

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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NEIL M. SCHMITT,) Case No. 2:11CV00381 DS

Plaintiff,)

vs.)

STEARNS LENDING, INC., ET AL.,)

MEMORANDUM DECISION
AND ORDER ADDRESSING
MOTION TO DISMISS OF
GREEN TREE SERVICING, LLC

Defendants.)

* * * * *

Plaintiff defaulted under the terms of a Trust Deed and Note securing the repayment of a loan obtained to purchase a home located in Herriman, Utah. Non-judicial foreclosure proceedings ensued.

Plaintiff subsequently filed this action against multiple defendants. As relevant here, Plaintiff purports to assert claims against Green Tree Servicing, LLC ("Green Tree") for Declaratory Judgment, Quiet Title, and Breach of Covenant of Good Faith and Fair Dealing. Green Tree moves to dismiss those claims (Doc. #25).

In his claim for declaratory judgment, Plaintiff essentially alleges that Defendants lack authority to foreclose on the subject property. In his claim for quiet title, Plaintiff essentially alleges that Defendants have no right to foreclose because "Plaintiff's Trust Deeds and notes were separated by

assignment of the Trust Deeds without assignment of the Notes during the securitization process, thus lodging foreclosure rights with the investors in the MBS [mortgage backed security]". Comp. ¶ 150. As Green Tree notes, these claims have been uniformly and consistently rejected by the Utah Courts and the Court sees no need to unduly belabor the matter further. See Reply at 3-6 (and cases cited therein).

The Court also agrees with Green Tree that Plaintiff has conceded his alternative claim for breach of the covenant of good faith and fair dealing by failing to contest it in his opposition pleading. Even if the Court were to address this claim it would be rejected for the reasons set forth by Green Tree and for the reasons set forth in the Court's Memorandum Decision and Order addressing the Motion to Dismiss of Defendants CitiMortgage Inc. and Mortgage Electronic Registration Systems, Inc. filed this same date.

Accordingly, Defendant Green Tree's Motion to Dismiss (Doc. #25) is granted with prejudice.

DATED this 31st day of August, 2011.

BY THE COURT:



DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT