

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-15-109

CRAIG BROWN,

Plaintiff

v.

ORDER

AMICA INSURANCE CO., et al,

Defendants

STATE OF MAINE
Cumberland, ss, Clerk's Office
JUN 09 2015
RECEIVED

Before the court is defendant PNC Bank's motion to dismiss. Plaintiff Craig Brown, who is representing himself, has filed an opposition to the motion combined with what he describes as a motion for summary judgment against PNC.

Brown's motion for summary judgment did not include any Rule 7(b)(1) statement so there is no current deadline for PNC Bank to respond to that motion. However, PNC's motion to dismiss has been briefed by both parties, PNC has not filed any reply memorandum, and PNC's motion to dismiss is properly before the court for decision.¹

Brown's complaint against PNC is apparently based on the theory that PNC, which had lent money to Brown secured by a second mortgage on property owned by Brown, had a legal obligation to assist Brown when he ran into financial difficulties based on the boundary dispute and the other legal difficulties outlined in the complaint. Specifically Brown complains that PNC wrongfully denied Brown a HAMP modification on his mortgage.

¹ Brown was granted leave to file an amended complaint setting forth his claims against defendant Amica Insurance Co., and he has done so. Brown's claims against PNC Bank, however, are set forth in paragraphs 317-23 of the original complaint.

However, the First Circuit has held that borrowers have no right of action for damages against mortgage lenders for alleged failures to provide modifications of mortgage loans under HAMP or other alleged violations of HAMP service participation agreements between Fannie Mae and mortgage lenders. *Mackenzie v. Flagstar Bank FSB*, 738 F.3d 486, 491-92 (1st Cir. 2103). To the extent that Brown is seeking to claim a violation of an implied duty of good faith and fair dealing, no such implied duty exists between mortgagors and mortgagees under Maine law. *Camden National Bank v. Crest Construction Inc.*, 2008 ME 113 ¶ 18, 952 A.2d 213.

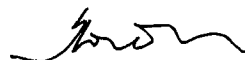
Finally, Brown's motion for summary judgment – submitted in opposition to PNC's motion to dismiss – suggests that PNC had some legal obligation to assist Brown with respect to the boundary dispute involving his property. This claim fails because Brown has not alleged any facts that would conceivably give rise to a legal obligation on the part of PNC to assist Brown.

Accordingly, Brown's complaint against PNC fails to state a claim and PNC's motion to dismiss is granted.

The entry shall be:

Defendant PNC Bank's motion to dismiss is granted. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: June 9, 2015



Thomas D. Warren
Justice, Superior Court

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

DAVID SOLEY ESQ
BERNSTEIN SHUR
PO BOX 9729
PORTLAND ME 04112-5029

Counsel for Fidelity (Dismissed)

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

JAY GREGORY ESQ
LECLAIRRYAN
ONE INTERNATIONAL PL 11TH FLOOR
BOSTON MA 02110

Counsel for PNC Bank

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

CRAIG BROWN
36 STONEHURST DRIVE
CAMDEN ME 04843

Plaintiff

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

MARTICA DOUGLAS ESQ
DOUGLAS DENHAM BUCCINA & ERNST
PO BOX 7108
PORTLAND ME 04112-7108

Counsel for Amica

STATE OF MAINE
CUMBERLAND, ss.

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CIVIL ACTION
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MAY 04 2015

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Before the court are three motions: (1) a motion to strike filed by defendant Amica Insurance Co.,¹ (2) a motion to dismiss filed by defendant Fidelity National Title Group, and (3) an application by plaintiff Craig Brown for a default against defendant PNC Bank.

Amica's Motion to Strike

Amica's motion to strike is based on the contention that the 61 pages and 309 paragraphs of plaintiff Craig Brown's complaint that are directed against Amica do not constitute a short and plain statement of claims showing that Brown is entitled to relief, *see* M.R.Civ.P. 8(a), and do not allow either Amica or the court to discern the basis of his claims. The court agrees.²

Brown's claims appear to arise from his unhappiness over the outcome of certain land disputes, civil litigation, and criminal charges in Knox County. His complaint consists of a long,

¹ Two other motions have been filed but are not yet fully briefed: a motion for a default judgment against defendant PNC Bank filed by plaintiff Craig Brown and a motion to dismiss filed by PNC.

² Brown filed an opposition to Amica's motion to strike on April 21 but may not have served counsel for Amica with that opposition because counsel for Amica wrote to the court by letter dated April 24 to state that Brown had not opposed the motion to strike within 21 days. Brown is again reminded that any documents that are filed or submitted to the court must be served on counsel for all parties who have appeared. *See* April 23, 2015 order ¶ 4.

disjointed, and partially incoherent diatribe of allegations against, *inter alia*, various law enforcement agencies, surveyors, lawyers who apparently represented Brown at one time, and various state and federal judges who issued rulings in his cases. Brown argues that all of the legal rulings against him should be subject to collateral attack and has filed a motion to that effect. However, he has not joined the parties to those prior legal actions, and the court has previously ruled that it will not entertain his motion to collaterally attack prior state and federal judgments in this action – which is seeking relief not against the parties to those prior actions but against Amica, Fidelity Title, PNC Bank, and Wells Fargo Bank. *See* April 23, 2015 order ¶ 7.

Although not readily discernable from Brown's complaint, the tortuous factual background of this case – and Brown's frequent recourse to litigation – is set forth in a federal district court decision that is attached to defendant Fidelity Title's amended motion to dismiss. *Brown v. State of Maine*, 11-CV-426 JD, 2012 WL 5463087 (D. Me. Nov. 7, 2012). The federal decision includes an order enjoining Brown from filing any further federal court actions without obtaining prior court permission in order "to prevent Brown from continuing to abuse the judicial process, from wasting judicial resources, and from wasting the resources of parties who must respond to his frivolous lawsuits."

In this case, as far as the court can discern, Brown appears to be alleging that Amica violated a duty to defend Brown under a homeowner's policy. It is, however, impossible to discern which of the various cases that are mentioned but not adequately identified in the complaint – including a criminal charge against Brown, an action for a protection order against Brown, a boundary dispute litigation, and four federal lawsuits initiated by Brown – are cases which Brown alleges triggered a duty to defend. Moreover, the court cannot discern any factual

basis for Brown's conclusory allegations that that Amica acted in bad faith or engaged in unfair competition, fraud, or "outrageous behavior."

Brown shall have leave to amend his complaint as against Amica to specify by docket number the actions against him which he contends Amica had a duty to defend and to clarify whether he is also contending that Amica's alleged duty to defend obligated Amica to undertake affirmative litigation on Brown's behalf. This pleading shall be limited to no more than 10 double-spaced pages and shall comply with 14 M.R.S § 52, which prohibits specifying the dollar amount of monetary damages sought.

Fidelity Title's Motion to Dismiss

Brown's claims against defendant Fidelity National Title Group are far more succinct. He alleges that he contacted Chicago Title, which is apparently part of the Fidelity National Title Group,³ and requested that Chicago Title provide legal representation and support for Brown's claims against Amica and his attempt to collaterally attack the judgment in Knox docket RE-09-10. Complaint ¶ 310. The Chicago Title policy is annexed to Brown's opposition to Fidelity Title's motion,⁴ and the court can consider that policy because it is central to Brown's claim against Fidelity Title. *See Moody v. State Liquor and Lottery Commission*, 2004 ME 20 ¶¶ 9-10, 843 A.2d 43.

Nothing in the Chicago Title policy obligates Chicago Title to assist Brown in an action against his homeowner's insurance carrier. Moreover, Brown's apparent contention that Chicago Title has an obligation to undertake a collateral attack against the judgment in RE-09-10 on

³ The caption in this case names Fidelity National Title Group as a defendant and Fidelity National Title Group has appeared and has filed a motion to dismiss the claims directed at Chicago Title without contending that plaintiff has sued the wrong entity.

⁴ See Exhibit 5 to Brown's opposition dated April 20, 2015.

Brown's behalf ignores the threshold issue of whether Chicago Title was notified of the suit in RE-09-10 in a timely fashion. If Chicago Title was not promptly notified, its obligations to Brown terminated pursuant to Paragraph 3 of the policy. Although it is not entirely clear, Brown's complaint appears to suggest that Chicago Title was not notified. *See* complaint ¶ 312.

Accordingly, Brown's complaint shall be dismissed as against Fidelity National Title Group without prejudice to his right to amend if the facts can support an allegation that he promptly notified Chicago Title of the claims in RE-09-10 before that action went to trial and before judgment was entered in that action.

Application for Default Judgment

Brown's application for a default judgment against PNC Bank appears to be based on service by certified mail, which appears to have been delivered to a PNC office in Pittsburgh on April 1, 2015. The first problem with this application is that certified mail is not proper service under M.R.Civ.P. 4(d)(9) and 4(e). The second problem is that Brown's application suggests that he discussed giving PNC an extension of time to answer – although he now contends that he did so under false pretenses.

PNC has now appeared and filed a motion to dismiss. The Law Court has suggested that, when a party has appeared and is prepared to litigate the issues, only "serious instances of noncompliance with pretrial procedures" should lead to a default. *Design Build of Maine v. Paul*, 601 A.2d 1089, 1091 (Me. 1992). It is unclear whether there was any noncompliance with pretrial procedures in this case, but there were certainly no serious instances of noncompliance.

Brown's application for a default judgment is denied. Brown shall have until May 22, 2015 to oppose PNC's motion.

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

CRAIG BROWN
36 STONEHURST DRIVE
CAMDEN ME 04843

Plaintiff

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

JAY GREGORY ESQ
LECLAIR RYAN
ONE INTERNATIONAL PLACE ELEVENTH FLOOR
BOSTON MA 02110

Attorney for Defendant
PNC Bank

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

DAVID SOLEY ESQ
BERNSTEIN SHUR SAWYER & NELSON
PO BOX 9729
PORTLAND ME 04104-5029

Attorney for Defendant
Fidelity National Title Group

CLERK OF COURTS
Cumberland County
205 Newbury Street, Ground Floor
Portland, ME 04101

MARTICA DOUGLAS ESQ
DOUGLAS DENHAM BUCCINA & ERNST
PO BOX 7108
PORTLAND ME 04112-7108

Attorney for Defendant
Amica Insurance Co.

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ORDER

AMICA INSURANCE CO., et al,

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APR 24 2015
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On April 21, 2015 plaintiff Craig Brown, who is representing himself, filed four motions – (1) a motion for summary judgment against defendant Amica Insurance Co.; (2) a motion for summary judgment against defendant Fidelity National Title Group; (3) a motion to collaterally attack a judgment apparently issued in Knox RE-09-10 and what Brown refers to as his “SCR-083-2009 misdemeanor conviction”; and (4) a motion for sanctions against unspecified court officers and parties involved in the foregoing docket numbers and also in three federal court cases.¹ The motion for summary judgment against defendant Fidelity Title is combined with an opposition to Fidelity Title’s pending motion to dismiss. Brown also filed a memorandum opposing a pending motion to strike filed by defendant Amica.

1. None of those documents reflect – either with cover letters showing copies sent to opposing counsel or with certificates of service – that service has been made on all parties who have appeared pursuant to M.R.Civ.P. 5(a). Defendant Amica and defendant Fidelity Title appear to have been served and have appeared by counsel and filed motions. No returns of

¹ These are identified only as 2:10-CV-00063 GZS, 2:10-CV-00523 GZS, and 2:12-CV-00426 JAD.

² Although the caption of Brown’s complaint lists certain named individuals at defendants Fidelity Title,

service have been filed with respect to two other named defendants, Wells Fargo Bank and PNC Bank, and the court assumes those parties have not been served.²

2. As far as the court can tell, Brown's motion for summary judgment against Amica and his combined opposition and motion for summary judgment on his claim against Fidelity Title do not bear original signatures.

3. Brown is directed to file within 10 days a certification that he has served his opposition to Amica's motion to strike, his combined motion for summary judgment against Fidelity Title and opposition to Fidelity Title's motion to dismiss, and his motion for summary judgment against Amica upon counsel for all parties who have appeared.

4. If he did not serve copies on counsel for all parties who have appeared, Brown is directed to serve those parties forthwith, and any deadlines for reply memoranda shall run from the date of service rather than from the date of filing.³

5. Brown is also directed to file within 10 days original signed signature pages for his motion for summary judgment against Amica and his combined opposition and motion for summary judgment against Fidelity Title. Otherwise those filings will have no legal effect. *See Petit v. Lumb*, 2014 ME 117, 103 A.3d 105.

6. Amica and Fidelity Title shall not be required to respond to Brown's motions for summary judgment until their pending motions to strike and to dismiss have been decided.

² Although the caption of Brown's complaint lists certain named individuals at defendants Fidelity Title, Wells Fargo Bank, and PNC Bank, Brown has since moved to amend the caption to clarify that he is only seeking to sue those entities and not any of the named corporate officers. That motion is granted and establishes that the named individuals are not being sued in this case, rendering moot Fidelity Title's amended motion to dismiss dated April 6, 2015. See also this court's March 30, 2015 order.

³ If he did not serve counsel for all parties who have appeared, Brown is reminded that under Rule 5(a) all filings with the court must be served upon all counsel who have appeared.

7. The court will not entertain Brown's motion to collaterally attack a 2009 Knox County judgment and an unspecified misdemeanor conviction. There is no cause of action in Brown's complaint seeking to collaterally attack the Knox judgment and no indication that the parties to that judgment have been made parties to this action. In addition, assuming that the misdemeanor conviction that Brown is seeking to collaterally attack was issued by a Maine court, the only available remedy is a petition for post-conviction relief, which may not be joined with this civil action.

8. The court will not entertain Brown's motion for sanctions against court officers and parties. This court does not have jurisdiction to sanction court officers and parties in unrelated state proceedings or to issue sanctions against court officers and parties in federal proceedings.

9. In the event that Amica and Fidelity Title wish to file reply memoranda on their pending motions to strike and dismiss, the court will take those motions under advisement once those reply memoranda have been filed or the deadlines to file those memoranda have passed.

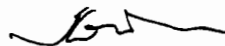
10. In his papers Brown repeatedly argues that a pro se plaintiff is not held to the same standards as a practicing lawyer. While some accommodations may be made due to a party's pro se status, the law in Maine is that self-represented litigants are afforded no special consideration in procedural matters. *Clearwater Artesian Well Co. v. LaGrandeur*, 2007 ME 11 ¶ 8, 912 A.2d 1252; *Dumont v. Fleet Bank*, 2000 ME 197 ¶ 13, 760 A.2d 1049. Brown is required to comply with all applicable procedural rules notwithstanding his self-represented status.

The entry shall be:

Procedural order entered on defendant Amica's motion to strike, defendant Fidelity Title's motion to dismiss, and plaintiff's motions for summary judgment against Amica and Fidelity Title. Plaintiff's motion to collaterally attack a judgment and misdemeanor conviction

and his motion for sanctions are summarily denied. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: April 23, 2015



Thomas D. Warren
Justice, Superior Court