon which relief may be granted. In the case at bar, even taking the

plaintiff's allegations as true, and construing his allegations in the light most favorable to him, his claim fails. *Id.* Therefore, the defendants' motion should be and it is hereby Granted.

It is so Ordered.

SIGNED on this 10th day of April, 2018.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge